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New Own Resources for the EU Budget: Good Old Taxes Could also Do the Job

On April 2020, a group of EATLP professors, among whom Prof. Nykiel and myself, 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.[2] The creation of genuine European taxes by EU institutions, whose revenues would flow into 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 be *de facto* but also *de iure* transform the European Union into a full-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 derived 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 Next Generation EU instrument leave some room is for caution optimism. The Next Generation EU (hereafter: NGEU) program was politically approved, together with a new multiannual financial framework for 2021–2027, after a marathon of negotiations in July

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[2] European Solidarity Requires EU Taxes – letter for EATLP members, April 2020, https://docs.google.com/forms/d/e/1FAIpQLScrDADzE69yLSceQKGdYUGohlcl2wRiAd1gJHczNKnT8-oEPA/viewform (accessed: 27.05.2020).

2020 and finally adopted on 17 December 2020.[3] To finance this programme, the EU Commission will issue bons up to 750 billion €. The repayment of NGEU will require additional own resources to the EU budget.

Reform towards new tax based own resources is certainly necessary and today more than ever. However, these resources should at the same time have a strong link with the European Union policies and, keeping an eye on the recent international debates on the digital economy,[4] with the European territory, and a not-too-tight link with the territory of single Member States to avoid fostering resentment between member states.

Previous studies[5] have discussed the pros and cons of introducing new own resources based on existing or new taxes, such as a 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 tax.[6]

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[3] 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, pp. 11–22. The manifesto was also published in several EU and national general and specialized media, including in Poland: "Przegląd Podatkowy" 2020.

[4] 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/ (accessed: 27.05.2020).

[5] See: European Parliament, *Working Document on improving the functioning of the European Union building on the potential of the Lisbon Treaty* (30 October 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: 27.05.2020). 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 January 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 April 2008; M. Lang, P. Pistone, J. Schuch, C. Staringer, *Introduction to European Tax Law on Direct Taxation*, Linde Verlag, Wien 2008; Ph. Cattoir, *Options for an EU financing reform*, Notre Europe, 2009, https://institutdelors.eu/wp-content/uploads/2020/08/eufinancingreformcattoirnedec09-1.pdf (accessed: 27.05.2020); M. Schratzenstaller, A. Krenek, D. Nerudová, 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, http://ec.europa.eu/budget/mff/Library/hlgor/selected-readings/40-DOC-COMM-EuTaxes-Schratzenstalle.pdf (accessed: 27.05. 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: 27.05.2020).

[6] C. Landais, E. Saez, G. Zucman, *A progressive European wealth tax to fund the European COVID response*, VOX, 3 April 2020, https://voxeu.org/article/progressive-european-wealth-tax-fund-european-covid-response (accessed: 27.05.2020).

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'.[7]

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 impôt'* (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.[8] 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,[9] a CO_2-based car taxation,[10] a financial transaction taxes (including under enhancement cooperation)[11] and, more recently, two types of digital taxes.[12] In this context, it would seem wise not to add administrative implementation hurdles with the already considerable political obstacle to the introduction of a direct

[7] European Parliament, Resolution of 15 May 2020, on the new multiannual financial framework, own resources and the recovery plan, P9_TA-PROV (2020) 0124 (15.05.2020). 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 (14.11.2018).

[8] See, for example, the adoption of the income tax in the United Kingdom in 1799 as a temporary tax to finance the Napoleonic Wars, or in France in 1914 to support the First World War effort.

[9] European Commission, *Proposal for a Council Directive introducing a tax on carbon dioxide emissions and energy*, COM(1992)226 final (2.06.1992).

[10] European Commission, *Proposal for a Council Directive on passenger car related taxes*, COM(2005)261 final (5.07.2005).

[11] 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 (28.07.2011) and European Commission, *Proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax*, COM(2013)71 final (14.02.2013).

[12] 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 (21.03.2018).

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 yet there is always a haze of uncertainty regarding the revenue-raising capacity of 'untested' taxes.

One other 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 in the EU budget?

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 or even second-best choices in the short-term: before they can be considered workable options, significant issues need to be considered in the EU competence to adopt them, but also 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.

Aside from customs duties, value added tax is the most European tax and is already used as a basis to calculate one of the own resources. In comparison to 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[13] 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

[13] 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 (accessed: 27.05.2020).

terms of simplicity, feasibility, and a 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 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 another. 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 (and using the same structure), without a right to deduct so as to cover both B2B and B2C services 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.[14]

[14] 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 Arts. 49 and 50 of the Treaty and High Authority Decision No. 3-52 ECSC

And if at the end, due the constitutional and legal constraints 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[15] or setting up obligations to contribute to pan-European funds built with protection against specific risks, such as those linked to climate change, along the lines of the EU regulatory bank levy in the framework of the Single Resolution Fund.[16] The road towards a more solid financing of the European Union has never been straight, and side paths could turn out to be the smartest approach to continue the journey, waiting for the right time to get back on the main track.

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[15] This appears to be the solution favoured by C. Fuest, J. Pisani-Ferry, *Financing the European Union: new context, new responses*, "Policy Contribution" 2020, No. 16.

[16] 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 stress 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.

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Abstract

The paper deals with issues related to currently discussed reform within the EU focused on the proposals of establishing the new own tax-based resources for the EU and the possibility to use an existing tax to transform it totally or partially into an EU tax based own resource which in his opinion seems to be the safest way forward from a legal perspective, as well as the future EU tax-based own resources.

Keywords: new own resources, New Generation EU, EU budget