UNIVERSITY OF RIJEKA, FACULTY OF LAW

UNIVERSITY OF SALERNO, THE DEPARTMENT OF ECONOMICS AND STATISTICS (DISES)

Viktorija Pisačić

THE EARMARKING OF CORPORATE TAXATION AND THE LAW OF PUBLIC FINANCE OF THE EUROPEAN UNION

DOCTORAL THESIS

Rijeka, 2026

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Supervisors:

Prof. Dr. Pasquale Pistone,

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Assoc. Prof. Stjepan Gadžo.

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ABSTRACT

The debate on the European Union's fiscal capacity gained renewed attention following the COVID-19 pandemic, when the Union raised unprecedented common debt on the capital markets to finance the NextGenerationEU recovery instrument. The unavoidable debt repayment requires an increase in the EU's fiscal capacity. Against this background, this dissertation examines whether the existing EU legal framework allows the introduction of tax-based own resources without Treaty amendment and whether earmarking may constitute a suitable mechanism for financing Union policies.

The dissertation begins by examining the legal notion of taxation, leading to the conclusion that the non-earmarked nature of taxation represents a relevant, but not constitutive, characteristic of a tax. The dissertation then turns its focus to earmarking, starting from its notion, advantages and disadvantages, to its role in selected Member States and the EU. Building on this, the dissertation analyses the historical development of the EU's public finance legal framework. This led to an observation that European integration was originally characterised by a close connection between specific revenue sources and Union policy objectives. The first own resources were earmarked for specific supranational objectives. Although this relationship gradually weakened as the Union increasingly relied on national contributions, recent proposals for new own resources indicate a tendency to reconnect Union revenues with its policy objectives.

The dissertation further evaluates institutional and academic proposals for new own resources, with particular emphasis on corporate taxation. Corporate-tax-based levy is identified as the missing piece of the own resource framework. It offers a combination of fiscal capacity, coherence with the Union's policy objectives, and a normative justification based on the principle that entities benefiting from the internal market should contribute to financing the European Public Goods. This makes corporate taxation particularly suitable as the basis for a new earmarked own resource. Thus, dissertation argues that Article 311 TFEU can provide an adequate legal basis for the introduction of tax-based own resources and that earmarked taxation is compatible with the foundational principles governing EU's public finance. It further demonstrates that earmarking may strengthen transparency, accountability and sound financial management by creating a link between revenue collection and expenditure. On this basis, the

dissertation develops a *de lege ferenda* proposal for an earmarked corporate-tax-based own resource.

SAŽETAK

Rasprava o fiskalnom kapacitetu Europske unije ponovno je dobila na važnosti nakon gospodarskog pada uzrokovanog pandemijom bolesti COVID-19, koja je dovela do zajedničkog zaduživanja EU-a na tržištima kapitala radi financiranja oporavka. Neizbježna otplata tog duga zahtijeva povećanje fiskalnog kapaciteta Unije. U tom kontekstu, ova disertacija ispituje dopušta li postojeći pravni okvir EU-a uvođenje vlastitih sredstava temeljenih na porezima bez izmjene osnivačkih ugovora te mogu li namjenski prihodi (engl. *earmarking*) predstavljati prikladan mehanizam za financiranje politika Unije.

Polazišna točka istraživanja jest analiza pojma poreza, koja dovodi do zaključka da nenamjenska priroda poreza predstavlja važnu, ali ne i konstitutivnu značajku poreza. Disertacija zatim usmjerava pozornost na koncept namjenskih prihoda, razmatrajući njegovu definiciju, prednosti i nedostatke, kao i njegovu ulogu u odabranim državama članicama i na razini EU-a. Naadalje, analiza povijesnog razvoja pravnog okvira javnih financija EU-a pokazuje da je početak europske integracije bio obilježen tijesnom povezanošću između određenih izvora prihoda i ciljeva politika Unije. Prva vlastita sredstva bila su namjenski vezana uz konkretne nadnacionalne ciljeve. Iako je ta povezanost postupno slabjela kako se Unija sve više oslanjala na nacionalne doprinose, noviji prijedlozi za nova vlastita sredstva upućuju na ponovno jačanje te veze.

Disertacija nadalje ocjenjuje institucionalne i akademske prijedloge za nova vlastita sredstva, s posebnim naglaskom na oporezivanje dobiti. Namet temeljen na oporezivanju dobiti identificira se kao nedostajući element sustava vlastitih sredstava Unije. Takav prijedlog može povećati njen fiskalni kapacitet, te je usklađen s ciljevima politika Unije. Noramtivno opravdanje takvoga prijedloga utemeljeno je na načelu da subjekti koji imaju koristi od unutarnjeg tržišta trebaju doprinositi financiranju europskih javnih dobara. Disertacija stoga tvrdi da članak 311. UFEU-a može pružiti odgovarajuću pravnu osnovu za uvođenje vlastitih sredstava temeljenih na porezima te da je namjensko oporezivanje u skladu s temeljnim načelima koja uređuju javne financije EU-a. Nadalje, pokazuje se da namjensko usmjeravanje prihoda može ojačati transparentnost, odgovornost i dobro financijsko upravljanje stvaranjem jasne veze između prikupljanja prihoda i javne potrošnje. Na toj osnovi disertacija razvija prijedlog *de lege ferenda* za namjensko vlastito sredstvo temeljeno na porezu na dobit.

BREVE SINTESI IN ITALIANO

Il dibattito sulla capacità fiscale dell'Unione europea è tornato al centro dell'attenzione dopo la recessione causata dalla pandemia di COVID-19 e il conseguente indebitamento congiunto sui mercati dei capitali per finanziare la ripresa. In questo contesto, la tesi esamina se l'attuale quadro giuridico dell'UE consenta l'introduzione di risorse proprie di natura tributaria senza modificare i Trattati e se la destinazione vincolata delle entrate possa costituire un meccanismo idoneo al finanziamento delle politiche dell'Unione.

Il punto di partenza dell'analisi è costituito dallo studio della nozione di tributo, dal quale si trae la conclusione che l'assenza di vincolo di destinazione rappresenta una caratteristica rilevante, ma non essenziale, dell'imposizione tributaria. La tesi si sofferma quindi sul fenomeno dell'earmarking, esaminandone la nozione, i vantaggi e gli svantaggi, nonché la sua funzione in alcuni Stati membri e nell'ordinamento dell'UE. Su tale base, viene analizzato lo sviluppo storico del quadro giuridico delle finanze pubbliche dell'UE. Ne emerge che l'integrazione europea era originariamente caratterizzata da un nesso stretto tra specifiche fonti di entrata e obiettivi delle politiche dell'Unione. Le prime risorse proprie erano infatti destinate a finalità sovranazionali determinate. Sebbene tale nesso si sia progressivamente attenuato con il crescente ricorso ai contributi nazionali, le più recenti proposte relative a nuove risorse proprie segnalano una rinnovata tendenza al recupero di tale collegamento.

La tesi valuta altresì le proposte istituzionali e dottrinali relative a nuove risorse proprie, con particolare attenzione alla fiscalità d'impresa. Un prelievo fondato sull'imposta sulle società viene individuato come tassello mancante del sistema delle risorse proprie. Esso offre infatti una combinazione di capacità fiscale, coerenza con gli obiettivi dell'UE e giustificazione normativa basata sul principio secondo cui i soggetti che beneficiano del mercato interno dovrebbero concorrere al finanziamento dei beni pubblici europei. Ciò rende la fiscalità d'impresa idonea quale base di una nuova risorsa propria con vincolo di destinazione. La tesi sostiene pertanto che art. 311 TFUE possa fornire un'adeguata base giuridica per l'introduzione di risorse proprie di natura tributaria e che la tassazione vincolata sia compatibile con i principi fondamentali delle finanze pubbliche dell'UE. Essa dimostra inoltre che la destinazione vincolata delle entrate può rafforzare trasparenza, responsabilità e sana gestione finanziaria, creando un nesso tra riscossione delle entrate e spesa. Su questa base, la tesi sviluppa una

proposta de lege ferenda per una risorsa propria con vincolo di destinazione fondata sull'imposta sulle società

1. INTRODUCTION

"All we have to decide is what to do with the time that is given us."
— J.R.R. Tolkien[1]

1.1. Background of the problem and relevance of the research

The European Union is confronted with many challenges inherent to its specific supranational nature, some of which have been progressively overcome, while others remain to be addressed. Among the latter, the need to expand the EU's fiscal capacity has gained renewed attention during the COVID-19 crisis because the existing budgetary legal framework proved inadequate to address the economic disruptions caused by the pandemic.[2] Thus, to mitigate the crisis, the EU borrowed over EUR 800 billion from the capital markets to fund its ambitious recovery plan - NextGenerationEU (NGEU).[3] However, this approach to crisis management highlighted the importance of introducing new own resources to ensure timely debt repayment.

This requirement was further intensified by rising expenditures linked to the armed conflict in Ukraine and the ongoing impact of the climate crisis.[4] In a period marked by geopolitical fragility, climate challenges, and the need for fiscal reform,[5] the call to decide how to use the time before us, to borrow from Tolkien's words quoted above, resonates with particular importance. Yet the "time given" to act is not indefinite. The approaching repayment of the debt incurred to finance the NextGenerationEU recovery instrument places the Union under pressure to develop new sources of revenue. The Union's system of public finance therefore stands before two intertwined forces: on the one hand, the need to strengthen its fiscal capacity to address these challenges; on the other, the limitations that national sovereignty

1 J.R.R. Tolkien, *The Fellowship of the Ring* (Vol. 1 of The Lord of the Rings) (Houghton Mifflin Company: 1960): 60.
2 See e.g. Gianluigi Bizioli, "Building the EU Tax Sovereignty: Lessons from Federalism," *World Tax Journal* 14, no. 3 (2022): 407–433, https://doi.org/10.59403/25ztn44.
3 See also Sebastian Grund and Armin Steinbach, "Debt-Financing the EU," *Common Market Law Review* 61, no. 4 (2024): 993–1018, https://doi.org/10.54648/cola2024066.
4 For a detailed analysis of the EU's expenditures stemming from the Russia and Ukraine conflict and possible solutions for dealing with economic consequences in this matter, see Eulalia Rubio, "What the EU Budget Can and Cannot Do in Response to the War in Ukraine" (2022). https://institutdelors.eu/content/uploads/2025/04/PB_220420_What-the-EU-budget-can-and-cannot-do-in-response-to-the-war-in-Ukraine_Rubio_EN-1.pdf. Fiscal measures related to the EU's climate policy, their drawbacks and possible solutions to increase in green public investment wereas analysed by Avgousti, Aris, et al. 2023. "The Climate Change Challenge and Fiscal Instruments and Policies in the EU." *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.4424152 .
5 Charles Wyplosz, *Which European Public Goods?* (Brussels: European Parliament, Economic Governance and EMU Scrutiny Unit, 2024), 9.

continues to impose on EU fiscal reforms The ongoing discussion on new own resources of the EU thus reflects a crucial moment, since reform of the EU's public finance system legal framework is necessary for the EU's long-term resilience.

These developments were already discussed in academia from various standpoints.[6] Initially, the focus was on creating a significant amount of European debt to finance NGEU.[7] Dermine offered one of the first studies on the Union's measures to mitigate the crisis[8], concluding that the pandemic inspired unprecedented steps in the EU's fiscal policy, such as the suspension of the Stability and Growth Pact.[9] Debt financing of the recovery plan gave rise to the view that it might represent a "Hamiltonian moment" for the EU, since it has similarities with the 1790 arrangement in the USA that transferred state debts to the federal level.[10] The EU's recovery instruments were also analysed from the viewpoint of rebalancing the Economic and Monetary Union (EMU).[11] The main legal issues connected with the recovery plan "NextGeneration EU" were discussed by De Witte, including its legal basis and the impact on the EU institutional balance.[12] In brief, a widely accepted viewpoint is that the EU's fiscal response to the pandemic is a stepping stone for a new phase of the EU's fiscal integration.

As the Member States gradually recovered, the focus of the EU institutions and academia shifted from the EU's instruments for economic recovery to the introduction of the new own resources.[13] In this regard, on 16 December 2020, an Interinstitutional agreement was

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[6] The impact of NGEU financing on the EU's legal architecture has given rise to a significant scholarly debate. See, e.g., Hanno Kube and Ekkehart von Reimer, eds., *Solid Financing of the EU* (Berlin: Lehmanns Media, 2021); Johan Lindholm and Anders Hultqvist, eds. *The Power to Tax in Europe* (Oxford: Bloomsbury Publishing, 2023); Paul Dermine, "The EU's Response to the COVID-19 Crisis and the Trajectory of Fiscal Integration in Europe: Between Continuity and Rupture," *Legal Issues of Economic Integration* 47, no. 4 (2020): 337–358; Luca Lionello, "Next Generation EU: Has the Hamiltonian Moment Come for Europe?" *EUROJUS* no. 4 (2020): 22–42.

[7] A more detailed insight into the legal architecture of the NGEU recovery plan is provided *infra*, in sec. 4.2.

[8] Dermine, *supra* note 6, at 338.

[9] European Commission, *Communication from the Commission to the Council on the Activation of the General Escape Clause of the Stability and Growth Pact*, COM (2020) 123 final.

[10] Lionello, *supra* note 6, at 23.

[11] The "imbalance within the EMU" refers to the persistent asymmetry between monetary and economic competencies. Monetary policy is fully centralised at the Union level and entrusted to the ECB. On the other hand, economic policy coordination mostly remains with the Member States. This asymmetry has long been viewed as a structural weakness of the EMU's institutional design. See Federico Fabbrini, "The Legal Architecture of the Economic Responses to COVID-19: EMU Beyond the Pandemic," *Journal of Common Market Studies*, 60 no. 1 (2021): 191-192.

[12] Bruno De Witte, "The European Union's COVID-19 Recovery Plan: the Legal Engineering of an Economic Policy Shift," *Common Market Law Review*, 58 no. 3 (2021): 654.

[13] See e.g. Frans Vanistendael, "An EU Corporate Income Tax Filling the Hole in the EU Budget: An End to Tax Competition," *Bulletin for International Taxation*, 75 no.11/12 (2021) 749-761; Aitor Navarro, "Protecting EU Financial Interests in the Collection of Tax-Based Own Resources" *Intertax*, 52 no. 8 (2024) 533-549.; Moritz Scherleitner and Edoardo Traversa, "*How to Achieve the EU's Climate Goals? A Model Proposal for an EU Climate Fund Contributing to Fill the Green Investment Gap*," Aalto University Publication Series Business + Economy 2/2024 (Aalto University, 2024): 1–32; Margit Schratzenstaller et al., *New EU Own Resources:*

reached among the Commission, the Council and the European Parliament.[14] This agreement was significant, as it laid out the roadmap for introducing new own resources. The first step towards this goal was already made with the successful introduction of a national contribution calculated on the weight of non-recycled plastic packaging waste in 2021.[15] Later on, progress has been made towards the implementation of additional own resources based on the introduction of the Carbon Border Adjustment Mechanism (CBAM) and the reformed EU Emission Trading System (EU ETS), but the process is still ongoing.[16]

A further element of the budgetary reform set out in the interinstitutional agreement is the introduction of a financial contribution linked to the corporate sector. Such a proposal is not a novelty in the EU public finance law. In 2001, the Commission proposed a Common Consolidated Corporate Tax Base (CCCTB)[17] to address internal market distortions, but the initiative was rejected by the Member States and later withdrawn.[18] In 2016, the Commission revived the initiative in the form of a split proposal consisting of the CCTB and the CCCTB.[19] Despite the Commission's efforts, the second attempt was not successful either.[20] The topic has once again become relevant with the introduction of the Commission's most recent proposals, known under the acronyms BEFIT and CORE.[21] In September 2023, the Commission introduced a new Directive proposal named BEFIT, which stands for "Business in Europe: Framework for Taxation". This is a proposal for the introduction of a common corporate tax

Possibilities and Limitations of Steering Effects and Sectoral Policy Co-Benefits (Policy Department for Budgetary Affairs, Directorate-General for Internal Policies, European Parliament, 2022).

[14] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, OJ L 433I, 22.12.2020, pp. 28–46.

[15] Legal basis for its introduction was the new 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, pp. 1–10

[16] European Commission, *Press Release: The Commission Proposes the Next Generation of EU Own Resources*, Brussels, December 22, 2021. Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_21_7025/IP_21_7025_EN.pdf.

[17] European Commission, *Company Taxation in the Internal Market*, COM (2001) 582 final (2001).

[18] European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM/2011/0121 final, 2011/CNS 0058 (2011).

[19] European Commission, *Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB)*, COM/2016/0683 final; 2016/0336/CNS (2016).

[20] Paul Tang, *Legislative Train 02.2026: An Economy That Works for People Common Corporate Tax Base (CCTB*). European Parliament, (2026).

[21] See more: European Commission: Directorate-General for Budget, *Europe's budget: own resources*. Publications Office of the European Union. https://data.europa.eu/doi/10.2761/3737467 (2025). For a detailed explanation of the CORE proposal see *infra*, Chapter 4.

framework at the EU level, which would subsequently serve as a basis for a new own resource.[22] More recently, the Commission also introduced the CORE proposal, which is, in short, envisaged as an annual lump-sum contribution paid per entity or permanent establishment located in the EU.[23]

Academic contributions have similarly offered alternative models, such as Vanistendael's proposal for an EU-level corporate income tax for large companies[24] and Scherleitner & Traversa's proposal for an EU surcharge on a harmonised corporate tax base.[25] Consequently, the design and legitimacy of potential new own resources have become a central and timely subject of both tax law scholarship and institutional proposals.

One dimension, however, remains largely unexplored to date - the potential for introducing an EU own resource based on a direct link between taxation and expenditure through earmarking. In this regard, earmarking is a practice of revenue allocation to predetermined purposes, usually through the enactment of a statute.[26] Exploring earmarking as a potential bridge for connecting the Union's revenues and expenditures represents a gap in both institutional proposals and scholarly debate. Against this background, this dissertation investigates whether and how an earmarked corporate income levy could serve as a component of the EU's system of own resources. By engaging with prior research on corporate taxation within the EU[27], the dissertation explores the legal rationale for integrating an earmarked levy on the corporate sector into the EU's fiscal framework.

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[22] European Commission, *Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)*, COM (2023) 532 final, (2023).

[23] See p. 66. of the Commission Staff Working Document Accompanying the Document Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A dynamic EU budget for the priorities of the future: the *Multiannual Financial Framework* 2028-2034, COM (2025) 570 final – SWD (2025) 571 final, (2025).

[24] Vanistendael, *supra* note 13.

[25] Moritz Scherleitner, and Edoardo Traversa, "Involving the Corporate Sector in EU Financing: A Two-Tier Model for a Corporate Income Tax-Based Own Resource," *European Law Review*, 49 no. 2 (2021): 99-125.

[26] For the overview of the concept of earmarking in legal and economic scholarship see *supra* sec. 2.2.1.

[27] Wolfgang Schön, Ulrich Schreiber, and Christoph Spengel, eds., *A Common Consolidated Corporate Tax Base for Europe – Eine einheitliche Körperschaftsteuerbemessungsgrundlage für Europa* (Berlin: Springer, 2008); Stephanie Mayers, *Formulary Apportionment for the Internal Market* (Amsterdam: IBFD, 2010); Dennis Weber and Jaap van de Streek, eds., *The EU Common Consolidated Corporate Tax Base: Critical Analysis* (Alphen aan den Rijn: Kluwer Law International, 2016); Michael Lang, Pasquale Pistone, Josef Schuch, Claus Staringer, and Alexander Storck, eds., *Corporate Income Taxation in Europe* (Cheltenham, UK: Edward Elgar Publishing, 2013); Joann Martens-Weiner, "The Dream Is Alive: WU Tax Policy with a Common Consolidated Corporate Tax Base and Formulary Apportionment," in *The Allocation of Multinational Business Income: Reassessing the Formulary Apportionment Option*, ed. Reuven Krever and François Vaillancourt (Alphen aan den Rijn: Wolters Kluwer, 2020); Alberto J. Martín Jiménez, *Towards Corporate Tax Harmonisation in the European Community: An Institutional and Procedural Analysis* (Alphen aan den Rijn: Kluwer Law International, 1999).

1.2. Aim of the research

The overall aim of the dissertation is to examine the role of earmarking in the broader debate on reforming the EU's public finance system, with a particular focus on the design of new own resources. To achieve this aim, it is necessary to determine whether earmarking can be reconciled with the concept of "tax" under EU law and tax legislation of selected Member States. Additionally, the dissertation must analyse the EU's public finance legal framework to assess the Union's competence to establish new own resources and the legal constraints that shape such a reform.

The analysis is grounded in the premise that economic operators benefiting from the internal market should contribute more directly to the financing of shared EU objectives, thereby strengthening both the Union's fiscal capacity and the legitimacy of its expenditures. On this basis, the dissertation develops a reform proposal for the corporate tax framework in the EU, under which a defined share of corporate tax revenues would be allocated to the EU level and earmarked for financing European public goods.[28] By explicitly linking revenue powers and spending powers, the dissertation explores how fiscal instruments can serve not only to raise revenue but also to advance broader EU regulatory goals.

Thus, the dissertation pursues the following specific objectives:

1. examine the legal nature of earmarking in light of the concept of "tax" in legal scholarship, EU law, and the legislative frameworks of selected Member States;
2. analyse the historical development and current structure of the EU's fiscal governance framework, and assess the Union's competences to establish new own resources;
3. explore the interaction between EU revenue-raising powers and EU spending competences;
4. assess the current own resource reform proposals, as well as the feasibility of introducing a corporate-based own resource in the EU public finance system;
5. present a policy proposal for a reformed corporate tax framework in which a portion of corporate tax revenue is allocated to the EU budget and earmarked for the financing of European public goods.

[28] On the importance of European public goods for the future of EU's public finance see *infra* sec. 4.4.3.

Therefore, the following hypotheses will be tested throughout the dissertation:

1. earmarking enhances the attainment of constitutional functions of taxation that go beyond revenue collection, without undermining the universal notion of a tax;
2. the existing EU revenue system is structurally misaligned with the scale and nature of the Union's contemporary expenditure needs;
3. introduction of a new tax-based own resource of the EU is possible without changes to the primary EU law;
4. companies operating in the internal market should contribute more directly to the financing of EU public goods;
5. from a *de lege ferenda* perspective, a new own resource of the EU should be introduced, taking the form of an earmarked levy imposed on corporate taxpayers.

1.3. Methodology

The etymological roots of methodology stem from the Greek '*meta-hodos*', which stands for 'following the road.'[29] This is particularly relevant, having in mind the aim of the dissertation, which calls for a diverse methodological approach, or, put differently, several paths to follow to address the various dimensions of the research questions.

Following the introduction, the second chapter lays the groundwork for the subsequent analysis of earmarking. Thus, it first examines how the concept of tax is defined in legal scholarship and in positive law, with particular attention to common constitutional principles. Therefore, this chapter follows the legal-dogmatic method, which, in broad terms, encompasses describing relevant rules and their systematisation.[30] Following Núñez Vaquero, such a normative approach aims to explain the logical consequences of the normative system in question and build conceptual categories that allow their understanding.[31] In examining the notion of tax, the analysis necessarily draws upon the four traditional canons of legal

[29] Rob Van Gestel, Hans-Wolfgang Micklitz, and Luis Miguel Poiares Maduro. "Methodology in the New Legal World." *EUI Working Papers LAW* no. 2012/13 (2012): 1.

[30] Smits pointed out that terms legal doctrine, black letter law, formalism, doctrinalism, and legal-dogmatic research are used to broadly describe the same approach to law. However, national traditions may differ somewhat in terminology. This approach is best understood as a research method that systematically sets out the principles, rules, and concepts governing a particular field or institution of law, and examines how they relate to one another to clarify ambiguities and fill gaps in the existing legal framework. For a deatialed approach to legal dogmatic research see Jan M. Smits, "What is legal doctrine? On the aims and methods of legal-dogmatic research," *Maastricht European Private Law Institute Working Paper* No. 2015/06 (2015). See also Ivan Padjen, *Metodologija pravne znanosti* (Rijeka: Pravni fakultet u Rijeci, 2015): 9

[31] Álvaro Núñez Vaquero, "Five Models of Legal Science." *Revus: Journal for Constitutional Theory and Philosophy of Law* 19 (2013): 63.

interpretation: historical, grammatical, logical and systematic. By adding a historical perspective, the analysis of the constitutional notion of tax is placed in context, allowing for a clearer understanding of how modern legal systems emerged.[32]

Additionally, the second chapter also employs the comparative method to explore the notion of tax, and, subsequently, the practice of earmarking in selected states. In this regard, the first step was to select EU Member States, namely Italy, Germany, Slovenia and Croatia. Both methodological and substantive considerations guided the selection of the states. First, the focus is deliberately limited to EU Member States to identify common elements relevant to the concept of taxation and the practice of earmarking within a shared supranational legal order. Such an approach should support the assessment of whether earmarking is compatible with the Union's public finance legal framework. Moreover, Germany and Italy were selected as founding Member States whose legal traditions significantly influenced the development of the *acquis communautaire*.[33] Their legal systems provide insights into the historical foundations and principles underpinning the European public finance law. Finally, Slovenia and Croatia serve as a contrasting pair of newer EU Member States whose legal systems evolved from a shared Yugoslav legal tradition.[34] Their inclusion introduces a perspective shaped by different historical trajectories and legal cultures, while also revealing the extent of convergence through the adoption of the EU *acquis*. This comparative approach is also applied to analyse the practice of earmarking, and to identify shared solutions across diverse states. The interim conclusions derived from this analysis are expected to underpin key elements of the proposed *de lege ferenda* reform of corporate taxation in the EU based on earmarking.

In the second part, this chapter shifts its focus to the concept of earmarking. The analysis includes evaluating its advantages and limitations, analysing comparative experiences from selected states, and assessing its application within the EU legal framework. Consequently, this part of the second chapter employs the descriptive method, enriched by a comparative study of earmarking in the selected Member states.

Furthermore, the third chapter begins with an external perspective on legal research. Thus, it explores the historical and social context of the development of the EU's public finance

[32] Sjoerd Douma, *Legal Research in International and EU Tax Law* (Deventer: Kluwer, 2014), 30.

[33] For a similar methodological approach used for an anylsis of the equality principle in Italy see Sanja Barić, "Načelo jednakosti u Italiji: ustavnopravni koncept u službi punog razvoja osobnosti," *Zbornik Pravnog fakulteta u Zagrebu*, 65 no. 1 (2015): 87-113.

[34] The notion 'Yugoslav' as it is used here refers both to the Kingdom of Yugoslavia (and its predecessors, Kingdom of Croatia, Slovenes and Serbs, as well as Kingdom of Serbs, Slovenes and Croats), as well as the state which evolved to be the Socialist Federative Republic of Yugoslavia. For a brief explanation of this historical background, see *infra* sec. 2.1.2.3.3.

law.[35] The subsequent part of the third chapter follows the legal dogmatic method. Firstly, it identifies relevant legal sources among primary and secondary EU law, using the analytical method. In doing so, the chapter benefits from secondary sources chosen among a vast number of academic contributions. Secondly, once the relevant sources are identified, they are interpreted and analysed, aiming to offer the systematisation of legal norms. [36] Following the standpoint of Núñez Vaquero, this chapter aims to present the sources of law systematically, to be able to identify the gaps, contradictions and deficiencies and to promote the integrity of the EU's legal system.[37]

The fourth chapter is focused on reform proposals developed by the EU institutions, as well as those advanced by legal scholarship. The first part of the chapter follows a descriptive approach by identifying and systematising the proposals for the reform of the Union's own resources framework. It thereby provides the basis for their subsequent evaluation. What follows is an assessment of these proposals against four selected benchmarks: (i) subsidiarity and proportionality, (ii) revenue potential, (iii) contribution to European public goods, and (iv) administrability. Therefore, this part of the fourth chapter adopts a normative approach, as it evaluates the proposals against predetermined criteria to give normative statements about the law.[38] The conclusions drawn from this assessment provide the foundation for the *de lege ferenda* proposal developed in the following chapter.

Moreover, the considerations of reforms in the public finance legal framework benefit from drawing on insights beyond strictly legal analysis. In this section, therefore, the discussion will also incorporate selected findings from economic theory and fiscal federalism, insofar as they help explain the rationale for assigning revenue-raising powers within a multi-level governance system. Thus, the dissertation will, where applicable, draw insights from the foundational economic theory of fiscal federalism. These perspectives do not amount to a full interdisciplinary approach, but they provide a useful context for understanding how legal principles operate in practice. This is inspired by the relationship described by Ricca Salerno in 1888: "Public finance is intimately connected with all parts of the economy, and they share

[35] Douma, *supra* note 32, at 28-31.
[36] Douma, *supra* note 32, at 18.
[37] Núñez Vaquero, *supra* note 31, at 63.
[38] Steve J. Burton, "Normative Legal Theories: The Case for Pluralism and Balancing," Iova *Law Review* 98, no. 2 (2013): 537.

common fundamental principles."[39] Thus, incorporating insights from economic scholarship can enrich the legal analysis, thereby supporting more pragmatic reform proposals.

Following the standpoint that the "ultimate question of legal science is what the law is ought to be,"[40] the fifth chapter will go beyond the "black letter" doctrinal research. Therefore, this chapter offers a *de lege ferenda* proposal for corporate taxation reform based on a supranational earmarked levy on multinational corporations in the EU internal market.

1.4. Delimitations of the research

It is important to note that the research does not engage in an examination of the legitimacy of the European Union to introduce own resources, nor does it engage in the broader constitutional debate on the existence of EU taxing powers. These questions have already been comprehensively addressed in legal scholarship.[41] Instead, the dissertation proceeds from the premise that the EU has the competence to finance itself. Therefore, the dissertation concentrates on the design and legal feasibility of a specific type of own resource, namely an earmarked levy linked to corporate taxation.

Second, the analysis deliberately excludes exploring the indirect taxes as potential candidates for new own resources. Although indirect taxation continues to play an important role in the EU's revenue system, this research focuses on corporate taxation. The latter is based on the assumption that corporate income taxation allows for a clear alignment between subjects which benefit from the internal market and their contribution to financing the European public goods.[42]

Third, the dissertation does not aim to provide a comprehensive quantitative assessment of revenue yields associated with different own resource options. While economic insights from fiscal federalism theory are incorporated where relevant, the analysis herein remains primarily legal.

Fourth, the comparative analysis is intentionally limited to four EU Member States: Germany, Italy, Slovenia, and Croatia. This selective approach does not seek to provide an exhaustive comparison of national tax systems, but rather to identify representative constitutional approaches to taxation and earmarking across different legal traditions and stages

[39] Giuseppe Ricca Salerno, *Scienza delle Finanze*. Manuali Barbera di scienze giuridiche, sociali e politiche. (Firenze, G. Barbera editore: 1888).
[40] Douma, *supra* note 32, at 17.
[41] See e.g. François Barreau, *The Legitimacy of the Taxing Powers of the EU and Its Impact on the Direct Taxation of Businesses* (PhD diss., Vienna University of Economics and Business, 2023).; Johan Lindholm and Anders Hultqvist, *The Power to Tax in Europe* (London: Bloomsbury Academic, 2023), 288.
[42] For a detailed explanation of suitability to connect direct taxation and earmarking see *supra* sec. 4.5.4.

of EU integration. Thus, the findings of the comparative inquiry are not of a general, EU-wide nature.

