

COVID-19 AND FISCAL POLICIES

Solidarity in the European Union in the Time of COVID-19: Paving the Way for a Genuine EU Tax?

Edoardo Traversa* & Gianluigi Bizioli**

A study of the European Union financing structure shows a disjunction between the EU taxing powers and the rules determining the resources funding the EU budget. Such a disconnection has deep historical roots, however, currently constitutes an obstacle towards the achievement of a sustainable Economic and Monetary Union. At the same time, the emergence of the solidarity principle in EU law is tangible proof that, in certain circumstances, the European Union also has as one of its objectives to grant financial assistance to Member States in distress. However, from a legal perspective, the current institutional framework needs reform in order to effectively serve this purpose, considering the magnitude of the economic consequences of the current pandemic. In this context, the debate on the adoption of truly European taxes must be relaunched.

Keywords: EU budget, tax solidarity, EU taxes, EMU, fiscal policy, EU tax competences, COVID-19.

I EU OWN RESOURCES AND THEIR TAX DIMENSION: THE SITUATION BEFORE THE COVID-19 crisis

The European Union (EU)'s tax situation is very peculiar. 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 Treaty on the Functioning of the European Union (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’.¹ 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, there is a clear separation – 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. According to Article 311 of the TFEU:

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.

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 of the EU acting unanimously with a mere consultation of the European Parliament except for the adoption of implementing measures. It is on the expenditure side that the European

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* Professor of Tax Law and European Law at UCLouvain. Email: edoardo.traversa@uclouvain.be.

** Professor of Tax Law and International and EU Tax Law at the Department of Law of the University of Bergamo. Email: gianluigi.bizioli@unibg.it.

¹ See G. Kofler, *EU Power to Tax: Competences in the Area of Direct Taxation* in *Research Handbook on European Union Taxation Law* 11 (C. H. J. I. Panayi, W. Haslehner & E. Traversa eds, Edward Elgar 2020).

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 EU budget² and the multiannual financial framework.³

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).⁴ Currently, it is Council Decision 2014/335/EU that regulates how the EU budget is financed.⁵ The current system provides for three main sources of revenues: Traditional Own Resources, a Value Added Tax-based Own Resource, and the Gross National Income-based Own Resource. Moreover, an overall cap for resources and expenditures has been established: under the rules agreed for the period 2014–2020, the EU may mobilize own resources for payments up to a maximum amount of 1.20% of the sum of all Member States' gross national income (GNI),⁶ and this cap is likely to be reduced for the period 2021–2027 to approximately 1%.

Traditional Own Resources are customs duties (and, until 2018, also sugar levies⁷). 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 revenues that are collected directly accrue to the EU budget after a 20% deduction this is supposed to remunerate for collection costs.⁸ Moreover, as an essential element of the internal market and the external commercial policy, legislation in the area of customs duties 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 (Article 294

TFEU). The EU Customs Code and its implementing regulations⁹ provide detailed legislation concerning the various aspects of the customs duties. 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 and a reduced rate of 0.15% applying to Germany, the Netherlands, and Sweden. According to the EU 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.¹⁰

Its financial relevance has steadily declined since the 1980s, and it accounts now for approximately 12% of total EU own resources. Despite proposals from the Commission,¹¹ 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.¹²

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' GNI. This rate is adjusted each year in order to achieve a balance between revenue and expenditure. Several exceptions

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² Articles 310 and 314 TFEU.

³ Article 312 TFEU.

⁴ Seven own resources decisions have been adopted since 1970. The first six were Council Decisions: *Council Decision of 21 Apr. 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 July 1988); *Council Regulation No 2729/94 of 31 Oct. 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 Sept. 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 June 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 Oct. 2011).

⁵ *Council Decision 2014/335/EU of 26 May 2014 on the System of Own Resources of the European Union*, OJ L 168/105 (7 June 2014).

⁶ The total amount of appropriations for commitments may not exceed 1.26% of EU GNI.

⁷ *Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 Dec. 2013 Establishing a Common Organization of the Markets in Agricultural Products and Repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007*, OJ L 347/671, (20 Dec. 2013), at 671–854.

⁸ *Council Decision 2014/335/EU of 26 May 2014 on the System of Own Resources of the European Union*, *supra* n. 5, Customs duties represent EUR 158,6 billions, around 12,7% of total EU resources (2018).

⁹ *Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 Oct. 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 Nov. 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).

¹⁰ European Commission, *supra* n. 4, at 4.

¹¹ 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 July 2004).

¹² 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.

have been established; besides the (in)famous UK rebate, some other EU Member States benefit from flat-rate corrections.¹³

Due to the complexity of the institutional framework surrounding the adoption of the EU own resources decision and the EU Multiannual financial framework as well as political tensions between Member States, attempts to reform the system have proven unsuccessful.

In 2011, in the wake of the 2008 financial crisis, the commission proposed a thorough simplification of the system and the introduction of a new Own Resource in the form of a financial transaction tax and the reform of correction mechanisms.¹⁴ The Value Added Tax-based Own Resource would have become:

a share of the Value Added Tax (VAT) on supplies of goods and services, intra-Community acquisitions of goods and importation of goods subject to a standard rate of VAT in every Member State pursuant to Council Directive 2006/112/EC, with the rate applicable (...) not exceeding two percentage points of the standard rate.¹⁵

In 2018, after several EU initiatives requesting a reshuffle of the current system,¹⁶ the Commission proposed together, with a proposal for the 2021–2027

Multiannual financial framework,¹⁷ an even more ambitious reform.¹⁸ The proposal includes the introduction of a basket of new Own Resources consisting of a share of the relaunched Common Consolidated Corporate Tax Base,¹⁹ a share of the auctioning revenues of the European Emissions Trading System,²⁰ and a national contribution calculated on the amount of non-recycled plastic packaging waste.

