FINANCING THE EU BUDGET THROUGH TAX-BASED RESOURCES: WHAT ARE THE MOST REASONABLE OPTIONS FROM A LEGAL-TECHNICAL PERSPECTIVE?

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Título

Financiando el presupuesto europeo a través de recursos basados en los impuestos: ¿cuáles son las opciones mas viables desde una perspectiva legal y técnica.

Resumen

Esta contribución se divide en tres partes. En primer lugar, aborda la razón por la que el debate sobre la reforma de los recursos propios de la UE basados en los impuestos es importante hoy en día. No es sólo una cuestión de calendario y de la necesidad de compensar el coste del programa de recuperación de la UE. Hay otras cuestiones pendientes desde hace años, a veces décadas, que justifican que se abra de nuevo este debate. A continuación, se discuten cuestiones jurídico-constitucionales, como la base jurídica adecuada para reformar los recursos propios de la UE basados en los impuestos. El art. 311 del TFUE, que confía a la UE la capacidad de financiarse con recursos propios autodefinidos y no con meras contribuciones voluntarias de los Estados miembros, como otras organizaciones internacionales más tradicionales, no es, en efecto, adecuado para adoptar instrumentos jurídicos en el ámbito de la política fiscal y la armonización fiscal, que se regulan por otras disposiciones, con otros procedimientos. La tercera parte es una pequeña contribución política desde una perspectiva jurídica al debate sobre las diferentes opciones de nuevos impuestos de la UE que están sobre la mesa.

Palabras clave

Impuesto de la UE, reforma, base legal, recursos propios, política fiscal y armonización fiscal.

Abstract

This contribution is divided into three parts. First, it addresses the reason why the debate on the reform of EU tax-based own resources is important today. It is not just a matter of timing and of the need to compensate for the cost of the EU recovery program. There are other issues that have been pending for years, sometimes decades now, that justify opening this debate again. Then, it discusses legal-constitutional issues, such as the appropriate legal basis to reform EU tax-based own resources. Art. 311 TFEU, which entrusts the EU with the capacity to be funded by self-defined own resources and not by mere voluntary contributions of Member States, like other, more traditional, international organisations, is indeed not suitable to adopt legal instruments in the area of tax policy and tax harmonization, which are regulated by other provisions, with other procedures. The third part is a small policy contribution from a legal perspective to the discussion of the different options of new EU taxes on the table.

Keywords

EU tax, Reform, Legal basis, own resources, tax policy, tax harmonization.

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SUMARIO

1. Introduction

Last year, a group of European professors drafted a manifesto on the necessity of finding a better democratic way of financing the EU budget. The manifesto proposed to address the European financial crisis brought on by the COVID pandemic by acknowledging that the current EU budget is not only inadequate to support economic and social progress and by advocating the creation of genuine EU taxes[1]. The creation of genuine European taxes by EU institutions, whose revenues would flow in the EU budget although desirable in the long term would however require a major overhaul of the EU Treaties, by granting the EU level a constitutional power to tax and would de facto but also *de iure* transform the European Union is a fully-fledged federation, like the United States of America. This perspective appears today to be a long shot. However, there is also space within the current Treaty framework for a broader range of less radical options for reform, through which the proportion of EU own resources deriving from tax-based revenues would be significantly increased. Genuine EU taxes are not indeed the only way to make the own-resources system more dependent on tax resources and on this premise, the recent developments at the EU level as to the adoption of a new multiannual financial framework for the period 2021-2027 and the NextGeneration EU instrument leave some room is for caution optimism.

When addressing the topic of EU Taxes from a legal perspective, it is important from the outset to distinguish between two situations. On the one hand, it may refer to the creation of genuine European taxes by EU institutions, whose revenues would flow in the EU budget. This would require a major overhaul of the EU Treaties, by granting the EU level a constitutional power to tax and would de facto but also *de iure* transform the European Union is a fully-fledged federation, like the United States of America. On the other hand, it may also refer to a broader range of options for reform, within the current Treaty framework, though which the proportion of EU own resources deriving from tax-based revenues would be significantly increased. Genuine EU taxes are not indeed the only way to make the own-resources system more dependent on tax resources and on this premise, the recent developments at the EU level as to the adoption of a new multiannual financial framework for the period 2021-2027 and the NextGeneration EU instrument leave some room is for caution optimism.

