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# Proportionality Principle in the CJEU Judgments on Tax Cases

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## ABSTRACT

*This article provides a comprehensive jurisprudential analysis of the principle of proportionality in EU law in the context of avoiding, abusing, and preventing tax evasion, as highlighted by the CJEU's jurisprudential practices. This study aims to clarify how the principle relates to the multifaceted challenges tax evasion poses for the EU. Key findings from this research underscore the pivotal role played by the principle in ensuring that EU tax laws effectively combat tax evasion while safeguarding fundamental rights and principles of justice. The CJEU's jurisprudential practices provide valuable insights into the interpretation and application of this principle in concrete cases, offering guidance to Member States and practitioners in the field. This study contributes to the ongoing discourse surrounding tax evasion and its countermeasures within the EU. As the EU continues to evolve its tax policies in an increasingly globalized and interconnected world, understanding the nuances of the principle of proportionality becomes indispensable. This research is a valuable resource for policymakers, legal practitioners, scholars, and stakeholders interested in enhancing the coherence and effectiveness of EU tax law while upholding the rule of law and protecting the integrity of the internal market.*

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EU tax law, VAT, legality, fairness, harmonization



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## Introduction

"The principle of proportionality has been developed by the Court of Justice of the European Union [CJEU] deriving from the rule of law and requires in particular that the individual should not have his freedom of action limited beyond the degree necessary in the public interest" (Tridimas, 1999, p. 136). The principle was first mentioned in the CJEU's decision in the case of *Fédéchar* (*Fédération Charbonnière de Belgique v. High Authority of the European Coal and Steel Community*, 1956). However, the Court did not explicitly cite proportionality (Moosdorff, 2011, p. 6) until it handed down its verdict in the international *Handelsgesellschaft* case (*Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, 1970).

The principle of proportionality is used to evaluate the performance of European Union (EU) institutions and forms the foundation for assessing Member States' actions (Baçal et al., 2013, p. 145–146). Article 3b (3 and 4) was incorporated into the Treaty on European Union (TEU) and the Treaty Establishing the European Community by the Lisbon Treaty, which amended Articles 5/4-5 of the Treaty on European Union and serves as the normative basis for the idea of proportionality in the legal system (Mudrecki, 2018b, p. 635).

This principle calls for a reasonable or appropriate balance between the authority that Member States may employ to avert possible abuse, evasion, or avoidance and the implementation of the values, rights, and duties contained in value-added tax (VAT) legislation. The CJEU has repeatedly underlined that any measures a Member State takes to thwart

and prevent suspected tax evasion may not go beyond what is required to accomplish that goal in harmony with the proportionality principle (Revenue Irish Tax and Customs, 2021, p. 25). The VAT Directive establishes the rules, parameters, and provisions that Member States are required to include in their national VAT regulations. Article 273 permits said Member States to impose additional requirements that they may judge essential to ensure the collection of the tax and combat tax fraud, provided that these responsibilities uphold the concept of equality compared to national transactions conducted among Member States. That is, it is important to adhere to the neutrality and proportionality principles (Galván, 2016).

The principle of proportionality is stated in the third paragraph of Art. 5 of the TEU. According to this principle, "Union action should not exceed that which is necessary to accomplish the purposes of the Treaties" (Official Journal of the European Union, 2016). The principle assures that a particular action does not go beyond what is necessary and does not impermissibly violate other rights or legitimate goals. It has a significant influence on the EU legal system; principles of EU law become non-hierarchical with the possibility that any one may prove most crucial in the unique facts of a specific case. This principle gives the Court enormous discretion and the ability to manage and advance norms under EU law (Dunbar, 2021, p. 557).

According to Article 3b/4 of the Application of the Subsidiarity and Proportionality Principles Protocol, the institutions of the EU must adopt the proportionality principle. The Protocol states that with relation to implementing the proportionality and subsidiarity principles, each institution should guarantee ongoing conformity with the provisions of Article 5 of the TEU (Article 1 of the Protocol). The CJEU has authority over actions brought by the Member States in conformity with Art. 263 of the Treaty on the Functioning of the European Union (TFEU) or notices made by them in accordance with their legal systems on the authority of the chamber of their national parliament (Mudrecki, 2018b, p. 635).