2 SOLIDARITY CLAUSE AND SOLIDARITY FUND IN EU BEFORE COVID-19

Providing the European Union with sufficient own resources is not just a matter of efficiency of EU policies but could also be linked to the concept of intra-EU solidarity. Solidarity and mutual assistance between Member States of the European Union are indeed not only political commitments but also, in certain circumstances, legal obligations deriving from EU treaties, in particular Articles 122.2 and 222 TFEU,²¹ covering different areas such as civil protection, security and defence, as well as immigration.²²

The occurrence of several natural and manmade disasters and crises has led to a significant enhancement of the coordination between the Member States. This integrated

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¹³ The flat-rate corrections, i.e. reductions in annual GNI-based contributions for the period 2014–2020 in favour of four Member States (expressed in 2011 prices): Denmark – EUR 130 million, the Netherlands – EUR 695 million, Sweden – EUR 185 million and Austria – EUR 30 million in 2014, EUR 20 million in 2015 and EUR 10 million in 2016. See Council Decision 2014/335/EU of 26 May 2014 on the System of Own Resources of the European Union, *supra* n. 5, Art. 2.

¹⁴ European Commission, COM(2011) 510, *supra* n. 11.

¹⁵ *Ibid.*, Art. 2, (C).

¹⁶ European Commission, *Future Financing of the EU*, Final report and recommendations of the High Level Group on Own Resources (Dec. 2016); European Commission, *Reflection Paper on the Future of EU Finances*, COM(2017) 358 (28 June 2017); European Parliament, *Resolution on the Reform of the European Union's System of Own Resources*, P8_TA-PROV(2018)0076 (14 Mar. 2018).

¹⁷ European Commission, *Proposal for a Council Regulation Laying Down the Multiannual Financial Framework for the Years 2021 to 2027*, COM(2018)322 final (2 May 2018) and European Commission, *Commission Communication, A Modern Budget for a Union that Protects, Empowers and Defends The Multiannual Financial Framework for 2021–2027*, COM(2018)321 final (2 May 2018).

¹⁸ European Commission, COM(2018) 325 final, *supra* n. 11.

¹⁹ European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM(2016) 683 final (25 Oct. 2016) and European Commission, *Proposal for a Council Directive on a Common Corporate Tax Base*, COM(2016) 685 final (25 Oct. 2016).

²⁰ *Directive 2003/87/EC of the European Parliament and of the Council of 13 Oct. 2003 Establishing a Scheme for Greenhouse Gas Emission Allowance Trading Within the Community and Amending Council Directive 96/61/EC*, OJ L 275/32 (25 Oct. 2003).

²¹ Article 222 TFEU:

'1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilize all the instruments at its disposal, including the military resources made available by the Member States, to:

(a) prevent the terrorist threat in the territory of the Member States; protect democratic institutions and the civilian population from any terrorist attack; assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack; and

(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Art. 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed. For the purposes of this paragraph and without prejudice to Art. 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Art. 71; the two committees shall, if necessary, submit joint opinions.

4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action. For a more thorough discussion of the nature of the principle of solidarity in EU law and its implications in the case of natural disasters, see P. Pistone & E. Traversa, *European Fiscal and Tax Policies for Damaged Areas: The European Legal Framework of Reference*, in *Tax Implications of Natural Disasters and Pollution* EUCOTAX series vol. 44, 15–42 (M. Basilavecchia, L. des Federco & P. Mastellone eds, Kluwer Law International 2015).

²² The EU principle of solidarity, whose origin lies in the draft of the EU Constitutional Treaty, also applies to the common policy on asylum, immigration, and external border control (Art. 67 (2) TFEU and 80 TFEU). See T. Konstantinides, *Civil Protection Cooperation in EU Law: Is There Room for Solidarity to Wriggle Past?*, 19 Eur. L. J. 267–282 (2013). See also J. M. Lavieille, J. Bétaille & M. Prieur, *Section 5 – Le droit communautaire face aux catastrophes naturelles: la construction d'un droit de la solidarité*, in *Les catastrophes écologiques et le droit: échecs du droit, appels au droit*, 131–153 (J. M. Lavieille, J. Bétaille & M. Prieur eds, Bruylant 2012).

framework – which encompasses both financial and non-financial dimensions – has allowed the EU and its Member States to become more responsive and effective in the prevention and management of crises, providing much-needed substance to the rather vague obligation of solidarity between Member State (MS) enshrined in the TFEU. Moreover, due to the ever more global dimension of the human and environmental risks and threats that would have to be faced in the future, many of these EU instruments have been used in the framework of the Union's external policy.

Regarding the scope, Article 222 TFEU establishes a duty of intervention of the European Union in favour of its Member States as well as between the Member States in the event of terrorist attack or a natural or manmade disaster. As it is drafted, this clause appears to be reserved for the most serious crisis situations and, although not formally excluded financial support, seems to refer primarily to other types of assistance, in particular military assistance.

Even before the adoption of Article 222 TFEU, several instruments had been developed in order to ensure a certain coordination and solidarity between the EU and the Member States in the area of emergency prevention and response. In the area of civil protection, based on Article 6 (f) and 196 TFEU,²³ the EU has adopted the EU Civil Protection Mechanism,²⁴ the EU Solidarity Fund,²⁵ a European civil protection force (Europe Aid),²⁶ and other more sector specific preventive measures.²⁷ Those initiatives have laid the foundations of a common European approach regarding disaster prevention and crisis management,²⁸ also regarding third countries.²⁹ Although originally motivated by the necessity to coordinate EU Member States against terrorist threats³⁰ (in particular the 2004 Madrid attacks),³¹ the EU framework

was extended so as to include civil emergencies such as natural disasters.³²

It is worth noting that, despite putting the emphasis on solidarity, Article 222 TFEU leaves the primary responsibility of addressing an emergency to the Member States. Accordingly, a request by the Member State affected by the emergency is a necessary condition to activate the assistance of the other Member States. In conformity with Declaration No. 37 on Article 222 TFEU, the latter Member States are free to decide the most appropriate means to comply with their own solidarity obligation towards their counterparts, leaving them relevant opportunity as to how the content of such obligation should be interpreted.³³

Moreover, the principle of solidarity embodied by Article 222 TFEU appears, at the moment, relatively limited in scope and has thus to be balanced with other principles of the European legal order such as the principles of the internal market and the principle of conferral, implying that competences that have not been transferred to the EU level remain with the Member States, the principle of equality and the principles of financial responsibility of the Member States deriving from the current Economic and Monetary Union (EMU) framework (see *infra*).