This contribution is divided into three parts. First, it addresses the reason why the debate on the reform of EU tax-based own resources is important today. It is not just a matter of timing and of the need to compensate for the cost of the EU recovery program. There are other issues that have been pending for years, sometimes decades now, that justify opening this debate again. Then, it discusses legal-constitutional issues, such as the appropriate legal basis to reform EU tax-based own resources. Art. 311 TFEU, which entrusts the EU with the capacity

1 European Solidarity Requires EU Taxes – letter for EATLP members. April 2020. At: https://docs.google.com/forms/d/e/1FAIpQLScrDADzE69yLSceQKGdYUGohlcl2wRiAd1gJHczNKnT8-oEPA/viewform

to be funded by self-defined own resources and not by mere voluntary contributions of Member States, like other, more traditional, international organisations, is indeed not suitable to adopt legal instruments in the area of tax policy and tax harmonization, which are regulated by other provisions, with other procedures. The third part is a small policy contribution from a legal perspective to the discussion of the different options of new EU taxes on the table.

2. Constitutional reasons to reform of the own resources system

So why should one discuss the reform of tax-based own resources now? A first reason is conjectural. The NextGeneration EU program was politically approved, together with the new multiannual financial framework 2021-2027, after a marathon of negotiation in July 2020 and finally adopted on 17 December 2020[2]. To finance this programme, the EU Commission will issue bonds up to 750 billions €. The repayment of NGEU will required additional own resources to the EU budget.

According to the 2020/2053 decision on own resources[3] :

> *«The economic impact of the COVID-19 crisis underlines the importance of ensuring that the Union has sufficient financial capacity in the event of economic shocks. The Union needs to provide itself with the means to attain its objectives. Financial resources on an exceptional scale are required in order to address the consequences of the COVID-19 crisis without increasing the pressure on the finances of the Member States at a moment where their budgets are already under enormous pressure to finance national economic and social measures in relation to the crisis. An exceptional response should therefore take place at Union level. For that reason, it is appropriate to empower the Commission on an exceptional basis to borrow temporarily up to EUR 750 000 million in 2018 prices on capital markets on behalf of the Union. Up to EUR 360 000 million in 2018 prices of the funds borrowed would be used for providing loans and up to EUR 390 000 million in 2018 prices of the funds borrowed would be used for expenditure, both for the sole purpose of addressing the consequences of the COVID-19 crisis.»*

As a consequence, *«to bear the liability related to the envisaged borrowing of funds, an extraordinary and temporary increase in the own resources ceilings is necessary.»* However, since the funds borrowed will have to be reimbursed, other measures to strengthen the financial capacity of EU institutions, such as a reform of the own-resources system needs to take place. This needs to be done even if Member States agree on a modification of the original agreement as to the duration of loans, for example by authorizing a rollover. The commitment of the EU institutions and the Member States to increase and diversify the basket of EU own-resources is indeed unconditional.

2 Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, OJ L 433I, 22.12.2020, p. 11–22.

3 Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, OJ L 424, 15.12.2020, p. 1–10.

From a constitutional perspective, such a reform could require important changes to the current EU constitutional framework, despite the fact that article 311 TFEU allows –through a rather cumbersome but democratic procedure– the «establishment of new categories of own resources or abolish an existing category».

Unlike the exercise of taxing powers in Member States, there is no parliament involvement at the EU level in the area of tax policy. There is therefore no real link between on the one hand the EU regulatory action of the European institutions –in particular the council– in tax matters and, on the other hand, the representative body, which is generally associated with the adoption of tax laws in domestic constitutional orders.