Regarding VAT, the proportionality concept has a distinct meaning. According to Art. 1/2 of Council Directive 2006/112/EC on the common system of VAT, the common system of VAT entails the imposition of a general consumption tax that is exactly proportional to the cost of goods and services, regardless of the number of transactions that occur during the production and distribution process prior to the point at which the tax is collected. Thus, the proportionality principle influences choosing the proper tax base is influenced by the proportionality principle (Baçal et al., 2013). The 112 Directive's proportionality concept, which is a consequence of Article 1/2, goes beyond the bounds of this item. However, this does not imply that the idea of the principle of proportionality in a more general sense is irrelevant to interpreting rules relating to VAT.

The only known method for putting the principle of equal treatment under the law in taxation is the principle of proportionality. As argued by McCulloch, "The moment you renounce the cardinal principle of demanding from all persons the same proportion of their income or of their property, you are at sea without a rudder or compass, and there is no amount of injustice and stupidity you may not perpetrate" (McCulloch, 1883, p. 164). All forms of taxation include some element of force, and most people see coercion as something negative, something they would rather have less of rather than more of (ignoring the costs of getting rid of it; Baird, 1981, p. 407). The CJEU advocates for a uniform VAT policy throughout the EU. The Court often issues rulings on problems presented by national courts from various Member States regarding the implementation and interpretation of VAT legislation (Revenue Irish Tax and Customs, 2021, p. 25–26).

The framework for a unified VAT system is entrenched by the VAT Directive (Council Directive 2006/112/EC), which each Member State is expected to apply in its own area via national

legislation. The overall legal structure of the EU is fundamentally grounded in the general principles of Union law. The basic principles are ranked alongside the EU treaty provisions in terms of hierarchy because they are regarded as fundamental legislation. Both Member States and Union institutions must abide by them. The implementation and execution of national VAT legislation must adhere to a number of basic EU legal standards, which Member States are required to respect. Some of these principles are built into the VAT system; thus, it is unnecessary to transpose them into national legislation to apply them. Therefore, even if they are not covered by national legislation, certain EU legal principles may be relied upon (Revenue Irish Tax and Customs, 2021, p. 25–26).

The context, goals, and aims of the VAT system must be considered while clarifying VAT law. The Member States' comprehension of the fundamentals of VAT law and how EU legislation ought to be construed in light of those fundamentals is strengthened by CJEU case law. As a result, the CJEU has the authority to use these guidelines to interpret the VAT Directive. These guidelines may be categorized as either basic EU law guidelines or guidelines derived from VAT legislation (Revenue Irish Tax and Customs, 2021, p. 24).

The article's goal is to try to address the topic of what function the proportionality principle serves in the value added tax system. This main goal will be attained through attaining specific goals, which are considered to be the following questions and their respective answers:

**RQ1:** Does the member state legislator consider the proportionality principle when adopting tax law solutions?

**H1:** Application of the proportionality principle is essential for the implementation of the value-added tax while adopting tax law solutions.

**RQ2:** Does the CJEU commonly use the principle of proportionality when interpreting tax law provisions?

**H2:** In tax cases, the CJEU applies the concept of proportionality, in conjunction with other EU principles, rather regularly. This is done in order to guarantee the defense of taxpayers' rights alongside other EU principles.

The first part of this paper discusses the theoretical definitions of the principle of proportionality and the definitions in the relevant EU law and CJEU jurisprudence. The second part presents our methodology to carry out this research. The third part elaborates on the CJEU's interpretation strategies in issues involving the VAT proportionality principle. We have also analyzed the effect of the principle on the CJEU's case law and judgment on the proportionality and neutrality principles. The fourth part includes discussions of the principle of proportionality and the standards the Court has created through its jurisprudence regarding this principle. The last part concludes the paper and provides recommendations.