From a procedural perspective, the specific extent of the obligations deriving from Article 222 TFEU is to be determined on the basis of the implementing decision of the EU Council. The terminology of the solidarity clause is indeed too vague to be considered as self-executing. Clear examples of this are the definition of the emergencies that are covered ('terrorist attack' and 'natural or manmade disaster'), with the possibility of a threshold to exclude minor events, the inclusion of preventive actions within its scope, or the territorial application of the clause.³⁴

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²³ According Art. 196 TFEU, the Union can: 'support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union'; 'promote swift, effective operational cooperation within the Union between national civil-protection services'; and 'promote consistency in international civil-protection work'.

²⁴ *Decision 1313/2013/EU of the European Parliament and of the Council of 17 Dec. 2013 on a Union Civil Protection Mechanism*, OJ L 347 (20 Dec. 2013), at 924–947. This decision abrogates the former *Council Decision 2007/779/EC of 8 Nov. 2007 Establishing a Community Civil Protection Mechanism*, OJ L 314/9 (1 Dec. 2007) and *Council Decision 2007/162/EC of 5 Mar. 2007 Establishing a Civil Protection Financial Instrument*, OJ L 71/9 (10 Mar. 2007).

²⁵ *Council Regulation (EC) 2012/2002 of 11 Nov. 2002 Establishing the European Union Solidarity Fund*, OJ L 311/3 (14 Nov. 2002).

²⁶ See European Commission, *EU Solidarity Fund*, https://ec.europa.eu/regional_policy/en/funding/solidarity-fund/ (accessed 27 May 2020).

²⁷ See e.g. *Directive 2007/60/EC on the Assessment and Management of Flood Risks*, OJ L 288/27 (6 Nov. 2007); *Council Directive 96/82/EC on the Control of Major-accident Hazards Involving Dangerous Substances*, OJ L 10/13 (14 Jan. 1997) (Seveso Directive); *Regulation (EC) No 1726/2002 of 27 Sept. 2002 Determining the Extent to Which Applications Lodged in Sept. 2002 for Import Licences for Certain Pork Products Under the Regime Provided for by the Agreements Concluded by the Community With the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria, and Romania can be Accepted*, OJ L 260/26 (28 Sept. 2002) and *Regulation (EC) No 2038/2006 of the European Parliament and of the Council of 18 Dec. 2006 on Multiannual Funding for the Action of the European Maritime Safety Agency in the Field of Response to Pollution Caused by Ships and Amending Regulation (EC) n. 1406/2002*, OJ L 394/1 (30 Dec. 2006).

²⁸ European Commission, Commission Communication, *A Community Approach on the Prevention of Natural and Man-made Disasters*, COM(2009) 82 final (23 Feb. 2009).

²⁹ European Commission, Commission Communication, *EU Strategy for Supporting Disaster Risk Reduction in Developing Countries* COM(2009) 84 final (23 Feb. 2009).

³⁰ Konstantinides, *supra* n. 22, at 273.

³¹ See European Council, *Declaration on Combating Terrorism* (25 Mar. 2004), https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/79637.pdf (accessed 27 May 2020).

³² S. Blockmans, & R. A. Wessel, *The European Union and Crisis Management: Will the Lisbon Treaty Make the EU More Effective?*, 14(2) J. Conflict & Sec. L. 265 & ff., 301 (2009).

³³ S. Myrdal & M. Rhinard, *The European Union's Solidarity Clause: Empty Letter or Effective Tool? An Analysis of Article 222 TFEU*, 2 Occasional Papers 7 (2010), <https://www.ui.se/globalassets/ui/se-eng/publications/ui-publications/the-european-unions-solidarity-clause-empty-letter-or-effective-tool-min.pdf> (accessed 27 May 2020).

³⁴ Council of the European Union, *Solidarity Clause – The Way Ahead*, (29 Sept. 2011), <http://www.statewatch.org/news/2011/oct/eu-council-solidarity-clause-terr-14840-11.pdf> (accessed 27 May 2020).

The adoption of implementing acts required several years of negotiations. The decision 2014/415/EU³⁵ and the implementing decision (EU) 2018/1993 of 11 December 2018 on the EU Integrated Political Crisis Response Arrangements³⁶ constitute the general legal framework. Moreover, EU solidarity is also reflected in other policy areas such as security, (external) crisis management, and health.³⁷

From a budgetary perspective, the solidarity clause may justify the targeted use of financial and tax resources in order to promptly face situations of extraordinary distress such as those caused by natural and man-made disasters or health emergencies and restore the *status quo ante*. This objective is pursued with the direct involvement of the European institutions and of all Member States by means of the joint application of Article 222.1.b and Article 222.3 TFEU. The 2014/415/EU decision states that ‘any financial resources necessary for the implementation of this Decision shall be mobilized within the agreed annual expenditure limits and in accordance with the scope of existing Union instruments, while respecting the yearly multi-annual financial framework ceilings’. It is worth noting that, even before the adoption of Article 222 TFEU, other legal bases in the treaty had already been used to develop pan-European instruments aiming at helping Member States in emergencies.