Then, there is the question of the legitimacy of the requirement of European unanimity in tax matters. It is very much like any type of international organization. When it comes to decisions that have a direct impact on citizens like taxes or tax policies, we should take seriously the arguments put forward by the European Commission in 2019, in its attempt to move gradually to qualified majority voting in taxation. This is not an issue of efficiency, because as we have seen from the last years, many acts in the area of taxation have been adopted at the EU level despite the unanimity requirement. It is an issue of democracy and of legitimacy. Although the democratic legitimacy of the European Parliament may be questioned in the light of the differences in the electoral processes in the various Member States used to elect their MEPs, the current procedure according to which the tax directives and regulations are currently adopted by the council alone do not guarantee effective democratic control despite the limited control mechanism by national parliaments on draft legislative act's non-compliance established by the protocol on the application of the principles of subsidiarity and proportionality (Protocol Nº 2). The Commission has proposed in 2019 to move progressively to a qualified majority in taxation matters, reform that would be possible without change to the EU Treaty under the so-called «passerelle clause» (Article 48(7) TEU).; those arguments that are used seem to be even more compelling regarding the adoption of a truly EU tax or even of new tax-based EU own resources.[4]

But there is also a stringent argument from an efficiency perspective to reform the EU own resource system. One should not just look at the number of acts have been adopted by the Council within the area of taxation, but also consider which level of government carries the budgetary consequences, at least partly, of tax policy choices made at the EU level. Tax policy decisions are indeed *split* between the EU and the member states while the budgetary consequences of those decisions lie exclusively with the member states.

Finally, another reason to justify a reform towards more tax-based EU own resources is solidarity. Only EU taxes can achieve solidarity, which is an essential component for the internal stability of the European Union. In an internal market where economic factors are free to move from one Member State to another, the increase of inequality between regions, as between people, can only be

4 European Commission, Communication form the Commission, *Towards a more efficient and democratic decision making in EU tax policy*, COM (2019) 8 final (15 Jan. 2019).

compensated by vertical intergovernmental transfers from the EU central level to the Member States. But solidarity is a difficult goal to achieve because as soon as it becomes too visible, or when it is presented as a single direction mechanism (from some clearly identified «contributors» to other clearly identified «beneficiaries»), it loses legitimacy. This consideration is to be found in the famous Spaak report[5] which paved the way towards the Treaty of Rome in 1957. The report recommended among other things the institution of a European fund was about helping in certain areas and industries in Europe to meet the transition of the economies. And it explicitly specified that « For the European Fund to be worthy of its name and to be able to play the part expected of it, there must be no territorial link between the origin of the funds and their utilisation». Interestingly enough, in a much more recent report written for the 2020 German presidency about the future of the reform of the EU own resource, Clemens Fuest and Jean Pisani-Ferry also address the relationship for Member States between contributions to and benefits from the EU : «Dominance of GNI contributions encourages thinking about the EU budget in terms of net balances, though EU spending creates added value that benefits the EU economy as a whole»[6].

In conclusion,. reform towards new tax based own resources is certainly necessarily and today more than ever. However, those resources should at the same time have a strong link with the European Union policies and –having an eye at the recent international debates on the digital economy[7]– with the European territory, and a not too tight link, with the territory of single Member states in order to avoid fostering resentment between member states.

3. Legal basis for tax-based own resources

In the political discussion on future EU own resources, the issues of the legal bases play an important roles, since they significantly limit the room for maneuver of EU decision-makers. In some cases, they seem to even preclude the possibility of adopting certain types of EU taxes without changing the treaties.

3.1. Legal basis and typology of EU own-resources

According to Article 311 of the Treaty on the Functioning of the European Union,

> *The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.*
>
> *Without prejudice to other revenue, the budget shall be financed wholly from own resources.*

5 Report of the Heads of Delegation to the Foreign Ministers « Spaak report » (Brussels, 21 April 1956)

6 Fuest, C., J. Pisani-Ferry (2020) «Financing the European Union: new context, new responses», Policy Contribution 2020/16, Bruegel

7 See in particular the ongoing work of the OECD on the BEPS Action 1 and the Pillar I and II proposals (https://www.oecd.org/tax/beps/beps-actions/action1/).

The Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament adopt a decision laying down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The Council, acting by means of regulations in accordance with a special legislative procedure, shall lay down implementing measures for the Union's own resources system in so far as this is provided for in the decision adopted on the basis of the third paragraph. The Council shall act after obtaining the consent of the European Parliament.