Finally, the dissertation does not assess the political feasibility of the proposed reform or seek to predict negotiation outcomes within the Council.[43] While political constraints are acknowledged, the primary objective is to develop a legally grounded proposal that can contribute to the broader debate on the future of the EU public finance legal framework.

1.5. Outline of the dissertation

This dissertation is divided into six chapters. Chapter 1 provides an introduction to the dissertation, highlighting its relevance, stating the research objectives and hypotheses, and outlining the methodology employed.

Chapter 2 begins by examining the notion of tax in legal scholarship and positive law, with an emphasis on constitutional principles underpinning the notion of tax. Studying the concept of tax at the national level is essential, as it will serve to determine how earmarked revenues fit within established tax definitions in Member States, and, by extension, whether such instruments can be integrated into the EU legal system. This conceptual and comparative examination of the notion of a tax provides the methodological foundation for testing the first hypothesis, which concerns the compatibility of earmarking with the constitutional functions and legal definition of a tax. The chapter then turns to the concept of earmarking itself, evaluating its theoretical justifications, advantages and limitations, comparative practices, and application within the EU public finance framework.

Chapter 3 examines the legal framework of EU public finances. To begin with, it examines the development of the Union's fiscal system through the historical method. Then the chapters turn to the doctrinal analysis of key principles such as subsidiarity, proportionality, solidarity, and Member States' sovereignty, and presents the Union's revenue and expenditure powers. This chapter serves as a basis to test the second and third hypotheses, concerning the adequacy of the EU's public finance legal framework and the feasibility of establishing new own resources under current Treaty provisions. Moreover, third chapter also outlines the transformation of the EU's public finance framework, tracing reforms from longstanding critiques of the own resources to the innovations introduced through NextGenerationEU. Special emphasis is on the growing momentum behind policy-aligned proposals[44] for new own resources. In this regard, the term policy-aligned or policy-driven own resoruces will be used

[43] See e.g. Nicolaas Stijn Groenendijk. "Revenue Capacity of the EU: Taxes, Tax Sharing, and Resource Pooling," *Politics and Governance* 11, no. 4 (2023): 6–16. https://doi.org/10.17645/pag.v11i4.7240.
[44] The explination behind the formulation "policy-aligned own resoruces" is offered *supra* in sec. 3.5.4.

to describe revenue sources that are proposed not only to raise revenue, capacity, but also to pursue another specific Union policy objective. In this sense, policy-aligned own resources also reflect a partial revival of the idea that EU financing should maintain a connection with the purposes for which the revenue is ultimately used.

Chapter 4 reviews institutional and academic reform proposals, assessing them against the benchmarks of subsidiarity, revenue potential, contribution to EPGs, and administrability. This chapter concludes by exploring corporate income taxation as a potential mechanism to strengthen fiscal integration and support the EU's strategic objectives. This evaluation serves as a basis to test the fourth hypothesis, which concerns the coherence of corporate-tax-based own resources supported by earmarking.

Chapter 5 develops a *de lege ferenda proposal*, drawing on the analyses and findings presented in the preceding chapters. Finally, Chapter 6 synthesises the key conclusions of the dissertation and evaluates the outcomes of the research hypotheses.

2. THE CONCEPTUAL FOUNDATIONS OF TAXATION AND EARMARKING

Starting the analysis of earmarking without first understanding the notion of a tax would be similar to building a house without laying its foundation. Thus, this chapter lays the groundwork for understanding the role of earmarked taxation within the EU system of fiscal federalism. Accordingly, this chapter begins with a two-step inquiry into the notion of a tax. The first step examines how legal scholarship has defined and conceptualised the notion of a tax. The second step takes a normative approach to the concept of a tax, considering how taxes are defined in the legal systems of selected EU Member States, encompassing both constitutional and legislative dimensions. Such analysis also includes a discussion of the European common constitutional tradition in taxation.

This chapter also explores the notion of earmarking and its various forms, including their advantages and disadvantages. Building on this, it examines earmarking within the legal systems of selected states and within the EU's legal framework.

Finally, the chapter examines the role of earmarking in achieving EU policy objectives. The overall structure of this chapter aims to ensure that later normative arguments for the introduction of an earmarked own resource are firmly grounded in legal doctrine and comparative practice.

2.1. The notion of a tax

This section begins by outlining the core elements that legal scholarship considers fundamental to the concept and purpose of taxation. By clarifying these elements, the analysis establishes a coherent doctrinal framework for assessing the phenomenon of earmarking more accurately. Therefore, this section will lay the groundwork for the subsequent examination of how earmarking is accommodated within the established doctrinal framework of taxation.[45]

2.1.1. Notion of a tax in tax law scholarship

It is broadly recognised that a universally agreed-upon definition of a tax remains elusive.[46] This may be attributed to the evolving perception of taxes, shaped by the various roles they have played throughout history, as well as to the fact that the notion of tax has always been intertwined with the question of its justification. Therefore, the notion of tax was shaped by broader economic, philosophical, and legal developments. To understand this evolution, it is

[45] This analysis will be presented *supra*, in sec. 2.2.2.
[46] See Bruno Peeters et al., *The Concept of Tax* (Amsterdam: IBFD, 2010), 197. On a similar note: Božidar Jelčić et al., *Financijsko pravo i financijska znanost* (Zagreb: Narodne novine, 2008), 79-82.

necessary to recall the main historical shifts that have influenced how taxation has been conceptualised. The concept of a tax has continuously evolved alongside changing understandings of the state, the purpose of public authority and the relationship between the state and a taxpayer.

In medieval scholastic thought, taxation was conceived as an exceptional measure, legitimate only in situations of necessity and justified by a clearly defined purpose, such as defence or sustaining the sovereign.[47] Thomas Aquinas, for instance, linked the legitimacy of taxation directly to its purpose, such as providing for military armament, supporting the sovereign's household, or funding dowries for royal daughters.[48] Once the necessity had expired, the tax would have lost its justification. [49]

The emergence of modern theories of the state altered the way taxation was justified, abandoning the previous perception that it was justified only in exceptional situations. With the Age of Enlightenment, the idea about taxation was reshaped by the emerging ideas about sovereignty and the social contract. Philosophers like Thomas Hobbes, John Locke, and Montesquieu understood taxation as "the price of peace" or as a portion of property surrendered to the state in exchange for protection.[50] This laid the groundwork for what later became known as the benefit theory of taxation**,** which assumes that individuals should contribute to public finances in proportion to the benefits they receive from the state.[51] Thus, the justification of taxation was dependent on the political and legal ideology of the concept of the state.[52] Tax was perceived as a consideration for state protection.

The 19th century marked an important shift in the way taxation was understood and justified. German scholars rejected the social contract theory and reconceptualised the state as a superior entity whose authority made taxation an inherent duty. [53] Thus, tax was perceived as an expression of sovereign authority. While Adolph Wagner emphasised the redistributive role of taxation, [54] Lorenz von Stein framed taxation as a system of mutual benefits: individuals owe

[47] Craig Macfarlane, Elliffe, "Justifying Source Taxation in the Digital Age," 53, no.3 *Victoria University of Wellington Law Review* 53(3): 744. Available at SSRN: https://ssrn.com/abstract=3833990.
[48] Klaus Vogel, "The Justification for Taxation: A Forgotten Question," *American Journal of Jurisprudence* 33, no.1 (1988): 25.
[49] *Ibid.*
[50] See e.g. Vogel, *supra* note 48 at 26; Jelčić, *supra* note 46, at 81.
[51] Allison Christians, "Introduction to Tax Policy Theory" (2018):12. Christians, Allison, Introduction to Tax Policy Theory (May 29, 2018). Available at SSRN: https://ssrn.com/abstract=3186791 or http://dx.doi.org/10.2139/ssrn.3186791.
[52] Gianluigi Bizioli, *Il processo di integrazione dei principi tributari nel rapporto fra ordinamento costituzionale, comunitario e diritto internazionale* (Padova: CEDAM, 2008), 84.
[53] Vogel, *supra* note 48, at 27.
[54] Jelčić, *supra* note 46, at 82.

a portion of their gains to the community that made such gains possible. A different interpretation of the benefit principle was offered by de Viti de Marco. He held that the benefit principle does not represent a criterion for allocating the tax burden based on an *ex ante* evaluation of the marginal benefit that the individual receives. Rather, the benefit principle is a criterion of *ex post* judgment of the State's performance and the productivity of public expenditures. In his view, this principle could strengthen political responsibility.[55] Later on, the concept of the tax state further confirmed the inseparable link between taxation and the state.[56]

Building on these theoretical shifts, modern tax scholars moved away from viewing taxation either as a contractual exchange or as a mere exercise of state power. Instead, they grounded fiscal legitimacy in the principle of ability to pay, derived from broader notions of fairness and distributive justice. Its intellectual roots lie in classical and scholastic theories of justice, especially Aristotle's distributive justice and Aquinas's emphasis on proportional contributions. These ideas were later refined by Adam Smith, who argued that citizens should support the state in proportion to their respective abilities. John Stuart Mill further developed this principle, criticising the benefit theory for its narrow focus on the protective functions of the state and instead advocated for a fairness-based approach grounded in economic capacity.[57]

A common denominator of the aforementioned theories is the understanding that taxation is legitimate as long as it serves essential and collectively recognised public purposes. Thus, the justification for taxation does not lie in a single principle or theory.[58] This functional approach captures the core idea which emerged from centuries of fiscal thought, that the authority to tax is justified by the purposes it serves and the collective goods it enables. The power to tax is therefore inseparably tied to the budgetary needs of the state: it is exercised not for its own sake, but to provide financing for public expenditures.[59] This perspective was explored by Cossa in 1919. He connected the question of benefits arising from spending the tax revenue and its legitimacy, stating that a tax is legitimised when it is used to benefit all taxpayers, thus achieving equivalence between the sum of taxes and that of public expenditure.[60] In this sense, taxation derives legitimacy from necessity; without revenue, no

[55] Concetta Ricci, *Tributi di scopo, vincoli di destinazione e obblighi di rendicontazione* (Pisa: Pacini Editore Srl., (2023), 7.
[56] An insight into the emergence of the term "tax state" is offered in the chapter: Richard Wagner, "The Tax State as Source of Perpetual Crisis", in Christopher J. Coyne and Peter Boettke (eds), *The Oxford Handbook of Austrian Economics* (2015; online edn, Oxford Academic, 10 Dec. 2015).
[57] Graeme S. Cooper, "The benefit theory of taxation," *Australian Tax Forum* 11, no. 4 (1994): 438.
[58] See also Vogel, *op. cit. supra* note 48, at 56-59.
[59] Luigi Cossa, *Primi elementi di scienza delle finanze* (Ulrico Hoepli: Milano, 1919), 79.
[60] *Ibid.*

government could perform its constitutional functions, from maintaining order and security to delivering public goods. In a similar vein, van der Vlugt pointed out the "the matrimonial connection between taxation and budgetary considerations."[61]

Therefore, the notion of tax is constantly adapting to changing socioeconomic circumstances while remaining essential to the functioning of the state.[62] The shift from an agrarian to an industrial and now digital economy has reshaped the functions of taxation. [63] This is not surprising since taxation arises from economic activities that trigger legal obligations, thus, its legal notion cannot be detached from its economic foundation.[64] Moreover, the functions of taxation expanded from financing state expenditure to serving social and economic objectives,[65] making a single definition increasingly elusive. Against this background, contemporary tax law scholarship opted for enumerating all of the constituting elements of a tax, which are considered its common identifiers.[66] This approach, now standard in EU tax law textbooks[67], provides a systematic framework for defining a tax and underpins the subsequent analysis.

2.1.1.1. *A tax is imposed by law*

The first defining element of a tax is that it must be imposed by law, thereby implicitly requiring its adoption by a legislative body.[68] A legislative act simultaneously creates the taxpayer's obligation and establishes the legal relationship between the state and the individual.[69] Thus, one of the fundamental principles of representative democracy, famously articulated during the American Revolution as "No taxation without representation", is the principle of tax legality.[70]

However, the roots of the legality principle reach further back in history, since it is closely tied to the historical development of parliamentary assemblies. In this regard, the *Magna Carta* of 1215 and the Bill of Rights in 1689 established clear limits on the monarch's authority

[61] Sam Van der Vlugt, *Rethinking Tax Sovereignty in the European Union: Towards Principled European Tax Integration* (PhD diss., 2024), 179.
[62] Enrico De Mita, *Principi di Diritto Tributario,* 7th ed. (Milano: Giuffrè Francis Lefebvre, 2019), 13.
[63] *Op. cit.*
[64] *Op. cit.*
[65] Marco Barassi and Lorenzo del Federico, "The notion of tax and the different types of taxes" in: Peeters, B. (ed.) *supra* note 46, at 64.
[66] Pasquale Pistone, et al., *Fundamentals of taxation.* (Amsterdam: IBFD, 2010), 2.
[67] See e.g. Massimo Procopio, *Il sistema tributario italiano: Principi istituzionali* (Padova: CEDAM, 2013); Klaus Tipke and Joachim Lang, *Steuerrecht* (Verlag Dr. Otto Schmidt KG, 2015); Michel Bouvier, *Introduction au droit fiscal général et à la théorie de l'impôt*, 10th ed. (Paris: Lexstenso, 2010); Božidar Jelčić, et al., *Financijsko pravo i financijska znanost* (Zagreb: Narodne novine, 2008).
[68] See Procopio, *op. cit*., at 50; Tipke & Lang, *op. cit.* at 42.; Bouvier, *op. cit*. at 50.; Jelčić, B. *op.cit.*, pp. 526-527.
[69] Emanuele Morselli, *Teoria Generale della Finanza Pubblica.* (Padova: CEDAM, 1935), 114.
[70] See Frans Vanistendael, "The Role of (Legal) Principles in EU Tax Law," in *Principles of Law: Function, Status and Impact in EU Tax Law,* ed. Cecile Brokelind (Amsterdam: IBFD, 2014).

to levy taxes, while the convocation of the *États Généraux* in 1789 marked a decisive moment in France, as the king's need for approval from the *États* on the increase of taxes ignited the Revolution itself.[71] Thus, the competence in tax matters as a legislative prerogative was not built with the intention to democratise social and political life, but rather to impose limits on the sovereign's authority in taxpayers' financial affairs.[72] Even Jean Bodin, who advocated for an absolute monarchy and denied the right to impose taxes on anyone except the king, established a fundamental rule that no ruler should introduce taxes upon his people without the approval and consent of parliament.[73] Hence, the principle of tax legality emerged as a safeguard to the financial integrity of individuals.[74]

Furthermore, over the past two centuries, the maxim "no taxation without representation" became a globally recognised principle. Against this background, the 20th century saw the emergence of nearly uniform constitutional language worldwide, affirming that ultimate authority over taxation lies with the people. Schön emphasised that this doctrine reflects the close connection between taxation and democracy.[75] In this vein, Italian doctrine highlights the reservation of law as an expression of representative democracy.[76] This is grounded in the premise that, in modern states, laws derive their legitimacy from democratic processes that ensure public authority reflects the collective will.[77] Thus, legitimate tax decision-making nowadays requires congruence among those who vote on taxes, those who bear their burden, and those who benefit from their revenue.[78]

In fact, the historical connection between taxation and democracy shows that the principle of legality forms an integral part of the rule of law. Hence, in the context of taxation in EU Member States, the rule of law requires adherence to the principles of popular sovereignty, separation of powers, and legality.[79] This interconnection among the

[71] Wolfgang Schön, "Taxation and Democracy," *Tax Law Review* 72, no. 2 (2019), 238.
[72] Miran Marelja and Valentino Kuzelj, "Evolucija fiskalnoga suvereniteta u Engleskoj: od sredstva ograničenja vladara do prerogativa zakonodavne vlasti," *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 41, no. 2 (2020): 511.
[73] Irena Klemenčić, "Državna suverenost i porezna jurisdikcija u kontekstu novih politika u međunarodnom oporezivanju," in *Sloboda i društvo u 21. Stoljeću. Liber Amicorum Slaven Ravlić*, ed. Dario Čepo, Siniša Zrinščak, Ksenija Grubišić (Zagreb: Sveučilište u Zagrebu, Pravni fakultet, 2024), 685.
[74] Franco Fichera, "L'oggetto della giurisdizione tributaria e la nozione di tributo," *Rassegna tributaria* 4 (2007): 1074.
[75] Schön, *supra* note 71, at 238.
[76] Francesco Tesauro, *Istituzioni di diritto tributario: 1. Parte generale*, 13th ed. (Milano: Wolters Kluwer Italia, 2017), 3.
[77] Stjepan Gadžo, "Principle of legality of taxation as an element of the EU legal order: a re-assessment in light of the CJEU's decision in UP CAFFE" (2025). (forthcoming)
[78] Schön, *supra* note 71, at 238
[79] Ana Paula Dourado, "Chapter 10: No Taxation without Representation in the European Union: Democracy, Patriotism and Taxes." in: *Principles of Law: Function, Status and Impact in EU Tax Law*, ed. Cécile Brokelind (Amsterdam: IBFD, 2014), 205.

aforementioned principles shows that the principle of legality in taxation carries constitutional and political weight. When applied to taxation, this bridge becomes particularly significant: the power to tax is one of the most intrusive forms of state authority, and its legitimacy therefore depends on being exercised strictly within the boundaries of law and through democratic representation.[80] Furthermore, a tax is perceived as "legitimate and valid when socially accepted, i.e. when it receives its legitimacy from democratic procedures, public discussion and argumentation, disagreement and compromise in parliament in a context of political plurality."[81] The latter indicates that the legality of a tax became inevitably connected with its legitimacy.[82] Originally designed to limit the sovereign's power to impose taxes, this principle evolved into a guarantee of representative democracy and an essential element of the rule of law.

2.1.1.2. *A tax is a monetary contribution*

Historically, taxes were not limited to monetary obligations. Tax obligation evolved from the continuous voluntary contributions of goods provided for the eldest members of prehistoric communities. Due to the long-term repetition of such a custom, it became an obligation, which subsequently transformed into a tax obligation.[83] Taxes levied in kind, that is, imposing an obligation to provide a certain amount of goods, were known in history, such as the harvest tax in ancient Egypt and Athens.[84] In medieval Croatia, marten skin was used as a means of payment for a tax named *Marturina* .[85] The significance of the marten skin as a means of payment in history was reflected in the name of the former Croatian currency *kuna* (literal translation to English: marten). As noted by Heij, "historically, much of the revenue of political rulers has been in natura. Many countries used conscripted labour for military and

[80] On the relationship between tax investigations and the principle of legality in Italy, see: Alberto Marcheselli, *Accertamenti Tributari: Poteri del fisco strategie del difensore*, 3rd ed. (Milano: Giuffre Francis Lefebvre, 2022), 145-149.
[81] Dourado, *supra* note 79, at 2.
[82] Pistone et al., *supra* note 66, at 2.
[83] See Jelčić, *supra* note 46, at 51.
[84] See Charles W. Adams, *Za dobro i zlo: utjecaj poreza na kretanje civilizacije*, 2nd ed. (Zagreb: Institut za javne financije, 2006), pp. 7 and 56.
[85] Croatian Kuna (HRK) was an official currency from 1993 until 2023 when Croatia joined the Eurozone. However, even after the introduction of the Euro as a currency, the marten can be found on the national side of the 1-Euro coin. See Mario Jareb, "Kuna kao simbol novčane vrijednosti i heraldički znamen u prošlosti i sadašnjosti," *Povijesni prilozi*, 41, no. *62*, (2022): 5-45. https://doi.org/10.22586/pp.v41i62.21810

other purposes."[86] Although it may seem that taxes in kind belong to ancient history, they were still present in the 20th century.[87]

Nevertheless, the gradual rise of the monetary economy led to the evolution of tax obligations into monetary obligations, establishing this as another widely accepted element of a tax.[88] According to Tipke and Lang, a tax cannot include obligations such as manual labour or jury duty.[89] Moreover, the frequency of tax payment is not a decisive element of the notion of tax, and it is irrelevant whether the monetary obligation is paid once or on an ongoing basis.[90] In modern society, a tax obligation which is not a monetary obligation is rare and could occur only during exceptional circumstances, such as a war or unprecedented natural disasters.[91]

2.1.1.3. *A tax is a compulsory contribution*

A historical analysis of the notion of tax reveals that compulsion has consistently been a defining element in both the imposition of tax obligations and their enforcement. This feature can be traced to the prehistoric civilisation of Assyria[92] through the Roman Empire,[93] in the Middle Ages,[94] and up until the modern age, although the justification for the legitimacy of taxes and their involuntary nature changed throughout history.[95]

According to Del Federico, compulsion belongs to the formal and structural elements of a tax, while justification of a tax constitutes its functional element.[96] More precisely, "compulsion is a structural element of taxes and shows that the taxpayer cannot choose between

[86] Gitte Heij, *Who Pulled the Strings? A Comparative Study of Indonesian and Vietnamese Tax Reform* (PhD diss., University of Groningen, 2007), n.p.
[87] For example, a tax in kind was introduced in the Soviet Union in 1923 with the Single Tax on Agriculture. This tax replaced the *Prodrazverstka* – measure consisting of grain requisitioning, which imposed an obligation on peasants to hand over to the Government all their grain above the necessary minimum. See in detail: Margaret S. Miller, "Taxation in Soviet Russia: II." *The Slavonic Review* 4, no. 11 (1925): 418–432. http://www.jstor.org/stable/4201973
[88] Bouvier, *supra* note 67, at 24.
[89] Tipke & Lang, *supra* note 67, at 41-42.
[90] Koenig/Koenig AO § 3 Rn. 12
[91] Jelčić, *supra* note 46, at 84.
[92] One of the earliest examples of the involuntary element of taxation comes from Assyria, one of the first advanced civilisations. A reference to taxes dating back to the 13th century BC mentions King Tukulti-Ninurta I, who imposed taxes on the populations he conquered. See more: Gwyneth McGregor, "Taxation in the ancient world," *Canadian Tax Journal* 4, no. 4 (1956): 276.
[93] Ancient Romans demanded taxes "from their conquered cities with the muscle of the legions; this was no longer a voluntary contribution." See more Adams, *supra* note 84, at 68.
[94] The imposition of tax obligations in medieval feudal states followed a similar pattern to that of ancient civilisations. The key difference was that the taxpayers were no longer the citizens of conquered nations but rather the subjects of feudal lords. See: Jelčić, *supra* note 46, at 86.
[95] For an in-depth analysis of the justification of taxation, see: Klaus Vogel, "The Justification for Taxation: A Forgotten Question," *American Journal of Jurisprudence* 33, no. 1 (1988): 19-59.
[96] Lorenzo del Federico, *Tasse, Tributi Paracommutativi e Prezzi Pubblici* (Torino: G. Giappichelli Editore, 2000), 94.

paying and not paying; once the taxable event happens, the taxpayer is obliged to pay."[97] While defining a tax, Falsitta emphasises its function. He states that a distinctive feature of tax obligation is its function as a shared obligation. Tax obligation is, in fact, a shared burden of public expenses among all the members of an organised social group. The determination of taxpayers will depend on relevant distribution factors.[98] Finally, he offered the following definition of a tax: "It is a public, usually monetary, obligation which cannot be disposed of freely. It is coercive because it stems directly or indirectly from the law and has the function of binding a certain person to participate in public expenses.[99] Italian legal scholars agree that compulsion is an essential, but not a distinctive element of a tax because other public levies also share a compulsory nature.[100] Ricci highlighted that it is not a distinctive element of a tax, pointing out that all taxes are compulsory contributions, but not all compulsory contributions are taxes.

In this sense, Tipke and Lang point out that voluntary or contractual monetary obligations to the state are outside the scope of the notion of tax.[101] Bouvier states that, as a consequence of this element of a tax, the taxpayer has neither the right to evade his tax debt nor to negotiate the amount of his contribution.[102] Croatian legal scholarship emphasises that in modern democratic states, compulsion exists only regarding the fulfilment of a tax obligation.[103] On the contrary, the introduction of a tax obligation is not considered involuntary because taxes are imposed by law and must be approved by parliament. This is based on the concept of the constitutional contract, derived from Thomas Hobbes' social contract theory.[104] Since taxes are enacted by parliament, the approval of its members in adopting a new tax is seen as an indirect agreement by the people who elected them. This rationale is directly connected with the principle of legality, as parliamentary approval of taxation is understood as an indirect expression of the people's consent.

The involuntary nature of a tax comes to the fore in tax procedures, which represent "a series of actions through which states assess and collect the taxes that they are entitled to levy in the exercise of their tax sovereignty."[105] The compulsory nature of a tax becomes obvious

[97] Peeters, *supra* note 46, at 64.
[98] Gaspare Falsitta, *Manuale di Diritto Tributario: parte generale* (Padova: Cedam, 2020), 29-30.
[99] *op. cit.*, pp. 25 – 26.
[100] Ricci, *supra* note 55, at 47.
[101] Tipke and Lang, *supra* note 67, at 42.
[102] Bouvier, *supra* note 67, at 25.
[103] See e.g. Jelčić, *supra* note 46, p. 87.; Tomislav Artuković, Neki aspekti osiguranja i naplate poreza i drugih javnih davanja u sudskoj praksi. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 44, no.1 (2023): 225.; Nika Šimurina, et al., *Osnove porezne pismenosti* (Zagreb: Narodne novine, 2018), 24.
[104] See more: Loughlin Martin, *Foundations of public law* (Oxford: Oxford University Press, 2010), 275-311.
[105] Pasquale Pistone, *Tax procedures* (Amsterdam: IBFD, 2022), 1.

when a tax procedure reaches the tax collection phase. If a taxpayer did not fulfil the tax obligation, she could ultimately face coercive collection of claims by tax authorities.[106]

2.1.1.4. *A tax is a revenue-raising instrument*

When examining the functions of taxation, it is common to begin with the straightforward claim that taxes exist to raise revenue for the State. Indeed, without the ability to collect revenue, no government could sustain its basic functions or provide public goods.[107] Although achieving a general agreement on the services the public sector should provide is impossible, there is a "widespread ideological agreement that this function is needed."[108] Unsurprisingly, taxes have become the most prominent revenue-raising instrument in modern states,[109] as reflected in the ratio of taxation revenue to GDP in modern states' budgets.[110] In the OECD countries, the average tax-to-GDP ratio rose from 24.9 % to 34.2 % from 1965 to 2021. Such an increase is considered a consequence of the increase in government spending.[111] Although taxation serves an essential revenue-raising function, its role cannot be reduced to revenue generation alone. It is therefore worth exploring how the revenue-raising function of taxation relates to, and interacts with, its other functions.

Beyond securing resources for public expenditure, modern tax systems have also been designed to pursue additional objectives, including the redistribution of wealth and income.[112] These broader aims are subject to significant debate, as they raise questions about the proper limits of state intervention in the economy and the contested meaning of distributive justice. Tax law, particularly income tax, has long been associated with a redistribution role in modern societies. Even before the emergence of the welfare state, progressive income taxation, grounded in the principle of ability to pay, was among the first tools used by democratic governments to influence the distribution of wealth.[113] Moreover, Cermignani points out the priority achievement of the well-being and general interest of the social community as a whole in a democratic society. According to the universal criterion of distributive justice, it must necessarily be maximised in a fair and "equal" manner for all, which may be achieved through

[106] *op. cit.* at 27.
[107] Reuven S. Avi-Yonah, "The Three Goals of Taxation," *NYU Tax Law Review* 60, no. 1 (2006): 1-28.
[108] Avi-Yonah, *op. cit.*, at 3.
[109] See Jelčić, *supra* note 46, at 67.
[110] See e.g. OECD. *Government at a Glance 2025*, (Paris: OECD Publishing, 2025) Paris, https://doi.org/10.1787/0efd0bcd-en.
[111] OECD, *Revenue Statistics 2023: Tax Revenue Buoyancy in OECD Countries* (Paris: OECD Publishing, 2023): 7. https://doi.org/10.1787/9d0453d5-en.
[112] Peeters, *supra* note 46, at 21.
[113] Peeters, *supra* note 46, at 27.

progressive taxation.[114] Avi Yonah underlined that although "the desirability of redistribution has been controversial, most commentators agree that if redistribution is a legitimate government goal, then taxation may be the most effective way to achieve that goal."[115]

Taxes may also be used to achieve a range of economic, social, cultural, and environmental objectives. Thus, contemporary tax systems are structured not only to generate revenue but also to pursue regulatory objectives. Economic theory, premised on the effectiveness of taxation as a policy tool, often recommends instruments such as tax incentives (or tax expenditures) and Pigouvian taxes to influence behaviour and correct market outcomes.[116] From the same perspective, there is a distinction between taxes regarding their function. Some taxes, such as environmental taxes, are primarily designed to regulate behaviour by ensuring that private actors bear the social costs of their actions. On the contrary, corporate income tax was initially oriented to revenue raising, but much of the complexity in modern tax codes reflects efforts to use it to also achieve regulatory and policy objectives, rather than just the revenue.[117]

Thus, by influencing behaviour and affecting the allocation of resources, taxes may serve purposes that go beyond revenue collection and support the achievement of constitutionally protected goals. In this sense, taxation with non-fiscal purposes can be seen as a concrete expression of the welfare state.[118] According to Fichera, the regulatory purposes of taxation are of no lesser constitutional and practical importance than its fiscal function of revenue collection.[119]

An important question in this context is whether the function of a compulsory contribution influences its classification. Specifically, if the primary purpose of a compulsory contribution is not revenue-raising, can it still be regarded as a tax? Comparative examples support the conclusion that revenue-raising does not have to be the primary objective for a levy

[114] Mario Cermignani, "Il dovere tributario come dovere di solidarietà sociale," *Innovazione e Diritto 6/2017* (2017): 241.
[115] Reuven S. Avi-Yonah, "Taxation as Regulation: Carbon Tax, Health Care Tax, Bank Tax and Other Regulatory Taxes," *Accounting, Economics, and Law a Convivium* 1, no.1 (2011): 2.
[116] Johanna Hey, "Effectiveness of Regulatory Taxes: Control Through Proceedings v. Judicial Control: A German Constitutional Perspective," *INTERTAX* 48, no. 4 (2020): 360.
[117] Avi-Yonah, *supra* note 119, at. 3. On the influence of the BEPS project on the corporate income tax potential to serve as a regulatory tool, see: Stjepan Gadžo and Šime Jozipović, "International Corporate Tax Regime Post-BEPS: a Regulatory Perspective" INTERTAX 48, no. 4 (2020): 432 – 445.
[118] Reynaldo Balladares Saballos, "Profili costituzionali delle imposte con fini extrafiscali," *Rivista di diritto tributario internazionale 3/2012* (2012): 78.
[119] See Franco Fichera, *Le agevolazioni fiscali*. (Padova: Cedam, 1992), 125.

to qualify as a tax.[120] Thus, levies primarily serving other purposes, such as regulation or behaviour modification, may still fall within the broad definition of a tax.