## Methodology

In verifying the raised hypotheses and the research question, we have applied most social science methods. The secondary data is the result of a review and analysis of the literature by international authors, particularly related to the role and importance of the principle of proportionality as a key tool to ensure that the EU institutions and the actions of the Member States accord with EU law and that any restriction on fundamental rights and freedoms is justifiable but not excessive. This principle requires that measures taken by EU institutions or Member States must be necessary to achieve a legitimate objective and must not go beyond what is required to achieve this objective. Information was gathered from various sources, including official EU documents, journal publications, reports, legislation, and court precedent.

The research methodology used in this study is qualitative analysis, as expressed through judicial practice and the interpretation of tax legislation. Some of the methods are the

descriptive method, the historical method, and the comparative method. With the aid of additional research methods, this approach reflects the study of the problem in two stages. The regulation of the EU VAT Directives and the CJEU precedence is examined to analyze, describe, and explain the topics covered. The CJEU case law, considering the proportionality principle, forms the basis of the study. The intent of the law and its application remain crucial factors. We use interpretation techniques, including historical, systematic, grammatical, and teleological approaches, to arrive at the appropriate responses when the law and the VAT Directives are ambiguous.

### **1. Interpretation Strategies the CJEU Uses in Issues Involving the VAT Proportionality Principle**

When legislation expressly makes the exercise of a legal right contingent on fulfilling specific conditions, one may reasonably assume that failing to comply with (at least) one of those criteria would be potentially fatal. However, the situation is more complicated under EU VAT rules. According to a long line of CJEU case law, provisos are classified into two categories for VAT purposes. On the one hand, substantive or material conditions must be met before taxpayers can exercise any privilege conferred by VAT legislation. On the other hand, formal conditions appear to be second-class provisos at best. Their sole goal is to make VAT administration easier by allowing taxpayers to discharge the burden of proof for meeting the substantive requirements. If the practical obstacle of fact-finding can be overcome in another way that persuades the tax authorities or a court, the failure to complete a legal prerequisite does not prohibit a right from being exercised (Barth, 2022, p. 293).

The CJEU is tasked with resolving any interpretational questions about the VAT Directive. If Member States' national courts are unsure how to interpret elements of the VAT Directive that must be implemented into their domestic law, the CJEU may guide the right interpretation to ensure it is carried out correctly. The EU VAT Directive (which must be applied identically across all Member States) and the jurisprudential ramifications of the CJEU have developed the unified VAT system into a truly European tax (Kollmann, 2013, p. 99).

Even if there is no uniform harmonization, the CJEU continues to emphasize the significance of the domestic legislation that is implementing the Directive into force being interpreted in a manner that accords with EU law (*Ekro BV Vee-en Vleeshandel v. Produktschap voor Vee en Vlees*, 1984, par. 11). Therefore, national courts and tax administrations are required to comply with EU legislation and CJEU precedent while implementing their national VAT rules. The CJEU has started developing a unified strategy for dealing with this constraint by delivering preliminary rulings laying out its position on "turnover taxes." These rulings were reached because of appeals taken before national courts under Art. 33 of the 6th Directive, which questioned the validity of a variety of domestic taxes. In this regard, it is important to stress that the treaties do not authorize the CJEU to expressly evaluate whether a national tax is acceptable under EU law. The CJEU is only able to offer a helpful interpretation of the Community norm when considering specified characteristics of the domestic tax that the national court mentions in its order for reference (Lenaert et al., 2015, p. 78).

For instance, the Court assessed whether the then-applicable Art. 33 of the 6th Directive, now known as Art. 401 RVD, prevented the maintenance of a French solidarity tax and a mutual aid fee that applied to commercial businesses in its first case, *C-295/84 Wilmot*. Both levies contributed to the funding of social benefit programs, including retirement pensions and programs for company owners and independent contractors. The solidarity levy was calculated based on the annual pre-tax income of the firm. The mutual assistance charge

was a specified percentage of the total solidarity levy. It was not obvious whether any of them qualified as turnover taxes, which are banned under that clause (*SA Rousseau Wilmot v. Caisse de compensation de l'Organisation autonome nationale de l'industrie et du commerce (Organic)*, 1985).