In particular, Article 175 EU on the strengthening of economic, social, and territorial cohesion within the Union that aims at ‘reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions’ was used to create a European Union Solidarity Fund in the wake of the severe floods in Central Europe in 2002.³⁸ The Fund has the objective to contribute, in the shortest time possible, in mobilizing emergency services to meet the immediate needs of the population and to reconstruct short-term damaged key infrastructure in order to facilitate the resumption of economic activities. The fund may be mobilized in cases of major disasters with serious repercussions on living conditions, the natural environment, or the economy in one or more Member States or accessing countries.

Assistance through the Solidarity Fund has a financial nature and takes the form of a global non-reimbursable³⁹ grant to the beneficiary state. Therefore, there is no possibility of any form of material support by EU institutions or other Member States under this instrument. The beneficiary state is responsible for the implementation of the grant. Moreover, the fund only covers ‘essential emergency operations’, which are the restoration of infrastructure to working order, the cleaning up of disaster-stricken areas, the costs of rescue services and temporary accommodation for the population concerned, and the securing of preventive infrastructures and measures of immediate protection of cultural heritage.

The decision to use the fund is made by the Commission on the basis of a request that is submitted by the Member States affected by the disaster. The request is to contain all ‘available information’ concerning specifically:

1. the total damage caused by the disaster and its impact on the population and the economy concerned;
2. the estimated cost of the operations (...);
3. any other sources of community funding;
4. any other sources of national or international funding, including public and private insurance coverage that might contribute to the costs of repairing the damage.

On the basis of this information, the Commission assesses if the conditions for mobilizing the Fund are met and, if that is the case, determines the amount of the grant, ensuring equality between Member States. Then, after the appropriations are made available by the budgetary authority, the Commission adopts its decision and concludes an implementing agreement with the beneficiary State(s). The grant must be used, in principle, within one year of the date of the disbursement of the grant; any remaining part of it is recovered by the commission from the beneficiary State(s).

However, even if the creation of the fund has proven to be a very important tool in addressing major emergencies within the EU – alleviating the Member States’ financial burden and fostering the visibility of the

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³⁵ The 2014/415/EU decision does not concern assistance between Member States (Art. 222, 2.) but only assistance from the Union to one or more Member States. Any Member State may invoke the solidarity clause ‘in the event of a disaster or terrorist attack’ and ‘after having exploited the possibilities offered by existing means and tools at national and Union level’ if ‘it considers that the crisis clearly overwhelms the response capabilities available to it’. The decision defines in rather broad terms some concepts such as crisis, disasters, terrorist attack, preparedness, and response and lays down general rules for the coordination of the response between the EU institutions and agencies. See *Decision 2014/415/EU of 24 June 2014 on the Arrangements for the Implementation by the Union of the Solidarity Clause*, OJ L 192/53 (1 July 2014).

³⁶ *Implementing decision (EU) 2018/1993 of 11 Dec. 2018 on the EU Integrated Political Crisis Response Arrangements*, OJ L 320 (17 Dec. 2018), at 28–34. The 2018 implementing decision reinforces and adapts the already existing EU Integrated Political Crisis Response (‘IPCR’) arrangements which aim at setting various coordination tools as regards information sharing and response measures under the presidency of the EU Council.

³⁷ *Council and European Parliament Decision No 1082/2013/EU of 22 Oct. 2013 on Serious Cross-border Threats to Health and Repealing Decision No 2119/98/EC*, OJ L 293/1 (5 Nov. 2013). See also European Commission, *Proposal for a decision of the European Parliament and of the Council on Serious Cross-border Threats to Health*, COM (2011) 866 final (8 Dec. 2011).

³⁸ *Council Regulation (EC) No 2012/2002 of 11 Nov. 2002 Establishing the European Union Solidarity Fund*, OJ L 311/3 (14 Nov. 2002).

³⁹ Except when the cost of repairing the damage is subsequently met by a third party. See *Council Regulation (EC) No 2012/2002 of 11 Nov. 2002 Establishing the European Union Solidarity Fund*, *supra* n. 38, Art. 8.

action of the EU among its citizens – the early functioning of the fund has raised some critiques,⁴⁰ and several improvements were made in 2014 regarding the definition of eligible disasters or the possibility of advanced payments and the involvement of the European Parliament. In March 2020, the scope of the Fund was extended to encompass major public health emergencies.⁴¹ It is worth noting that no reference is made to Article 222 TFEU in the 2014 and 2020 amending regulations which are based – as was the case for the original 2012/2002 regulation on Articles 175 TFEU (economic, social, and territorial cohesion) and 212 TFEU (cooperation in third countries).

3 THE FISCAL DIMENSION OF THE ECONOMIC AND MONETARY UNION AND THE IMPLICATIONS OF COVID-19

3.1 The European and Monetary Union (EMU): The Original Legal Deficit

The EMU is based on an asymmetric distribution of competences between the EU and the Member States.⁴² The competence relating to the monetary policy, i.e. the Euro, belongs *exclusively* to the Union and, in particular, to the European Central Bank (ECB); its primary task is to ‘maintain price stability’ (Article 127(1) of the TFEU). On the other hand, the economic governance of the EMU lays *substantially* in the hands of the Member States which ‘shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union, as defined in Article 3 of the Treaty on European Union, and in the context of the broad guidelines referred to in Article 121(2)’ (Article 120 TFEU), although the same policies require ‘close coordination’ and should be ‘conducted in accordance with the principle of an open market economy with free competition’ (Article 119(1) TFEU).⁴³ Disregarding the difficulty of

categorizing this policy among the competences and the powers of the Union,⁴⁴ the coordination of the economic (national) policies provided by Article 119 ff. TFEU is ‘built on two related assumptions, preservation of national authority and preservation of national liability’.⁴⁵

According to these rules, the ECB is vested with the exclusive competence to govern the Euro and the monetary stability in the Euro area whereas the coordination of the economic national policies is, *in principle*, left to the Member States, which shall achieve the establishment of the internal market, ‘avoid excessive government deficits’ (Article 126(1) TFEU), and maintain the stability of the monetary Union. From the outset, therefore, the EMU framework deviated from the model and the conditions to be qualified as an optimum currency area (OCA), which can be reduced to (1) the mobility of factors of production (including labour), (2) price and wage flexibility, and (3) symmetry of economic structures between countries belonging to the same currency area.⁴⁶

