

Interjurisdictional Competition between EU States

Some brief Remarks on Interjurisdictional Competition between EU Member States

By Christian Koenig *

A key issue of European integration has emerged through the phenomenon of interjurisdictional competition between the EU Member States.¹ Interjurisdictional competition arises in a "regulations market for public goods-tax-benefit packages", in which the Member States compete to attract labour, capital and entrepreneurial innovation. In this regulations market, which by now has been neglected within the European Union, differences in tax and other regulatory burdens between the Member States create different access price offers for membership of various "clubs" which are organised under public law.² Transfer of competence from the level of the Member State to the supranational level can be understood as the result of jurisdictional competition to achieve the most efficient collective problem solutions. Supranational or federal jurisdictions should arise in interjurisdictional competition and from the bottom upwards in the search for the most efficient collective solution level (bottom-up approach). This applies above all to supranational harmonisation which, as a sovereign regulatory cartel of the Member States in the Council of Ministers, reduces the incentive for mobility for those participants in the single market which, without harmonisation, would move into another Member State with regulations more favourable to them. According to "bottom-up" logic, harmonisation – at all events with regard to mobile participants in the single market – requires justification in terms of an explanation of the failure of interjurisdictional competition.

The extent to which interjurisdictional competition between Member States challenges even the rules firmly established under applicable EC competition law is illustrated by the example of control of state aid. Interjurisdictional competition results from the simple fact that Member States can provide a more attractive location for companies to come and set up business than

other Member States. Artificial differences in competitive conditions between Member States are a prerequisite for interjurisdictional competition to function. If Member States offer so-called "public goods-tax-benefit packages" in a previously neglected single market for collective problem solutions and companies are seen as the demand side, state aid can be understood as price discounts/rebates granted by the supply side (Member States) to the demand side (companies). It would then, however, be logical at least if state aid could be negotiated between the supply and demand sides as rebates against the normal price (normal taxation) in the single market for industrial locations.³ Control of state aid (i.e. control of rebates) would have to be targeted against unfair practices, especially against discrimination or dumping, as in the case of markets for private goods and services. A categorical ban on state aid (ban on rebates) could prevent price competition between different Member States and reinforce excessive location prices (taxes) in the long term.

Interjurisdictional competition between Member States must in future be incorporated in the formulation of European integration rules and principles, in particular the EC competition rules. Even axiomatic rules and principles of the single market which have never been questioned must be fundamentally re-examined. The objective of research is to develop "model rules" which on the one hand create coherence between the dual-level competition between Member States' jurisdictions and the competition between companies. On the other hand new rules shall simulate the "bottom-up" competition between Member States' regulations and supranational action (in particular, harmonisation).

* Professor Dr. Christian Koenig LL.M. (London) is director at the Centre for European Integration Research at the University of Bonn (www.zei.de).

1 Kerber, Zum Problem einer Wettbewerbsordnung für den Systemwettbewerb, in: *Jahrbuch für Neue Politische Ökonomie* 1998 (Vol. 17), pp. 199.

2 Vanberg and Kerber, Institutional Competition among Jurisdictions: An Evolutionary Approach, in: *Constitutional Political Economy*, Vol. 5, pp. 193.

3 Kerber, Die EU-Beihilfenkontrolle als Wettbewerbsordnung: Probleme aus der Perspektive des Wettbewerbs zwischen Jurisdiktionen, in: Cassel (ed.), *Europäische Integration als ordnungspolitische Gestaltungsaufgabe*, Berlin 1998, pp. 87.