The Court then moved on to an interpretative teleology of Art. 33, finding that it ought to be understood in light of the purposes reached by the harmonizing turnover taxes. As a result, the unified system of VAT was developed to eliminate cumulative multistage turnover taxes. In considering the circumstances, it is necessary to establish the precise scope of the legislation (Maris, 2017, p. 21). The CJEU has frequently declared that the VAT is an indirect tax on final consumption (*Elida Gibbs v. Commissioners of Customs and Excise; Teleos and Others*). Therefore, one may argue that the purpose of the EU VAT Directive is to tax the end user (Lang et al., 2009, p. 7).

When interpreting the essentials of the VAT Directive, it is important to keep in mind that the intended beneficiaries of VAT are individual consumers, not businesses. European Union law has its own distinct body of rules. In particular, in connection to the VAT Directive, the CJEU is certain that there cannot be any allusions made to the legal systems of specific countries. A reference of this sort would contradict the goal of implementing the VAT Directive the same throughout all of the Member States (Kollmann, 2013, p. 17).

In addition, the Court found that EU law could not be used in a dishonest or fraudulent way. A transaction carried out with the sole intention of dishonestly obtaining an advantage in conformity with EU rules and without any other legitimate economic motive would be considered abusive. This principle also applies to taxes on sales and purchases. The Court decided that it is acceptable for businesses to structure their financial and business dealings in a way that reduces the possibility that they would be required to pay taxes on the profits they generate. A transaction would be regarded as an abusive practice only if two prerequisites were met. First, the transaction had to acquire a tax advantage that directly opposed the stated aims of both the Directive and the national implementing legislation, all while satisfying the formal criteria of both sets of regulations. Second, there needed to be objective proof to show that the major purpose of the transaction was to get a tax advantage (Reiniers et al., 2008).

Article 131 of the EU VAT Directive grants Member States a broader range of discretion, allowing them to, for instance, impose restrictions on the use of exemptions to guard against potential fraud, abuse, or avoidance. If a Member State chooses to restrict a taxpayer's EU rights in this case, it must ensure that it does not go further on what is necessary to achieve its purpose—that is, that the measures adopted to achieve the goal are proportionate to the goal. It is known as the proportionality principle and pertains to VAT.

Member States and taxpayers are protected by certain legal concepts ingrained in the EU legal system. The legal certainty principle is one example that “seeks to maintain predictability in circumstances and legal relationships covered by EU law, particularly with respect to regulations that may have financial repercussions; and demands legislation to be precise, specific, and understandable to taxpayers before implementation” (Lexis PSL Tax, 2015). Only taxpayers, not Member States, may rely on certain additional principles.

The CJEU has been unable to implement the rules of the TEU in the area of VAT, which has led to the survival of regulations that may be seen as incompatible with the EU's common market and restrictive of fundamental freedoms. Harmonization is to blame for this situation.

### **1.1. Effect of the Proportionality Principle on the CJEU's Case Law**

It cannot be argued that the proportionality principle satisfies the requirements for being accepted as a jurisprudential theory. Nevertheless, it is significant in determining how tax



law requirements should be interpreted. Three interpretation directives—linguistic, systemic, and functional—are often used when interpreting tax legislation. Furthermore, pro-EU interpretation (interpretation in favor of European law) and pro-constitutional interpretation (interpretation in line with constitutional principles) are put into practice. It is possible to see the proportionality principle as pro-EU and/or pro-constitutional when used in rulings by international courts, constitutional tribunals, and local courts (Mudrecki, 2018b).

The CJEU strongly affects the protection of taxpayers' rights by applying a pro-EU interpretation binding on national courts, effectively defending these rights. In one view, it does so by alluding in its legal precedent to the standards for promoting human rights established by the European Court of Human Rights within this guideline of amicable cooperation. It is important to emphasize that the CJEU deals with tax issues, particularly those involving harmonized taxes like the excise duty and VAT (Mudrecki, 2015, p. 79).