The 2007–2008 financial and economic crisis clearly showed that the Union has suffered (and still suffers) significant asymmetries in output and growth which has led (and still leads) to the enlargement of the economic distance between the different MSs. This situation raises two alternatives for politics: (1) the disintegration of the EMU and the Eurozone in particular or (2) the rebuilding of the EMU based on the introduction of some form of fiscal stabilization, redistribution, and economic adjustment.⁴⁷ As has been tellingly stated:

{f}or countries deprived of external mechanisms of adjustment (trade barriers or currency devaluation), the inexistence of a central public finance system prevents them from adjusting, for instance, in the case of a fall in the demand for its exports or a rise in the respective price. This leads us, retrospectively, to the conclusion that a majority of the crucial problem that the EU and the eurozone face today are a consequence of its fragile

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⁴⁰ These critiques have been summarized by the EU Commission in the following document: European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and social Committee and the Committee of the Regions, *The Future of the European Union Solidarity Fund*, COM/2011/0613 final (6 Oct. 2011).

⁴¹ Regulation 2020/461 of 30 Mar. 2020 Amending Council Regulation (EC) No 2012/2002 in Order to Provide Financial Assistance to Member States and to Countries Negotiating Their Accession to the Union that are Seriously Affected by a Major Public Health Emergency, OJ L 99/9 (31 Mar. 2020).

⁴² This situation is well-known in EU legal literature. An overview is provided by A. Hinarejos, *Fiscal Federalism in the European Union: Evolution and Future Choices for EMU*, 50 (6) Com. Mkt. L. Rev. 1621, 1624 ff. (2013) and the provided references.

⁴³ It is worth mentioning that the ‘close economic coordination’ required for the Eurozone MSs is strengthened according to Art. 136(1) TFEU.

⁴⁴ G. Lo Schiavo, *The Role of Financial Stability in EU Law and Policy* 91 (Kluwer Law International 2017) questions that Ch. 1 of Title VIII of the TFEU ‘its uneasily with the general structure of EU competences (exclusive, shared or supporting) and suggests that European economic governance is not, strictly speaking, an EU competence’.

⁴⁵ P. Craig, *The Lisbon Treaty, Revised Edition: Law Politics and Treaty* 460 (Oxford University Press 2013).

⁴⁶ R. A. Mundell, *A Theory of Optimum Currency Areas*, 51(4) Am. Econ. Rev. 657, 664 (1961), when the author draws his conclusion: ‘[t]he argument works best if each nation (and currency) has internal factor mobility and external factor immobility’. This issue was clear even before the launch of the EMU project. See T. Padoa-Schioppa, *Efficiency, Stability and Equity: A Strategy for the Evolution of the Economic System of the European Community* (Oxford University Press 1987).

⁴⁷ This is, e.g. the conclusion of K. R. McNamara, *Forgotten Embeddedness: History Lessons for the Eurozone: The Future of the Euro* 21 (M. Matthijs & M. Blyth eds, Oxford University Press 2015), who restricts the conditions for success on four key elements: (1) a legitimated generator of market confidence and liquidity (a true lender of last resort); (2) mechanisms for fiscal redistribution and economic adjustment; (3) regulation of financial risk and uncertainty; and (4) political solidarity.

*foundations, and one of the reasons is that a budgetary union should have preceded, not succeeded, the monetary union.*⁴⁸

3.2 The Patches Introduced After the 2007-2008 Crisis

The described original legal framework was the object of a partial reform after the 2008 financial and economic crisis. On the one hand, the reform aimed at strengthening the existing European budgetary surveillance system through the institution of minimum requirements for Member States' national budgetary frameworks and a new surveillance framework for macroeconomic imbalances, the Excessive Imbalance Procedure.⁴⁹ These measures share the same nature and the same idea permeating the EMU, i.e. the coordination of the Member States' economic policies, but further reduce their autonomy in conducting their economic policy, especially when their budgetary and public finance situation presents some issues of concern. The same goal is fostered by the Euro Plus Pact and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) adopted outside the EU legal framework.

On the other hand, the Eurozone Member States concluded an international treaty establishing the European Stability Mechanism (ESM)⁵⁰ that replaced various temporary emergency mechanisms: the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM).⁵¹ The ESM is 'an international financial institution' (Article 1 Treaty ESM) whose purpose:

shall be to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member

*States. For this purpose, the ESM shall be entitled to raise funds by issuing financial instruments or by entering into financial or other agreements or arrangements with ESM Members, financial institutions or other third parties (Article 3 Treaty ESM).*⁵²

The ESM is based on Article 136(3) TFEU, which also states that it can be activated (1) 'if indispensable to safeguard the stability of the euro area as a whole' and (2) that 'any required financial assistance under the mechanism will be made subject to strict conditionality'. Such a conditionality is represented by a specific condition that the MS must have ratified the TSCG (Preamble 5) and a generic clause that 'may range from a macro-economic adjustment programme to continuous respect of pre-established eligibility conditions' (Article 12(1) Treaty ESM).