The determination of the EU own resources is a matter reserved for the Council acting unanimously with a mere consultation of the Parliament except for the adoption of implementing measures. It is on the expenditure side that the Parliament's powers have increased over time, and it is now placed on an (almost) equal footing with the Council regarding the establishment of the multiannual financial framework[8] and of the annual EU budget[9].

The first Own Resources Decision dates from 1970, and no major substantial changes to the system have been made since the 1980s (with the addition of the GNI own resource)[10]. The current system provides for four main sources of revenues: Traditional Own Resources, a Value Added Tax-based Own Resource, the Gross National Income-based Own Resource, and since 2021, a plastic contribution. Moreover, an overall cap for resources and expenditures has been established: under the rules agreed for the period 2014-2020, the EU could mobilize own resources for payments up to a maximum amount of 1.20% of the sum of all Member States» gross national income (GNI). The cap will be raised to 1.40% for 2021-2017, with temporary increases allowed, to be determined a later stage according to a formula contained in article 3 of Council Decision (EU, Euratom) 2020/2053.

Traditional Own Resources are customs duties. Customs duties are currently the closest thing to a genuine EU tax. The EU has exclusive competence regarding the determination of the scope and structure of customs duties, and the

8 Article 312 TFEU.

9 Articles 310 and 314 TFEU. However, it could be argued that the aboliton of the distinction between compulsory expenditures and non-compulsory expenditures in the EU budget by the Treaty of Lisbon has reduced the autonomy of the European Parliament as regards the latter type of expenditures (over which the EP used to have the final say).

10 Seven own resources decisions have been adopted since 1970. The first six were Council Decisions: Council Decision of 21 April 1970 on the Replacement of Financial Contributions from Member States by the Communities» own Resources, OJ L 94/19 (28 Apr. 1970); Council Decision of 7 May 1985 on the Communities» system of own resources, OJ L 128/15 (14 May 1985); Council Decision of 24 June 1988 on the Communities» system of own resources, OJ L 185/24 (15 Jul. 1988); Council Regulation Nº 2729/94 of 31 October 1994 amending Regulation (EEC, Euratom) Nº 1552/89 implementing Decision 88/376/EEC, Euratom on the system of the Communities» own resources, OJ L 293/5 (12 Nov. 1994); Council Decision 29 September 2000 on the Communities» system of own resources, OJ L 253/42 (7 Oct. 2000); Council Decision of 7 June 2007 on the Communities» system of own resources, OJ L 163/17 (23 Jun. 2007);
See European Commission, *Commission Staff Working Paper Financing the EU budget: Report on the operation of the own resources system*, SEC(2011) 876 final/2 (27 October 2011).

revenues that are collected directly accrue to the EU budget after a 25% (since 2021) deduction this is supposed to remunerate for collection costs. Moreover, as an essential element of the internal market and the external commercial policy, legislation in the area of customs duties, like the Union Customs Code and its implementing regulations[11] is not considered as having a fiscal nature and, therefore, is jointly adopted by the council (with a qualified majority) and the parliament under an ordinary legislative procedure. Customs duties represent EUR 158,6 billions, around 12,7% of total EU resources (2018).

The other two EU resources take the form of compulsory national contributions by the Member States to the EU budget.

The VAT-based own resources is calculated on the basis of a uniform rate of 0.3% applied to the corrected value added tax base of each Member State with the VAT base capped at 50% of each country's GNI. According to the commission,«the VAT based contribution is complex, requires an important administrative work necessary to harmonize the calculation basis, and offers little or no added value compared to the GNI based own resource. Furthermore, due to the statistical nature of the basis, the resource is fully independent of- and does not support VAT policies at EU or Member States level.»[12]. Its financial relevance has steadily declined since the 1980s, and it accounts for approximately 12% of total EU own resources. Despite proposals from the commission[13], the Council has not seized the opportunity to transform it in a truly tax-based own resources, which would at least, in part, directly accrue to the EU budget[14].