The CJEU regularly uses the principle of proportionality to interpret EU law. In the *Sosnowska* case, the CJEU ruled that Art. 18/4 of the 6th Directive 77/388 conflicts with national law, which extends the time frame for a domestic tax authority to reimburse excess VAT amounts paid while absent of a substantial bond from 60 to 180 days (beginning on the day that taxpayers of specific categories file a VAT submission). This national regulation is intended to make it easier to oversee tax avoidance and fraud (Mudrecki, 2018b, p. 640).

As Klatt and Meister (2012) have correctly stated, several uncertainties concerning the principle of proportionality test originate from the absence of precise recognition and explanation of the variables that affect the weighing procedure. This absence contributes to a lack of clarity about the proportionality test. The authors attribute this situation to the concurrent functioning of many theories that prioritize the idea of "rights" more than the legal limitations placed on their exercise (Klatt & Meister, 2012, p. 15–44).

The finding that the scope of national laws on the entitlement to a VAT refund is too restrictive and therefore disagrees with EU legislation resulted from the pro-EU interpretation regarding the proportionality principle as an EU norm. Thus, the CJEU called for modifications regarding the extension of the right to refund of VAT, which according to local Polish legislation, apart from being restrictive, are therefore in conflict with EU law therefore they must be fully harmonize the tax law's requirements. In a characteristic move, the Court often cites the concept of neutrality as the basis for the VAT, coupled with the criterion of proportionality (Mudrecki, 2018b).

As Barak (2012) argues, the principle of proportionality serves two essential purposes. First, it offers a crucial standard for settling conflicts involving standards that contradict various constitutional systems. Put another way, this standard provides a way to determine whether inferior norms that restrict the enforcement of constitutionally established human rights norms are valid. Proportionality serves as a tool for interpretation, offering a standard for giving a legal rule meaning in this capacity (Barak, 2012, p. 131). Second, the normative implementation of the proportionality principle was probably discovered in EU law. As a result, this principle takes on the form of a standard for the EU and is coupled with the principle of subsidiarity. This provision has been amended from Art. 5(4) and (5) of the TEU to Art. 5(4) of the TEU (Official Journal of the European Union, 2016).

The CJEU's recognition that judicial application of the law is a component of the domestic execution of a directive permits:

- (1) Giving courts the authority to determine whether a Member State has effectively implemented EU law;
- (2) Achieving the goal of EU law, including a Directive, via judicial application of the law (the principle of the effectiveness of EU law);

(3) Interpreting domestic legislation in conformity with EU legislation; and

(4) Implementing EU legislation uniformly across all Member States (von Colson and Kamann v. Land Nordrhein-Westfalen and Commission of the European Communities v. Italian Republic).

It should be emphasized that the CJEU often applies the proportionality principle in tax matters along with other EU rules to guarantee the preservation of taxpayers' rights.

Analysis of the CJEU's enforcement of the principle of proportionality reveals variations. Regarding conformity to the principle in taxes that must be harmonized, such as excise duty and VAT, the CJEU provides the highest protection. In instances involving these taxes, the CJEU has often determined that Member States have breached the principle. Furthermore, in accordance with CJEU case law, the principle is designed to stop national lawmakers from enacting any "automatisms" that impose stricter tax laws. The CJEU has also noted the need to consider the taxpayer's alleged good faith before denying it the ability to deduct input tax in reviewing this group of cases (Mudrecki, 2021, p. 43–44).

A review of CJEU case law demonstrates that the principle of proportionality may be breached when punishing taxpayers for violating formal constraints despite satisfying substantive requirements (Mudrecki, 2021, p. 43–44).

The CJEU uses the concept of proportionality to provide taxpayers with extensive protections. The Court underlined in its judgments of 21 February 2008 in *Netto Supermarkt*, C-271/06, EU:C:2008:105, paragraph 18, and of 10 September 2009 in *Plantanol*, C-201/08, EU:C:2009:539, paragraph 43, that general legal concepts, including the proportionality principle, are a component of the EU legal system. To exercise the authority granted to them by EU directives, EU institutions and Member States must conform to these rules (Mudrecki, 2018a, p. 51).