2.1.1.5. *A tax is a contribution without a direct benefit for the taxpayer*

Typically, tax payments do not provide taxpayers with a direct personal benefit but rather fund the totality of public goods and services. Therefore, taxes should not include payments to the government for which the taxpayer receives something in return.[121] As stated above, the revenue raised from taxes is used to finance a variety of public services. Thus, "a tax is usually not tied to a specific service to be provided to the individual paying the tax but instead supports the services to the collective."[122]

Therefore, it is important to emphasise the term "direct benefit" since it would be incorrect to conclude that paying taxes does not result in any benefit for the taxpayer whatsoever. However, this element of a tax is important when it comes to defining the tax liability. Namely, it is impossible to connect the amount of an individual's tax liability and the benefits this person (taxpayer) receives from goods and services financed by the government.[123] Furthermore, this element is used to distinguish taxes from fees. Thus, Ricci pointed out that the distinction between taxes and private law fees lies in whether the relationship is synallagmatic or not. More precisely, taxes, even when they appear "commutative" (i.e. linked to a benefit), do not create a reciprocal relationship in the civil law sense. If the taxpayer receives a benefit from the state, it does not arise because of the tax payment itself but because a condition defined by law has been fulfilled. However, if the taxable event is not realised or the service is irregular, the taxpayer may only claim reimbursement of the tax.[124]

This element is nowadays considered a *differentia specifica* of a tax compared to other public finance instruments.[125] The absence of direct compensation is the main difference

[120] For example, the German Fiscal Code (*Abgabenordnun*g) explicitly prescribes that the notion of tax also includes a compulsory contribution where raising revenue may be a secondary objective (see Section 3). Croatian legal scholarship also recognises excise duties as taxes with the primary purpose of deterring the consumption of certain products. See: Jelčić, *supra* note 46, at 441-443. The High Court of Australia also decided that revenue raising does not have to be the primary function of a tax. See John Tiley and Glen Loutzenhiser, *Revenue Law*: *Introduction to UK Tax Law; Income Tax; Capital Gains Tax; Inheritance Tax*, 7th ed. (Oxford, Hart Publishing, 2012), 5. Legal definition of a tax in Slovenia does not contain a reference to the purpose of raising revenue or any other purpose of taxation.

[121] Victor Thurony, Kim Brooks, Borbala Kolozs, *Comparative Tax Law*, 2nd ed. (Alphen aan den Rijn**,** Kluwer Law International, 2016)*:* 56

[122] Pistone et al., *Fundamentals of taxation,* at. 2

[123] Nataša Žunić Kovačević and Stjepan Gadžo, "Komunalna naknada u RH i njezino pozicioniranje u odnosu na teoretske i normativne koncepte financijskog prava," *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 35, no. 1 (2014): 252

[124] Ricci, *supra* note 55, at 51.

[125] *Ibid.*

between taxes and some other revenue sources in the state budget.[126] Thus, academic contributions, textbooks, and legislative definitions nowadays rely on the lack of direct benefit as a key criterion for differentiating between a tax and other compulsory contributions.

2.1.1.6. *A tax is not allocated for a specific purpose*

The final element of taxation is that tax revenues flow into the general budget, not being allocated to specific expenditures. Conversely, revenues from levies such as social security contributions are allocated to fund specific public services.[127] Thus, the universally adopted standpoint is that taxes finance government expenditures rather than being tied to a particular spending purpose.[128] This is closely connected with the principle of budgetary universality, which requires that all revenues be used to collectively fund all public expenditures.[129] Although formulated as a rule of budgetary law, the principle of universality reflects a similar underlying logic: public revenues should not be earmarked unless the legislature expressly provides otherwise.

Conversely, earmarking is a practice of allocating the revenues to predetermined purposes, usually established by statute. Thus, earmarked taxes depart from this general element of a tax. Even in jurisdictions that explicitly prescribe the principle of budgetary universality, or the non-affectation as a part of their legislative definitions of tax, earmarked taxes exist.[130] The argumentation of this practice varies across jurisdictions. For example, in Germany, it is necessary to justify earmarking based on a specific federal government financing purpose that extends beyond its general and permanent fiscal needs.[131]

Nevertheless, this characteristic of a tax is generally used as a basis for differentiation between taxes on the one hand, and contributions and fees on the other. Thus, the distinctions between taxes and social security contributions are usually focused on "the existence of a direct link between the contribution and the payment."[132] Moreover, even if the amount of benefits received is not related to the amount of contributions paid, this will not affect its classification

[126] See: Tipke & Lang *supra* note 67, at 15.
[127] David Williams, "Social security taxation" in *Tax Law Design and Drafting*, vol. 1, ed. Victor Thuronyi (International Monetary Fund: 1996), 5.
[128] See Tipke & Lang *supra* note 67, at 41.; Bouvier, *supra* note 67, at 24.; Jelčić, *supra* note 46, pp. 89.- 90.
[129] See OECD. *OECD Journal on Budgeting. Special Issue: The Legal Framework for Budget Systems: an International Comparison* 4, no.3 (Paris: OECD Publishing, 2004): 133. See also: Ian Lienert, "The Legal Framework for Public Finances and Budget Systems" in *The International Handbook of Public Financial Management,* ed. Richard Allen, Richard Hemming, and Barry Potter (London: Palgrave Macmillan, 2013), 71.
[130] See *supra* sec. 2.2.5. and 2.3.
[131] Klaus Tipke, Joachim Lang, et al. *Steuerrecht*, 25th ed. (Köln: Ottoschmidt, 2024), 47.
[132] Bruno Peeters, "The Design of Covid-19 Recovery Contributions: Taxes or Social Security Contributions?" *EC Tax Review* 30, no. 5 (2021): 238.

as a contribution, as long as there is a received social security benefit.[133] In this vein, in Italy, the social security contributions are "received by public bodies, they are imposed by law and linked with the provision of public services. Therefore, the social security system is not different from the tax system for the compulsory payment of the revenues (contributions or taxes), which is equal in both systems, but for the destination of the revenues which are employed for covering the cost of the provision of social security."[134] That being said, "the argument that social security is not like a tax derives from Bismarckian tradition in social security".[135] This conceptual distinction is even less persuasive in countries which fund their welfare systems with a combination of taxes and contributions, such as Sweden and Denmark.[136] In such systems, the boundary between taxes and contributions becomes blurred, and the criterion of revenue allocation alone cannot reliably serve as a distinguishing feature Thus, it should be acknowledged that, apart from the specific destination of revenue for social protection, there are no fundamental conceptual differences between social security contributions and certain forms of earmarked taxation. However, a more detailed examination of this debate lies beyond the scope of the present thesis.

In addition, this element of taxation in Italian legal scholarship is analysed from the viewpoint of the potential to divide public expenses**.** This distinction reflects an underlying understanding of the non-earmarked nature of taxation. Thus, taxes are understood as a revenue source supporting the state's overall functioning rather than a specific spending purpose. This understanding is reflected in the view that taxes (*imposte)* are considered suitable to fund indivisible public expenditures, while benefit taxes (*tasse*)[137] are a modality of financing divisible public services.[138] Ricci also elaborated on the difference between funding divisible public services and indivisible expenditures. She states that for levies funding divisible public services, a reasonable distribution criterion must be found in individual responsibility for the specifically caused public expenditure, or in the need to compensate for the advantageous situation that the taxpayer derives from the performance of a public service or the enjoyment

[133] Peeters, *supra* note 46, at. 47.
[134] Giuseppe Corasaniti, "National Report Italy," in: *Double Taxation Conventions and Social Security Conventions*, ed. Michael Lang (Wien: Linde Verlag, 2006), 427.
[135] Yariv Brauner, "The International Tax Regime and Social Security" ed. Michael Lang, *Double Taxation Conventions and Social Security Conventions*, (Wien: Linde Verlag, 2006), 18.
[136] See e.g. Michael Lang, ed. *Double Taxation Conventions and Social Security Conventions* (Wien: Linde Verlag, 2006), 217-232, and 653.-681.
[137] For a detailed explanation of the linguistic choice to translate *tassa* as a benefit tax in English, see *infra* sec. 2.1.2.4.
[138] Francesco Tesauro, *Compendio di Diritto Tributario*, 8th ed. (Padova: UTET Giuridica, 2020), 4.

of a public good (or, for contributions, from the construction of a public work).[139] Thus, the non-earmarked nature of taxation is a relevant, but not a constitutive characteristic of taxes.

2.1.2. The notion of tax in domestic law

2.1.2.1. The importance of constitutional fundamentals of taxation

Taxation has been described as an "unprecedented social phenomenon," sitting at the intersection of two seemingly conflicting interests: the government on the one hand and citizens and businesses on the other.[140] This tension has inspired the view that a constitution serves as a "fundamental transmission belt" that reconciles these interests.[141] In general, a constitution is the fundamental legal document of each state, possessing the highest legal authority and precedence. It constitutes the primary source of rights and obligations within the state, regulating them in accordance with the fundamental principles that underpin the legal and political order.[142] In other words, a constitution prescribes the basic rules determining how a state is governed, including the distribution of powers and the protection of human rights and freedoms.[143]

Beyond this general role, the constitution also shapes taxation: it enshrines legal principles that both legitimise taxation and impose boundaries to safeguard individual rights. The constitutional dimension of taxation, therefore, functions both as a protection against arbitrary tax measures and as a framework through which the state fulfils its redistributive and developmental functions.[144]

Before turning to tax-specific principles, it is necessary to clarify what is meant by "principles" in legal theory. Although principles were traditionally understood as non-codified legal sources recognised by courts and used as benchmarks in legislative development,[145] many of them have since been codified. This makes it important to distinguish principles from rules when both appear in written form. Thus, legal theory distinguishes between rules and principles, both of which fall under the category of legal norms. Some scholars regard this as a conceptual distinction, while others see it as a difference of degree. Under the former view, rules and

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[139] Ricci, *supra* note 55, at 51.
[140] Stjepan Gadžo, "Prilog istraživanju sadržaja načela pravednosti kao kriterija evaluacije normi međunarodnog poreznog prava," *Pravni vjesnik* 31, no. 2 (2015):135.
[141] Pietro Boria, *Taxation in the European Union*, 2nd ed. (Cham: Springer, 2017), 3.
[142] Branko Smerdel, *Ustavno uređenje europske Hrvatske* (Zagreb: Narodne novine, 2013), 3.; Zvonimir Lauc, "Načelo vladavine prava u teoriji i praksi," *Pravni vjesnik* 32, no. 3-4 (2016): pp. 48, 60.
[143] Vanistendael, *supra* note 70, at 33.; Smerdel, *op. cit.* at 4.
[144] Matija Miloš, Valentino Kuzelj, "Ostvarenje i zaštita ustavnog ideala porezne pravednosti u svjetlu zahtjeva socijalne države," *Zbornik radova Pravnog fakulteta u Splitu*, 58 no. 4 (2021): 1109.
[145] See Cécile Brokelind, "Introduction" in *International Tax Law: New Challenges to and from Constitutional and Legal Pluralism*, ed. Cécile Brokelind (Amsterdam: IBFD, 2016), 3.

principles diverge in their structure, mode of application, and treatment of conflicts: contradictions between rules require invalidation or exceptions, whereas tensions between principles are resolved through balancing, with each principle assigned relative weight.[146] According to Tridimas, there are two constituent elements of a legal principle: generality and added normative weight, the latter meaning that a principle contains a core value of a legal system. Principles, in this sense, answer the question "why," while rules provide a more specific answer to the question "what."[147] Moreover, Guastini emphasised that even if a constitution does not explicitly label a provision as a principle, it may still be recognised as such by virtue of its distinctive features.[148] The first is that a principle provides a foundation or justification for other provisions; unlike those provisions, however, the principle itself does not require justification, as it is understood as inherently "just" within a legal order. The second characteristic is its non-technical and often unspecified formulation.[149] Moreover, some legal principles have been incorporated into constitutional texts and, over time, have evolved into constitutional rights.[150]

Furthermore, not all principles are expressly codified within legal norms; many remain implicit and operate beneath the surface of the legal system. These underlying principles nevertheless hold significance for judicial interpretation, particularly in the jurisprudence of constitutional courts, and, where legislation expressly incorporates principles, they often engage in a close dialogue with those explicit formulations.[151] Nevertheless, judges first have to "create" implicit principles as general principles on an *ad hoc* basis, to make them sufficiently explicit to function as a basis for court decisions.[152] „Their creative discovery takes the form of the so-called juridical construction procedure."[153] In sum, judicial construction of implicit norms, as well as reliance on explicit constitutional principles, illustrates their central function within constitutional law. Building on this foundation, the following section explores the principles that specifically address the tax system.

Applied to taxation, constitutional principles serve a dual role. On the one hand, they guide legislators in shaping tax policy; on the other, they carry binding normative force,

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[146] Luka Burazin, "Antinomies between Implicit Legal Principles: A Solution to the Total-Partial Antinomy" in *Courts, Interpretation, and The Rule of Law*, eds. M. Jovanović and K.E. Himma (The Hague: Eleven International Publishing, 2014), 167-180, Available at SSRN: https://ssrn.com/abstract=2391860
[147] Takis Tridimas, *The General Principles of EU Law*, 2nd ed. (Oxford: Oxford University Press, 2006), 1.
[148] Riccardo Guastini, *Sintaksa prava*, 3rd ed. (Zagreb: Naklada Breza, 2019): 77-78.
[149] Guastini, *op. cit.*, at 78.
[150] Vanistendael, *op. cit. supra* note 70, at 1.
[151] Pasquale Pistone, *The EU Common Constitutional Tradition and Its Impact on Tax Law in the European Union: A Systematic Assessment*. (2025). (Forthcoming), at 18.
[152] Burazin, *supra* note 146, at 5.
[153] Burazin, *supra* note 146, at 5.

imposing limits on taxation that ordinary legislation must respect, and noncompliance may result in unconstitutionality.[154] Furthermore, constitutional principles increasingly influence the content and interpretation of tax laws. This has been acknowledged in constitutional jurisprudence, as well as in legal scholarship, confirming the principles' central role in shaping public finance legislation.[155]

Regarding the governance of the tax system, several constitutional principles came to the fore. In this regard, the principle of legality stands out as a broadly recognised standard, since it is enshrined in the constitutions of EU Member States and many legal systems worldwide.[156] Additionally, equality and the ability to pay principle are fundamental in the context of taxation.[157] Thus, the normative basis of taxation is rooted in constitutional fundamentals.

Against this backdrop, the following section will dive into a dual dimension of taxation, assessing the constitutional framework of taxation at the national level in selected EU Member States, as well as its supranational dimension at the EU level.[158] This analysis seeks to highlight the core principles governing the raising and allocation of tax revenues, to examine how these constitutional foundations frame taxation. This will serve as a first step in the formulation of the final *de lege ferenda* proposal.

2.1.2.2. Common constitutional traditions of the EU Member States and their implication for taxation

The constitutional dimension of taxation in the EU Member States should be analysed in the context of legal pluralism, built on the understanding of the supremacy of EU law.[159] To understand such a complex legal conundrum, it is important to take a step back and reflect on the development process of this dimension.

At the very beginning of EU integration, "the protection of fundamental rights was virtually absent, and this could be intended as a direct consequence of the particular nature of the European Community as an international organisation aimed at establishing a common

[154] Boria, *supra* note 141, at 174.
[155] Boria, *op. cit.*, at. 88.
[156] Vanistendael, *supra* note 70, at 30.
[157] Vanistendael, *supra* note 70, at 34; Robert Påhlsson, "Equality in Taxation: Reflections on the Social Construction of Comparability in Tax Law", in "*Principles of Law",* supra in note 70, p. 151-152.
[158] In this sense, van der Vlugt offered an in-depth analysis on the daul legitimacy in European tax law, stemming from both national principles and the common tradition of EU Member States. See Sam Van der Vlugt, *Rethinking Tax Sovereignty in the European Union* (Amsterdam: IBFD, 2025), 391.
[159] For a discussion on legal pluralism in the EU, see Matej Avbelj, *"*The EU and the Many Faces of Legal Pluralism Toward a Coherent or Uniform EU Legal Order?" *Croatian Yearbook of European Law & Policy* 2, no.1 (2006): 377-391.

market and a functional type of economic integration."[160] However, as the integration process evolved, it became clear that fundamental rights protection in the Union had to be addressed. The landmark judgement in this regard was the *Stauder* case, where the Court of Justice emphasised that the general principles of Community law encompass the fundamental rights of the individual."[161]

One year later, the term "common constitutional traditions of the Member States" emerged from the CJEU's jurisprudence on fundamental rights[162] in the *Internationale Handelsgesellschaft* case.[163] The Court mentioned common constitutional traditions for the first time, emphasising that "fundamental rights are an integral part of the general principles of EU law based on the common constitutional traditions of the Member States."[164] Put differently, the CJEU highlighted the constitutional traditions common to the Member States as the foundation for safeguarding fundamental rights in the EU, as long as they align with the structure and goals of the European Economic Community.[165] Ever since, the CJEU has relied on this term in cases involving the safeguarding of human rights.[166]

Nowadays, explicit reference to the common constitutional traditions can be found in Article 6(3) TEU, which prescribes: "Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law."[167] Article 6 TEU represents the nucleus of the fundamental rights application in the EU, whereas its third paragraph confirms that fundamental rights still exist as general principles. However, the relationship between the two sources of law is left undefined.[168] The broad wording should be understood as a gap-filling mechanism, which

[160] Stelio Mangiameli, "The Constitutional Traditions Common to the Member States in European Law, as a Tool for Comparison among MS Legal Orders in the Construction of European Fundamental Rights," *Italian Papers on Federalism*, no. 3/2016 (2016): 6.
[161] CJEU, judgement of the Court of 12 November 1969, *Stauder*, Case 29/69, ECLI:EU:C:1969:57.
[162] Francesco Belvisi, "The Common Constitutional Traditions and the Integration of the EU," *Diritto & Questioni Pubbliche: Rivista di Filosofia del Diritto Cultura Giuridica* (2006): 30.
[163] CJEU, judgment of the Court of 17 December 1970, Case 11/70 *Internationale Handelsgesellschaft*, ECLI:EU:C:1970:114.
[164] Tobias Lock, "Treaty on the European Union: Article 6" in *The EU Treaties and the Charter of Fundamental Rights; a Commentary*, ed. Kellerbauer, Manuel, Marcus Klamert, and Jonathan Tomkin (New York, 2019; online edn, Oxford Academic), 80.
[165] CJEU. (2021) *EUnited in diversity: between common constitutional traditions and national identities - Conference Proceedings*, International Conference Riga, Latvia – 2-3 September 2021, at 60. (Hereinafter: *EUnited in diversity*)
[166] See e.g., CJEU, Judgment of the Court of 21 December 2021, *Randstad Italia SpA v Umana SpA and Others*, Case C-497/20, ECLI:EU:C:2021:1037; CJEU, Judgment of the Court of 27 February 2017, Associação *Sindical dos Juízes Portugueses*, Case C-64/16, ECLI:EU:C:2018:117; CJEU, Judgment of the Court of 13 March 2007, *Unibet (London) Ltd*, Case C-432/05, ECLI:EU:C:2007:163.
[167] Consolidated version of the Treaty on European Union [2012] OJ C326/13.
[168] Lock, *supra* note 164, at 80.

allows the CJEU to establish additional fundamental rights in the future. Furthermore, it is important to address that only the CJEU can delineate the content of common constitutional traditions.[169] To do so, the CJEU must rely on the comparative method of interpretation.[170] Thus, "the nuances of the common constitutional traditions, which were synthesised through the jurisprudence of the Court, flow into European law."[171]

Since its introduction, the nature and the role of "common constitutional traditions" have evolved.[172] Fichera and Pollicino argue that the common constitutional tradition lacked legal authority before codifying fundamental rights. The evolution of common constitutional traditions may be divided into two phases: the first began with the proclamation of the Charter of Fundamental Rights of the EU (hereinafter: CFR) in 2001, while the second phase commenced with the Treaty of Lisbon coming into force, granting legal status to the Charter as a binding instrument.[173] In the period before the Charter, the concept of common constitutional tradition seemed necessary for the CJEU to legitimise its protection of human rights. The concept may owe its success to terms such as "traditions" and "common" since they inherently carry persuasive weight, which gives them self-justifying power.[174]

After the adoption of the CFR, common constitutional traditions are included in the wording of Article 52(4): "[in] so far as [the] Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions".[175] According to Lenaerts, the effect of Treaty provisions mentioning common constitutional traditions, as well as Article 52(4) of the CFR, allows the use of the comparative law method to integrate the common constitutional traditions of Member States into the EU's constitutional framework. This can be achieved by identifying general principles or defining the scope of rights acknowledged in the CFR.[176] The birth of the EU CFR was an impetus for the CJEU's use of common constitutional traditions in its case law. Namely, "a reference to common constitutional traditions has arisen more frequently within the case law of the Court than during the pre–Charter period; moreover, figures have increased

[169] Court of Justice of the European Union, *EUnited in diversity*, 29.
[170] For the analysis of interpretation methods of primary and secondary EU law, see: Karl Reisenhuber (ed.) *European Legal Methodology*, 2nd ed. (Cambridge, Intersentia: 2021).
[171] Court of Justice of the European Union, *EUnited in diversity*, 30.
[172] Massimo Fichera, Oreste Pollicino, "The Dialectics Between Constitutional Identity and Common Constitutional Traditions: Which Language for Cooperative Constitutionalism in Europe?" *German Law Journal* 20, no.8. (2019): 1099.
[173] *op. cit.*, at 1105.
[174] Francesco Belvisi, "The Common Constitutional Traditions and the Integration of the EU," *Diritto & Questioni Pubbliche: Rivista di Filosofia del Diritto Cultura Giuridica*, 6 (2006): 31.
[175] Charter of Fundamental Rights of the European Union (2000/C 364/01).
[176] Court of Justice of the European Union, *EUnited in diversity:* 38.

exponentially."[177] This supports the conclusion that common constitutional traditions go beyond protecting human rights. They became a powerful instrument of integration and further development of European law.[178]

Common constitutional traditions are significant for taxation in several ways. This can be observed in direct taxation "where the lack of written legislation made recourse to the general principles of EU law necessary."[179] Fundamental rights are recognised as the general principles of EU law, stemming from the constitutional traditions common to the Member States. Therefore, if the CJEU relies upon the general principles in its tax decisions, this implies that the CJEU is indirectly drawing insights from the common constitutional traditions.[180]

The interconnection of common constitutional traditions and taxation can also be observed regarding indirect taxation. A notable example is the *Związek Gmin Zagłębia Miedziowego w Polkowicach* case, decided by the CJEU in 2019.[181] This case began with the request for a preliminary ruling by the Polish Regional Administrative Court in Wrocław in a dispute between the Association of Municipalities in Zagłębie Miedziowe in Polkowic and the national tax administration. The Association of Municipalities requested a tax ruling regarding the right to deduct input value-added tax (VAT) "charged in respect of goods and services purchased by the Association of Municipalities to carry out both economic activities subject to VAT and non-economic activities falling outside the scope of VAT ('mixed expenditure')."[182] The Court emphasised that "as apparent from the constitutional traditions common to the Member States, the principle of fiscal legality may be regarded as forming part of the EU legal order as a general principle of law."[183] In interpreting the content of the principle[184], the Court found that the law must lay down any tax obligation and its essential elements. However, the Court emphasised that the principle of legality does not require the exhaustive regulation of every technical detail of taxation. Finally, the Court ruled that Article 168(a) of Directive

[177] Fichera and Pollicino, *supra* note 174, at 1106.
[178] Similar opinion regarding the role of common constitutional traditions as accelerators of integration in the EU can be found in Cesare Pinelli, "Tradizioni Costituzionali Comuni ai Popoli Europei fra Apprendimenti Virtu Trasformative" *Giornale di Storia Costituzionale* (2005):11.
[179] Brokelind, op. cit. *note* 45, at 2.
[180] See also Lock, *supra* note 167, 86.
[181] CJEU, Judgement of the Court of 8 May 2019, *Związek Gmin Zagłębia Miedziowego w Polkowicach*, Case C-566/17, ECLI:EU:C:2019:390.
[182] CJEU, Judgement of the Court of 8 May 2019, *Związek Gmin Zagłębia Miedziowego w Polkowicach*, Case C-566/17, ECLI:EU:C:2019:39, para 2.
[183] CJEU, Judgement of the Court of 8 May 2019, *Związek Gmin Zagłębia Miedziowego w Polkowicach*, Case C-566/17, ECLI:EU:C:2019:39, para. 39.
[184] For an in-depth analysis of the interpretative issues regarding the principle of legality as a supranational principle, see Sam van der Vlugt, "The Principle of Legality of Taxation as a General Principle of EU Law: National and Supranational Differences of Interpretation and Potential Difficulties," *EC Tax Review* 32, no. 5 (2023): 214-228. https://doi.org/10.54648/ecta2023027 .

2006/112/EC[185] should be understood as precluding a national practice that allows for the complete deduction of input VAT incurred on the acquisition of goods and services, regardless of whether they are used for economic activities subject to VAT or non-economic activities falling outside the scope of VAT.[186] Thus, it is apparent that even in areas that have reached a high level of harmonisation, such as the VAT regulation, recourse to common constitutional traditions still serves as a valuable instrument for filling gaps and interpreting EU law.

Finally, the use of common constitutional traditions also raised several important questions. The first question is the conceptual clarity in determining what constitutes a common constitutional tradition and how many constitutions of the Member States need to be aligned to conclude that a tradition is common.[187] So far, the CJEU case law indicates that differences among the legal systems of various nations may not necessarily prevent the adoption of a legal principle into the EU legal framework, even if it is only acknowledged in a few Member States.[188] In addition, when the CJEU explores whether there is a common constitutional tradition, it should consider whether to adopt the interpretations of certain definitions developed by the national courts.[189] In practice, the obstacles raised in interpreting common constitutional traditions did not obstruct the concept's practical role as an impetus for European integration. Common constitutional principles of taxation are, as with any other general principle in EU law, not only guidelines for interpretation but also limits on the exercise of power by the EU and the Member States.[190]

Finally, after examining the common constitutional traditions, it is important to reflect on whether these traditions have shaped the EU's concept of a tax. In this regard, it should be emphasised that primary sources of EU law do not contain a definition of a tax.[191] Thus, having in mind that the EU legal order lacks any codified definition of a tax, the CJEU has offered broad contours of this concept through its jurisprudence. This resulted in the consequence that "the concept (or rather concepts) of tax in EU law is functional and varies according to the law in question."[192] According to the CJEU a levy qualifies as a tax when three conditions are met:

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[185] Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax, OJ L 347, 11.12.2006.
[186] This prohibition arose due to the absence of clear guidelines in national legislation regarding criteria and methods for allocating input VAT, which are necessary to determine the portion of input VAT that can be deducted in such cases.
[187] Similarly: Belvisi, *supra* note 174.
[188] Court of Justice of the European Union, *EUnited in diversity*, at 39.
[189] *Ibid.*
[190] Marcheselli, *supra* note 80, at 15.
[191] Ricardo García Antón, „Building up the EU Revenue Side: But What is a Tax in EU Law? " *Politics and Governance* 11, no. 4 (2023):18.
[192] Peeters *supra* note 46, at 255.

i) it is mandatory and enforceable by public authorities, ii) it pursues a *general interest*, irrespective of whether the revenue is part of the state budget, placed in a separate fund, or linked to regulatory objectives such as environmental protection; and iii) the amount payable is not linked to the cost of a service or transaction.[193] In essence, the CJEU requires only that a charge be compulsory, cost-independent, and aimed at the general interest for it to qualify as a tax under EU law. Whether the revenue is earmarked or motivated primarily by regulatory considerations is irrelevant. This expansive definition serves the broader objective of preventing domestic levies from fragmenting the internal market and thus supports the harmonisation aims of EU tax law.[194] However, its jurisprudence indicates that the CJEU does not treat common constitutional traditions as the primary legal basis for defining tax itself. Nevertheless, they are the backbone of general principles of EU law, such as the legality and proportionality of taxation, having an indirect influence on jurisprudence related to taxation.

2.1.2.3. Constitutional framework of taxation in selected EU Member States

This section will offer a comparative overview of the constitutional provisions directly or indirectly addressing the tax system. The guiding thought for the following analysis is found in the words of Vanistendael: "the principles of legality, non-discrimination and legitimate expectation are non-tax principles often to be found in constitutional texts, which are frequently applied in tax cases."[195] Therefore, the following section will address not only the provisions directly related to taxation but also non-tax principles within the constitutions of Germany, Italy, Slovenia, and Croatia.

Understanding current developments in the legal system requires looking into the historical and sociological background. Thus, this section offers a brief historical outline of key developments in the respective legal systems, primarily to develop a better understanding of their tax systems' development. The peculiarity of this section is that it will provide an overview of the development of taxation in the former Yugoslavia, keeping in mind that the territory of modern Croatia and Slovenia in the 20th century was a part of the former Yugoslavia. Since "the impact of principles on positive tax law is largely determined by the power of constitutional control in the judiciary,"[196] the following section will also refer to the case law of constitutional courts in the mentioned states. This step will serve to build an understanding of the concept of

[193] García Antón, supra note 191, at 19.
[194] *Ibid.*
[195] Vanistendael, *supra* note 70, at 35.
[196] *Ibid.*

tax in a particular legal system and to subsequently gain an insight into how earmarking fits into the legal framework of taxation in selected states.

2.1.2.3.1 Germany

The unification of Germany in 1871 resulted in the creation of a federal system, where "the *Reich* had limited tax powers consisting largely of customs duties, certain tolls and excises, and the income from the postal system.[197] The states initially held a privileged position, benefiting from a substantial share of tax revenues. The Weimar Constitution of 1919 redefined this balance by directing most revenue to the *Reich*, which in turn assumed responsibility for allocating funds to the states. This shift marked a significant reorganisation of public finance control.[198] Preparations for the upcoming war marked the beginning of the 20th century. Military mobilisation went hand in hand with "financial mobilisation",[199] including the introduction of an earmarked tax for national defence levied on property and income in 1913.[200]

However, the war's expenses were ultimately financed entirely through borrowing since the state's overall income declined, leading to post-war inflation.[201] After World War I, the Weimar Republic had to face many issues, including "the socialisation of production, reparation payments, and particularly hyperinflation."[202] This was a serious challenge for the public finance system, which led to its reform and the fundamental reorganisation of financial administration. The Erzberger reform introduced a progressive income tax, a 20 % corporate income tax, an increase in the general sales tax, and the expansion of the social security system.[203] Moreover, the reform introduced fiscal centralisation and public debt control. The central state became the main recipient of the CIT revenue. Such a revenue structure is a predecessor of the current structure in modern Germany. [204]

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[197] James Macdonald, "From Sovereign Nations to Federal States. Creating Stable Systems of Public Finance in America and Germany: Lessons for the Eurozone," *Cambridge Working Papers in Economic and Social History*, Working Paper No. 17 (2014): 11-12.