The Gross National Income-based Own Resource –which was originally supposed to have a purely complimentary role– currently accounts for more than 70% of EU budget. It is calculated by applying a uniform rate to Member States» gross national income. This rate is adjusted each year in order to achieve a balance between revenue and expenditure. Several exceptions have been established; in the wake of rebate for the United Kingdom, which is no longer a member State, some other EU Member States benefit from flat-rate corrections : for the period 2021-2027, EUR 565 million for Austria, EUR 377 million for Den-

11 Regulation (EU) Nº 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, OJ L 269/1 (10 Oct. 2013); Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) Nº 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code, OJ L 343/1 (29 Dec. 2015); Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) Nº 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, OJ L 343/558 (29 Dec. 2015).

12 European Commission, *Commission Staff Working Paper Financing the EU budget: Report on the operation of the own resources system*, supra n. 4, p. 4.

13 See Commission proposals on the system of Own Resources of the European Union: European Commission, *Proposal for a Council Decision on the system of own resources of the European Union*, COM(2011) 510 (29 June 2011) and European Commission, *Proposal for a Council Decision on the system of own resources of the European Union*, COM(2018) 325 (2 May 2018). See also European Commission, *Report from the Commission, Financing the European Union. Commission Report on the Operation of the Own Resources System*, Volume I and II, COM(2004) 505 final (14 Jul. 2004).

14 The relation between the EU budget and the taxpayers is not direct, but indirect, since the VAT base resource is a contribution of the Member States.

mark, EUR 3 671 million for Germany, EUR 1 921 million for the Netherlands and EUR 1 069 million for Sweden[15].

3.2. Interaction with existing EU legal basis in taxation matters

Although the Union has legislative powers in the area of taxation, these powers do not pursue a financial or budgetary objective. They are exercised with a legal and economic objective which is the achievement of the internal market. As Article 113 TFEU on the harmonization of indirect taxation explicitly states –similarly to Article 115 TFEU which serves as a legal basis to adopt acts in the area of direct taxation– the Union may adopt acts «to the extent that [they are] necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.in a way that is functional to the completion of the internal market'[16]. Both provisions provide for a special legislative procedure with the Council acting unanimously as sole legislative body and a consultative role for the European Parliament. Therefore, a clear separation exists –with minor overlaps– between the rules defining the extent of the powers in the area of taxation and those determining the own resources through which the EU budget is financed. The nature of these own resources and their relationship to taxation is quite different. Custom duties are the closest things that we know today to a genuine EU tax. Because, also from a constitutional perspective, custom duties remain national taxes, the EU has the exclusive competences regarding the structure of the custom duties, the rates, the way they are collected and the revenues generated by custom duties and by different member states to the EU budget. Moreover, there is a clear link between custom duties and the competence transferred to the EU, in particular trade policy, the customs union and the internal market. Custom duties currently represent approximately 12 % or 13 % of the total EU budget. Then the VAT resource, which has little to do with VAT. It is not part of the VAT revenue collected by the member states. It is fully independent from EU or domestic VAT policies. And GNI own resources has nothing to do with European taxation.

As the precedent of customs duties shows, nothing in the Treaty prevents a new EU own resource from being tax-based. However, this would require the adoption of common –if not identical rules– on the structure of the tax at the EU level, which could only be achieved using legal basis existing in the treaties. Art. 311 TFEU is indeed not a valid legal base to harmonize or to create taxes; it merely deals with the attribution of financial means to the European Union.

Currently, those are article 113 TFEU for indirect taxes, 115 TFEU for direct taxes, and 192 TFEU for environmental taxes, which all provide for unanimity of the council and a mere consultation of the European Parliament. The question may however be asked whether such a procedure is appropriate for establishing the base and the rate of a future EU tax, Article 113 and 115 TFUE enable the

15 Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, OJ L 424, 15.12.2020, p. 1–10.
16 See G. Kofler, EU power to tax: Competences in the area of direct taxation, in: Research Handbook on European Union Taxation Law (C.H.J.I. Panayi, W. Haslehner and E. Traversa eds., Edward Elgar, 2020), p. 11

Council to adopt tax legislation for a specific purpose. Indeed, article 115 TFUE confers powers to the Council to «issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market». Moreover, such directives should comply with the subsidiarity and proportionality principles laid down at Article 5 TEU. It appears legitimate to raise the question whether new legislation aiming at harmonizing the structure of a future EU tax would help to attain the objective of the achievement of the Internal market, and whether their adoption at the EU level would meet the subsidiarity and proportionality criteria[17].