The CJEU ensures that EU legislation is applied consistently in all Member States. When there is a reasonable dispute about the application or interpretation of EU legislation, Member States' national courts may refer cases to the CJEU for clarification under Art. 267 of the TFEU (Revenue Irish Tax and Customs, 2021). The preliminary ruling procedure changed the domestic judicial structure by allowing lower courts to interact directly with the CJEU (Zu, 2023, p. 308).

It is important to remember that the CJEU is the final judge in disputes involving VAT. The Court's jurisdiction to decide on the legality of acts of the Union's institutions, organizations, offices, or agencies is an unquestionable foundation of the European legal order (Papis-Almansa, 2023, p. 612). The CJEU's rulings have precedence and are enforceable across the board for all Member States. Therefore, each Member State's comprehension, interpretation, and execution of VAT regulations at the national level depend heavily on the VAT case law from the CJEU.

On core VAT concepts, rights, and responsibilities, and the intended impact of specific VAT Directive provisions, the Court will elaborate on the fundamental principles of VAT. The judgments are retroactive unless the Court states explicitly in the ruling and establishes a time restriction (Revenue Irish Tax and Customs, 2021, p. 23–24).

The principle of proportionality has been integrated into the TEU since the Treaty of Amsterdam in 1997 (Usher, 1998, p. 37–40). The CJEU is crucial in determining how EU legislation ought to be understood. Municipal courts must abide by CJEU rulings due to the principle of primacy in the implementation of EU law and the effectiveness of that legislation. They run the danger of being fined if they do not follow the CJEU interpretation (Mudrecki, 2018a, p. 50).

The Court finds itself in an awkward situation. It seeks to strike a balance between EU principles and ideals on the one hand and national laws' autonomy on the other. As a result,

the Court is frequently accused of either restricting Member States' discretionary powers or failing to ensure the proper protection of people's rights (Bellenghi, 2023, p. 89).

## **1.2. The CJEU's Judgment on the Principles of Proportionality and Neutrality:**

### **Poland Case**

The CJEU frequently applies the concept of neutrality combined with the proportionality principle when interpreting rules involving VAT. The principle of neutrality is intended to prevent VAT from becoming a burden for an enterprise. In addition, the national legislature is unable to implement any "automatic" processes to enforce the legislation governing taxes since the principle of proportionality prevents them from doing so (Mudrecki, 2018a, p. 52).

On April 15, 2021, the CJEU issued its decision in the *Grupa Warzywna* (C-935/19) dispute in accordance with Polish law and EU law. This case relates to the ongoing, contentious issue of VAT sanctions (KPMG Tax M. Michna sp.k., 2021).

A Polish corporation named *Grupa Warzywna* bought real estate that had been owned for more than two years. The real estate seller sent out an invoice collecting VAT. *Grupa Warzywna* filed a reimbursement request for the VAT paid on the real estate. The tax office denied the claim on the grounds that the real estate transaction should have been VAT-exempt. According to the tax authorities, *Grupa Warzywna* was not permitted to remove the supply's input VAT. The tax authorities assessed a penalty of 20 % on the VAT amount of the purchase even though the firm amended its VAT return appropriately and reduced its deductible VAT amount, claiming that the first VAT deduction was invalid. The corporation objected to the authorities' strategy. Eventually, the CJEU was asked to rule on whether a penalty similar to that imposed by the Polish authorities was permissible under EU law.

The CJEU reasoned that because penalties are not included in EU VAT Directives or VAT rules, there is no harmonization of penalties under EU law. Member States are within their rights to qualify, determine, and apply whatever sanctions they deem necessary (Merz, 2021).

However, the principles of proportionality and VAT neutrality – the two foundations of EU law – must always be respected. Respect for the neutrality principle manifests itself in the ability of VAT taxpayers to deduct the input VAT sums incurred while engaging in VAT-registered activity. Only rare circumstances, such as fraudulent behavior, allow for the restriction of this freedom. Penalties that limit or abolish this right thus violate EU law. On the other hand, a number of reasons, such as stipulating that punishments should not go beyond what is required for the objectives achieved, crystallize the notion of proportionality. It is important to consider the kind and severity of the violation that the penalty tries to punish. In conclusion, the penalties cannot be out of proportion to the gravity of the incident, particularly when no loss of VAT income occurs.