In *Pringle*,⁵³ the European Court of Justice upheld the compatibility of the ESM with EU Treaties stating that MSs remain subject to the logic of the market when they enter into debt. In particular:

Article 125 TFEU prohibits the Union and the Member States from granting financial assistance as a result of which the incentive of the recipient Member State to conduct a sound budgetary policy is diminished. As is apparent from paragraph 5 of the ECB opinion on the draft European Council Decision amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro, the activation of financial assistance by means of a stability mechanism such as the ESM is not compatible with Article 125 TFEU unless it is indispensable for the safeguarding of the financial stability of the euro area as a whole and subject to strict conditions. However, Article 125 TFEU does not prohibit the granting of financial assistance by one or more Member States to a Member State which remains responsible for its commitments to its creditors provided that the conditions attached to such assistance are such as to prompt that Member State to implement a sound budgetary policy. As regards the ESM Treaty, it is clear, first, that the instruments for

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⁴⁸ N. da Costa Cabral, *Which Budgetary Union for the E(M)U?*, 54(6) J. Com. Mkt. Stud. 1280, 1284 (2016). Similarly, I. Visco, *The Economic and Monetary Union: Time to Break the Deadlock*, 4 (15 Nov. 2019), https://www.bancaditalia.it/publicazioni/interventi-governatore/integov2019/en_Visco_OMFIF_15112019.pdf?language_id=1 (accessed 27 May 2020), who notes that 'little progress has been made in the way of remedying the asymmetry of having a single monetary policy and yet multiple national budgets, perhaps out of fear of sharing the debts that could result from the operation of a fiscal union'.

⁴⁹ These measures are part of the so-called Six-Pack, composed by three Regulations and a Directive: *Regulation 1175/2011 Amending Regulation 1466/97 on the Strengthening of the Surveillance of Budgetary Positions and the Surveillance and Coordination of Economic Policies*, OJ L306/12 (23 Nov. 2011); *Regulation 1177/2011 Amending Regulation 1467/97 on Speeding up and Clarifying the Implementation of the Excessive Deficit Procedure*, OJ L306/33 (23 Nov. 2011); *Regulation 1173/2011 on the Effective Enforcement of Budgetary Surveillance in the Euro Area*, OJ L306/1 (23 Nov. 2011); *Directive 2011/85/EU on Requirements for Budgetary Frameworks of the Member States*, OJ L306/41 (23 Nov. 2011); *Regulation 1176/2011 on the Prevention and Correction of Macroeconomic Imbalances*, OJ L306/25 (23 Nov. 2011); *Regulation 1174/2011 on Enforcement Measures to Correct Macroeconomic Imbalances in the Euro Area*, OJ L306/8 (23 Nov. 2011).

⁵⁰ *Treaty Establishing the European Stability Mechanism* (signed on 2 Feb. 2012), https://www.esm.europa.eu/sites/default/files/20150203_-_esm_treaty_-_en.pdf (accessed 27 May 2020).

⁵¹ The EFSF was a special purpose vehicle in the form of *société anonyme* established in 2012 according to the Luxembourg laws, whose shareholders were seventeen MSs. The EFSM was an emergency funding programme reliant upon funds raised on the financial markets and guaranteed by the European Commission using the budget of the European Union as collateral. The EFSM found its legal basis in Council *Regulation (EU) No 407/2010 of 11 May 2010 Establishing a European Financial Stabilization Mechanism*, OJ L 118/1 (12 May 2010).

⁵² The ESM aims to mobilize funding up to EUR 700 billion.

⁵³ CJEU, 27 Nov. 2012, Case C-370/12, *Thomas Pringle v. Government of Ireland and Others*, ECLI:EU:C:2012:756.

stability support of which the ESM may make use under Articles 14 to 18 of the ESM Treaty demonstrate that the ESM will not act as guarantor of the debts of the recipient Member State. The latter will remain responsible to its creditors for its financial commitments. The granting of financial assistance to an ESM Member in the form of a credit line, in accordance with Article 14 of the ESM Treaty, or in the form of loans, in accordance with Articles 15 and 16 of the ESM Treaty, in no way implies that the ESM will assume the debts of the recipient Member State. On the contrary, such assistance amounts to the creation of a new debt, owed to the ESM by that recipient Member State, which remains responsible for its commitments to its creditors in respect of its existing debts. It should be observed in that regard that, under Article 13(6) of the ESM Treaty, any financial assistance granted on the basis of Articles 14 to 16 thereof must be repaid to the ESM by the recipient Member State and that, under Article 20(1) thereof, the amount to be repaid is to include an appropriate margin (paras 136-139).

In this perspective, the ESM is an *international* institution established for the financial assistance of the Eurozone Member States for which its exclusive goal is to close the leaks of the EMU, however, leaving the entire financial responsibility and accountability to the Member States. Stated differently, the establishment of the ESM is necessary because of the absence of an adequate EU budget and the authority to intervene in order to prevent an asymmetric economic crisis or to stabilize the economic shocks. However, as already pointed out:

{t}he ESM is not a straightforward bail-out facility or last guarantee: Member States that receive assistance remain formally responsible to their creditors, and they only obtain this assistance after negotiating and agreeing to strict conditions, which ensure among other things that the ESM Treaty is in accordance with EU law.⁵⁴

3.3 The Prudent Reaction to the Covid-19 Crisis

Although the Council of the EU has acknowledged that '*{t}he COVID-19 pandemic constitutes an unprecedented challenge with very severe socio-economic consequences*' which commits the Union '*to do everything necessary to meet this challenge in a spirit of solidarity*' (emphasis added),⁵⁵ the concrete reaction lies in the furrow already traced in the previous paragraphs.

Disregarding the emergency support line, the actions proposed by the Union can be reduced to:

1. the establishment of a *temporary* loan-based instrument for the financial assistance of the MSs according to Article 122(2) TFEU (SURE), a fund of EUR 100 billion primarily directed at supporting the efforts to protect workers and jobs;
2. the Pandemic Crisis Support that will fund direct and indirect healthcare as well as cure and prevention-related costs due to the COVID-19 crisis through the ESM for amounts of 2% of the respective Member's GDP as of the end of 2019. By derogating from the ordinary rules provided by the treaty of the ESM, these loans are not subject to any (strict) conditionality: '*{t}he Eurogroup recalls that the only requirement to access the credit line will be that euro area Member States requesting support would commit to use this credit line to support domestic financing of direct and indirect healthcare, cure and prevention related costs due to the COVID 19 crisis*'.⁵⁶