We should be careful about using these legal bases to create a new tax that would be justified only because its revenues would fund the EU budget. There must always be a link with the internal market. The only exceptions are environmental levies because, in that case, there is a specific legal basis, Art. 192 TFEU, which also provides for unanimity, but which does not require a connection with the internal.

Anyway, it seems clear that a move towards EU tax based own resource should be accompanied by introducing qualified majority voting for the adoption of harmonisation measures. If a clearer link would be made between tax harmonization and the own resource system, the argument based on the «No taxation without representation» principle would be even more stringent, more compelling. That shows that the path towards EU tax based own resource is a relatively complicated one.

4. Assessment of potential options

Previous studies[18] have discussed the pros and cons of introducing new own-resources based on existing or new taxes, such as value added tax, customs duties and other border levies, excise duties and special taxes on certain goods and services, corporate tax, transport tax, especially car taxes and air transport taxes, financial transaction tax, and carbon tax. Some scholars have also argued for the introduction of a Pan European wealth

17 Similar doubts have been expressed as regards the adoption of the ATAD, which can be seen as an empowerment to member States to sthrengten their domestic tax systems and to adopt anti-abuse measures even in a EU cross-border context without harmonizing or coordinating their coroporate tax systems. Under such a perpective, the question may legitamenky be asked as to whetehr the ATAD really services the purpose of achieving the internal market. See E. Traversa, The prohibition of abuse of rights in European Tax Law: sacrificing the internal market for the fight against base erosion and profit shifting?, «Studi Tributari Europei» – Vol. 9, no. 1, p. 1-14 (2019), in particular p. 13 https://ste.unibo.it/article/view/10682/11222

18 See European Parliament, *Working Document on improving the functioning of the European Union building on the potential of the Lisbon Treaty* (30 Oct. 2015), para. 42 and the works of The High-level group on own resources established in 2014 by Monti (European Commission, *High-level group on own resources*, available at http://ec.europa.eu/budget/mff/hlgor/index_en.cfm (accessed 27 May 2020)). Among scholarly literature, see F. Heinemann, P. Mohl and S. Osterloh, *Reform options for the EU own resource system*, Research project 8/06 commissioned by the German Federal Ministry of Finance (18 Jan. 2008); I. Begg, H. Enderlein, J. Le Cacheux, and

tax [19]. In a resolution of 15 May 2020, the European Parliament reaffirmed its position supporting the Commission's previous proposals regarding the list of potential candidates for new own resources. Those were «a common consolidated corporate tax base, digital services taxation, a financial transaction tax, income from the emissions trading scheme, a plastics contribution and a carbon border adjustment mechanism'[20].

From a lawyer's perspective, future EU tax-based own resources should have certain characteristics that would ensure that they respect constitutional and legal principles whether based on EU law or on the common constitutional tradition of the Members States and that can be easily implemented, limiting legal uncertainty.

First, as the French say «*Un bon impôt est un vieil impot»* (a good tax is an old tax) tells, creating a completely new tax has always been quite a difficult task and was usually made possible by extraordinary events, such as wars[21]. Moreover, besides the –rather understandable– natural aversion that people and countries could show against the introduction of new levies (which prompted several revolutions), the administrative costs associated with the introduction of a new tax in 27 States should not be overlooked, also considering the significant disparities due to the different tax cultures. It should be borne in mind

that the Commission, over the years, has unsuccessfully proposed a carbon tax[22], a C02-based car taxation[23], a financial transaction taxes (including under enhancement cooperation)[24] and, more recently, two types of digital taxes[25]. In