[198] Joachim Englisch and Henning Tappe, "The Federal Republic of Germany" in *Tax Aspects of Fiscal Federalism*, ed. Gianluigi Bizioli and Claudio Saccheto (Amsterdam: IBFD, 2011), 276.

[199] For example, such as building a flexible credit system designed to handle the sudden surge in demand for credit that accompanies the onset of war.

[200] Considering that the purpose for spending the revenue collected by this tax was decided before its collection, it was an earmarked tax. It was prescribed that the tax would be paid in three consecutive years, in 1914, 1915, and 1916. See in detail Chase M. Going "German War Finance" *Journal of Political Economy*, 24, no.6 (1916): 515.

[201] Macdonald, *supra* note 197, at 12.

[202] Harald Hagemann, "Germany: economics in the 20th century" in *The New Palgrave Dictionary of Economics 3rd ed.*, Steven N. Durlauf and Lawrence E. Blume. (eds), (London: Palgrave Macmillan, 2008), 2.

[203] Stefan Bach, "100 years of the modern German tax system: Foundation, reforms, and challenges," *DIW Weekly Report* 9.46/48 (2019): 408. Nowadays, the CIT revenues are still divided between the central state and federal states in equal parts (50:50)

[204] *Ibid.*

Following Hitler's rise to power, from 1933 until 1945, fiscal power was centralised.[205] This era was known for confiscatory taxes and infamous oppressive emigration taxes, such as the *Reichsfluchtsteuer* introduced in 1931, allegedly to prevent capital from exiting the country.[206] The *Reichsfluchtsteuer*, in fact, did respect the demands of tax legality, but this principle proved insufficient as a safeguard against arbitrary measures. Namely, legality in taxation cannot serve as an absolute safeguard unless accompanied by the broader guarantees of the rule of law and the effective protection of fundamental rights in practice. Furthermore, the preparation for the upcoming war led to a significant increase in taxes, including a wartime surcharge on income tax and corporate income tax as well as an increase in excise duties. German federal states were obliged to pay a wartime contribution to the central budget.[207] Once again, earmarked revenues were used for war financing. As the war continued, expenditures and public debt increased, leaving the state's public finances devastated.[208]

After World War II, the Basic Law for the Federal Republic of Germany (*Grundgesetz)* was adopted in 1949. Learning from previous constitutions, which adopted an extreme division of fiscal powers, the *Grundgesetz* strived for a balanced apportionment of financial means between the central level of government and the federal states.[209] At first, tax policy in West Germany was marked by high tax rates, which subsequently decreased as the state gradually recovered.[210] Taxes were used for regulatory functions, such as promoting economic growth. Finally, German reunification in the early 1990s posed significant financial challenges. To support regional development in East Germany, substantial tax breaks were provided for investments, causing considerable tax deficits. VAT and excise taxes were raised to finance these investments, and the solidarity surtax was introduced.[211] To conclude, the basic structure of the German tax system has remained constant since the adoption of the *Grundgesetz*.[212]

Nowadays, as a unitary federal state divided into 16 federal states (*Länder*), Germany is a valuable example for studying fiscal federalism. As previously mentioned, the division of the state is set out in the German Constitution (*Grundgesetz*) adopted in 1946. Unlike the Weimar Constitution, the *Grundgesetz* grants a lower level of tax autonomy to the federal states.

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[205] Macdonald, *supra* note 197, at 13.
[206] By 1939, it raised more than 340 million RM in the state budget. See Peter Essers, ed, *History and taxation: the dialectical relationship between taxation and the political balance of power*. (Amsterdam, IBFD:2011), 63.
[207] After 1942, there were no significant tax increases to maintain the regime's popularity. See in detail: Mark Buggeln, "*Was Nazi Germany an 'Accommodating Dictatorship'? A Comparative Perspective on Taxation of the Rich in World War II*." Central European History 56, no. 3 (2023) 1-21.
[208] Bach, *supra* note 203, at 409.
[209] Englisch and Tappe, *supra* note 198, at 275.
[210] Bach, *supra* note 203, at 411.
[211] Bach, *supra* note 203, *supra* note 201, at 408.
[212] Bach, *supra* note 203, at 413.

However, "the *Länder* executives have kept the influence on tax laws via the second chamber of parliament, the *Bundesrat*."[213] The third level is the local government. Moreover, it should be emphasised that the current division of powers in Germany reflects a series of constitutional reforms over time, most notably the 2006 and 2008 Federalism Reforms, driven by the common goal of limiting the gradual expansion of federal legislative authority.[214]

The *Grundgesetz* dedicates an entire chapter to public finance, starting from the articles on the distribution of fiscal authority between the federal government and the federal states (*Länder*).[215] Article 105 delineates the allocation of taxing powers; subsequently, Article 106 deals with the apportionment of tax revenue among various levels of government. The federal government has the exclusive authority to legislate customs duties and fiscal monopolies. Concurrent competencies exist on the taxes related to real property and other taxes, where revenue goes to the federal government. Interestingly, the term "concurrent competence" identifies matters subject to parallel competence, that is, matters in which each level of government can legislate separately and autonomously.[216]

Federal states have the exclusive legislative power on local consumption and expenditure taxes, as long as they do not closely resemble federal taxes.[217] However, "there is a lack of explicit provisions on taxation based on ability to pay, the prohibition of confiscatory taxes and the legality and predictability of tax burdens, as they are enshrined in many modern constitutions around the world."[218]

Nevertheless, the basic constitutional principles, such as the rule of law and the welfare state principle, also apply to tax law. This was a bedrock which the German Federal Constitutional Court (*Bundesverfassungsgericht*, hereinafter: BVerfG) used to shape the taxation system. In addition, the principle of legality in taxation was derived from the principle of legality and the rule of law principle in the jurisprudence of the BVerfG.[219] In this regard, "the legal basis for taxation rests on the combination of two other constitutional provisions: the provision guaranteeing personal freedom, which cannot be restricted except by law, and the provision requiring a legal basis for any act of administration, including any administrative act

[213] Yannick Bury, Lars P. Feld, "Fiscal Federalism in Germany," in *The Forum of Federations: Handbook of Fiscal Federalism, ed.* Jean-François Tremblay (Cham: Palgrave Macmillan, 2023): 160.
[214] Gianluigi Bizioli, *L'autonomia finanziaria e tributaria regionale*, (Torino: Giappichelli Editore, 2012).
[215] See, e.g. Art. 104 a, 104 b, 104 c, 104 d Basic Law for the Federal Republic of Germany.
[216] Bizioli, *supra* note 214.
[217] Art. 105, Basic Law for the Federal Republic of Germany (*Grundgesetz)*, Translated by Prof. Christian Tomuschat, Prof. David P. Currie, Prof. Donald P. Kommers and Raymond Kerr, in cooperation with the Language Service of the German Bundestag.
[218] Joachim, Englisch, and Hanno Kube, "Constitutional requirements for substantive tax law in the Federal Republic of Germany," *Review of International and European Economic Law* 2, no. 3 (2023): 3.
[219] CJEU, Research note: Scope of the principle of the legality of taxation, particularly in relation to VAT, at 4.

of tax assessment and collection."[220] In addition, German legal scholarship perceives the legality principle as a two-tier concept. First, the imposition of a tax burden is governed by the principle of the reservation of law, meaning that it is permissible only if, and to the extent that, a legislative act expressly authorises it. Second, legal regulations and administrative acts must not violate the law, in accordance with the primacy of the law.[221]

Moreover, German tax law differentiates between two concepts of tax. Besides the legislative definition of tax in the *Abgabensordnung*, there is also an independent constitutional concept of tax "in the functional context of the federal financial constitution" which is to be determined according to specific constitutional aspects on the requirements relevant to the constitutional concept of tax.[222] BVerfG has developed specific constitutional guidelines for substantive tax law, the most prominent example being the ability-to-pay principle, which attained constitutional relevance through its jurisprudence.[223] German Constitutional Court acknowledged the ability-to-pay principle for income taxes and now extends this requirement to inheritance, gift taxes, and other financial purposes.[224] In addition, BVerfG holds that income taxes inherently interfere with the fundamental right to property and, thus, must be constitutionally justified.[225]

When it comes to principles related to, but not explicitly referring to, taxation, the guarantee of human dignity from Article 1 of the *Grundgesetz* should be mentioned. BVerfG decided that tax regulations only have to be measured directly against the guarantee of human dignity to a minimal extent because they only cause existential impairments in exceptional cases.[226] In addition, Article 3(1) of the *Grundgesetz* prescribes the principle of equality, which has become one of the crucial criteria for constitutional oversight of tax laws. The BVerfG consistently derived the principle of tax justice from the fundamental principle of equality.[227] In addition, BVerfG jurisprudence resulted in the understanding that the legislative body of government, under the principle of equality, must design tax laws so that the burden is applied fairly in practice. Laws that either lack effective enforcement mechanisms or enable extensive

[220] Frans Vanistendael, "Legal Framework for Taxation", in *Tax Law Design and Drafting*, vol. 1, ch. 2., Victor Thurony (ed.) (International Monetary Fund, 1996) 17.
[221] Tipke & Lang, 119.
[222] Koenig/Koenig AO § 3 Rn. 1-6
[223] Englisch and Kube, *supra* note 218.
[224] Ibid.
[225] Englisch and Kube, *supra* note 218, at 10.
[226] Englisch and Kube, *supra* note 218, at 4.
[227] Englisch and Kube, *supra* note 218, at 4.

tax avoidance may be unconstitutional, allowing taxpayers to contest their assessments on this basis.[228]

Furthermore, in exploring the relationship between constitutional principles and taxation, Schön coined the division into two primary paths of taxpayer protection, which have developed over time: protection based on "content" and protection based on "consent." [229] If this distinction is applied, constitutional principles in Germany primarily emphasise the protection based on "content", meaning the protection of taxpayers' rights against unfair taxation.[230] BVerfG has built upon the meaning of equality in taxation, deriving the ability to pay principle from this fundamental right.[231] Furthermore, BVerfG explained the content of this principle, stating that it encompasses the "horizontal tax equality, which requires that people with the same high ability to pay are generally charged the same amount and the so-called vertical tax equality, meaning that the tax burden on higher-performing individuals must be proportionately higher than for lower-performing individuals."[232] Thus, BVerfG gave the ability to pay principle constitutional relevance and pursued an active approach to fundamental rights control of substantive tax laws. In the past 30 years, the BVerfG reviewed tax laws based on fundamental rights and general constitutional principles in over 100 decisions.[233] Finally, another principle that is not explicitly prescribed in the German constitution regarding taxation is the principle of proportionality. It was derived from the article on the freedom to work or to exercise a profession and the protection of property and inheritance.[234] However, it is interesting to point out the German perspective that "taxation can hardly be unproportional because there is no lesser means for fulfilling the same goal: Taxes are always suited for general financing for the state. Concerning taxes, the proportionality test therefore fails on the very first level (*Geeignetheit*), because there is no alternative to taxes when it comes to the issue of generally financing the state."[235]

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[228] *Ibid.*
[229] Wolfgang Schön, "Taxation and democracy". *Tax Law Review* 72, no. 2 (2019): 244.
[230] On the other side of the medal is the protection based on "consent," meaning that constitutional principles emphasise the voluntary aspect of taxation. This approach is characteristic for the Common Law countries, such as the USA and UK. See more: Schön, *ibid.*
[231] See e.g. *Bundesverfassungsgerich*t (BVerfG), order of 10 November 1998 – 1 BvL 10/98, BVerfGE 99, 1., para. 53.
[232] Englisch and Kube, *supra* note 221, at 5.
[233] Englisch and Kube, *supra* note 221, at 3
[234] *Op.cit.*
[235] Oliver Lepsius, "Constitutional Review of Tax Laws and the Unconstitutionality of the German Inheritance Tax," *German Law Journal* 16, 5 (2015):1193.

2.1.2.3.2. Italy

Before the unification, the fundamentals of the state were established in 1848 by the *Statuto Albertino*, a fundamental regulatory text of the Kingdom of Sardinia. However, the *Statuto Albertino* was not an expression of people's sovereignty. Instead, it was granted to the Kingdom by King Charles Albert. Nevertheless, *Statuto Albertino* attained constitutional relevance for the Kingdom of Italy.[236]

The Kingdom of Italy was proclaimed on 17 March 1861. Following the unification, another essential question required a solution: the government system. Although some initiatives considered a federal system, unitary and centralistic structures prevailed in the end.[237] The legislative power was confined to the Parliament, but its „elitist nature strongly influenced tax policy decisions. "[238] When it comes to taxation, Article 30 of Statuto Albertino prescribed the rule of the reservation of law, following the 'no taxation without representation' doctrine.[239] Moreover, Article 25 provided that the citizens "contribute without distinction, in proportion to their assets, to the burdens of the State", which is nowadays considered as an antecedent of Article 53 in the Italian Constitution. This provision significantly indicates both the existence of an obligation to contribute to public expenditures borne by members of the community, and above all, the establishment of a limit on the taxing power consisting of proportionality to assets.[240] *Statuto Albertino* did not provide for any other provisions regarding the budget.[241] Bizioli pointed out the longstanding continuity of the reservation of law and the ability to pay principle from *Statuto Albertino* to the current Italian Constitution. Such continuity indicates the enduring role of these principles in shaping the Italian tax system.

Until World War I, the tax system was substantially in line with the structure developed following unification and tax revenues were constantly rising.[242] At the beginning of the 20th century, the most significant direct tax was the income tax on movable assets.[243] Its relevance stems from the elitist parliamentary structure, which often protected the interests of rich

[236] Domenicantonio Fausto, *Lineamenti di storia della finanza pubblica in Italia (1861-2011)* (Bologna: Il Mulino, 2023), 7-8.
[237] Fausto, *op. cit.*, at 24-25.
[238] Maria Cecilia Fregni, "Italy" in M.C. 'Italy' in: *History and Taxation: The Dialectical Relationship between Taxation and the Political Balance of Power*, ed. Peter Essers (Amsterdam: IBFD, 2011): 398.
[239] Tesauro, *supra* note 78, at 13.
[240] Boria, *supra* note 141, at 14.
[241] Fregni, *supra* note 238, at 397.
[242] Fausto, *supra* note 236, at 252.
[243] The income tax on movable assets accounted for 20.3 % of the total tax revenue. See Fausto, *supra* note 238 at 252.

landowners.[244] The inheritance tax was transformed into a progressive tax, and the personal income tax was confronted with intense tax evasion. [245]

During the Fascist period, the tax policy was not radically changed. One of the reasons might be found in the Great Depression, which was not a favourable time for tax reforms.[246] In 1940, when the war had already started, the regime introduced a "modern and innovative wealth tax and a modern income tax, which would survive 30 years after the fall of fascism."[247]

Following the referendum after World War II, the Italian Republic was born on 2 June 1946. The Parliament adopted the Constitution (*Costituzione della Repubblica Italiana*),[248] in 1948, and it is still in force. The most important principles affecting tax policy are enshrined in Article 3 (the principle of equality), Article 23 (the principle of legality) and Article 53 (the ability-to-pay principle and the progressivity of the tax system). One possible explanation for the constitutional assembly's focus on these principles was the aim to build an equal and just tax system, in contrast to the previous regime.[249] Moreover, although the Italian Constitution was adopted in 1946, the Constitutional Court held its first hearing ten years later. [250] Nevertheless, the first hearing was held in 1956, and since then, the Constitutional Court has also aimed to redirect the new legal system away from the framework of the previous regime. As a result, early tax law cases focused on the protection of human rights.[251] Moreover, in the first decades of the new Italian Republic, the various tax law mechanisms of the old system were abolished by the Constitutional Court.[252]

Although the Constitution does not explicitly connect the principle of solidarity with taxation, solidarity nonetheless is among the constitutional values shaping the Italian tax system. Bizioli highlights that the Italian Constitution frames the obligation to contribute to public expenditure as an expression of solidarity. This emerges from the combined reading of

[244] Fregni, *supra* note 238, at 397.
[245] Fausto, *supra* note 236, at 253.
[246] Fregni, *supra* note 238, at 405.
[247] *Ibid.*
[248] The Constitution of the Republic of Italy (*Costituzione della Repubblica Italiana*), Testo vigente aggiornato alla legge costituzionale 26 settembre 2023, n. 1
[249] Similar to Germany and Croatia, during the 2nd World War, the tax system was also used as an oppressive tool against the Jewish community.
[250] The Court's establishment had been delayed by protracted debates within the Constituent Assembly on the legitimacy of a small panel of judges annulling parliamentary legislation. In addition, it was difficult for the Parliament in joint session to meet the high quorum required for the appointment of five judges to succeed. See more: Corte Costituzionale Italiana. (2025) The Court in the Constitution. Available at: https://www.cortecostituzionale.it/contenuti/istituzioni/lacorte-EN
[251] Augusto Fantozzi, "La Giurisprudenza della Corte Costituzionale in materia tributaria". www.giustizia-tributaria.it p. 3.
[252] Enrico De Mita, "Il diritto tributario tra diritto comune e principi costituzionali" *JUS – Rivista di scienze giuridiche.* 1/1997. (1997): 37.

Article 53(1) and Article 2 of the Constitution, which together characterise the duty to pay taxes as a specific manifestation of the broader set of inalienable political, economic, and social duties of solidarity.[253] Thus, the duty to contribute to public services is primarily one of the mandatory duties of solidarity (political, economic, and social), since it is a necessary consequence of individual membership in any form of structured social group.[254] The aforementioned articles provide the normative foundation for viewing taxation as a key instrument through which such solidarity is realised in practice.[255]

Among the fundamental principles enshrined in the Italian Constitution, the principle of equality also occupies a central position. The Italian principle of equality must be understood in the context of the Constitution's post-fascist origins.[256] Adopted alongside the choice of a republican system, the Constitution embraced the model of a "social state," departing from liberal traditions and embedding strong social and economic rights with special attention to the working class. This historical and political background decisively shaped the meaning of constitutional equality in Italy.[257] Bizioli points out that "Article 3 of the Constitution expresses two distinct principles, defined in terms of formal and substantial equality. The first is resolved in a prohibition of unjustified discriminatory tax treatments."[258] Moreover, Article 3 not only guarantees formal equality before the law but also establishes a substantive commitment to reducing social and economic disparities, thereby reflecting the Constitution's broader orientation towards the social state.[259] The concept of substantial equality thus serves to promote conditions for creating homogeneity in the enjoyment of rights and social freedoms.[260] Substantive equality found its expression in Italian tax policy, for example, through non-refundable tax credits like child benefits, which mitigate disparities in taxpayers' economic circumstances.[261] On this note, Fichera stated that the legislator may provide tax credits to favour certain situations or encourage certain activities, based on constitutional principles. At the same time, however, the possibility of differentiating treatment is limited by the

[253] Gianluigi Bizioli, *Il processo di integrazione dei principi tributari nel rapporto fra ordinamento costituzionale, comunitario e diritto internazionale*. (Padova: CEDAM, 2008), 115.
[254] Cermignani, *supra* note 114, at 259.
[255] Tesauro, *supra* note 76, at 5.
[256] Sanja Barić, "Načelo jednakosti u Italiji: ustavnopravni koncept u službi "punog razvoja osobnosti," *Zbornik Pravnog fakulteta u Zagrebu*, 65, no. 1 (2015): 91.
[257] Barić, *ibid.*
[258] Bizioli, *supra* note 253, at 115.
[259] For an analysis of the equality principle in the Italian Constitution (in Croatian) see Barić, *supra* note 256.
[260] Bizioli, *supra* note 253, 116.
[261] Gianluigi Bizioli, Ekkehart Reimer, "Equality, ability to pay and neutrality" in *Research Handbook on European Union Taxation Law*. ed. Christiana HJI Panayi, Werner Haslehner and Edoardo Traversa (Cheltenham: Edward Elgar, 2020), 57.

Constitution, primarily by the principle of equality. Thus, the legislator needs to balance regulatory needs with the state's financial needs or fiscal interests, simultaneously respecting the equality principle.[262] The latter also implies that taxes may fulfil several purposes, including their role as an instrument balancing the constitutional principles.

Furthermore, in Italy, the constitutional foundation of the principle of legality is articulated through the broad formula contained in Article 23 of the Constitution. More precisely, Article 23 prescribes "No obligation of a personal or financial nature may be imposed on any person except by law."[263] This Article deliberately ties the reservation of law to the broadest terminological concept, being "*prestazioni patrimoniali obbligatorie"*. This expression encompasses a wider range of compulsory transfers than "public levies" (*tributi*) in the technical doctrinal sense.[264] The wording of this article reflects an objective to ensure that the legality requirement applies not only to taxes narrowly conceived but to all forms of compulsory patrimonial obligations that the State may impose. Within this constitutional framework, Italian legal scholarship has developed a more detailed conceptual taxonomy of public levies. Public levies (*tributi*) are understood as compulsory monetary obligations imposed by public authorities that are not reciprocally linked to a specific consideration.[265] Scholarship further elaborates a tripartite structure within this category, distinguishing between taxes (*imposte*), benefit taxes *(tasse*)[266], and social contributions (*contributi speciali*). [267] While the Constitution does not define these categories, they play a central role in shaping the interpretative work of both scholars and courts in determining the scope of tax obligations and the application of the legality principle. Tesauro emphasised the importance of the reservation of law, especially in relation to substantive tax provisions, as a key component of the legality principle.[268] This reasoning seems to correspond to the previously mentioned German interpretation, which considers the reservation of law as one part of the broader term of legality in taxation.[269]

However, in recent years, there has been a slight shift in the jurisprudence regarding the perception of tax obligation. Thus, the Constitutional Court stated that the duty to contribute to

[262] Fichera, *supra* note 119, at 125.
[263] „*Nessuna prestazione personale o patrimoniale può essere imposta se non in base alla legge*." Article 23, Constitution of the Italian Republic (Costituzione Italiana, Testo vigente aggiornato alla legge costituzionale 26 settembre 2023, N. 1)
[264] Enrico De Mita, *Principi di Diritto Tributario* 7th ed. (Milano: Giuffrè Francis Lefebvre, 2019), 10.
[265] Falsitta, *supra* note 99, at 18.
[266] For the explanation of linguistic choice to translate *tassa* as a benefit tax, see *infra* sec. 2.1.2.4.
[267] Falsitta, *supra* note 98, at 29.
[268] Tesauro, *supra* note 140, at 10.
[269] See *infra* sec 2.1.2.3.1.

public expenditure through taxation is consistently framed as an inalienable instrument of achieving constitutional solidarity.[270] This interpretation departs from view that regarded taxation primarily as an instrument of subjection to state authority or as a necessary condition for the maintenance of state structures. Instead, the Constitutional Court emphasised that the constitutional legitimacy of taxation lies in its role in financing the system of fundamental rights. Taxation is not merely a technical or administrative function; it is how the state guarantees both civil and social rights.[271] This interpretive approach aligns with Articles 2 and 3 of the Constitution, which articulate the principles of solidarity and substantive equality. Accordingly, the Court has read the fiscal function of the State as inseparable from social justice and inclusion.[272] This interpretation is in line with Article 42 of the Italian Constitution, which grants the constitutional protection of property rights, but not in an absolute manner. More precisely, property rights are recognised insofar as they serve their social purpose.[273] Thus, the duty to pay taxes is considered one of the instruments to influence individual autonomy towards shared goals of collective welfare. In this regard, the Constitutional Court took a position that taxation is not a form of limiting human rights, such as the right to property. Instead, the Court stated that "taxes are the condition of the property" and that "without taxes, property does not exist."[274]

Furthermore, the ability-to-pay principle is explicitly prescribed on a constitutional level in Article 53(1): "Every person shall contribute to public expenditure in proportion to their ability to pay". The wording also indicates that everyone is obliged to contribute to public expenditures, regardless of race, gender or any other criterion besides their ability to pay. The Constitutional Court excluded fees from the application of this principle.[275] Moreover, it is interesting to mention that the Constitutional Court took a position that tax exemptions presuppose the ability to pay, at the very moment in which they excluded, for extra-fiscal reasons, the application of the ordinary tax treatment.[276] The Italian Constitutional Court interpreted Article 53 in many of its decisions, thereby articulating a more precise understanding of the tax obligation. It derived the conclusion that a tax represents a form of

[270] Luca Antonini, "Introduzione il diritto costituzionale tributario: nella prospettiva del terzo millennio, " in *Il diritto costituzionale tributario nella prospettiva del terzo millennio* ed. Valeria Mastroiacovo, Giuseppe Melis, (Torino: Giappichelli.Editore, 2022), 3.
[271] Corte Costituzionale Italiana, Sentenza del 23.12.2019, n. 288/2019, ECLI:IT:COST:2019:288.
[272] See Antonini, *supra* note 278, at 5.
[273] Franco Gallo, „La funzione del tributo al tempo delle grandi disuguaglianze," in *Il diritto costituzionale tributario nella prospettiva del terzo millennio* ed. Valeria Mastroiacovo, Giuseppe Melis, (Torino: Giappichelli.Editore, 2022), 105.
[274] Peeters, *supra* note 46, at 324.
[275] Peeters, *supra* note 46, at 66.
[276] Fichera, *supra* note 119, at 149.

solidarity from the mentioned provision.[277] In addition, a tax must be effective and current to be in line with the Constitution, meaning that the object of taxation must be an index of concretely revealing wealth and effectively connected to the taxable person.[278] The Court derived the principle of tax equality from the joint interpretation of Article 53 and Article 3 of the Constitution.[279] Among the recent examples where the Court had to intervene in the tax law arena was Decision No. 49/2024 on the legality of the so-called sugar tax in Italy.[280] The Court once again reflected on the ability to pay principle, emphasising that "the tax in question is linked to the quantity of the entire product placed on the market and therefore reflects the relative conception of contributory capacity consolidated in the jurisprudence of this Court, according to which the power to tax can also affect non-pecuniary facts, provided that they are naturally detectable and measurable in money."[281]

Furthermore, Article 14 explicitly safeguards the inviolable right to personal domicile, ensuring that inspections related to economic and taxation matters are governed by specific laws.[282] Tax burden is also mentioned in Article 20 of the Constitution, which guarantees that religious associations or institutions cannot face specific legislative restrictions or additional tax burdens solely based on their religious or ecclesiastical nature.[283]

Neither the Italian constitution nor legislation defines the notion of tax.[284] However, the Italian Constitutional Court has built its meaning through its jurisprudence. Having in mind that the term compulsory contribution (*tributo)* is broader than tax (*imposta)*, the Constitutional Court often interprets the notion of compulsory contribution. Hence, the Court secures the unique application of the Constitution regarding all public contributions, not just taxes.[285] That being said, the Court developed criteria which qualify a levy to be considered as a compulsory contribution (*tributo*), regardless of its *nomen iuris*. These criteria are the following: dutifulness of the service, the lack of a synallagmatic relationship between parties and the connection of said service to public spending to an economically relevant assumption.[286] The latter is

[277] Maurizio Villani, "Il concetto di tributo: ai fini dell'individuazione della giurisdizione delle Commissioni Tributarie". (2008) Available at: https://studiotributariovillani.it/public/ins_novita/docnovita/concetto-tributo-individuazione-giurisdizione-Commissioni-Tributarie_12-12-08.pdf
[278] Iacobellis, Luigi, *'Il fondamento costituzionale della potestà tributaria'*, p. 15.
[279] Corte Costituzionale Italiana, Sentenza del 23.12.2019 no. 288/2019, ECLI:IT:COST:2019:288.
[280] Corte Costituzionale Italiana, Sentenza del 26.03.2024 no. 49/2024, ECLI:IT:COST:2024:49.
[281] Corte Costituzionale Italiana, Sentenza del 26.03.2024 no. 49/2024, see: *Ritenuto in fatto, 1.4.*
[282] Constitution of the Italian Republic (Costituzione Italiana, Testo vigente aggiornato alla legge costituzionale 26 settembre 2023, n. 1), Article 14.
[283] Constitution of the Italian Republic (Costituzione Italiana, Testo vigente aggiornato alla legge costituzionale 26 settembre 2023, N. 1), Article 20.
[284] Fichera, *supra* note 75, 1059-1104. See also *infra* sec. 2.1.2.4.
[285] See *infra* sec. 2.1.2.4.
[286] Corte Costituzionale Italiana, Decisione del 16.07.2009, no. 238/2009, ECLI:IT:COST:2009:238.

important since the notion of "*tributo*" also has a practical value in the Italian legal system. More precisely, this notion is a decisive factor for the application of the Taxpayer's Bill of Rights (*Statuto dei diritti del contribuente*) and the scope of application of the law regulating administrative sanctions for tax violations.[287] A view of the Italian Constitutional Court, which is particularly interesting for the purpose of the present study, is that it must not be earmarked to cover specific expenses.[288]

In addition, the Italian Constitution prohibits submitting matters of taxation and budgetary policy to a referendum.[289] Article 117 addresses the division of legislative power between the state and the regions, stipulating that the state has exclusive legislative powers regarding state taxation. Finally, Article 119 explicitly refers to the taxation powers of sub-national levels of government, granting them autonomy in managing income and expenditure. Another principle that indirectly addresses taxation is the principle of good administration, which is intertwined with the principle of budgetary balance in the Italian Constitution.[290]

The analysis must ultimately address the interaction between the Italian constitutional framework and EU law. In this respect, Article 11 of the Italian Constitution has served as the foundation for the Italian courts' acceptance of Community law, though, as in other Member States, such acceptance has not been without reservation.[291] Moreover, following the 2001 reform, Paragraph 1 of the revised Article 117 of the Italian Constitution expressly subjects both state and regional legislative powers to EU law and international obligations. In either case, the provision highlights the central role of national courts as guardians of EU primacy and as primary actors for the enforcement of individual rights within the Union's legal order.[292]

2.1.2.3.3. Croatia

The constitutional framework of the Kingdom of Yugoslavia and of the Socialist Federative Republic of Yugoslavia provides an important historical reference point for understanding the development of taxation in its successor states, including Croatia and

[287] De Mita, *supra* note 272, at 11.
[288] Governo Italiano, Presidenza del Consiglio dei Ministri, *Che cos'è l'otto per mille a diretta gestione statale* https://www.governo.it/it/dipartimenti/dip-il-coordinamento-amministrativo/dica-att-8x1000-cosae/18318
[289] Constitution of the Italian Republic (Costituzione Italiana, Testo vigente aggiornato alla legge costituzionale 26 settembre 2023, N. 1), Article 75
[290] It is explicitly enshrined in Article 97 of the Italian Constitution, which stipulates that public administrative authorities shall ensure balanced budgets and the sustainability of public debt following European Union law. This particular provision was amended in the Constitution in 2012, and it was applied as of 2014. See also Francesco Randazzo, *Manuale di diritto tributario*, 3rd ed. (Giappichelli editore: Torino, 2022)
[291] See also Valentina Colcelli, "Overview of the relationship between the Italian Constitutional Court and EU law, with particular reference to the Italian Constitutional Court's approach to Renewable energy policy" *EU and Comparative Law Issues and Challenges Series (ECLIC) 2* (2018): 63-84. https://doi.org/10.25234/eclic/7099.
[292] Colcelli, *op. cit.* at 69.