In the *Grupa Warzywna* case, the corporation incorrectly determined how a particular transaction should be treated for VAT purposes. Nevertheless, whether the intent was dishonest, whether the mistake resulted in a loss of tax income, or whether other unique circumstances were considered, the punishment remained the same. For these reasons, the CJEU concluded that the punishment in question abused the principle of proportionality. One may conclude that VAT penalties that are arbitrarily applied without considering the unique circumstances of each instance violate the proportionality principle and, as a result, do not align with EU legislation (Matesans, 2021).

It is impossible to talk about harmonization with regard to sanctioning legislation, and it is doubtful that full harmonization will occur very soon. Yet, considering the many CJEU precedents, one may detect a "soft" harmonization that manifests in preserving two key VAT principles: proportionality and VAT neutrality. Each Member State's sanctioning system must



always respect both principles. It is debated if respecting both of these principles really exists (Matesans, 2021).

VAT is a consumption-based tax that is paid mainly by final consumers and collected by companies (Organization for Economic Co-operation and Development, 2011). The proportionality principle may be separated into two tests: suitability and necessity. The suitability test refers to the connection between the means and the goal; the methods used ought to be appropriate for accomplishing the objectives. The necessity test concerns the ability to weigh competing, divergent interests (Moosdorff, 2011, p. 7).

In the case of *Gemeente Leusden and Holin Groep* (2004, par. 76), the Court stated that a goal is to prevent potential tax fraud, evasion, and abuses that are recognized and promoted by the Directive. In the *Garage Molenheide* case, the Court said that the principles of the common system of VAT would be weakened if the measures went further than required to accomplish their aim (*Molenheide and others v Belgian State in Joined Cases C-286/94, C-340/95, C-401/95 and C-47/96*, 1997). In this particular instance, the ability to deduct input VAT.

In accordance with the principle of proportionality, Member States need to use methods that do the least amount of harm to the goals and ideals outlined in the legislation that is relevant to the Union. For domestic measures to be in accordance with the principle, it is important to verify not only whether the methods used are appropriate but also whether those means do not go beyond what is required to accomplish the goals of the laws (*Lodewijk Gysbrechts and Santurel Inter BVBA*, par. 51).

Regarding the above, we can conclude that, in accordance with the Court's decision in case C-895/19, the VAT Act provisions in Poland do not adhere to the VAT Directive. Since the 2008 financial crisis, the economic situation has compelled nations to evaluate ways to boost revenue without weakening social rights or imposing an unjust tax burden. Recent economic challenges due to the pandemic and the oil crisis have exacerbated this trend. It has resulted in the implementation of several policies targeted at curbing tax evasion that are laying the groundwork for tax authorities to use new technological tools (Tomo, 2023, p. 152).

## **2. Discussion**

The Court primarily adopted the proportionality principle from the administrative and constitutional law traditions of Germany and France (Arai-Takahashi, 2002, p. 188). Nevertheless, the Court follows the conventional three-step procedure for a proportionality test in only a small number of cases: (1) whether the measure in question is necessary to reach the goals that the relevant EU legislation is legitimately pursuing; (2) whether the measure is appropriate, which means that when choosing between several appropriate measures, one must choose the one that has the least negative impact on the primary law's guiding principles; and (3) whether the disadvantages caused are not out of proportion to the goals achieved (Weber, 2010, p. 235–236).

In most instances, the Court has simply examined the contested measure in light of the first two requirements: that it be suitable to reach or promote a legal objective and that it not exceeds what is required to accomplish that goal (*Laserdisken ApS v. Kulturministeriet*, 2006, par. 53). The third phase, which involves considering and balancing competing ideas and policies, is undoubtedly a somewhat dubious aspect of the Court, maybe because it is directly tied to the sensitive problem of institutional balance at the EU level (Bogdandi, 2000).