In this particularly historical moment, the only innovative proposal made by the Council is the so-called Recovery Fund. In the meeting held on 9 April 2020, Member States agreed '*to work on a Recovery Fund to prepare and support the recovery, providing funding through the EU budget to programmes designed to kick-start the economy activity and investment to ensure a sustainable growth*'.⁵⁷ The general idea of the Recovery Fund is that the European Commission would directly borrow money on the financial markets and would distribute it to the Member States through the EU budget, whether under the form of direct transfers or long-term loans. This idea has not yet been further implemented and developed, and any decision will not be made before the summer. On 18 May 2020, the German Chancellor and the French President agreed on a joint proposal regarding the size of the Recovery Fund (EUR 500 billion) and its nature (grants to the MSs most affected by COVID-19). Considering the opposition of some Member States to the very idea of direct transfers, it remains to be seen what will be the final compromise. Although the details have yet to be decided, this creation of the Recovery Fund already raises two opposite comments. On the one hand, it leads to a de-facto extension of the budget that is available to EU institutions aimed at stabilizing the asymmetric economic shocks. If actually finalized, this decision represents a clear step ahead towards the completion of the EMU based on a specific stabilization authority and on a certain idea of solidarity among the MSs. On the other hand, the Recovery Fund is,

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⁵⁴ *Supra* n. 43, at 1628–1629.

⁵⁵ Council of the European Union, *Report on the Comprehensive Economic Policy Response to the COVID-19 Pandemic*, Press Release (9 Apr. 2020).

⁵⁶ Council of the European Union, *Eurogroup Statement on the Pandemic Crisis Support*, Press Release (8 May 2020), point 4.

⁵⁷ Council of the European Union, *supra* n. 55, point 19.

unlike genuine EU own resources, composed of funds borrowed from the capital market which, therefore, create the commitment for the future generations to repay them. This conclusion does not mean that the recourse to the capital market should be completely avoided, however, this cannot be considered as an alternative to a tax-based financing of the EU budget for the reasons that are going to be illustrated in the following section.

4 EU TAXES AS THE ULTIMATE RESPONSE TO CURRENT AND FUTURE CRISES

The COVID-19 crisis, as before the financial and euro-crisis, has weakened the coherence of the EU as a whole and has emphasized the need to organize fiscal transfers between EU Member States, even more between the Members of the Eurozone, considering the inevitable relationship between monetary and tax policies.⁵⁸ It puts in emphasis – once again – the unachieved state of the European integration and the direction to be taken to achieve ‘genuine Economic and Monetary Union’ as it was argued some years ago as a response to the financial crisis. As for other crises before, ad-hoc mechanisms have been established, however, they do not amount to a structural reform regarding the financing of the EU budget even though they significantly enhance the funds available to EU institutions for granting financial assistance to EU MSs.

In such a context, it could be questioned whether the implementation of a true solidarity obligation in budgetary matters does not necessarily imply the introduction of a tax-based EU own resource to ensure the efficiency of EU policies.⁵⁹ The adoption of European-wide taxes could permit limiting the participation of Member States in the European budget by providing the EU with an autonomous source of revenue, and would therefore limit Member States exposure when the EU will have to pay back the bonds issued to finance the Recovery Fund. Such a reform could play an important role in strengthening the EU as a political union based on an efficient Economic and Monetary Union, allowing for a stronger link between taxing and spending at the EU level. It could also permit the EU to set up Pan-European economic stimulation programs and solidarity mechanisms as well as financing common initiatives in key areas like, for example, defence and foreign policy.⁶⁰

From a political perspective, gathering support for such a fundamental reform will certainly be difficult and could be further complicated by exogenous factors. The economic effects of the current pandemic could indeed swing the pendulum of EU integration in either way. However, it can be argued that the case for an EU tax seems (a little bit) stronger now than before the COVID-19 crisis. An event of such magnitude demonstrates that, despite the fact that national states maintain the best-suited levels to implement a response both from a health and economic viewpoint, the EU level has a vital role to play regarding coordination, on the one hand, but also concerning financial and material support for the most exposed Member States on the other. In the face of the enormous consequences of weeks of lockdown on inter-dependent European economies, the discussion on strengthening European solidarity instruments has evolved from an ideological debate on the virtues and deficiencies of government management between rich and more financially vulnerable Member States to a shared concern of ensuring economic recovery for everyone and ultimately guaranteeing the survival of the European Union itself. It has also revealed that the ‘cost of non-Europe’, i.e. the obligation to organize ad hoc transfers between Member States to avoid unsustainable, snowballing debt explosions of the most exposed countries, could be much higher than the cost of pooling financial resources at the EU level. Moreover, during the COVID-19 crisis, the limits of using monetary instruments to ensure intra-EU solidarity (at least within the Eurozone) have been put into evidence. The ECB’s role is not and never will be to provide for targeted financial assistance to Member States. This is inherent to the nature of an independent central bank but is also not desirable from a democratic standpoint, as the recent judgment of the German Constitutional Court has demonstrated.⁶¹

From a legal perspective, the adoption of a truly EU tax could require important changes to the current EU constitutional framework. Currently, Article 311 TFEU allows – through a rather cumbersome but democratic procedure – the adoption of new own resources. 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 the legal basis

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⁵⁸ On the meaning of the economic crisis for the EU’s tax policy, see F. Vanistendael, *Revisiting Taxation in the Wake of the Crisis: Between National Tax Sovereignty and Tax Harmonisation*, 4(3) Madariaga Paper 16 (2011) (‘The financial crisis has demonstrated in a painful way the absence of adequate instruments to conduct an effective fiscal and budgetary policy to meet the challenges of the crisis.’); F. Vanistendael, *The Crisis: A Window of Necessity for EU Taxation* 50(9) Eur. Tax’n 394–401 (2010). The need for fiscal transfers was also tackled in a report of UK’s European Union Committee (see ‘Genuine Economic and Monetary Union and the implications for the UK’, 8th Report of Session 2013–2014). On the relationship between monetary and tax policies in history, see G. Ardant, *Histoires financière de l’Antiquité à nos jours* (1976 Gallimard).