Slovenia. A brief remark about the differentiation between the two states referred to as Yugoslavia in the 20th century is necessary at the beginning of this section. Following the dissolution of the Habsburg Monarchy, Croats, Slovenes and Serbs, on October 29, 1918, established a new state, initially called the State of Slovenes, Croats and Serbs. On the 1st of December 1918, "Serbian model of unification was adopted in Belgrade, and a monarchy under the Karađorđević dynasty was immediately installed in the new joint state,"[293] with a new name - Kingdom of Serbs, Croats and Slovenes. A decade later, this state was renamed the Kingdom of Yugoslavia. Although the state existed under different names over time, it will hereinafter be referred to as the Kingdom of Yugoslavia for clarity.

The evolution of the tax system of the Kingdom of Yugoslavia was, in many ways, peculiar. At first, five different systems of direct taxation were applied in the state territory.[294] The first step towards unification was the so-called Vidovdan Constitution from 1921, which prescribed that state taxes and other public levies are established only by law and tax liability is general. It also prescribed the principle of progressive taxation on the constitutional level.[295] The newly formed public finance system soon faced a challenge, as the economic crisis in the 1930s led to increased public borrowing, the introduction of new taxes, and modifications to existing tax policies.[296] The outbreak of World War II led to the dissolution of the Kingdom of Yugoslavia.

In April 1941, the Independent State of Croatia[297] was created by the will of Hitler's Germany and Mussolini's Italy as their puppet state.[298] The state's tax policy was influenced by exports to Germany and Italy under unfavourable conditions, the resistance of antifascist squads, and difficult working conditions.[299] The economy was deteriorating, which resulted in the introduction of a tax in kind, paid in a certain amount of agricultural products in 1944. The

[293] Stanislava Koprivica-Oštrić, "Konstituiranje Države Slovenaca, Hrvata i Srba 29. listopada 1918. godine," *Časopis za suvremenu povijest* 25, no.1 (1993): 45.
[294] More precisely, the tax systems in question were the following: the Austrian, Turkish, Serbian, Montenegrin and Hungarian tax systems. See in detail Božidar Jelčić, *Razvoj javnih financija u Jugoslaviji* (Zagreb: Pravni fakultet u Zagrebu, 1984), 4.
[295] Those principles, however, were enforced from 1929 when the new Act on Direct Taxation came into force. See Jelčić, *op. cit. supra* note 46, at 5.
[296] Božidar Jelčić, Predrag Bejaković, *Razvoj i perspektive oporezivanja u Hrvatskoj. (*Zagreb: HAZU, 2012), 73.
[297] The head of state was Ante Pavelić. He obtained the functions of head of state, chief of the executive branch, and supreme commander of the army and also took over some legislative powers. Throughout its existence, the Independent State of Croatia only had a quasi-representative body, the Croatian State Parliament, which was dissolved in 1942.
[298] Only two months later, the first antifascist resistance squad called People's Liberation Army (*Narodnooslobodilačka armija*) was formed in Croatia. See: Hrvoje Arbutina, Nataša Žunić Kovačević, Stjepan Gadžo, *"Croatia"* in: *History and Taxation: The Dialectical Relationship between Taxation and the Political Balance of Power*, ed. Peter Essers, (Amsterdam: IBFD, 2022), 201.
[299] Jelčić and Bejaković, *supra* note 296, at 90.

tax system was subject to numerous changes, many of them increasing the tax burden.[300] This state ceased to exist in 1945.

Notwithstanding the turbulent period in the Croatian territory during World War II, the tax system inherited from the Kingdom of Yugoslavia was still in use until 1945. A new era began when the Federative People's Republic of Yugoslavia (*Federativna Narodna Republika Jugoslavija*, FNRJ) was proclaimed on 29 November 1945.[301] The FNRJ constitution was adopted in 1946, and the constitutions of its republics were adopted by the end of 1947.[302] Both Croatia and Slovenia were a part of the FNRJ. Soon, "the communist regime started changing the political and socio-economic landscape of the country."[303] Thus, one of the fundamental constitutional principles was the state's ownership over almost all important resources.[304]

In addition, the FNRJ Constitution prescribed the basic principles governing the tax system in Article 42: universality of tax obligation, legality and ability to pay.[305] The tax reform in the FNRJ began with the Act on Direct Taxes adopted in 1945, introducing income tax and tax on inheritances and gifts with high tax rates intended to reduce the economic differences between taxpayers. The second step was the introduction of a new tax system in 1946, to replace the inherited capitalist tax system. The new tax system consisted of two subsystems, namely the taxation of state enterprises and the taxation of citizens.[306] Additionally, the Basic Act on Social Contributions and Taxes took effect in 1952, introducing the obligation for companies to pay contributions. The revenue was subsequently divided into three categories: general budget revenue, investment funds, and social security funds.[307]

In 1964, when the new constitution came into force, marking a new era as the state was renamed the Socialist Federative Republic of Yugoslavia (*Socijalistička Federativna Republika Jugoslavija*, SFRJ). This constitution reformed the division of revenue powers between

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[300] The tax system included VAT, excise duties and customs. The Act on Indirect Taxes inherited from the Kingdom of Yugoslavia was still in force. The so-called "State Treasury" was authorised to manage public finances, including a special division called the Treasury Guard, organised as an armed military unit. See Arbutina, Žunić Kovačević, Gadžo, *supra* note 298, at 200.

[301] Josip Broz Tito was appointed prime minister, and in 1953, he became the president of the republic.

[302] FNRJ consisted of the following republics: Bosnia and Herzegovina, Croatia, Macedonia, Montenegro, Slovenia and Serbia. See Croatian Encyclopaedia, *Jugoslavija.* Available at: https://enciklopedija.hr/clanak/jugoslavija.

[303] Arbutina, Žunić Kovačević, Gadžo, *supra* note 298, at 203.

[304] Josip Mihaljević, "Ustavna uređenja temeljnih prava u Hrvatskoj 1946.–1974." *Časopis za suvremenu povijest*, 43, no. 1 (2011): 33.

[305] See Article 42, the Constituion of the Federal People's Republic of Yugoslavija, available in: Jovan Đorđević, *Ustavno pravo* 2nd ed. (Beograd: Savremena administracija, 1958), 495.

[306] In 1959, a new tax on citizens' total income was introduced with a proportional rate, but any excess income over a specified threshold incurred a progressive tax rate up to 80 %. Sales and profit taxes were collected from state-owned enterprises, and many taxes were collected from citizens, with personal income tax being the most important. See Jelčić, Bejaković, *op. cit.*

[307] Jelčić and Bejaković, *supra* note 296, at 105.

different levels of government: the federal government, the governments of six republics and two autonomous provinces at the intermediate level, and the governments of communes at the local level. Additional branches of government were the self-governing interest communities and the Federal Development Fund.[308] The sources and types of revenue belonging to republics, provinces, and municipalities were determined by the federation.[309]

Furthermore, the SFRJ addressed the disparities among different tax systems in its federal republics. To avoid the application of eight tax systems in the unified Yugoslav territory, a 1971 constitutional amendment provided that federal republics and autonomous provinces shall, through mutual agreements, harmonise the basics of the tax system to ensure the unity and stability of the Yugoslav market.[310] The wording of the article may have some similarities with the preservation and stability of the internal market as one of the EU's goals.[311] In addition, the federal state was allowed to eliminate disturbances in the market by proposing to the republics and autonomous provinces to reduce or increase taxes.[312]

Moreover, it is interesting to briefly address constitutional principles underpinning the public finance legal framework in the SFRJ. To begin with, Article 32(1) articulated rights and freedoms as inseparable from the socialist and democratic order, highlighting solidarity and mutual responsibility as the conditions for the exercise of individual rights.[313] In addition, Article 33(2) prescribed that all citizens were equal in rights and duties irrespective of nationality, race, religion, sex, language, education, or social status. Contemporary scholars recognised this provision as the basis of the equality principle.[314] The procedural dimension of legality was addressed in Article 67, which guaranteed every individual equal protection of their rights in proceedings before courts, administrative bodies, and other state organs.[315] Although framed in general terms, this provision extended to fiscal matters. Furthermore, Article 62 imposed on every citizen the duty to contribute to the satisfaction of the material

[308] See Dubravko Mihaljek, "Fiscal Relations in Yugoslavia" in *Transition to Market: Studies in Fiscal Reform*,ed. Vito Tanzi (International Monetary Fund, 1993) Retrieved May 18, 2024, from https://doi.org/10.5089/9781557752758.071.
[309] Jelčić and Bejaković, *supra* note 296, at 105
[310] Jelčić and Bejaković, *supra* note 296, at 107.
[311] See Consolidated Version of the Treaty on European Union, 2012 OJ C 326/13, Article 3(3).
[312] Jelčić and Bejaković, *supra* note 296 at 108.
[313] Josip Sruk, *Ustavno uređenje Socijalističke Federativne Republike Jugoslavije* 3rd ed., (Zagreb: Informator, 1982), 93.
[314] See e.g. Miodrag Jovičić, *O ustavu: teorijsko-komparativna studija* (Beograd: Savremena administracija, 1977) 135.
[315] Ustav Socijalističke Federativne Republike Jugoslavije, Article 61, available at: https://pfsa.unsa.ba/pf/wp-content/uploads/2019/05/Ustav-SFRJ-iz-1963.pdf

needs of the social community.[316] This article expressed the constitutional foundation of taxation, grounding the fiscal obligation in the collective nature of the socialist state and in the principle of equal distribution of tax burdens.

Systematic interpretation of these articles led to the conclusion that fiscal obligations were not seen as unilateral impositions by a sovereign, but as collective contributions within a system where political and economic power was formally vested in the working people. Taxation was embedded within a framework of solidarity, equality, and collective responsibility.[317] The Yugoslav approach emphasised social duty and the shared responsibility of citizens to sustain the material foundations of the socialist community. Solidarity was understood as an inevitable element of federalism, alongside "the mentality of compromise". In fact, federalism was perceived as a system in which states voluntarily transferred certain sovereign prerogatives to the union. This arrangement was justified by the belief that mutual support among member states produced benefits that no state could secure on its own.[318]

A new constitution was created in 1974 to preserve the stability of the state through decentralisation, and to address the growing tension between the various republics and nationalities.[319] Thus, the sovereign powers of the republics were increased, and they were allowed to regulate taxes through state laws.[320] The Federal Republic of Croatia enacted its new constitution the same year.[321] Thus, the Croatian Parliament appeared in a role that is an important step in the development of the Croatian tax system.[322]

When it comes to taxation, several important provisions should be mentioned. As its predecessor, the 1974 Constitution also placed fiscal obligations within the broader framework of workers' self-management, solidarity, and equality. The working class and "all working people" were again declared as the bearers of state power, framing social policy around the reduction of inequalities and the equalisation of opportunities.[323] This indicates that taxation was perceived as a collective responsibility of workers. The latter was concluded through the

[316] Ustav Socijalističke Federativne Republike Jugoslavije, Article 61, available at: https://pfsa.unsa.ba/pf/wp-content/uploads/2019/05/Ustav-SFRJ-iz-1963.pdf
[317] Article 71(1) declared the "working people" as the sole bearers of authority and governance in public affairs. See also Sruk, *supra* note 313, at 311.
[318] Sruk, *supra* note 313, at 271.
[319] Josip Mihaljević, "Pravna ili partijska država? – Položaj pojedinca u Ustavu SFRJ 1974,"in *Pola veka ustava Socijalističke Federativne Republike Jugoslavije iz 1974. – Između mitova i prošlosti*, ed. Mijodrag Radojević, (Beograd: Institut za političke studije, 2025), 291.
[320] Jelčić and Bejaković, *supra* note 296, at 106.
[321] Interestingly, with its 442 articles, at the time, it was regarded as one of the longest constitutions in the world. See also Mihaljević, *op. cit.*
[322] Jelčić and Bejaković, *supra* note 296, at 106.
[323] See Articles 1-3, Ustav Socijalističke Republike Hrvatske, available (in Croatian) at: https://www.iusinfo.hr/zakonodavstvo/ustav-socijalisticke-republike-hrvatske-1

interpretation of Article 11, which embedded fiscal duties in the principle of distribution according to labour. Moreover, Articles 32 and 33 established that both workers and their organisations were obliged to contribute through taxes and other levies, with obligations determined by income, productivity, and the developmental needs of society.[324] The principle of tax legality was explicitly prescribed at the constitutional level.[325] In particular, federal legislation determined the types of revenues derived from the taxation of goods and services circulating across the entire territory of the SFRJ, as well as the method and level of taxation. Following the dissolution of the SFRJ, Croatia and Slovenia gained independence in 1991.

The Croatian Constitution[326] was adopted on 22 December 1990, which is why it is sometimes referred to as the „Christmas Constitution". It was an important step towards Croatian independence, designed to differentiate the country from the former socialist regime in the SFRY. Therefore, the Constitution emphasised a democratic and pluralistic approach grounded in the rule of law and the respect for fundamental rights.[327]

A provision of particular relevance for the Croatian legal system, including the tax system, is Article 3 of the Croatian Constitution. This article outlines the foundational values of the Croatian constitutional order, which serve as the basis for interpreting the Constitution: "freedom, equal rights, national and gender equality, peace-making, social justice, respect for human rights, inviolability of ownership, conservation of nature and the environment, the rule of law and a democratic multiparty system."[328] These values are of importance, since taxation is one of the primary instruments through which the state gives practical effect to constitutional commitments. Among those values, social justice and respect for human rights reflect the requirement that tax burdens should be distributed fairly, while the ownership rights and the rule of law limit the state's fiscal power and safeguard against arbitrariness.[329] At the same time, the social dimension of Article 3, particularly social justice and solidarity, provides constitutional grounding for the redistributive function of taxation. This provision, at the same time, enumerates some aspects of material equality, which requires the removal of any obstacle

[324] See Articles 11, 32 and 33, Ustav Socijalističke Republike Hrvatske, available (in Croatian) at: https://www.iusinfo.hr/zakonodavstvo/ustav-socijalisticke-republike-hrvatske-1
[325] Article 80, Ustav Socijalističke Republike Hrvatske.
[326] The Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*), Official Gazette (*Narodne novine*) no. (NN 56/1990, 135/1997, 113/2000, 124/2000, 28/2001, 41/2001,55/2001, 76/2010, 85/2010, 5/2014), hereinafter: The Constitution of the Republic of Croatia.
[327] Tamara Ćapeta, "Croatian Constitution in EU Integration" in *National Constitutions and EU Integration*, ed. Stefan Griller, Lina Papadopoulou, Roman Puff (Bloomsbury Publishing, 2022), 333.
[328] Article 3, the Constitution of the Republic of Croatia.
[329] Pasquale Pistone, „The EU Common Constitutional Tradition and Its Impact on Tax Law in the European Union: A Systematic Assessment ". In *The Common Constitutional Tradition of the European Union and Its Impact on Tax Law, ed.* Pasquale Pistone (Amsterdam: IBFD, 2026) *forthcoming.*

that prevents equality.[330] In addition, the principle of equality is enshrined in Article 14 of the Croatian Constitution, which explicitly touches upon the formal dimension of the principle, providing that everybody is equal before the law.[331] The latter is of importance for the tax system, since it lays the basic requirement that tax laws, regulations, and their application must avoid preferential treatment based on these protected grounds. This principle underpins a general prohibition against discriminatory tax practices. Thus, principles such as legality, non-discrimination, and the right to a fair trial are often used in tax-related matters. This is supported by the Croatian Constitutional Court (*Ustavni sud Republike Hrvatske,* hereinafter: USRH), which emphasised that the Constitution should be interpreted as a whole. This resulted in the judicial creation of implicit principles in the jurisprudence of the USRH, such as the principle of legal certainty.[332] Therefore, it would be a mistake to extract one provision and interpret it mechanically and independently of other constitutional values and the entirety of the relations established by the Constitution.

The aforementioned interpretation of the Constitution in tax matters is of importance in Croatia, since the Croatian Constitution has few provisions related to public finance law. Among these provisions, only one directly refers to tax policy. In only two short paragraphs, Article 51 sets out three principles underlying the Croatian tax system: universality, equality, and ability to pay.[333] Jurisprudence of the Constitutional Court is crucial for shaping the meaning of these principles.

Against this background, the most prominent case in which the USRH interpreted the constitutional framework of taxation was the case on the so-called "crisis tax" in Croatia. It was introduced in 2009, during the global financial crisis, as a special temporary tax on salaries, pensions and other income with an initial tax rates of 2 % and 4 %.[334] A highly controversial measure, as such, captured the public attention. The Constitutional Court received a request to assess its constitutionality from the President of the Republic of Croatia, and more than 30,000

[330] Pistone *ibid.*
[331] On the difference between formal and material dimensions of equality, and their interconnection with anti-discrimination in Croatia, see Lana Ofak, "Primjena načela zabrane diskriminacije u izradi općenormativnih akata s posebnim osvrtom na uređivanje novčane pomoći povodom rođenja djeteta," *Zbornik radova Pravnog fakulteta u Splitu,* 60 no. 2 (2023): 367-393.
[332] See Constitutional Court of the Republic of Croatia, decision no. U-III/5419/2013, 21.2.2017.
[333] See also Hrvoje Arbutina, "Ustavna i nadnacionalna ograničenja ovlaštenja na oporezivanje," *Zbornik Pravnog fakulteta u Zagrebu* 62, no. 5-6 (2012): 1285.
[334] Zakon o posebnom porezu na plaće, mirovine i druge primitke, Official Gazzette (*Narodne novine*) no. 94/2009, 56/2010.

proposals were sent by Croatian citizens.[335] The crisis tax was challenged based on several bases, including equality, ability to pay and proportionality.

The crisis tax decision is important because the USRH rarely engages with tax law issues in such detail. First of all, it started its interpretation by defining the notion of tax. Firstly, it emphasised that a tax represents one of the constitutionally permitted forms of state interference in the private property of an individual.[336] The Court derived this definition from the universal obligation to participate in the payment of public expenses prescribed in Article 51(1) and from the obligation to contribute to public expenses from Article 48(2).[337] USRH upheld the "crisis tax", considering it was in line with constitutional principles.

However, a part of this decision that was subject to criticism was a paragraph which legal scholars perceived as a limit to the power to interpret tax legislation. Thus, the Court stated: „In the constitutional judicial supervision of tax regulations, the Constitutional Court is not authorised to judge the expediency and justification of the general tax system, that is, of individual tax forms in the Republic of Croatia. (...) In this sense, the prescription of certain types of taxes, the circle of taxpayers, the amount of tax rates or tax benefits cannot be a constitutional issue."[338] This is highly problematic from a legal standpoint. First, the Constitutional Court's position regarding the authority to control tax legislation cannot be read as anything other than an overly restrained interpretation in favour of the legislature.[339] Second, it reflects excessive formalism and questionable interpretation of the principles of equality and ability to pay. A consequence of the described approach is the reduced possibility of holding the legislator accountable.[340] In addition, the USRH began its analysis of the ability to pay principle by referring to the BVerfG's practice because of constitutional similarities. Also, it is an example of a national court decision that, even before the accession to the EU, embraced the obvious common constitutional dimension of taxation.

Other principles relevant to taxation in Croatia must be derived through judicial interpretation. For example, Article 16(1) stipulates that rights and freedoms may be restricted only by law for constitutionally legitimate aims.[341] Thus, this article provides the constitutional

[335] For an analysis of the social aspects of "crisis tax" see Sonja Cindori and Valentino Kuzelj, "Socijalni aspekt kriznoga poreza: fiskalni instrument ili devijacija poreznog sustava?" *Ekonomska misao i praksa* 27 no. 2 (2018): 490.
[336] Constitutional Court of the Republic of Croatia, decision of 17. November 2009, no. U-IP/3820/2009, para. 14.1.
[337] Constitutional Court of the Republic of Croatia, decision of 17. November 2009, U-IP/3820/2009, para 9.
[338] Constitutional Court of the Republic of Croatia, decision 17. November 2009, U-IP/3820/2009.
[339] Cindori and Kuzelj, *supra* note 335, at 490.
[340] Miloš and Kuzelj, *supra* note 144, at 1114.
[341] Article 16 (1), Constitution of the Republic of Croatia.

basis for the principle of legality in taxation. Since taxes constitute an interference with property rights, this provision implies that taxes may be introduced exclusively by a statute. Finally, this interpretation reflects a functional, rather than absolute, approach to the protection of property rights. However, it is interesting that Croatia did not prescribe this principle explicitly in the constitutional text, as opposed to Slovenia.[342] This is interesting, having in mind that both countries shared a legal tradition in the former SFRJ, where legality in taxation was prescribed on a constitutional level. Furthermore, the Croatian Constitution adopts a socially oriented conception of ownership, confirmed by Article 48(2), which makes property subject not only to entitlements but also to the duty to contribute to the common good. This provision reflects that the property right is understood as a relative right whose exercise must align with public and private interests.[343]

Finally, Article 141 is a keystone of the Croatian Constitution for the relationship between the constitution and EU law. It is a part of the legal basis of Croatian membership in the EU, stipulating that Croatia: „ as a member state of the European Union, participates in the creation of European unity to ensure lasting peace, freedom, security, and prosperity together with other European countries, and to achieve other common goals in accordance with the fundamental principles and values on which the European Union is founded."[344] Following the wording of this article, it is worth exploring what is added to the Croatian Constitution on its basis. More precisely, Article 141 seems to be connected to Article 2 TEU, which articulates the foundational values of the EU. Namely, Article 141 explicitly references fundamental EU principles and values, thus mirroring values enshrined in Article 2 TEU and thereby anchoring Croatia's constitutional duties to these supranational standards. Hence, this provision at the same time binds the Croatian legal order to uphold and implement these values. It fosters legal coherence between Croatia's constitutional order and the EU's constitutional framework, embedding European integration principles at the highest level of national law. The Constitution also entrusts the EU institutions with the powers necessary to exercise the rights and fulfil the obligations assumed based on membership. However, the Constitutional Court in Croatia emphasised in two of its decisions, which had nothing to do with EU law whatsoever, that „the Constitution is superior to the EU law".[345]

[342] See *infra* sec. 2.1.2.3.4. on the principle of tax legality in Slovenia.
[343] For an extensive analysis of the constitutional framework related to the limitations of property rights in Croatia see: Mato Arlović, "Ustavnopravni okvir ograničenja prava vlasništva u Republici Hrvatskoj," *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 46, no.1 (2025): 235-259.
[344] Article 141, Constitution of the Republic of Croatia.
[345] Constitutional Court of the Republic of Croatia, decision of of 21 April 2015 no. U-VIIR -1158/2015 and U-VIIR -1159/2015.

2.1.2.3.4. Slovenia

Following the dissolution of the SFRJ, the Constitution of the Republic of Slovenia, was adopted on 23 December 1991.[346] It devotes an entire chapter to public finance. The article which represents "the fundamental provision of the Constitution that regulates the imposition of taxes"[347] is Article 147 of the Constitution. Namely, it enumerates the most important public levies, the principle of legality in taxation, as well as the right of the lowest level of government to levy taxes.[348] It states that "the State shall levy taxes, customs duties and other levies in accordance with the law. Local government bodies shall levy taxes and other charges in such circumstances as determined by this Constitution and by statute". In addition, such constitutional regulation of all public levies is "inextricably linked to the principle of the rule of law, which is stipulated in Article 2 of the Constitution of the Republic of Slovenia. This principle requires that all public levies, such as taxes, contributions, fees and penalties and fines, be prescribed clearly, predictably and in accordance with the principle of legality."[349] Slovenian Constitutional Court emphasised that "on one hand, the principle of legality determined by Article 147 of the Constitution gives the state the authorisation to impose taxes, and on the other hand it is intended for the protection of taxable persons, because it requires that their legal position is, concerning tax obligations, clearly and predictably evident already from the law and not only from implementing regulations." [350] An interesting distinction is that the Slovenian Constitution retained an explicit provision on the principle of tax legality, following the approach previously adopted in the Constitution of the SFRY, whereas the Croatian Constitution omitted such an explicit guarantee.[351]

Moreover, equality in taxation is derived from Articles 14 and 22 of the Constitution of the Republic of Slovenia. Article 14(1) prescribes that everyone is guaranteed equal human rights and fundamental freedoms, regardless of nationality, race, gender, language, religion, political or other belief, material status, birth, education, social status, disability or any other personal circumstance. In its second paragraph, it prescribes equality before the law.[352] Article 22 guarantees equality in equal protection of their rights in proceedings before a court and

[346] Ustav Republike Slovenije (URS) Uradni list RS, št. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a in 92/21 – UZ62a (hereinafter: Constitution of the Republic of Slovenia).
[347] Ustavno Sodišče Republike Slovenije, judgement of 21 March 2014, no. U-I-313/13-86.
[348] See also Anita Blažič, „Pravica do dobre uprave" *Aktuelnosti: Časopis za društvena pitanja* 47 (2023): 10.
[349] *Ibid.*
[350] Ustavno Sodišče Republike Slovenije, judgement of 21 March 2014, no. U-I-313/13-86, para 42.
[351] See *supra* 2.1.2.3.3.
[352] Article 14, Constitution of the Republic of Slovenia.

before other state authorities, local community authorities and holders of public authority who decide on their rights, duties or legal interests.[353] When applied in the context of tax law, these articles reflect the requirement that all taxpayers and those liable for other public duties must be treated equally and without discrimination.[354]

Moreover, Article 146 governs the financing of the state and the local Communities. Thus, the Constitution provides that governments at both the national and local levels collect funds needed for their responsibilities through taxes, mandatory fees, and revenues from their assets. Governments at both levels reveal the worth of their assets through financial statements. The national government enforces taxes, tariffs, and additional fees through legislation, while local governments impose taxes and fees based on conditions outlined in the Constitution and laws.[355] Budgetary balance in Slovenia is the general constitutional rule. The Constitution prescribes that "all revenues and expenditures for financing public spending must be included in the state budgets."[356] In addition, a so-called golden rule is constitutionally stipulated: that revenues and expenditures of general government budgets must be balanced in the medium term without borrowing, or revenues must exceed expenditures."[357]

Unlike the Italian or Croatian constitutions, the Slovenian Constitution articulates the limitation of property rights in a more restrained manner. Article 67 provides that the acquisition and enjoyment of property shall be regulated by law to ensure its economic, social, and environmental function.[358] Unlike the Italian Constitution (Article 42) and the Croatian Constitution (Article 48), the Slovenian provision does not explicitly state that ownership entails obligations, nor does it expressly authorise limitations or expropriation in the text itself. In this regard, the Slovenian Constitutional Court took the position that "according to the Constitution, taxes are a constituent part of the content of a property right."[359]

As previously mentioned, the Constitutional Court of the Republic of Slovenia (*Ustavno sodišče Republike Slovenije,* hereinafter: USRS) played a significant role in shaping the tax system. In addition, USRS considers the role of taxes in the functioning of the state. For example, in the case regarding the constitutionality of taxation imposed on the interest on bonds which entitled persons received as compensation under the Denationalisation Act, USRS

[353] Article 22, Constitution of the Republic of Slovenia.
[354] Blažič, *supra* note 348, at 11.
[355] Article 147, Constitution of the Republic of Slovenia.
[356] Article 148, Constitution of the Republic of Slovenia.
[357] Rado Bohinc, "Regulation of Public Finances in Slovenia in Light of Financial Constitutionality," *Regulation of Public Finances in Light of Financial Constitutionality*, ed. Zoltan Nagy (Miskolc, Budapest: Central European Academic Publishing, 2022), 217.
[358] Article 67 of the Constitution of the Republic of Slovenia.
[359] Ustavno Sodišče Republike Slovenije, judgmenet of 20. April 2007, no. U-I-260/04.

pointed out that "income tax and other taxes provide the state with financial resources that enable it to perform its functions. Since taxes are an instrument of economic, social, demographic, and other related policies, the variability of the systemic regulation in the tax field is always to be expected. Taxes pursue the fundamental goals of the socio-economic and economic system: to meet social needs in the public interest."[360]

Finally, a constitutional provision concerning taxation parallels Article 75 of the Italian Constitution in its treatment of referendums. Namely, Article 90 of the Slovenian Constitution prescribes that a "referendum cannot be called on the laws on taxes, customs duties, and other compulsory charges, and on the law adopted for the implementation of the state budget."

2.1.2.4. The notion of tax at the legislative level

It is important to emphasise that some states in continental Europe, such as Germany and Croatia, follow the approach of explicit normative differentiation between taxes and other public finance instruments. Compulsory fiscal contributions form the general umbrella under which various compulsory levies are classified.[361] In Germany, the term *Abgaben* embodies all compulsory contributions, including taxes (*Steuer).* Italy follows a similar approach with the term *tributi* encompassing taxes (*imposte)* and other compulsory levies[362], while in Croatia, taxes (*porezi*) fall into the group of compulsory contributions (*javna davanja).*[363] However, relying on the legal nomination of a particular public finance instrument is not reliable since it might not reflect its genuine nature.[364] More precisely, sometimes a compulsory contribution can be named as a levy or a fee, although it has every characteristic of a tax. This might stem from the fact that introducing a new levy named "fee" may counter the lower level of opposition among taxpayers, which is favourable from a political point of view.[365]

Against this backdrop, some countries in continental Europe have prescribed quite specific definitions of taxes and other compulsory contributions.[366] Thus, in section 3 of the

[360] *Ibid.*
[361] Peeters, *supra* at 46, at 60.
[362] Tesauro, *supra* note 138, at. 4.
[363] See Article 2(2), General Tax Act, Official Gazette (*Narodne novine*) no. 115/16, 106/18, 121/19, 32/20, 42/20, 114/22.
[364] *Ibid.*
[365] A study conducted in 2011 showed that naming a certain tax as "tax" significantly reduces the public support for such an instrument, even if it has a non-fiscal purpose, such as the reduction of pollution. See in detail: Steffen Kallbekken, Stephan Kroll and Todd L. Cherry, "Do you not like Pigou, or do you not understand him? Tax aversion and revenue recycling in the lab," *Journal of Environmental Economics and Management* 62, no. 1 (2011): 53-64,
[366] Thurony, *supra* note 121, at. 47.

German *Abgabenordnung* (AO)[367] a tax is defined as "payments of money, other than payments made in consideration of the performance of a particular activity, which are collected by a public authority to raise revenue and imposed by the public authority on all persons to whom the characteristics on which the law bases liability for payment apply; the raising of revenue may be a secondary objective."[368] This definition is important since it also determines the scope of application of the AO.[369] Moreover, it also embodies the aforementioned elements of a tax.[370] First, it highlights the monetary nature of taxes; it establishes that a tax is a compulsory and unrequited payment imposed by law. Finally, the German definition is notably broad, as it recognises revenue raising as the primary, but not necessarily the exclusive, purpose of taxation, allowing for regulatory objectives as well.