The Court's jurisprudence seems to perform a dual function in which proportionality serves as both an independent assessment criterion and a prerequisite for allowing the overriding of other basic general principles. The Court is kindly advised to accept the latter interpretation

alone and refrain from interpreting proportionality as a generic concept similar to any other. Most legal theory experts believe that a legal principle, as opposed to a legal rule, is defined by its relative nature and susceptibility to weighing and balancing against opposing interests (Weber, 2010, p. 237).

This article will look into proportionality as a relevant context for an infraction of other basic principles of EU law recognized by the CJEU. As a result, proportionality may become a problem when a VAT Directive provision conflicts with the equality principle's requirements but may still be justified by other legitimate goals, like practicability and the employment use of administrative resources (*Gustave Wuidart and others v Laiterie coopérative eupenoise société coopérative and others*, 1990, par. 27 et seq.).

The information above may be used to generate the following hypotheses:

**H1:** Application of the proportionality principle is essential for implementing VAT while adopting tax law solutions.

**H2:** In tax cases, the CJEU regularly applies the concept of proportionality in conjunction with other EU principles to guarantee the defense of taxpayers' rights alongside other EU principles.

It will also become important when the implementation of VAT results in violations of other general principles, such as fundamental rights and freedoms.

## Conclusions

One of the most important principles regarding VAT is proportionality. A normative adoption of the proportionality principle could be found in international tax law. There is a possibility that the standards developed through legal research on the proportionality principle, particularly the evaluation serving the fulfillment of criteria, would be advantageous to the science of tax law.

According to the principle of proportionality, the action taken by the EU must not go beyond what is essential to reaching the aims of the Treaties in terms of the content and the form of those accomplishments. The principle of proportionality is integrated into Art. 5 of the TEU and also applies from the law of the CJEU to avoid fraud, evasion, or abuses in the domain of VAT.

As a result of the evidence presented earlier and the discussion that followed, we have arrived at the following conclusion: to avoid possible evasion, fraud, or abuses, it is necessary to strike an acceptable balance between the harm to the core principles and goals of the common VAT system and the authority of the CJEU. There are two components to this definition. First, the measure must be designed to stop potential evasion, avoidance, or abuse. Second, the extent to which the common system of VAT is undermined to achieve this objective must be proportional. The jurisprudence of the CJEU has an important function in the discussion of this matter.

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**Беши С., Сусури Д. Принцип пропорційності у рішеннях СЄС у податкових справах. – Стаття.**

У цій статті наведено усебічний юридичний аналіз принципу пропорційності у законодавстві ЄС у контексті уникнення, зловживання та запобігання ухиленням від сплати податків, як це підкреслюється судовою практикою СЄС. Це дослідження має на меті з'ясувати, яким чином цей принцип пов'язаний з різноманітними проблемами, які створює для ЄС ухилення від сплати податків. Ключові висновки цього дослідження підкреслюють провідну роль зазначеного принципу у забезпеченні ефективної боротьби податкового законодавства ЄС з ухиленням від сплати податків, одночасно захищаючи фундаментальні права та принципи справедливості. Практика Суду ЄС надає цінну інформацію про тлумачення та застосування цього принципу у конкретних справах, пропонуючи рекомендації для держав-членів і практиків у цій галузі. Проведене дослідження є внеском у поточний дискурс навколо ухилення від сплати податків та заходів протидії цьому в ЄС. Оскільки ЄС продовжує розвивати свою податкову політику у все більш глобалізованому та взаємопов'язаному світі, розуміння характерних рис принципу пропорційності є актуальним та необхідним. Це дослідження є цінним для політиків, юристів-практиків, науковців та стейкхолдерів, зацікавлених у підвищенні послідовності, узгодженості та ефективності податкового законодавства ЄС з одночасним дотриманням принципу верховенства права та захистом цілісності внутрішнього ринку.

**Ключові слова:** податкове право ЄС, ПДВ, законність, справедливість, гармонізація.