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M. Mrak, *Financing of the European Union Budget*, Study for the European Commission, Directorate general for Budget (29 April 2008); Lang et al. ed. *Introduction to European Tax Law on Direct Taxation*, Linde, 2008; Ph. Cattoir, *Options for an EU financing reform*, Notre Europe (2009); M. Schratzenstaller, A. Krenek, D. Nerudová, and M. Dobranschi, *EU Taxes as Genuine Own Resource to Finance the EU Budget: Pros, Cons and Sustainability-oriented Criteria to Evaluate Potential Tax Candidates*, FairTax Working Paper 3 (June 2016), available at http://ec.europa.eu/budget/mff/Library/hlgor/selected-readings/40-DOC-COMM-EuTaxes-Schratzenstalle.pdf (accessed 27 May 2020); A. De Feo & B. Laffan, *EU Own Resources: Momentum for a Reform?* European University Institute (2016), available at http://ec.europa.eu/budget/mff/hlgor/library/selected-readings/01-DOC-COMM-EUORMomentumForReform-EUIDeFeoLaffan-Feb2016.pdf (accessed 27 May 2020).

19 C. Landais, E. Saez, and G. Zucman, *A progressive European wealth tax to fund the European COVID response*, VOX (3 April 2020) available at https://voxeu.org/article/progressive-european-wealth-tax-fund-european-covid-response (accessed 27 May 2020).

20 European Parliament, Resolution of 15 May 2020, on the new multiannual financial framework, own resources and the recovery plan, P9_TA-PROV(2020)0124 (15 May 2020). See also European Parliament, Interim report of 14 November 2018 on the multiannual financial framework 2021-2027 – Parliament's position with a view to an agreement, P8_TA(2018)0449 (14 Nov. 2018).

21 See, for example, the adoption of the income tax in the United Kingdom in 1799 as a temporary tax to finance Napoleonic wars or in France in 1914 to support the WWI effort.

22 European Commission, *Proposal for a Council Directive introducing a tax on carbon dioxide emissions and energy*, COM (1992) 226 final (2 Jun. 1992).

23 European Commission, *Proposal for a Council Directive on passenger car related taxes*, COM (2005) 261 final (5 July 2005).

24 European Commission, *Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC*, COM(2011) 594 final (28 Sept. 2011) and European Commission, *Proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax*, COM(2013) 71 final (14 Feb. 2013).

25 European Commission, *Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services*, COM (2018) 148 final (21 Mar. 2018).

this context, it would seem wise not to add administrative implementation hurdles to the already considerable political obstacle to the introduction of a direct transfer of tax revenue from the Member States to the Union and to adapt models already existing at the level of the Union or at least inspired by experiences common to all or at least a majority of Member States.

In addition, as already mentioned earlier, the resource should be able to provide the European budget with significant and stable revenue, to reimburse the loans taken by the Commission in the framework of the Next EU Generation, and there is always a haze of uncertainty regarding the revenue-raising capacity of «untested» taxes.

A last element to be taken into consideration is the fact that a truly European tax-based own resource, by its very nature, cannot create territorial divisions that would foster resentment between Member States, as is currently the case when it comes to determining the net contributors and the net beneficiaries to the budget of the European Union.

Therefore, trying to use an existing tax to transform it totally or partially into an EU tax based own resource seems to be the safest way forward from a legal perspective. For these reasons, plastic taxes, financial transaction taxes, digital taxes, but also corporate taxes (which given the disparity between Member States corporate income taxes, would require a considerable harmonization effort) cannot reasonably be first (and even second)-best choices in the short-term : before they can be considered workable options, significant issues as to the EU competence to adopt them, but also as regards their implementation and administration will have to be properly addressed.

The two candidates that offer more reliability from a legal viewpoint are a (truly) VAT-based own resources and an own-resources based on an excise tax on certain services connected to the digital economy.