The Croatian General Tax Act (*Opći porezni zakon*) adopted a similar approach but with a less specific definition than the *Abgabensordnung*. Article 2(2) of the General Tax Act prescribes as follows: "Taxes are financial obligations and are a budget revenue used for settling public expenditures determined in the budget. Excise duties are considered taxes. "[371] This normative definition reflects just a few of the characteristics of tax agreed upon in the literature. The wording of the Article firstly emphasises that tax is a financial obligation. Afterwards, it is explicitly mentioned that taxes are used to raise revenue, which is necessary for funding public expenditures defined in the budget. Interestingly, the other part of the definition states that excise duties are also taxes. This definition is quite vague, which emphasises the importance of the Constitutional Court's interpretation, as well as academic contributions in clarifying what is considered a tax in Croatia.

The Slovenian Act on Tax Procedure (*Zakon o davčnem postopku*) likewise contains an explicit normative definition of a tax.[372] Thus, Article 3(1) of the Act on Tax Procedure prescribes a definition which embodies all of the mentioned commonly accepted elements of a tax: "A tax according to this law is any monetary revenue of the state budget, the budget of the European Union or the budget of a self-governing local community, which does not represent payment for a service rendered or goods supplied and is paid exclusively based on laws on

[367] *Abgabenordnung in der Fassung der Bekanntmachung* vom 1. Oktober 2002 (BGBl. I S. 3866; 2003 I S. 61). die zuletzt durch Artikel 14 des Gesetzes vom 27. März 2024 (BGBl. 2024 I Nr. 108).
[368] Article 3(1), *Abgabenordnung.*
[369] Koenig Abgabenordnung: § 3 Rn. 1-6 in : AO *§§ 1 bis 368*5. völlig neubearbeitete Auflage 2024, C.H.Beck.
[370] See *infra* sec. 2.1.1.
[371] General Tax Act, Official Gazzette (*Narodne novine*) no. 115/2016, 106/2018, 121/2019, 32/2020, 42/2020, 114/2022.
[372] Zakon o davčnem postopku, Official Gazzette (*Uradni list RS*), no. 13/11 – uradno prečiščeno besedilo, 32/12, 94/12, 101/13 – ZDavNepr, 111/13, 22/14 – odl. US, 25/14 – ZFU, 40/14 – ZIN-B, 90/14, 91/15, 63/16, 69/17, 13/18 – ZJF-H, 36/19, 66/19, 145/20 – odl. US, 203/20 – ZIUPOPDVE, 39/22 – ZFU-A, 52/22 – odl. US, 87/22 – odl. US, 163/22, 109/23 – odl. US, 131/23 – ZORZFS, 100/24, 40/25 – ZINR in 100/25.

taxation or regulations of self-governing local communities issued based on laws on taxation." This definition incorporates all core elements of tax recognised in legal theory. It clearly emphasises the monetary character of taxes, while expressly establishing the unrequited nature of taxation. Third, the provision reflects the principle of legality in taxation, since it stipulates that tax obligations may arise only based on tax laws or subordinate regulations adopted pursuant to such laws. In addition, the Slovenian definition adopts a notably broad institutional scope by expressly including the EU as a beneficiary of tax revenue. This explicit recognition of the EU as a potential beneficiary of tax revenue is rather uncommon in national tax legislation and reflects the supranational dimension of taxation. By including the EU's own resources within its definition of a tax, the Slovenian legislator recognises that taxation is no longer confined to the national level.

Finally, the Italian approach to this matter is quite different from the aforementioned states. Namely, there is no legislative definition of a tax in the Italian legal order.[373] However, Italian legal scholarship distinguishes between the wider term of public levies (*tributi)* and taxes (*imposte*). Public levies are understood as compulsory monetary transfers imposed by public authorities which are not reciprocally connected to a consideration.[374] This term encompasses taxes (*imposte)*, benefit taxes (*tasse*), contributions (*contributi*) and fiscal monopolies (*monopoli fiscale*).[375] Although Italian legislation does not provide explicit definitions of *imposte, tasse,* and *contributi speciali*, these categories still play an important role in the interpretation of tax law. Their relevance derives from the fact that the legal system refers to these categories in statutory provisions, administrative practice, and in the jurisprudence of the Constitutional Court. Therefore, the precise content of these categories of different levies is developed through case law and legal scholarship. Thus, even in the absence of statutory definitions, the taxonomy of *imposte, tasse,* and *contributi speciali* forms a part of the Italian legal framework and provides the interpretative structure to define the notion of "tax".

Moreover, it is necessary to explain the linguistic choice of translating the Italian term *tassa* into English as "benefit tax" rather than "fee". This is grounded in a comparison of their legal definitions. In tax theory, a benefit tax is a compulsory levy imposed on individuals or entities presumed to derive a particular advantage from certain public activities, even though the benefit cannot be measured or attributed with precision to each taxpayer.[376] Unlike user fees

[373] Tesauro, *supra* note 76, at 3.
[374] Tesauro, *supra* note 76, at 4.; Falsitta, *supra* note 99, at 18.
[375] Falsitta, *supra* note 98, at 29.
[376] See also David G. Duff, "Benefit taxes and user fees in theory and practice," *University of Toronto Law Journal* 54 no. 4 (2004) 391-448.; Giovanna Messina, Marco Savegnago and Andrea Sechi. *Il prelievo locale sui rifiuti in*

or prices for public services, benefit taxes are not linked to the direct provision of a specific good or service to an identifiable individual.

An example is the *tassa sui rifiuti* (TARI), the waste collection tax established under Law 147/2013.[377] Although administered at the municipal level, the obligation to pay TARI arises from national legislation and is triggered by the fact of possession or inhabitation of immobile property capable of producing waste.[378] The tax is due even when the owner is temporarily absent, for example, during a three-month business trip, because liability is not tied to the actual use of the waste collection service but to the presumed benefit associated with the property's capacity to generate waste.[379] This structure demonstrates that TARI functions as a benefit tax rather than as a fee. The payment is mandatory, not contractual. Moreover, it does not correspond to a service supplied to a particular individual, and it is justified by a presumed, not an individually measurable, benefit. For these reasons, translating tassa as "benefit tax" captures its legal nature more accurately than the alternative translation "fee."[380]

The compulsion and legality of taxation, as part of its definition in Italy, can be derived from Article 23 of the Italian Constitution. However, other defining elements of a tax must be sought in the jurisprudence of the Italian Constitutional Court and legal scholarship. Fichera explained the difference between these categories as follows: i) taxes are payments which have no other legal basis than that of subjection to the financial power of the State and they do not have any direct relationship with the advantages that the obliged party derives from the performance of public services; ii) contributions are the payments due from those who, finding themselves in a certain situation, derive a particular economic advantage, as a result of the performance of an administrative activity, compared to all the others who benefit indiscriminately from the same activity; c) benefit taxes are the payments due for an activity of the State which concerns in a particular way the obliged party.[381] Tesauro points out that the

Italia: benefit tax o imposta patrimoniale (occulta)? Banca d'Italia. (2018); Žunić Kovačević and Gadžo, *supra* note 126, at 92.

[377] Legge 27 dicembre 2013, n. 147, art. 639–660 (Istituzione della Tassa sui Rifiuti – TARI).

[378] Ministero dell'Economia e delle Finanze; Tassa sui rifiuti (TARI) https://www.finanze.gov.it/it/fiscalita/fiscalita-regionale-e-locale/TARI-Imposta-di-soggiorno-e-altri-tributi-comunali/Tassa-sui-rifiuti-TARI/disciplina-del-tributo/

[379] Tesauro, *supra* note 76, at 6.

[380] In this regard, TARI reassembles the utility charge "*komunalna naknada"* in Croatia. Although its nomenclature would not suggest it, it also functions as a tax. Namely, Žunić Kovačević and Gadžo pointed out that the design of its individual elements (payer, base, rate, exemptions) does not indicate that there is a strong connection between the monetary amount of the utility charge and the direct benefits that it may bring to an individual payer. Also, public goods financed by revenues from the utility fee are, from a theoretical perspective, closer to pure public than pure private goods. See in detail (in Croatian): Žunić Kovačević and Gadžo, *supra* note 123.

[381] See Franco Fichera, "I contributi speciali e le tasse", in *Trattato di diritto tributario, vol. IV*, ed. Andrea Amatucci (Padova, Cedam: 1994): 297-345

differentiating point between an *imposta* and a *tassa* lies in the specific public service they are supposed to finance. Thus, revenues intended to finance indivisible expenditures are taxes (*imposta*), while those intended to finance divisible expenditures are benefit taxes (*tasse*).[382]

Furthermore, the Italian Constitutional Court and the Cassation Court emerge as key institutions for defining a tax and differentiating it from other levies.. The Italian Constitutional Court explained the difference between taxes and benefit taxes based on the principle of ability to pay. To be more precise, the Court stated that "the main difference between benefit taxes (*tasse*) and taxes (*imposte*) is that taxes are due according to the taxpayer's ability to pay. In fact, taxation is the way every state apportions government expenses among its citizens who belong to the state community. The criterion of apportionment is the taxpayer's ability to pay."[383] However, the Constitutional Court often defines levies in general (*tributi*), thus securing that its decisions would apply to taxes, but also to other levies.

Finally, if the mentioned legislative definitions are subject to comparison, it can be observed that they share some common core elements. All of the aforementioned definitions reflect two elements generally accepted in tax theory, namely, that taxes are compulsory, monetary contributions imposed by public authorities, and are intended to fund public expenditures through the state budget. However, there are variations in the precision and scope. The German *Abgabenordnung* offers the most detailed and structured definition. It clearly distinguishes taxes from fees, and allows revenue-raising to be a secondary objective. In contrast, Croatia's definition is more general, lacking clarity and explicitly includes excise duties without elaboration. This suggests a stronger role for judicial interpretation in giving concrete content to the concept of tax. The level of precision in a tax definition affects how legal norms are applied. For example, Germany's comprehensive definition directly determines the scope of its tax procedural law, enhancing legal certainty. In Croatia, the vague definition leaves more room for discretionary interpretation.

The Slovenian definition may be the most accurate regarding tax revenue allocation, since it includes the EU as the possible recipient of the revenue. Thus, while the essence of taxation is shared across systems, legislative definitions differ in precision. These differences influence the interpretation and implementation of tax laws. A well-defined legal concept of tax, as in Germany and Slovenia, enhances transparency and aligns administrative practices with constitutional principles.

[382] Tesauro, *supra* note 76, at.5.
[383] Peeters, *supra* note 46, at 65.

2.1.3. Interim conclusion

Despite the divergent historical and political circumstances that shaped different European states and tax systems, the comparative analysis reveals a degree of convergence in the core elements that define a tax. Across the examined jurisdictions, whether they are long-standing Member States such as Germany and Italy or more recent ones such as Slovenia and Croatia, certain characteristics of taxes are common. Among these, compulsion stands out as the oldest and most persistent element.[384] In modern democratic societies, taxes keep their compulsory nature, but their introduction through legislative procedures is now considered a legitimate expression of the people's sovereign will.

In addition, the principle of tax legality has also endured throughout history and turned out to be a common denominator of tax obligation across Europe. Even authoritarian regimes in Germany, Italy and Croatia during World War II, formally enacted taxes through legislative acts. Even where it is not explicitly enshrined in the constitution, the principle of tax legality is recognised in jurisprudence. This confirms its status as part of the EU common constitutional tradition.

Moreover, taxes served as a revenue-raising instrument in various regimes, and other objectives that could be achieved through taxation differed depending on the specific time and needs of states. For example, in the former SFRJ, taxes were used to achieve the goals of Marxist philosophy, while in Germany, they served as a regulatory tool to promote recovery after World War II. Although taxes are nowadays considered a monetary contribution, not so long ago, taxes were still levied in kind. This is especially applicable in times of outstanding circumstances. Another similarity which stands out from this brief comparative analysis is that earmarking becomes a valuable government instrument during times of crisis, such as preparations for war or during the war itself. Having in mind the difficulty of circumstances for the taxpayers, the introduction of an additional tax burden must be accompanied by a specific spending purpose to justify it.[385]

Most importantly, the previous analysis indicates that earmarked taxes exist as a departure from the generally accepted element of a tax - not being allocated for a specific spending purpose. Nevertheless, the analysis of both historical development and current normative framework in selected EU Member States indicates that this is not a constitutive element of a tax. Instead, it is a commonly observed feature of a tax which will not apply when it comes to earmarked taxes. The mere fact that tax revenues are generally allocated to the

[384] See *supra* sec. 2.1.1.3.
[385] See *supra* sec. 2.1.1.

general budget should not be treated as a constitutive element of a tax. These interim conclusions provide a necessary foundation for the subsequent analysis of earmarking practices.

2.2. The notion of earmarking

2.2.1. Concept and definition of earmarking

The etymological roots of the term earmarking are derived from the custom of marking cattle's ears to claim ownership. This was a way to differentiate the cattle and recognise to whom they belonged.[386] Accordingly, the concept of earmarking is used to describe a levy that will be dedicated to a specific purpose. In other words, earmarking represents a practice of dedicating a specific public levy to a predetermined spending purpose.

The understanding of this concept has seemingly remained unchanged for over a century. Back in 1940, Clague and Gordon described earmarking in the context of the tax policy in the USA as „the direct relationship which exists between taxes and expenditures when the proceeds of special taxes are by law assigned exclusively to certain expenditures.“[387] Moreover, they perceived earmarking as a „special relationship between revenues and expenditures.“[388] Moreover, in 1963 James M. Buchanan stated that “earmarking is defined as the practice of designating or dedicating specific revenues to the financing of specific public purposes. It is discussed under such headings as 'special funds', 'segregated accounts', 'segregated budgets' 'dedicated revenues.'”[389] Similar definition was present in economic scholarship forty years later. Thus, Anesi defined earmarking as “the practice of assigning revenue (generally through statute or constitutional clause) from specific taxes or group of taxes to specific government activities or areas of activity.”[390] Corresponding definition was offered by Bös, who stated that “earmarking provides a direct link between revenues of a particular tax and expenditures for a particular public task This direct link refers to the aggregate revenues of the particular tax and the total expenditures for the public task.”[391] When it comes to legal scholars, Kotha and Talekar, similarly, stated that „earmarking has been defined to be the act of allocating specific tax revenues to fund a specific public service within public finance systems, collecting multiple taxes applied for varied purposes. The specific purpose is to be made public through the

[386] Oxford English Dictionary, “earmarked (adj.),” July 2023, https://doi.org/10.1093/OED/2110309470.
[387] Ewan Clague and Joel Gordon, “Earmarking tax funds for welfare purposes,” *Social Security Bulletin*, 3 no. 1 (1940): 10.
[388] *Ibid.*
[389] James M. Buchanan, “The Economics of Earmarked Taxation,” *Journal of Political Economy* 71, no.5 (1963): 457-458.
[390] Vincent Anesi, “Earmarked taxation and political competition,” *Journal of Public Economics* 90, no. 4,5 (2006): 679.
[391] Dieter Bös, “Earmarked taxation: welfare versus political support,” *Journal of Public Economics* 75, no. 3 (2000): 439.

charging legislation, even before the taxes have been collected."[392] Cuéllar analysed earmarking in the USA, starting from the definition that it represents "to designate (through a statutory provision or an accompanying committee report) certain appropriated funds for narrow (nearly always geographically delimited) purposes."[393] In addition, Ricci defined earmarked levies in light of the Italian doctrine, stating that they would be nothing other than "taxes" whose revenues are allocated by the legislator to the financing of a particular public service or work, without, for this reason, in any way affecting the pure regime of the tax, which would remain a tax in all respects, subject, therefore, to the constitutional guarantees outlined in Article 53 of the Constitution.[394]

Accordingly, scholars across different disciplines and legal traditions broadly concur that earmarking refers to the allocation of a specific revenue source to a predetermined spending purpose established by law. Earmarking has a material dimension, which concerns the allocation of a particular revenue source; a formal dimension, which concerns the allocation of that revenue through a legislative act; and a temporal dimension, which requires that the spending purpose be determined before the revenue is collected. In addition, earmarking should not be mistaken for tax labelling, i.e., merely naming a tax or contribution to indicate its spending purpose, without a legal obligation to spend the revenue from that tax for that purpose.[395] Thus, pure labelling of a contribution (e.g. education allowance) can reveal a modality of the use of this contribution, but it is also not legally binding. The general labelling of a levy named "education allowance" thus does not state whether the revenues from this contribution will be used, for example, to fund schools, universities, or general education projects such as community colleges, libraries, or museums.[396]

2.2.2. The practice of earmarking in light of the notion of a tax

As noted above, the tax legality principle is a cornerstone of the notion of a tax.[397] In this regard, earmarking represents its extension into the allocation of revenues, since it presupposes that funds are legally designated for a specific spending purpose. Thus,

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[392] Ashrita Prasad Kotha and Pradnya Satish Talekar, "Earmarked taxes: an Indian case study," *eJournal of Tax Research*, 19, no. 1 (2021): 100.
[393] Mariano-Florentino Cuéllar, "Earmarking earmarking" *Harvard Journal on Legislation* 49, no. 2 (2012): 249.
[394] Ricci, *supra* note 55, at 53.
[395] Ashrita Prasad Kotha, "Earmarking of taxes for Disruption and Recovery" in *Tax Law in Times of Crisis*, ed. Dominic DeCogan, Alexis Brassey, Peter Harris (Oxford: Hart Publishing, 2023), 80.
[396] Jochen Hundsdoerfer et al., "The Name Game for Contributions – Influence of Labelling and Earmarking on the Perceived Tax Burden" *Freie Universität Berlin, School of Business & Economics Discussion Paper No. 2010/12*. (2010): 6.
[397] See *supra* sec 2.1.1.1.

earmarking, by definition, aligns with the principle of tax legality, as it requires the allocation of specific revenue streams to defined public purposes through a legal act.[398]

In addition, accepted definitions of earmarking usually presuppose that tax obligation is a monetary obligation. In this sense, earmarking is in line with the monetary nature of taxation, treating tax as a financial resource to be allocated for different public purposes.

Furthermore, earmarking does not alter or affect the compulsory nature of a tax. However, it may have an influence on the perceived justification of that obligation. By clearly linking the revenue to a specific expenditure purpose, earmarking may soften the political and psychological burden of compulsion, especially when taxpayers are informed that their contributions serve a specific public good.[399] However, once the taxable event occurs, payment of an earmarked tax is still mandatory regardless of how the funds are used.

Against this backdrop, earmarking might be understood as a slight departure from the established principle that tax payments do not result in a direct benefit to the taxpayer. More precisely, the practice of earmarking creates a connection between the tax paid and the benefit that may occur because of that payment. This may give rise to the argument that earmarking partially blurs the distinction between taxes and fees. The level of impact on the mentioned distinction depends on the form of earmarking chosen by the legislator.[400] For instance, taxes on motor vehicles, which are often used to fund highway infrastructure, are an example of strong earmarking. In this case, the link between the tax payment and potential benefits is more precise when compared to weak earmarking. Although earmarked taxes, depending on their design, may dilute the usual understanding that taxes do not result in direct benefits, they never result in such benefits.[401] Thus, earmarked taxes will not result in individual benefits to taxpayers and remain within the conceptual definition of a tax. In a similar vein, Ricci stresses that earmarked taxes do not give taxpayers any entitlement to a refund in case the revenue is ultimately used for a purpose different from the one originally declared. This is because the obligation to pay the tax arises from a factual situation that reflects the taxpayer's ability to contribute, and this obligation is not legally tied to the specific expenditure, service, or project that the tax is intended to finance.[402]

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[398] See definitions of earmarking in Prasad Kotha and Talekar, *supra* note 392 at 98; Clague and Gordon, *supra* note 387, at 10.
[399] See *infra* sec 2.2.4.
[400] For a detailed description of various forms of earmarking, see *infra* sec. 2.2.3.
[401] On the influence of earmarking on the willingness of taxpayers to contribute to public expenses, see *infra* sec. 2.2.4.
[402] Ricci, *supra* note 55, at 53.

In addition, the fact that tax revenues are usually flowing to the general budget and they are not allocated to a specific spending purpose is not a constitutive element of a tax. More precisely, taxes are usually used to finance public expenditure as a whole. However, comparative legal analysis shows that legislatures may allocate tax revenues to specific purposes.[403] Consequently, earmarking affects the function of taxation rather than its legal character, making it possible for taxes to pursue defined policy objectives without ceasing to qualify as taxes.

2.2.3. Forms of earmarking

Although the notion of earmarking appears straightforward at first glance, it may appear in several variations. One of the distinctions drawn in the literature is between the so-called "strong earmarking" and "weak earmarking". Strong earmarking occurs when tax revenue directly determines the funding allocated to a specific public service.[404] Thus, „narrow base and narrow purpose, amongst other features, demonstrate strong earmarking. "[405] Taxes on gasoline and taxes on motor vehicles, which are used to fund highway infrastructure, are an example of strong earmarking. Another example can be found in the contributions to social security and unemployment insurance funds.[406] On the other hand, weak earmarking, according to Kotha and Talekar, can be observed in the following three cases: (i) applying a narrow tax base to a broad purpose, (ii) applying a broad tax base to a narrow purpose, and (iii) applying a broad tax base to a broad purpose.[407] For example, a tax imposed on fuel earmarked for the general purpose of technological development falls into the „weak" earmarking category.

Moreover, „earmarking may be applied in a strong or substantive sense or a nominal sense. In the strong case, revenue determines expenditure, or revenue must match expenditure, and there may be associated referenda on amounts of spending and the tax rate. In the weak case, earmarking is purely formal, undertaken to make the system more transparent. "[408]

Another basis for differentiating forms of earmarking, as discussed in the literature, is the nature of the funding source assigned to the earmarked objective. Earmarks can be categorised as either full or partial. A full earmark indicates that the earmarked revenue is the

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[403] See *infra* sec. 2.3.
[404] Margaret Wilkinson, "Paying for public spending: is there a role for earmarking?" *Fiscal Studies* 15, no. 4 (1994): 119.
[405] Kotha and Talekar, *supra* note at 392, at 101.
[406] William McCleary, "The Earmarking of Government Revenue: A Review of Some World Bank Experience" *The World Bank Research Observer* 6, no 1 (1991): 82.
[407] *Ibid.*
[408] Wilkinson, *supra* note 404, at 19.

sole source of funding for the program, while a partial earmark allows the parliament to supplement the earmarked funds with additional financial resources.[409]

Another categorisation of earmarking differs between political and budgetary earmarking. "Budgetary earmarking means that the revenues have a clear separation from the state budget; political earmarking means that a law declares where the revenues go without a separate budgetary structure."[410] The former type of earmarking could also be understood as paying for public expenditures through separate funds.

The aforementioned forms describe the main variations of earmarking within national fiscal systems, but they might be less suited in the context of fiscal federalism in the EU, where revenues are generated, collected, and allocated across different levels of government. Moreover, national and supranational level of government each possess different competences. The interaction between these levels results in variations of earmarking that cannot be explained by the mentioned typologies. For this reason, it becomes useful to distinguish between earmarking that occurs at a *single* level of authority and earmarking that operates *across* levels, involving both Member States and the EU itself.

Within the framework of EU fiscal federalism, earmarking can be conceptually divided into two distinct categories: single earmarking and double earmarking. The distinction is primarily of a legal nature, as it reflects the level(s) at which decisions on the earmarking of a levy are made. Under single earmarking, the revenue is dedicated to a specific purpose by either the national or EU legislator, but never by both. Consequently, earmarking occurs at a single level of government. An illustrative example is provided by the coal and steel levy in the European Community for Coal and Steel (hereinafter: ECSC). Namely, this levy was never a part of the Member States' budget, since it flowed directly to the ECSC. At this level, it was earmarked for administrative expenditure of the Community,[411] the non-repayable aid towards readaptation, loans raised by the High Authority and the promotion of technical and economic research.

Conversely, double earmarking refers to a more complex legal arrangement in which the same levy is earmarked at both the national and EU levels. This means that, firstly, national legislation provides the legal basis for collecting the levy and earmarking it for transfer to the

[409] Joel Michael, "Earmarking State Tax Revenues," *Policy brief: Research Department Minnesota House of Representatives* (2015): 3.
[410] Isabel Haase et al. "The use of auctioning revenues from the EU ETS for climate action – An analysis based on eight case studies," *Ecologic Institute*, Berlin (2022):4.
[411] Art. 50 of the ECSC Treaty relates to the administrative expenditure provided. The latter is an umbrella term, encompassing the administrative expenditure of the ECSC institutions, including the High Authority, the Consultative Committee, the Court, the Assembly and the Council.

EU budget. Secondly, a corresponding EU legislative act designates the final use of the funds within the EU budget for a specific policy objective or program. Double earmarking thus represents a vertically coordinated form of revenue assignment, requiring two-tier legal alignment across governance levels. EU ETS serves as a normative example of double earmarking. At the first level, revenues generated from the auctioning of allowances are earmarked at the national level for environmental and climate-related objectives by national legislation. At the second level, a portion of these revenues is transferred to the EU budget, where it is earmarked again, this time under EU law, for specific purposes, such as financing the Social Climate Fund or the Modernisation Fund.[412] This leads to the conclusion that, double earmarking could help to clearly connect revenue raising and expenditure at the EU level, thus contributing to more efficient fiscal management in the EU.

2.2.4. Advantages of earmarking

Earmarking could be analysed in the context of justification for introducing a new tax. Although the literature on earmarking is sometimes polarised, it has been observed that earmarking has significant potential for tax policymakers. One of its advantages was analysed in the 1960s by James M. Buchanan.[413] He examined earmarking through the lens of the participation of individuals in collective decision-making, stating that earmarking enables citizens to participate separately in various public expenditure decisions in their roles as voters, taxpayers, and beneficiaries. Their participation could be direct or through their legislative representatives. Through earmarking, citizens can independently "vote" on allocating funds for specific purposes.[414] The latter might be the reason why some academics concluded that „earmarking reduces resistance to paying taxes; there was no backlash to the 1983 USA federal gasoline tax increase, which was "paid to fix roads," nor to the repeated increases in USA payroll taxes which fund social security."[415]

Against this background, it is important to mention empirical research on the influence of labelling and earmarking on the willingness to pay contributions conducted in Germany on 542 study participants during 2008 and 2009. The research confirmed that willingness to pay contributions depends on their labelling.[416] Furthermore, it confirmed that „the individual willingness to contribute to the education allowance is significantly higher if the study

[412] For the EU ETS legal architecture, see *infra* sec. 2.4.2.2.
[413] Buchanan, *supra* note 389.
[414] Buchanan, *supra* note 389, at 458.
[415] Wilkinson, *supra* note 404, at 122.
[416] Hundsdoerfer et al., *supra* note 396, at 9.

participants were informed about the specific appropriation for the contribution."[417] Vogel conducted another interesting empirical study in Sweden during the 1970s, motivated by the high level of tax evasion at the time. The study's results showed that willingness to evade taxes decreased when tax payment was accompanied by a specific benefit or service in return.[418] More recently, a focus group study was conducted in Norway in 2010, with the aim of exploring the public opinion on environmental measures and taxes. The study concluded that participants expressed a strong preference for linking revenue and expenditure. It appeared that participants valued policies that made sense to them. This is further supported by the fact that participants acknowledged some problems with earmarking but still strongly supported it.[419]

Another empirical study regarding earmarking and taxation was conducted in the USA in 2019. More precisely, Hemel and Porter examined how earmarking tax revenues for specific uses affects public support for taxes. Their study showed that earmarked taxes gain more support when they achieve "source-use alignment," drawing from consumer fairness norms.[420] Thus, the results of their study strongly support earmarking when it is source-use aligned. More precisely, source-use alignment refers to the logical connection between a tax and its designated spending purpose, making the earmark feel fair, similar to a consumer transaction. This applies when taxes follow norms such as "you get what you pay for" (e.g., gasoline tax to fund highways that drivers use) or "you break it, you buy it" (e.g., alcohol tax funding anti-drunk driving enforcement to fix harms caused).[421]

In her article examining the benefits of earmarking from a tax law perspective, Camic concludes that earmarking can enhance the stability and predictability of the tax system, leading to increased revenue generation.[422] She supports this statement with the argument that earmarking makes taxation more transparent since earmarked taxes encompass a precommitment, thus binding future generations to these taxes and the programs they support. The latter gives the tax system stability and predictability that general revenue taxes cannot achieve because they are often subject to changes due to different budgetary politics. Earmarked taxes connect revenues to specific spending purposes, often over multiple generations. They

[417] Hundsdoerfer et al., *supra* note 396, at 24.
[418] See in detail Joachim Vogel, "Taxation and Public Opinion in Sweden: An Interpretation of Recent Survey Data," *National Tax Journal* 27 no. 4 (1974): 499- 513.
[419] See Steffen Kallbekken and Marianne Aasen, "The demand for earmarking: Results from a focus group study," *Ecological Economics* 69 (2010): 2183–2190.
[420] Danil Hemel and Ethan Porter, "Aligning taxes and spending: theory and experimental evidence," *Behavioural Public Policy* 6, no. 3 (2022): 464–484.
[421] Hemel and Porter, *op. cit.*, pp. 478-480.
[422] Susannah Camic, "Earmarking: the potential benefits," *Pittsburgh Tax Review* 4, no. 1 (2006): 83.

involve much less uncertainty and do not depend on changes in a leading political party.[423] In other words, „the distinguishing feature of earmarking, at least in its pure form, is the desire to protect a specific category of expenditure from the political process by linking it to a particular source of revenue.“[424] McCleary explores a similar argument in favour of revenue raising. In his opinion, earmarking can lead to revenue increases based on a two-tiered approach. First, it connects taxing and spending, thus overcoming the resistance towards tax obligation. Second, the stability of earmarked funding decreases the administrative costs, which may lead to quicker completion of projects and, subsequently, to higher revenue.[425]

Another argument in favour of earmarking is that it can enhance the stability of public finance. More precisely, since earmarking establishes a connection between revenue and expenditure, it helps in aligning current spending with current revenue, thereby reducing the reliance on debt financing.[426]

2.2.5. Disadvantages of earmarking

Notwithstanding the potential benefits, earmarking can also be accompanied by certain budgetary or constitutional concerns that require closer examination. Kotha and Talekar pointed out that the unavailability of earmarked funds for any other expenditure, besides their designated purpose, increases pressure on remaining financial resources during urgent situations. In addition, earmarked funds are pledged in advance, which means that they are not adjusted in line with inflation levels, necessitating additional budgetary allocations.[427] Opponents of earmarking in the US think that political leaders intentionally bind their successors to rules or policies to remove certain decisions from the democratic process. They argue that earmarking could restrict future choices. They often support this view by highlighting that each generation should have the same freedom to act as previous ones and control its resources.[428]

Specific critique, which is, however, applicable in the US legal context, was articulated by Jackson.[429] In his view, earmarking diminishes the flexibility of public expenditure, as well as its oversight. It may restrict the government's ability to adapt to changing economic conditions. This criticism strikes at the core of earmarking within the US legal system, as it

[423] Camic, *op. cit*., at 77.
[424] McCleary, *supra* note 406, at 82.
[425] *Ibid.*
[426] Jeremy Jackson, “Tax earmarking, party politics and gubernatorial veto: theory and evidence from US states,” *Public Choice* 155 (2013): 3.
[427] Kotha and Talekar, *supra* note 403, at 103.
[428] Camic, *supra* note 422, at 64 – 65.
[429] Jackson, *supra* note 426, at 4.

prevents the legislature from evaluating the relative merits of state programs concerning available revenue during each budget cycle. For this reason, earmarking can be considered an inefficient method of allocating funds to projects, regardless of the potential benefits it may offer. [430]

In addition, another objection to the use of earmarking, based on the US experience, is that it might be used for pork-barrel spending. This vivid phrase is a synonym for "government projects or appropriations yielding rich patronage benefits."[431] Put differently, it is the practice of "targeted spending to benefit some interest group or jurisdiction. "[432] Members of Congress were often at the centre of public attention because of incidents related to earmarking, which sometimes led to convictions for bribery. The latter left a bitter taste for earmarking in the public and in academia. An analysis by Ferejohn in the 1970s revealed three possible reasons why members of the US Congress often relied on earmarking. First, such projects showcased the member's legislative effectiveness. Second, once pork-barrel projects secure a member's electoral position, they can act more independently on other issues. Third, pork-barrel spending signals electoral security, thus deterring political challengers. However, this critique towards earmarking should be taken with a grain of salt since it is tied to the specificities of the US legal system .[433]

Finally, a relative disadvantage of introducing earmarked taxes is that such a policy must be reconciled with the principle of budgetary universality. More precisely, this principle requires that all public revenues flow into a single budget and that all expenditures are made from that budget without dedicating revenues for specific expenditures.[434] Although earmarking is not inherently incompatible with this principle, it does introduce an additional layer of justification in the design of a fiscal instrument. However, there are examples of different approaches to this need for reconciliation.