⁵⁹ See the call by a group of European tax professors, among which the authors, in this issue.

⁶⁰ See M. L. Ross, *Does Taxation Lead to Representation*, 34(2) Brit. J. Pol. Sci. 229–249 (2004).

⁶¹ DE: BVerfG, 5. May 2020, 2 BvR 859/15, 2 BvR 1651/15, 2 BvR 2006/15, 2 BvR 980/16. See H. Kube, *Lehren aus Karlsruhe – die EU-Finanzierung weiterdenken*, VerfBlog, (17 May 2020), <https://verfassungsblog.de/lehren-aus-karlsruhe-die-eu-finanzierung-weiterdenken/> (accessed 27 May 2020).

existing in the treaties. Additionally, Article 113 for indirect taxes, 115 for direct taxes, and 192 for environmental taxes all provide for unanimity of the Council and a mere consultation of the European Parliament. The question may be asked whether such a procedure is appropriate for establishing the base and the rate of a future EU tax, considering the constitutional traditions of the Member States and, in particular, the principle ‘No taxation without representation’.⁶² The Commission proposed in 2019 to move progressively to a qualified majority in taxation matters, reform that would be possible without change to the EU Treaties under the so-called ‘passerelle clause’ (Article 48(7) Treaty of European Union); the arguments that are used seem to be even more compelling regarding the adoption of a truly EU tax.⁶³

Discussing which tax could be a suitable candidate for providing EU own resources would go beyond the purpose of this article. Nevertheless, some preliminary comments can be made. First, as the French say ‘*un bon impôt est un vieil impôt*’ (a good tax is an old tax) tells that creating a new tax has always been quite a difficult task and was usually made possible only by the occurrence of extraordinary events, often wars.⁶⁴ Moreover, besides the – rather understandable – natural aversion that people and countries could show to the introduction of new levies (which prompted several revolutions), the administrative costs associated with the introduction of a completely new tax in twenty-seven Member States should not be overlooked, also considering the significant disparities in the different tax cultures. It should be borne in mind that the Commission, over the years, has unsuccessfully proposed new taxes such as a carbon tax,⁶⁵ CO₂-based car taxation,⁶⁶ financial transaction taxes (including under enhancement

cooperation)⁶⁷ and, more recently, digital taxes.⁶⁸ In this context, it would seem wise not to add administrative implementation hurdles to the already considerable political challenge that the introduction of a direct transfer of tax revenue from the Member States to the Union would represent and to adapt models already existing at the level of the Union (like VAT, excise and customs duties) or at least inspired by experiences common to several Member States. In addition, it is essential that the resource that is selected should be able to provide the European budget with significant and stable revenue, 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, 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. Having stated that, as several previous studies show,⁶⁹ there are numerous potential candidates such as value added tax; customs duties and other border levies; excise duties and special taxes on certain goods and services (including digital services); corporate tax; transport tax, especially car taxes and air transport taxes; financial transaction tax; and carbon tax. Some have even argued for the introduction of a Pan European wealth tax.⁷⁰ 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: ‘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’.⁷¹

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⁶² 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 of national parliaments 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). See European Commission, *National Parliament Opinions and Commission Replies*, http://ec.europa.eu/dgs/secretariat_general/relations/relations_other/npo/index_en.htm (accessed 27 May 2020).

⁶³ European Commission, Communication from the Commission, *Towards a More Efficient and Democratic Decision Making in EU Tax Policy*, COM (2019) 8 final (15 Jan. 2019).

⁶⁴ See e.g. 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.

⁶⁵ European Commission, *Proposal for a Council Directive Introducing a Tax on Carbon Dioxide Emissions and Energy*, COM (1992) 226 final (2 June 1992).

⁶⁶ European Commission, *Proposal for a Council Directive on Passenger Car Related Taxes*, COM (2005) 261 final (5 July 2005).

⁶⁷ 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).

⁶⁸ 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).

⁶⁹ 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*, http://ec.europa.eu/budget/mff/hlgor/index_en.cfm (accessed 27 May 2020)). Among scholarly literature, see F. Heinemann, P. Mohl & 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 & M. Mrak, *Financing of the European Union Budget*, Study for the European Commission, Directorate general for Budget (29 Apr. 2008); *Introduction to European Tax Law on Direct Taxation* (Lang et al. ed., Linde 2008); Ph. Cattoir, *Options for an EU Financing Reform*, Notre Europe (2009); M. Schratzenstaller et al., *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), <http://ec.europa.eu/budget/mff/Library/hlgor/selected-readings/40-DOC-COMM-EuTaxes-Schratzenstaller.pdf> (accessed 27 May 2020); A. De Feo & B. Laffan, *EU Own Resources: Momentum for a Reform?* European University Institute (2016), <http://ec.europa.eu/budget/mff/hlgor/library/selected-readings/01-DOC-COMM-EUORMomentumForReform-EUIDeFeoLaffan-Feb2016.pdf> (accessed 27 May 2020).

⁷⁰ C. Landais, E. Saez, & G. Zucman, *A Progressive European Wealth Tax to Fund the European COVID Response*, VOX (3 Apr. 2020), <https://voxeu.org/article/progressive-european-wealth-tax-fund-european-covid-response> (accessed 27 May 2020).

⁷¹ 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 Nov. 2018 on the Multiannual Financial Framework 2021–2027 – Parliament’s Position with a View to An Agreement*, P8_TA (2018)0449 (14 Nov. 2018).

Each of these levies have economic advantages and disadvantages that should be carefully weighed against considerations of democracy, legal certainty, administrative implementation, political feasibility, equity, and ability to pay. In any event, the debate for a EU

tax is far from over in a context in which the current COVID-19 crisis offers a compelling illustration of how European solidarity and national responsibility do not have to be treated as opposed but rather complementary objectives of a sustainable EU integration.