Value-added tax is besides customs duties the most European tax and is already used as a basis to calculate one of the own resources. In comparison with all the other taxes, not much would be needed to make from it the most significant own resources, both in terms of yield and visibility for EU citizens. It is certainly worth remembering the solution devised in the Commission's 2011[26] proposal, which unfortunately remained a dead letter by the Member States. The idea concerned a slight modification of the current system of own resources in addition to a single innovation, which the Member States were not ready to discuss at the time, namely that of transforming the VAT resource into a (quasi) European tax, with the establishment of a specific European rate on top of the national one, with a maximum of 2%. This proposal by the Commission has merits in terms of simplicity, feasibility and the link with the internal market. The EU VAT system is indeed largely harmonized, instruments for cooperation between Member States exist, and a common VAT culture between national administrations is slowly developing. Moreover, the impact in terms of revenue of such a solution can be precisely estimated. Such a solution would

26 Proposal to the European Parliament of 29 June 2011, COM(2011) 510 final. See the following link: https://ec.europa.eu/info/sites/info/files/about_the_european_commission/eu_budget/com-2011-510_2011_en.pdf.

certainly require changes, such as further harmonization as regards exemptions and exclusions (which could be achieved by amending the 2006/112/CE directive) and increased cooperation between Member VAT administrations and the EU Commission, as well as a modification of the structure of the VAT own resource in the own resource decision. But this would not constitute a legislative revolution, rather an evolution in a process that started decades ago. And last but not least –and even if that argument is often used against such a solution– VAT is a tax that is paid by everyone : every consumer, rich or poor, but also every business, in one way or the other. A VAT-based own resource could give a stronger sense of European citizenship, in comparison to other, more sectoral, levies that would give the impression that the EU has been created for large businesses, such as digital companies or banks.

The second option would be an excise tax on certain services. Digital taxes are in the air. While some Member States have already adopted the digital service tax, intense discussions are taking place at the international level (Pillar 1 and Pillar 2 OECD initiatives. If there is no agreement at the OECD level, the Commission has announced that it would introduce a digital levy. The structure of that levy could be a top-up tax on certain transactions already subject to VAT, without a right to deduct so as to cover both B2B and B2C services (there to be considered as a sort of excise on digital transactions), with a threshold for smaller providers. Alternatively, if the determination of the services subject to this new levy would prove to be too difficult, a small percentage of the total turnover of large multinational firms (which are those who benefit the most from the EU single market) could also be an option. There would be a precedent : for almost 50 years, the European Coal and Steel Community, which was created in 1951 and then later absorbed by the European Economic Community, has been financed through a levy on the production of coal and steel, at a rate (less than 1%) fixed by the High Authority –the forerunner of the European Commission and directly collected by it from undertakings active in those sectors–[27].

And if at the end, due the constitutional and legal constraints described above and/or political factors, a compromise on tax-based own resources would prove too difficult to achieve or if it would not yield enough revenues, it would be wise not to cast all the EU eggs in the same tax basket, and also develop other forms of EU financing. Alternatives outside the field of taxation exist, like resources based on the Emission Trading Scheme system[28] or the setting-up of obligations to contribute to pan-European funds aiming at protecting against specific risks, such as those linked to climate change, along the lines of the EU

27 Article 49 of the Treaty establishing the European Coal and Steel Community (ECSC), signed in Paris on 18 April 1951. See also High Authority Decision Nº 2-52 ECSC of 23 December 1952 determining the mode of assessment and collection of the levies provided for in Articles 49 and 50 of the Treaty and High Authority Decision Nº 3-52 ECSC of 23 December 1952 on the amount of and methods for applying the levies provided for in Articles 49 and 50 of the Treaty,avalible on www.cvce.eu

28 This appears to be the solution favoured by Fuest, C., J. Pisani-Ferry (2020) «Financing the European Union: new context, new respon-ses», Policy Contribution 2020/16, Bruegel

regulatory bank levy in the framework of the Single Resolution Fund[29]. The road towards a more sold financing of the European Union has never been straight, and side paths could turn out to be the smartest manner to continue the journey, waiting for the right time to go back on the main track.

29 Regulation (EU) Nº 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) Nº 1093/2010 (OJ 2014 L 225, p. 1. In 2019, the Single Resolution Fund (SRF) received €7.8 billion from 3,186 institutions and investment firms. It is important to estrés that the calculation and collection of the contributions by the Single Resolution Board is subject to review by EU Courts : see for example GCEU, 23 september 2020, Cases T-411/17 Landesbank Baden-Württemberg v Conseil de résolution unique (CRU), T-414/17 Hypo Vorarlberg Bank AG v CRU et T-420/17 Portigon AG v CRU.