In Germany, the BVerfG decided that earmarking can be consistent with the budgetary

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[430] Jackson, *supra* note 426, at 4.

[431] *Merriam-Webster.com Dictionary*, s.v. "pork barrel," accessed May 30, 2025, https://www.merriam-webster.com/dictionary/pork%20barrel.

[432] Jackson, *supra* note 426, at 1.

[433] According to Erik J. Engstrom and Georg Vanberg, „conversations with congressional staff suggest that this is how the process (*of earmarking*, op.a.) actually unfolds: A total budget for earmarks is set, it is divided among majority and minority parties, and party leaders are then given discretion in distributing these resources among their respective members. Members of the spending committees have been forthright about this practice. This system allows certain congress members to earmark funds in areas where they are hoping to obtain votes for their next mandate." See more: Erik J. Engstrom and Georg Vanberg, "Assessing the Allocation of Pork: Evidence From Congressional Earmark," *American Politics Research* 38, no. 6 (2010): 959-985.

[434] OECD, "The Legal Framework for Budget Systems: An International Comparison," *OECD Journal on Budgeting* 4, no. 3 (Paris: OECD Publishing, 2005): 133.

principle of universality, which requires all revenues to be used to collectively fund all public expenditures. The BVerfG has upheld the constitutionality of earmarked taxes.[435] By contrast, in Croatia, earmarking practices exist without attracting significant constitutional or doctrinal scrutiny, although the Budget Act explicitly prescribes the principle of universality.[436] The latter might stem from the fact that earmarked revenues in Croatia firstly flow into the state budget before being allocated to designated state-owned entities, thereby formally preserving the universality requirement.[437] Italy is another example of a state with an explicitly prescribed principle of budgetary universality, but it also allows for exceptions, in the same Article prescribing this principle.[438] In this sense, the need to reconcile earmarking with budget universality does not amount to a substantial disadvantage, but it does represent a design constraint that must be addressed transparently. Thus, Italy, Germany and Croatia recognise the principle of budgetary universality in their legal systems. However, each has developed a different approach to reconciling this principle with the practice of earmarking. These examples demonstrate that, although the principle of universality is widely shared, the mechanisms used to accommodate earmarking vary, illustrating the flexibility of budgetary law when confronted with a certain policy need.

2.3. Comparative experiences with earmarking in light of fiscal federalism

Fiscal federalism has been widely studied by both legal scholars and economists, which is unsurprising given that "nearly 40 % of the world's population lives in a constitutional system with a federal structure."[439] Considering this, it is impossible to develop a universal definition of fiscal federalism that captures all its possible forms. In a broad sense, fiscal federalism provides a normative framework for allocating functions across government levels and identifying the appropriate fiscal instruments to implement them.[440] A central dilemma, as identified by Oates, is "which functions and instruments are best centralised and which are best placed in the sphere of decentralised levels of government."[441] This question lies at the heart of fiscal federalism, encompassing not only the assignment of expenditure responsibilities and taxing rights but also the mechanisms for managing fiscal imbalances.[442] In this vein, it also

[435] See *infra sec.* 2.3.5.
[436] The Budget Act (*Zakon o proračunu*), Article 12, Official Gazette (*Narodne novine*) no. 144/21.
[437] See *supra* sec. 2.3.2.
[438] Article 24, Law 31 December 2009, n. 196. Government Accounting and Public Finance Act.
[439] Claudio Sacchetto, "Analysis of Fiscal Federalism from a Comparative Tax Law Perspective" in *Tax Aspects of Fiscal Federalism*, ed. Gianluigi Bizioli and Claudio Sacchetto (IBFD: Amsterdam, 2011), 4.
[440] Wallace E. Oates, "An Essay on Fiscal Federalism," *Journal of Economic Literature* 37, no. 3, 1121.
[441] Oates, *op. cit.* at 1120.
[442] Richard M. Bird and François Vaillancourt, "Introduction and Summary*,"* in *Perspectives on Fiscal Federalism*, ed. Richard M. Bird and François Vaillancourt (World Bank Institute, Washington D.C., 2006) 2-3.

touches upon the solution for vertical imbalances, being mismatches between the revenue-raising capacities and expenditure obligations of different government levels.[443] On the other hand, fiscal federalism also seeks a solution for horizontal imbalances, that is, disparities in needs and fiscal capacities among units at the same level of government. Fiscal federalism also encompasses decisions about borrowing powers, by determining which level of government may incur debt, under what rules, and with what oversight. The effectiveness of fiscal federalism ultimately depends on the political and institutional systems in place to resolve disputes and manage these complex fiscal relationships.[444]

In addition, Vanistendael examined fiscal federalism through the lens of public services. He argues that its core "originates in the fact that from a financial point of view the production and consumption of public services has four different aspects relevant to fiscal federalism: (i) the decision to provide a service; (ii) the production of the public service; (iii) the payment for the service; and (iv) the consumption of the service."[445] Furthermore, he also noted that fiscal federalism encompasses other government functions, which go beyond the supply of public services.[446]

Against this background, this section will compare earmarked taxes in selected EU Member States. The analysis builds upon previous historical and socio-political approaches, which are necessary to obtain a broader perspective of the selected Member States' legal systems.[447] The analysis includes Germany and Italy, two states with long-standing and influential legal traditions shaped by decades of federal and regionalised governance. Additionally, it examines the former Yugoslavia, as two current EU Member States inherited their legal systems from this federal state, and its peculiarities might represent an interesting addition to the analysis. The aim is to identify common features in the use of earmarked taxes within federal and regionalised constitutional frameworks.

2.3.1. Former Yugoslavia

It is interesting to start the analysis from the predecessor of the former SFRJ, that is, the Kingdom of Yugoslavia.[448] During the brief existence of the mentioned state, several earmarked taxes existed. The purpose of spending the revenue from such taxes was connected to the fact

[443] *Ibid.*
[444] Richard M. Bird, "Fiscal Federalism in Russia: A Canadian Perspective." *Public Finance and Management* 3 (2003): 419-459.
[445] Frans Vanistendael, "*European Union,"* in *Tax Aspects of Fiscal Federalism*, ed. Gianluigi Bizioli, and Claudio Sacchetto (IBFD: Amsterdam, 2011), sec. 2.1.
[446] *Ibid.*
[447] See *supra* sec. 2.3.
[448] See *supra* sec. 2.3.1.

that the state was constituted following World War I. Thus, one example is the so-called „tax for people with disabilities“ (*invalidski porez*), which was strictly earmarked for the settlement of disability benefits. This tax was paid from the beginning of 1920 to the end of 1928.[449] Taxpayers were, in fact, all taxpayers of direct taxes from the entire territory of Yugoslavia, including those temporarily exempted from paying direct taxes. Tax rates were progressive, between 10 % and 20 %. Another example of an earmarked tax was the „military tax “ (*vojnica*). It was introduced in September 1929 as a surtax on direct taxes.[450] The obligation to pay military service tax was imposed on all citizens of the Kingdom of Yugoslavia from the age of twenty to the age of fifty who did not serve in the army and navy and whose service in the army and navy had not been postponed based on the law. Tax exemption was provided for persons receiving disability benefits and for individuals who are unintentionally unfit for military duty. The revenue was flowing into a special fund.[451]

Following the establishment of socialist Yugoslavia after the Second World War, the constitutional and fiscal framework underwent a significant transformation. As mentioned above, the first major step toward greater fiscal autonomy for Yugoslavia's federal republics followed the adoption of a new Constitution in 1964. Further autonomy was granted with the 1974 Constitution, which allowed both federal and republic-level tax legislation.[452] Against this background, the SFRJ Constitution explicitly allowed the introduction of a special earmarked sales tax or other taxes earmarked specifically to ensure the stability of an already well-financed army.[453] On the eve of the forthcoming dissolution and war, at the end of 1989, the possibility of introducing a special sales tax was realised by passing the law on temporary measures on a special federal sales tax in 1990. The mentioned taxes included the special federal product sales tax and the special federal service charge tax.[454]

In addition, the Constitution of the Federal Republic distinguished between two categories of public goods. These different public needs were also financed by different sources. The constitution defined general public goods as the expenditures for the legislative, executive and judiciary branches, expenditures for the defence of the state and social support for the disabled and victims of World War II. The general public's needs were funded through taxes

[449] Jelčić and Bejaković, *supra* note 296, at 41.
[450] Interestingly, another state-level surtax was the so-called „bachelor tax,“ paid by men older than 30, and younger than 60 years of age who were not married, or who were divorced.
[451] Jelčić and Bejaković, *supra* note 296, at 75.
[452] See *supra* sec. 2.1.2.3.3.
[453] Jelčić and Bejaković, *supra* note 296, at 121.
[454] Jelčić and Bejaković, *supra* note 296, at 121.

and fees.[455] While general public needs encompassed public goods of national significance, common public needs related primarily to the provision of services and facilities at the local community level. Common public goods were provided by the Self-governing interest communities[456] (*Samoupravna interesna zajednica, SIZ).*[457] The latter reflects that "the ideologues of the Yugoslav self-management system attached special importance to the commune as the basic unit of the socialist self-managing system."[458] Self-governing interest communities were established for the three groups of common public goods: i) education, culture, physical health and science, ii) social care, child care, health insurance, pension insurance, health protection and employment, iii) housing projects, electricity industry, water supply system, and traffic infrastructure.[459] These communities were financed through the earmarked contributions of individuals who were considered users of services provided by the communities.[460]

More precisely, the so-called "voluntary contribution" (*samodoprinos*) was an earmarked revenue introduced in 1946 and remained in use until the dissolution of the state. This instrument was specific because of its 'voluntary' nature. Namely, the central difference between this revenue source and taxes was that a decision on self-contribution was not the government's decision but a direct expression of citizens' will through a referendum.[461] By deciding to introduce voluntary contributions in their local communities, citizens would accept the voluntary obligation to set aside funds for a certain period of time, which would finance the local needs for which the contribution was introduced. Self-contribution could be imposed only

[455] In the Federal Republic of Croatia, the revenue for general public goods on the federal-state level was gathered by 50 % of the general tax on the sales of goods and services and from the tax on the income of Organisations of Associated Labour (*Zajednice udruženog rada*). In this regard, organisations of Associated Labour were economic and non-economic organisations which carried out their activities with socially owned resources and were organised on a self-management level." Definition was found in the following contribution: Jovan Đorđević "Remarks on the Yugoslav Model of Federalism, Publius, Federalism and Community: A Comparative View," *Publius:the Journal of Federalism* 5, no. 2 (1975): 88.

[456] Article 51 of the SFRY Constitution (1974) prescribed as follows: "Self-managing interest communities are established by workers, either directly or through their self-managing organisations and communities, to meet their personal and collective needs and interests, and to align work in the area for which the community is established with those needs and interests. Rights, obligations, and responsibilities in the mutual relations within the self-managing community are regulated by the self-managing agreement on its establishment, its statute, and other self-managing acts. To meet their needs and interests in self-managing communities of interest, working people pay contributions to these communities from their personal incomes and from the income of the basic organizations of associated labor, in accordance with the purpose and objectives served by these funds."

[457] Juraj Hrženjak, *Moja prava, moje dužnosti: pravni savjetnik* (Zagreb: Grafički Zavod Hrvatske, 1979) 557.

[458] Mladen Ostojić, "Yugoslav Self-Management as a Model of Participatory Municipal Governance? Local Communities in Belgrade in the 1980s" in *Participatory Democratic Innovations in Southeast Europe*, ed. Ivana Fiket et al. (London, Routledge: 2024), 176.

[459] Hrženjak, *supra* note 458, at 558.

[460] Before the constitutional reform in 1974, these services were also financed from tax revenues.

[461] Jelčić and Bejaković, *supra* note 296, at 128.

on the lowest level of government, which is the level of local communities.[462] It was envisaged as a temporary source of revenue for funding a specific local expenditure decided by citizens. The tax obligation was not exclusively monetarybecause it was possible to fulfil the obligation by providing certain services.[463]

2.3.2. Croatia

Croatia is a unitary state with two levels of sub-national government, counties at the regional level and municipalities and towns on the local level.[464] The most prominent earmark in Croatia appears on the central level of government, and it is also one of the classic illustrations of its practical use. In Croatia, a portion of the excise duties levied on fuel is earmarked for two state-owned companies. Specifically, part of the excise revenue is allocated to Hrvatske ceste d.o.o., a limited liability company for the management, construction and maintenance of state roads.[465] Furthermore, another part of the revenue is allocated to Hrvatske autoceste d.o.o., a limited liability company established to operate, build and maintain all motorways except for those managed by concession companies.[466] Both entities are 100 % owned by the Republic of Croatia, and their financial plans are ultimately incorporated into the State Budget. These two entities are extra-budgetary users of the State Budget.[467]

The earmark itself as a legal provision is not to be found in any of the legal acts concerning taxation or the budget. Instead, one must look into the Roads Act and the Railways Act. Firstly, Article 91 of the Roads Act prescribes that the compulsory levy for roads is paid per litre of excise tax on energy products, namely: EUR 0.03 to the account of Hrvatske autoceste d.o.o. and the amount of EUR 0.11 to the account of Hrvatske ceste d.o.o.[468] However, this amount first goes to the general state budget, and then it is subsequently allocated to the

[462] Ostojić, *supra* note 459, at 174-175.
[463] Hrženjak, supra note 458, at 585.
[464] See Article 1 and Article 128 of the Constitution of the Republic of Croatia.
[465] See more on the company's official website: https://hrvatske-ceste.hr/en.
[466] Hrvatske autoceste (2026). About us. https://www.hac.hr/en/about-us.
[467] More precisely, pursuant to Article 4 of the Budget Act, extra-budgetary users are institutions, companies, and other legal persons that are not budgetary users, but which individually or cumulatively meet the following conditions: i) the Republic of Croatia and/or local or regional self-government units are their sole founders or owners; the Republic of Croatia or the relevant local/regional units exercise decisive influence over their management; and they are included in the general budget concerning their method of financing; ii) according to the rules of the European Union statistical methodology (ESA 2010, established by Regulation (EU) No. 549/2013 of the European Parliament and of the Council), they are classified within the general government sector. Legal persons that meet both conditions fall into the first category of extra-budgetary users (Group I). See Registar proračunskih i izvanproračunskih korisnika, RKPFI portal. Available at: https://rkpfi.drzavna-riznica.hr/PORTAL/Rkp
[468] Article 19, Roads Act (*Zakon o cestama*), Official Gazette (*Narodne novine)* no. 84/2011, 18/2013, 22/2013, 54/2013, 148/2013, 92/2014, 110/2019, 144/2021, 114/2022, 114/2022, 4/2023, 133/2023, 156/2025.

mentioned companies.[469] Nevertheless, there is another purpose of spending on excise duties on fuel in Croatia. Thus, the Railways Act prescribes that a EUR 0.03 per litre of excise duty charged on fuel will be paid from the State Budget to the account of the railway infrastructure manager.[470] In Croatia, this function is entrusted to another State-owned company, Hrvatske željeznice d.o.o. Furthermore, the revenue collection system is the same as in the first example. Revenue first goes into the state budget and is subsequently allocated to the account of the railway infrastructure manager.[471]

Thus, a conventional example of earmarking in Croatia concerns the financing of road infrastructure. Through the payment of excise duties on fuel, motor vehicle drivers contribute directly to the budgets of two companies entrusted with the task of road maintenance. The underlying assumption is that individuals who own and use cars are also primary users of road infrastructure. The latter is a diluted version of the benefit principle: those who are presumed to benefit from a public good are also those who contribute to its financing. What is more atypical, however, is that the same fuel excise contributes not only to road infrastructure but also to the financing of the railway system. In this case, the presumed link between the taxpayer and the benefit received disappears. Nevertheless, such an arrangement highlights that earmarking in practice does not always rest on a strict or demonstrable benefit principle. It may also serve broader policy objectives, such as supporting public transport as a public good.

Following the adoption of EU Regulation 2022/1854,[472] Croatia introduced an excess profit tax. In the Excess Profit Tax Act (*Zakon o dodatnom porezu na dobit)* the revenue is formally earmarked for measures to assist socially disadvantaged citizens, including retirees and other vulnerable groups in society.[473] However, besides this particular provision in the mentioned Act, no other sources are available to substantiate the earmarking of these funds and their expenditure for the prescribed purposes.

[469] This conclusion is based on Article 91(1) of the Roads Act which explicitly prescribes that the fee for financing the construction and maintenance of public roads from Article 86, paragraph 1, point 11 of this Act is paid from the state budget to energy producers.
[470] Article 18, Railways Act (*Zakon o željeznici*), Official Gazette (*Narodne novine*) no. 32/2019, 20/2021, 114/2022.
[471] Similar to the formulation in Article 91 of the Roads Act, this statute in Article 18(3) also prescribes that „The fee from paragraph 1, point 1 of this article is paid from the state budget per litre of excise tax on energy products, of EUR 0.03 to the account of the infrastructure manager."
[472] For a more detailed explanation about Regulation 2022/1854 see *infra* sec. 4.5.
[473] Act on Extra Profit Tax (*Zakon o dodatnom porezu na dobit*), Official Gazzette *(Narodne novine*) no. 151/2022, 9/2023.

2.3.3. Slovenia

Slovenia is also a unitary state. Its Constitution prescribes two tiers of local self-government, municipalities and regions (*pokrajine*). An example of earmarking appears at the level of municipalities as the tourist tax, prescribed in the Promotion of Tourism Development Act.[474] Firstly, it is necessary to reflect on the translation of this term from Slovenian *"turistična taksa"* to tourist tax. Although its nomenclature in Slovenian would not suggest that it is not a tax, Slovenian authors used the term tax for this levy.[475] Moreover, *turistična taksa* is classified as a tax revenue in the economic classification of the Slovenian budget.[476]

Municipalities in Slovenia have a certain degree of fiscal autonomy regarding this tax, including the decision whether to introduce the tax, to determine who is liable, and define limited exemptions. The Act sets a maximum rate of EUR 2.50 per overnight stay,[477] and the revenue is strictly earmarked for local tourism development. The spending purposes of the revenue include tourism information services, the maintenance of tourist infrastructure and public areas, promotion and marketing of the local offer, preservation of cultural and natural heritage, and the organisation of events.[478]

In addition to the tourist tax, accommodation providers must also charge a promotional tax, set at 25 % of the tourist tax. It was introduced in 2018 by the amendments to the Promotion of Tourism Development Act, and it is likewise earmarked. "The promotional tax is collected simultaneously with the tourist tax and is transferred by the municipalities to the national agency's account eight days after the tourist tax for the past month has been collected."[479] Its revenue constitutes a direct funding source for the national tourism agency responsible for planning and marketing Slovenia's tourism offer.[480]

Finally, Slovenia also transposed Council Regulation 2022/1854 through the Act on Emergency Intervention to Address High Energy Prices *(Zakon o nujnem posredovanju za*

[474] Zakon o spodbujanju razvoja turizma (ZSRT-1) Official Gazette (*Uradni list RS*) no 13/18, 100/25.
[475] Irena Bačlija Brajnik and Marjetka Rangus, „Local tourism development: earmarked taxes for enhancing tourism in Slovenian municipalities," in: *Contemporary issues in tourism*, ed. Maja Borlinič and Milica Rančić Demir (Maribor: University of Maribor, University Press, 2022), 5; Irena Bačlija Brajnik, Vladimir Prebilič and Luka Kronegger, "Explaining strategies in setting own local taxes in Slovenia," *Lex Localis-Journal of Local Self-Government* 20, no.1 (2022): 239-257.
[476] Ministrstvo za finance (2025). Ekonomska klasifikacija (skupine kontov, podskupine kontov, konti, podkonti) Available at: ekonomska_klasifikacija_julij25.pdf .
[477] Article 17, Zakon o spodbujanju razvoja turizma (ZSRT-1) Official Gazette (*Uradni list RS*) no. 13/18 in 100/25.
[478] Brajnik, Prebilič, and Kronegger, *supra* note 486, at 250.
[479] Brajnik and Rangus, *supra* note 476, at 14.
[480] Brajnik and Rangus, *supra* note 476, at 14.

obravnavo visokih cen energije).[481] The Act introduces a cap on market revenues from electricity generation, set at EUR 180/MWh, with any surplus treated as windfall earnings and transferred to the state budget. It also establishes a solidarity levy on companies in the fossil fuel sector. The revenue collected was earmarked in the same legislative act for different purposes, including, but not limited to, financial compensation for reducing consumption during peak hours, financial assistance to vulnerable groups of electricity consumers, promotion of investments by final electricity consumers in technologies for reducing GHG emissions, and using renewable energy sources.[482]

2.3.4. Italy

When it comes to earmarking, various examples of its use can also be observed in Italy. Before diving into an analysis of earmarking examples in Italy, it is necessary to explain the linguistic use of certain terms. The following section will address various forms of dedicating certain public levies for specific spending purposes, which, in Italian, are gathered under the term *tributi di scopo.* Thus, the following section will address examples which may go beyond the narrow understanding of the English term "earmarked taxes". The latter is tightly interconnected with the Italian tripartite understanding of the term *tributi*, which encompasses not only taxes (*imposte)*, but also *tasse*, as explained in the previous section.[483]

One of the particularly interesting instruments bears an equally interesting name, "*cinque per mille"*. This is the name of the instrument introduced in 2005.[484] The term "five per thousand" refers to the method of allowing taxpayers to allocate 0.5 % of their personal income tax to support non-profit organisations, universities, and scientific and medical research.[485] The amount of tax based on a specific declaration of the taxpayers' will becomes earmarked for a certain purpose. Consequently, the State's tax revenue is reduced. This part of the revenue is withheld by the State, which is obliged, as *ex-lege* agent, to pay to the subjects indicated by the taxpayer himself. The financing of said subjects is, therefore, directly attributable to the taxpayer's will. The Italian Constitutional Court holds that the amount of revenue collected by the *cinque per mille* loses the nature of tax-based revenue.[486] This is quite

[481] Zakon o nujnem posredovanju za obravnavo visokih cen energije (ZNPOVCE) Official Gazette (*Uradni list RS*) no. 158/22.
[482] Article 16, Zakon o nujnem posredovanju za obravnavo visokih cen energije (ZNPOVCE) Official Gazette (*Uradni list RS*) no. 158/22.
[483] See *supra* sec. 2.1.2.4.
[484] Ricci, *supra* note 55, at 213.
[485] Agenzia delle Entrate: Glossary. Available at: https://www.agenziaentrate.gov.it/portale/web/english/nse/glossary#C.
[486] Ricci, *supra* note 55, at 214.

a strict interpretation of what is necessary for revenue to be regarded as tax-based. The Italian Constitutional Court holds that a constitutive element of a tax is that it must not be destined to cover specific expenses.

A similar example from Italy is a measure "*otto per mille"*. Similar to the aforementioned measure, *otto per mille* is the portion of the personal income tax revenue each taxpayer can allocate for one of the proposed purposes. A taxpayer can make their choice when filing their income tax return. The offered spending purposes are as follows: i) hunger in the world, ii) natural disasters, iii) school building, iv) assistance to refugees, v) cultural heritage.[487] Despite the Constitutional Court's interpretation of the legal nature of *cinque per mille* and *otto per mille*, it is uncontested that both measures represent examples of earmarking.

An example of earmarking at the level of provinces is a tax on the sound emissions of civil aircraft (*l'imposta regionale sulle emissioni sonore degli aeromobili*) introduced in 2000.[488] The base is calculated by considering the number of landings and take-offs, the weight of the aircraft, and its noise level certified according to international certification rules. The revenue flows into the budget of regions and provinces, but the state determines the purposes for which it must be spent. The allocation of tax revenue is carried out internally by each region and autonomous province based on the remediation and noise pollution reduction programs submitted by the municipalities in the airport area and developed using data collected from the noise monitoring systems implemented in accordance with the decree of the Minister of the Environment of May 20, 1999.[489] More precisely, the revenue should be invested in noise monitoring systems and noise abatement programmes.[490]

Another example of earmarking present at the mentioned level of government is the provincial levy for the exercise of environmental protection (*il tributo per l'esercizio di funzioni di tutela, protezione ed igiene dell'ambiente,* TEFA). The revenue collected should serve the provinces or Metropolitan Cities to exercise their administrative functions regarding environmental protection, including: organisation of waste disposal, the detection, regulation and control of discharges and emissions and the protection and enhancement of the soil.[491] The levy is determined, starting from 01 January 2020, at an amount equal to 5 % of the levy connected to the collection and disposal service of solid urban waste established by each

[487] Governo Italiano, Presidenza del Consiglio dei Ministri, *Che cos'è l'otto per mille a diretta gestione statale* Available at: https://www.governo.it/it/dipartimenti/dip-il-coordinamento-amministrativo/dica-att-8x1000-cosae/18318 .
[488] Law No. 342 of 21 November 2000.
[489] Article 90, para 3. Law No. 342 of 21 November 2000.
[490] Ricci, *supra* note 55, at 242 – 243.
[491] Ricci, *supra* note 55, at 257.

Municipality. In essence, it is applied as an additional surcharge on the tax for the collection of solid urban waste. Therefore, it is charged if a person owns premises located in the municipal territory. It is a levy with a specific purpose, which was introduced as part of the solution to fund administrative actions aimed at protecting the environment. Following the interpretation of the Italian Constitutional Court regarding the specific spending purposes of certain revenue sources, it is not surprising that these contributions were classified as a *tributo,* that is, a broad umbrella term which may encompass all compulsory contributions.

Finally, earmarking is present in the Italian system of fiscal federalism also at the level of municipalities. Thus, from January 2007, municipalities can introduce the municipal earmarked tax for public works (*l'imposta di scopo per la realizzazione di opere pubbliche, ISOP*) to fund specific public needs, as defined by the law enacted by the Parliament.[492] When it was introduced, it was prescribed that it could contribute to the financing of public works, but only up to 30 % of the expenses. The competence to decide on the public works to be carried out is confined to the municipalities. It was envisaged to last for 5 years. However, the tax was applied by just twenty municipalities in five years. To give a new impetus to the tax, article 6 of legislative decree no. 23 of 2011 introduced some novelties, such as the extension of public works that can be financed with the tax, the increase in the maximum duration of application of the tax to ten years and the possibility that the tax revenue finances the entire work. Despite these innovations, the application of the tax did not increase.[493] Another example is the "tourist tax" (*imposta di soggiorno).* The mentioned tax was also imposed by the legislative act of the state parliament in 2011, but the municipalities are the authorities which collect the revenue and decide upon certain elements of a tax. More precisely, revenue from the mentioned tax is envisaged to finance interventions regarding tourism, including those in support of accommodation facilities, but also the maintenance, use and recovery of local cultural and environmental assets.[494]

As a result of the adoption of the Council Regulation (EU) 2022/1854 on solidarity contribution, Italy also introduced a tax on extra profit on the national level.[495] However, Italy decided to broaden the scope of such a levy. More precisely, "the Italian solidarity contribution scheme requires a broad range of energy operators – including distributors, resellers and

[492] Legge no. 296, 27 Dicembre 2006.
[493] Simone Bezzolato, *L'autonomia finanziaria degli enti locali. Riflessioni sullo stato di attuazione del federalismo fiscale* (master thesis, Università di Padova, 2022) 33-34.
[494] Bezzolato, *op. cit.* at 34.
[495] Legge no. 197, 29 Dicembre 2022. (State budget for financial year 2023 and multi-year budget for the 2023-2025 period).

importers – to pay an additional tax on surplus revenues generated during the 2022 energy crisis. By contrast, EU law's requirement to introduce such a scheme refers, on its face, only to operators involved in the extraction and refining of raw energy sources, such as oil, gas and coal."[496] Such a broad scope eventually led to a proceeding before the Italian Constitutional Court, which decided to refer a preliminary question to the CJEU to clarify whether the solidarity contribution imposed on energy operators under Law No 197/2022 complies with Council Regulation (EU) 2022/1854.[497] When it comes to earmarking, Italy departed from the explicit earmarking practice observed in Germany and Croatia. Instead, there is only one reference to the spending purpose of this tax. More precisely, Article 1, paragraph 115 of the Law No 197/2022 prescribes that "to contain the effects of rising prices and energy sector tariffs on businesses and consumers, a temporary solidarity contribution is established for the year 2023." This departs from the wording used to define the spending purposes of other earmarked taxes in Italy, which sparked a debate over their legal nature regarding earmarking.[498]

The practice of earmarking in Italy is quite developed. The use of earmarked levies at the regional level is usually already decided by the central government. Municipalities also obtain revenues from taxes, including the earmarked taxes, such as the municipal purpose tax and the tourist tax. Their revenue is to be spent on local projects and public works. Although these sub-national entities collect some revenue from earmarked taxes, the national government plays an important coordinating role in the tax system, as well as in determining how tax revenue will be allocated.

2.3.5. Germany

Although the understanding of the notion of tax in Germany encompasses the element that taxes are not earmarked for specific purposes, there is an exception to this general rule. The justification for such an exception may be observed in the jurisprudence of the German Federal Constitutional Court (BVerfG). According to the BVerfG, earmarking can be consistent with the budgetary principle of universality (non-affectation principle), which requires all revenues to be used to collectively fund all public expenditures. The BVerfG has upheld the

[496] Italian Constitutional Court (2025) Legal summary Order No 21/2025 ECLI:IT:COST:2025:21. Available at: legal-summary-21-of-2025-6878c78aaa7eb.pdf.
[497] Italian Constitutional Court (2025) Legal summary Order No 21/2025 ECLI:IT:COST:2025:21 Available at: legal-summary-21-of-2025-6878c78aaa7eb.pdf.
[498] Matteo Bettoni, "La rilevanza della destinazione finanziaria nel contributo di solidarietà a carico degli operatori del settore energetico istituito con legge di bilancio 2023" *Fiscalità dell'energia* (2023) La rilevanza della destinazione finanziaria nel contributo di solidarietà a carico degli operatori del settore energetico istituito con legge di bilancio 2023 - Fiscalità dell'Energia.

constitutionality of earmarked taxes, affirming that the principle of universality does not hold constitutional status.[499] The latter is also in line with the existing tradition of using earmarked taxes in German history.[500]

The legal basis which allows the earmarking of tax revenue in Germany can be found in Article 7 of the Budget Principles Act (*Haushaltsgrundsätzegesetz - HGrG*). The mentioned Article provides that, notwithstanding the fact that all income sources serve to cover all expenses, revenue may be restricted to use for specific purposes, provided this is required by law or permitted in the budget.[501]

In this regard, the German network of the federal highway is partially financed by earmarked funds. One of the revenue sources for financing the road construction and maintenance is the motor vehicle tax (*Kraftfahrzeugsteuer* or *Kfz-Steuer*).[502] It is a tax which belongs to the federal level of government, and it is used to finance road construction, among other purposes. In addition, "the revenues of the distance-based toll collected on federal motorways and some federal roads must be used for investments in the federal trunk roads. The current funding system provides approximately six billion euros per year for the federal trunk roads. This amount already contains the funds spent from the earmarked toll revenues (EUR 3.31 bn. in 2011)."[503] More precisely, "all expenditures are accounted for in the federal budget, the revenues from the HGV toll are finally distributed by a state-owned transport infrastructure financing agency."[504]

Moreover, another example of earmarking in Germany can be observed in the example of the supplementary levy on income and corporation tax (*Solidaritätszuschlag*).[505] Notwithstanding its nomenclature, Seer states that it is an example of an earmarked tax (*Zwecksteuer).*[506] More precisely, it is an ancillary tax on personal income and on corporate income, with the current rate being set at 5.5 %, flowing to the federal budget. It was introduced

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[499] Tipke & Lang, *supra* note 67, at 41-42.
[500] For example, the aforementioned earmarked tax for national defence levied on property and income before the First World War, or the war time contribution during 1940s. See *supra* sec. 2.1.2.3.1.
[501] Tipke & Lang, *supra* note 67, at 42.
[502] Kraftfahrzeugsteuergesetz 2002 (KraftStG 2002). Available at: https://www.gesetze-im-internet.de/kraftstg/KraftStG_2002.pdf.
[503] Jan Peter Klatt and Thorsten Beckers, "Funding of Federal Trunk Roads in Germany: an Institutional Analysis of Current Deficits and Future Perspectives", (2012), available at: www.uni-weimar.de/fileadmin/user/fak/bauing/professuren_institute/Infrastrukturwirtschaft_und-management/Forschung/Publikationen/2012/klatt_beckers_2012-funding_of_federal_trunk_roads_in_germany.pdf.
[504] *Op. cit.*
[505] Solidaritätszuschlaggesetz vom 24. Juni 1991 (BGBl. I S. 1318), das durch Artikel 19 des Gesetzes vom 25. Februar 1992 (BGBl. I S. 297).
[506] Tipke and Lang, *supra* note 131, at 45.

in 1991, and one of its most important purposes was to support the expenses following the unification of Germany. Having in mind that it is still in force, the doctrine critiques its existence since it was envisaged as an exceptional, and hence temporary mechanism.[507]

A more recent example of earmarking in Germany is related to the environmental efforts. To be more precise, the Single-Use Plastics Fund Act, passed by the German Parliament on 11 May 2023, came into force as of January 2024.[508] The mentioned legislative Act introduced a levy which is imposed on manufacturers of single-use plastic products, based on the type and weight of their products. Their annual contributions will flow into the Single-Use Plastic Fund. The amount of levy will be calculated by multiplying the reported quantities of each product type by the fee rates specified in a statutory order. On the other hand, beneficiaries of this fund will be primarily public waste management authorities such as German municipalities and other public entities. They will be entitled to apply for reimbursement from the fund to cover the costs they incur from managing waste in public spaces.[509]

In 2022, following the Union's adoption of Regulation (EU) 2022/1854, Germany also introduced the excess profit tax.[510] This tax was introduced for the temporary confiscation of excess profits of energy producers caused by the Ukraine crisis, limited to two fiscal years. The revenues flow into the general state budget but are earmarked for measures to financially overcome the energy crisis in accordance with Article 17 of Regulation (EU) 2022/1854.

2.4. The use of earmarking at the EU level

The practice of earmarking is not a novelty in the EU's legal framework. Earmarking has played a recurring role in the evolution of the EU's system of public finance, though often in diverse and fragmented forms. Sometimes, earmarking has been embedded within the EU budget, directing revenues to specific expenditure lines or programs. Furthermore, some levies or funds have been established outside the ordinary budgetary framework to pursue particular policy objectives. This section distinguishes between these two dimensions of earmarking and

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[507] See e.g. Eckart Bomsdorf, "Weg mit dem Soli, her mit einem neuen, transparenten und flexiblen Einkommensteuertarif", *IFO Schnelldienst*, IFO Institut – Leibniz-Institut für Wirtschaftsforschung an der Universität München, vol. 73, no. 1 (2020): 34-39 Retrieved from https://www.proquest.com/scholarly-journals/weg-mit-dem-soli-her-einem-neuen-transparenten/docview/2347768903/se-2 See also: Tipke, and Lang *supra* note 131, at 324.

[508] Björn Enders and Alexander Backe "Introduction of the Single-Use Plastics Fund Act (EWKFondsG): New obligations for companies placing single-use plastic products on the German market" (2023) Available at: https://www.dlapiper.com/en/insights/publications/2023/05/introduction-of-the-single-use-plastics-fund-act-ewkfondsg.

[509] *Op. cit.*

[510] Gesetz zur Einführung eines EU-Energiekrisenbeitrags nach der Verordnung (EU) 2022/1854 (EU-Energiekrisenbeitragsgesetz - EU-EnergieKBG).

provides examples of each before drawing preliminary conclusions about their relevance for the development of the EU public finance legal framework.

2.4.1. Earmarking within the EU budget: previous experiences and current examples

While the EU budget traditionally relies on general funding mechanisms, there have been notable instances where levies were introduced with specific spending purposes. Thus, the first levy to fund the ECSC, marking the beginning of European integration, was earmarked. The main mechanism through which this occurs today is assigned revenue, which allows funds to be allocated directly to defined purposes.[511] These examples will be analysed below.

2.4.1.1. Coal and steel levy

At the beginning of European integration, one of the primary revenue sources of the European Coal and Steel Community (ECSC) was an earmarked levy: the coal and steel levy.[512] Despite being designated a "levy," it satisfies all the previously identified elements of the concept of a tax.[513] This interpretation was acknowledged even by the ECSC institutions, as evidenced by their use of the term "tax" in official documents.[514]

The main goal of the ECSC was elaborated in Article 2 of the ECSC Treaty, which stipulates that the ECSC aims "to contribute, in harmony with the general economy of the Member States and through the establishment of a common market as provided in Article 4, to economic expansion, growth of employment and a rising standard of living in the Member States."[515] To achieve these goals, the ECSC inevitably needed its own resources and a certain degree of fiscal autonomy. Therefore, an entire chapter of the ECSC Treaty was devoted to the financial provisions. It should be pointed out that the ECSC did not depend on the Member States' national contributions. Instead, the ECSC Treaty explicitly enumerated two revenue-raising instruments – levies on the production of coal and steel and contracting loans.[516] ECSC's High Authority, the predecessor of the European Commission, determined the coal and steel levy for each financial year. It was calculated based on the average value of different coal and steel products. Article 50 of the ECSC Treaty provided that the rate should not exceed 1 %

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[511] See e.g. Margit Schratzenstaller et al. "Other Revenue for the EU Budget – Status Quo and Potential," *Intereconomics* 60, no. 5 (2025): 282.
[512] Article 49, Treaty Establishing the European Coal and Steel Community, France, Germany, Italy, Belgium, Netherlands, and Luxembourg, April 18, 1951, 261 U.N.T.S. 140. (Hereinafter: ECSC Treaty).
[513] See *supra* sec. 2.1.1.
[514] European Community Information Service Report: The European Community (Coal & Steel, Common Market, Euratom) - The facts: Politics and economics, institutions, external relations. Second edition, April 1960. [EU Commission - Working Document], 2nd Edition, April 1960, available at: http://aei.pitt.edu/52348/.
[515] Article 2(1), ECSC Treaty.
[516] Article 50, ECSC Treaty.

unless specifically approved by the Council by a two-thirds majority vote. Put differently, the consultation with the Council was necessary only if the levy surpassed the rate of 1 %. The levy was collected from the coal and steel companies, who transferred the funds "to the High Authority via assigned regional banks."[517] To be more precise, the levy started raising revenue in 1953.[518] At the time, the levy was imposed on 574 coal mines and 434 iron and steel enterprises across the Community.[519]

Furthermore, the High Authority of the ECSC was empowered to borrow funds. However, Article 51(1) of the ECSC Treaty explicitly stated that the funds raised through debt were only to be used for granting loans within the markets of the Member States. In addition, the High Authority could also grant loans directly to undertakings.[520] Following the main objective of the ECSC as described in Article 2 of the ECSC Treaty, "over the period from 1952 to 2002, loans were one of the most important activities of the ECSC, allowing enterprises to benefit from better conditions on the financial markets and favouring their modernisation as well as improving the living conditions of workers." [521]

These revenue sources were intended to cover different purposes. The funds raised through the coal and steel levy could be spent for the purposes enumerated in Article 50 of the ECSC Treaty, namely on the administrative expenditure of the Community[522], the non-repayable aid towards readaptation, loans raised by the High Authority and the promotion of technical and economic research.[523] It is necessary to point out that each of the mentioned expenditures is based upon one of the ECSC competences stemming from the Treaty. Thus, the wording of Article 50 of the ECSC Treaty indicates that the coal and steel levy was earmarked.[524] Moreover, it is important to analyse the coal and steel levy against the previously mentioned differentiation between single and double earmarking in the supranational

[517] Johanna Lorraine Breuer "Revisiting Early Fiscal Centralisation in the European Coal and Steel Community in Light of the EU's Transfer Budget" *Politics and Governance* 11, no. 4 (2023): 31.
[518] Although the ECSC Treaty was signed in 1951, the first funds based on its provisions were collected in 1953. Iti s interesting to point out that during the first years of its existence, the rate was 0.9 %. From 1957 onwards the rate started decreasing and came to the lowest in 1962, when it was only 0.2 %. In the last decades of the ECSC Treaty existance, the rate was set at 0 %. See in detail: Breuer, *supra* note 518.
[519] Henry L. Mason, *The European Coal and Steel Community*: *Experiment in Supranationalism* (Springer, 1955), 38.
[520] Article 51(2) TECSC.
[521] Alfredo De Feo, *A history of budgetary powers and politics in the EU: the role of the European Parliament. Part I: The European Coal and Steel Community 1952-2002*"(Luxembourg: Publications Office of the European Union, 2015): 29-30.
[522] Article 50 of the ECSC Treaty relates to the administrative expenditure provided in Article 78. The latter is an umbrella term, encompassing the administrative expenditure of the ECSC institutions, including the High Authority, the Consultative Committee, the Court, the Assembly and the Council.
[523] Article 50, TECSC.
[524] See Breuer, *supra* note 517, at 32.

context.[525] In this regard, the coal and steel levy is an example of single earmarking. Namely, it never was a part of the Member States' budgets since it flowed directly into the budget of the ECSC. Conversely, it was earmarked only at the supranational level and represents single earmarking.

2.4.1.2. Assigned revenue

As an exception to the principle of budgetary universality, assigned revenue is a separate category of "other revenue" in the EU budget, used for specific types of expenditures.[526] This definition aligns the assigned revenue with the definition of earmarked funds, which are also assigned to a particular spending purpose. EU institutions interpreted Article 311 TFEU as a legal basis for this category of revenue. More precisely, Article 311(2) TFEU stipulates that the EU budget shall be financed wholly from its own resources, without prejudice to other revenue.[527] The wording of this Article was interpreted in a way that "assigned revenue is therefore a kind of "other revenue" of the European Union."[528] In 2019, the highest share of assigned revenue was present in financing the following purposes: competitiveness for growth and jobs and social and territorial cohesion. These expenditures represent around 80 % of the total assigned revenue in commitment and around 83 % in payment.[529]

Moreover, Article 21(1) of the so-called Financial Regulation[530] differentiates between the internal and external assigned revenue. In this regard, Article 21(3) prescribes that internal assigned revenue consists of: a) revenue from third parties in respect of goods, services or work supplied at their request; b) revenue arising from the repayment, in accordance with Article 101, of amounts wrongly paid, c) proceeds from the supply of goods, services and works to other departments within an Union institution, or other Union institutions or bodies, including refunds by other Union institutions or bodies of mission allowances paid on their behalf; d) insurance payments received; e) revenue from lettings and the sale of buildings and land; f) repayments to financial instruments or budgetary guarantees and g) revenue arising from

[525] See *supra* sec. 2.2.3.
[526] Sebastian Grund and Armin Steinbach, "European Union Debt Financing: Leeway and Barriers from a Legal Perspective" Bruegel Working Paper 15/2023 (2023):3. See also: European Parliament. Briefing: Next Generation EU, Where are assigned revenue? Which impact in 2021?. available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/656549/IPOL_BRI(2020)656549_EN.pdf
[527] Article 311, TFEU.
[528] Grund and Steinbach, *supra* note 527, at 3. See also: European Parliament, "*Briefing: Next Generation EU Where are assigned revenue? Which impact in 2021?*" (2020) Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/656549/IPOL_BRI(2020)656549_EN.pdf.
[529] European Parliament, *Briefing: Next Generation EU. Where are assigned revenue? Which impact in 2021?*" (2020).
[530] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), PE/99/2023/REV/1, OJ L, 2024/2509.

subsequent reimbursement of taxes pursuant to point (b) of the first subparagraph of Article 27 (3) of the Financial Regulation. Furthermore, "some of this revenue is so-called internal assigned revenue and is linked to the supply of goods, services, or products by the EU (e.g., revenue from the selling of EU publications is assigned to expenditure for the production of these publications). This earmarking is an exception to the general budgetary principle of universality."[531]

On the other hand, an example of external assigned revenue (hereinafter: EAR) is a specific additional financial contribution from Member States to certain supplementary research and technological development programmes and certain external aid actions or programmes financed by the Union and managed by the Commission. In addition, Article 21(2) of the Financial Regulation also enumerates the following as the external assigned revenue: a) specific additional financial contributions from Member States including voluntary contributions; b) appropriations relating to the revenue generated by the Research Fund for Coal and Steel; c) the interest on deposits and the fines provided for in Council Regulation (EC) No 1467/97 (43); d) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests, including the earmarked revenue specific to each Union institution; e) financial contributions to Union activities from third countries or from bodies other than those set up under the TFEU or the Euratom Treaty; f) internal assigned revenue referred to in paragraph 3 (…); (g) revenue from the activities of a competitive nature conducted by the Joint Research Centre (JRC).[532] In the category of "contributions from third countries", the most significant are the contributions made by the EEA States and the EFTA States (Norway, Iceland, and Liechtenstein), which finance their participation in specific EU programmes. These contributions are "centrally collected by the EC's Directorate-General for Budget and redistributed among the relevant directorates-general. Thus, the contributions are clearly earmarked."[533] However, it is important to emphasise that these EEA contributions will not result in the lowering of EU Member States' contributions based on their GNI.[534]

The subject matter of external assigned revenue came into focus when the Commission decided that revenue collected through debt financing for the NGEU recovery plan would be

[531] Nicolaas Stijn Groenendijk. "Revenue Capacity of the EU: Taxes, Tax Sharing, and Resource Pooling," *Politics and Governance* 11, no. 4 (2023): 11.
[532] Article 21(2), Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), PE/99/2023/REV/1, OJ L, 2024/2509.
[533] Groenendijk, *supra* note 531, at 11.
[534] Groenendijk, *supra* note 531, at 11.

regarded as EAR.[535] However, "unlike own resources, EAR is not subsequently subject to the normal budgetary procedure. Under Article 22 of the Financial Regulation, external assigned revenue is introduced in the budget and is made available automatically."[536] This was subject to critique because it raises several concerns about budgetary principles. First, Article 310(1) TFEU requires that all revenue and expenditure be included in the EU budget. Historically, EU borrowing and lending operations ("back-to-back lending") have not been considered budgetary expenditures, as funds raised were passed on in a budget-neutral manner. However, the subsidies under NGEU are clear expenditures. In fact, "the most novel element is the use of borrowing to finance budget spending ("borrowing for spending").[537] Thus, critiques expressed in the scholarship targeted this legal architecture, since such an exclusion from the budget is not consistent with the principle of completeness. Additionally, there is an asymmetry in budget integration: while revenue and fund usage are not included, EU bond repayments are financed from the general budget.[538] Another issue emphasised by the COVID-19 crisis is that the European Parliament is excluded from the decision-making on the assigned revenue.[539]

Although the assigned revenue represents earmarking, its legal nature within EU public finance law remains somewhat elusive. Also, a recent experiment with the NGEU funding revealed many questions regarding its ability to serve as a basis for financing EU expenditures. Therefore, it seems that an earmarked own resource which would be included in the budget might be more appropriate from the viewpoints of budgetary principles, as well as the transparency of EU public finance.

2.4.2. Earmarking outside the general budget

Beyond the ordinary EU budget, earmarking has also been implemented through sectoral levies and special funds created to address specific policy needs, mostly in times of crisis. This is consistent with the historical role of earmarking as a financing technique particularly suited to exceptional circumstances, where the introduction of new fiscal burdens is more likely to be accepted if their purpose is clearly identified.[540]

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[535] See more European Parliament, *Briefing: Next Generation EU Where are assigned revenue? Which impact in 2021?* Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/656549/IPOL_BRI(2020)656549_EN.pdf

[536] Dominik Łukowiak, "Combating the COVID-19 Crisis within the European Union: A Critical Assessment of the 'Next Generation EU' in the Context of the Budgetary Balance," *Utrecht Law Review* 19, no. 1 (2023): 66.

[537] European Council. Opinion of the Legal Service 9062/20, Brussels, 3 July 2020, p. 7.

[538] Łukowiak, *supra* note 536, at. 67.

[539] European Parliament, *Assigned revenue in the Recovery Plan - The frog that wishes to be a prince* (2020). https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/654526/IPOL_BRI(2020)654526_EN.pdf .

[540] See *supra* sec. 2.1.2., also sec. 2.3.

2.4.2.1. Single Resolution Fund

A useful illustration of earmarked financing outside the EU budget was grounded in the intergovernmental agreement concluded in 2014 by 26 Member States[541] on the transfer and mutualisation of contributions to the Single Resolution Fund (hereinafter: SRF).[542] This agreement, together with the SRM Regulation,[543] represents the result of the EU's efforts to achieve "the internal market in the field of financial services and for guaranteeing the financial stability of the euro area and the Union as a whole."[544] The objective underpinning the SRF's establishment was that "the financial industry as a whole ensures the stabilisation of the financial system (...) and that taxpayers are not first in line to provide funds to the bank, should extra funding be required."[545] However, the SRF was subject to criticism because of its legal design outside EU law. Instead, it was based on an international agreement between the Member States. In this regard, Fabbrini expressed a concern that "it is a bad precedent for the reforms of the Economic and Monetary Union (EMU), as it side-steps the European Parliament – a necessary co-legislator – in defining the rules on the transfer and mutualisation of contributions to the SRF."[546]

From the viewpoint of earmarking, the SRF was financed by the contributions of banks in participating Member States. Each Member State appoints a National Resolution Authority (NRA) which fulfils the mentioned State's responsibility to collect and transfer contributions from the institutions located in their territories to the SRF.[547] Upon collection at the national level, the funds are transferred to the SRF and are not considered part of the EU budget. More precisely, the SRF is governed by the Single Resolution Board (SRB), which is independent of the EU budget.[548]

Contributions paid for financing the SRF fit into the notion of an earmarked levy on several levels. First, the contributions were designated to finance a specific public purpose,

[541] The UK and the Kingdom of Sweden were not the parties to this agreement.
[542] Agreement on the transfer and mutualisation of contributions to the single resolution fund, 21 May 2014, available at: https://data.consilium.europa.eu/doc/document/ST%208457%202014%20INIT/EN/pdf
[543] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013.
[544] Federico Fabbrini, "On Banks, Courts and International Law: The Intergovernmental Agreement on the Single Resolution Fund in Context" *Maastricht Journal of European and Comparative Law* 21, no. 3 (2014): 448.
[545] Single Resolution Board, *What is Single Resolution Fund (online)*, available at: https://www.srb.europa.eu/en/single-resolution-fund
[546] Fabbrini, *supra* note 544, at 447.
[547] Single Resolution Board (SRB), *The Single Resolution Fund* (2021). Available at: https://www.srb.europa.eu/system/files/media/document/2021-01-01%20The%20Single%20Resolution%20Fund.pdf.
[548] Maria Ana Barata, *Completing a half full or a half empty Banking Union: the introduction of the common backstop*. (2022) Available at: https://fbf.eui.eu/completing-a-half-full-or-a-half-empty-banking-union-the-introduction-of-the-common-backstop/.

which is a risk of a bank's dissolution. Second, the dedication of funds was based on a legal instrument, in this case, on the SRF intergovernmental agreement. Finally, if observed in light of the division of earmarked levies into single and double earmarking, the SRF contributions represent the example of double earmarking. For example, the Croatian NRA is the Croatian Deposit Insurance Agency (*Hrvatska agencija za osiguranje depozita*), which operates outside of the state budget. Therefore, the funds flowing to the Croatian Deposit Insurance Agency are earmarked at the national level for transfer to the SRF. Subsequently, these funds are earmarked once again, for the purposes agreed upon in the intergovernmental agreement on transferring and mutualising contributions to the SRF.[549]

Although SRF contributions represent an example of double earmarking at the supranational level, it is important to emphasize that it is not an example of an own resource. More precisely, the SRF is a peculiar EU's financial instrument. At the same time, it is based on an international agreement, but it also refers to EU law. The SRF agreement contains numerous references to EU law, including the treaties, as well as the secondary law. Nevertheless, it is expected to be fully integrated into the EU legal framework within ten years of its establishment.[550]

2.4.2.2. EU Emission Trading System

Another example of earmarking, which is closely related to EU's environmental objectives, is the revenue collected from the EU Emission Trading System (hereinafter: EU ETS). The EU ETS was launched in 2005 to reduce greenhouse gas (GHG) emissions produced by "installations in the energy sector and manufacturing industry."[551] From 2024, it also applies to the maritime sector.[552] EU ETS operates as a "cap and trade" system through setting a "cap" or the maximum level of the total GHG emissions that operators within the system can produce. The cap is being reduced each year and is quantified in emission allowances, with each allowance permitting the emission of one tonne of CO2. When it comes to revenue collection, "each Member State must appoint an auctioneer of the allowances on behalf of that state. Conversely, the auctioneer is responsible for disbursing the revenue to the appointing Member

[549] On the division of different forms of earmarking see *supra* sec. 2.2.3.
[550] Diane Fromage, "Complexity in the EU's Resolution Mechanism: An Expanding but Unavoidable Phenomenon?" *European Business Organisation Law Review* 26, no.1 (2025): 128.
[551] See more: European Commission. *EU Emission trading system.* Available at: https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/scope-eu-emissions-trading-system_en.
[552] Moses Adjei, Judith Van Leeuwen and Helder Pereira, "Towards decarbonising shipping: Governance challenges and barriers to the implementation of EU emission trading system (ETS)," *Maritime Studies* 25, 23 (2026): 2.

State.[553] Revenues collected from the allowances were initially flowing to the Member States' national budgets. However, this was subject to change, and currently the EU ETS revenues are allocated also to the Innovation Fund, the Modernisation Fund, and the Social Climate Fund, supporting climate-related purposes.

Initially, earmarking the funds generated through the EU ETS was not mandatory for Member States, although it was recommended. The former EU ETS Directive[554] prescribed that Member States should determine revenues generated from auctioning allowances and inform the Commission about how these revenues are utilised. Former Article 10(3) of the EU ETS Directive used to prescribe that at least 50 % of the revenues generated from the auctioning of allowances *should* be used to mitigate climate change within the EU and in third countries. The Directive also provided a list of potential actions that could be funded.[555] The wording used in the Directive prior to the 2021 amendments provided earmarking, but it was not mandatory. However, Member States pledged to allocate at least 50 % of the auction revenues to reduce greenhouse gas emissions and address climate change.[556]

Furthermore, 2021 marked a turning point for earmarking EU ETS revenues. Namely, the Commission proposed revising the EU ETS as part of implementing the European Green Deal. The memorandum of the Commission's EU ETS reform proposal states that "stricter rules are necessary to ensure Member States spend their revenues in line with climate objectives".[557] Following this aim, the Commission also proposed using the entire portion of EU ETS revenues for climate action, except for the share dedicated towards industry compensation. The EU ETS reform proposal was adopted in May 2023 through two legislative acts: Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023,[558] and Regulation

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[553] European Commission, "EU ETS Handbook" (2015). Available at: https://climate.ec.europa.eu/document/download/8cabb4e7-19d7-45bd-8044-c0dcc1a64243_en?filename=ets_handbook_en.pdf.

[554] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (Text with EEA relevance).

[555] European Commission, "*EU ETS Handbook*" (2015). *op. cit. supra* note 561. at 35.

[556] *Ibid.*

[557] Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757, COM/2021/551 final.

[558] Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system, PE/9/2023/REV/1, OJ L 130, 16.5.2023.

(EU) 2023/957 of the European Parliament and of the Council of 10 May 2023.[559] The latest amendment to the EU ETS system was adopted in 2024.[560] In this regard, the wording of the current EU ETS Directive regarding the use of EU ETS revenues has been changed to use the term "shall," which undoubtedly imposes an obligation on Member States.[561] Thus, Article 30 d(6) of the Directive 2023/959 prescribed "Member States shall use their revenues or the equivalent in the financial value of those revenues for one or more of the purposes referred to in Article 10(3) of this Directive, giving priority to activities that can contribute to addressing social aspects of the emissions trading."

More precisely, some of the spending purposes of the EU ETS revenue are the following: "the reduction of GHG emissions, supporting renewable energies and other low carbon technologies, reducing deforestation and increasing afforestation and reforestation, shift to low-emission transport, research and development for energy efficiency and clean development, etc.[562] Thus, the system of spending the revenue collected under the EU ETS system checks all the boxes from the previously mentioned definitions of earmarking.[563] Thus, spending purposes are defined in a legislative act before the revenue is collected. In addition, spending purposes are known to the public, since a part of the revenue collected by the EU ETS is assigned to the two EU investment funds. The Modernisation Fund focuses on investments in lower-income Member States to improve energy systems, enhance energy efficiency, and ensure a socially equitable transition to a low-carbon economy. This fund is financed by auctioning 2 % of EU allowances.[564] The Innovation Fund supports cutting-edge industrial technologies contributing to the green transition.[565] This fund is financed by selling at least 450

[559] Regulation (EU) 2023/957 of the European Parliament and of the Council of 10 May 2023 amending Regulation (EU) 2015/757 in order to provide for the inclusion of maritime transport activities in the EU Emissions Trading System and for the monitoring, reporting and verification of emissions of additional greenhouse gases and emissions from additional ship types, PE/10/2023/REV/1, OJ L 130, 16.5.2023.
[560] See Regulation (EU) 2024/795 of the European Parliament and of the Council of 29 February 2024 establishing the Strategic Technologies for Europe Platform (STEP), and amending Directive 2003/87/EC and Regulations (EU) 2021/1058, (EU) 2021/1056, (EU) 2021/1057, (EU) No 1303/2013, (EU) No 223/2014, (EU) 2021/1060, (EU) 2021/523, (EU) 2021/695, (EU) 2021/697 and (EU) 2021/241,PE/11/2024/REV/1.OJ L, 2024/795, 29.2.2024.
[561] See, e.g., Article 30 d (6)., Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system, PE/9/2023/REV/1, OJ L 130, 16.5.2023.
[562] Haase et al., *supra* note 410, at. 6.
[563] See *supra* sec. 2.2.1.
[564] Damien Meadows, Mette Quinn, Beatriz Yordi, "The EU Emissions Trading System" in *Delivering a Climate Neutral* Europe, ed. Jos Delbeke (London: Routledge, 2024): 75-76. For the latest information about the functioning of the Modernisation Fund, see European Commission. *Modernisation Fund.* Available at: https://climate.ec.europa.eu/eu-action/eu-funding-climate-action/modernisation-fund_en.
[565] *Op. cit.* at 76.

million allowances and utilising the remaining budget from the NER 300[566] Programme.[567] Notably, in its press releases on investments financed through the Innovation Fund, the European Commission itself employed the term 'earmarking' to describe this practice.[568] However, the Innovation fund is not a part of the EU budget, nor the MFF.[569] Thus, the system introduced by Directive 2023/959, which remains in force following the latest amendment, fits within the previously discussed definitions of earmarking.[570]

Moreover, in 2023, the scope of the EU ETS was enlarged to include the emissions from buildings, road transport and additional sectors.[571] Simultaneously, the EU adopted a regulation which founded the Social Climate Fund (SCF).[572] The revenues from the mentioned amendment to the EU ETS Directive, known as the ETS2, are earmarked for financing the SCF. More precisely, SCF is envisaged to provide support for the most vulnerable groups. It will be financed by the revenues generated from the auctioning of allowances under the new ETS2, in addition to 50 million allowances reallocated from the existing EU ETS. Altogether, the SCF is expected to mobilise a minimum of EUR 86.7 billion in public funding over the period 2026 to 2032.[573] Thus, from the perspective of single and double earmarking,[574] the EU ETS represents an example of double earmarking. First, the revenues collected from the competent authority are earmarked at the national level to support environmental goals. Second, part of the funds will be flowing into the EU budget, where they are earmarked once again for specific spending purposes, such as financing the SCF or the Modernisation Fund.

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[566] NER 300 was an EU funding programme focused on renewable energy. It was financed by selling 300 million emission allowances from the New Entrants' Reserve (NER), established for the third phase (2013–2020) of the EU emissions trading system. The remaining funds from NER were allocated to the Innovation fund.

[567] Simone Borghesi, Albert Ferrari, "Carbon pricing and social acceptability: using EU ETS auction revenues for social expenditures in a changing world," in *Peace not Pollution How Going Green Can Tackle Both Climate Change and Toxic Politics*, ed. Christian Gollier and Dominic Rohner. (CEPR Press, 2023), 43.

[568] See e.g., European Commission, *Commission earmarks €4.6 billion to boost net-zero technologies*. (2024). Available at: https://blue-economy-observatory.ec.europa.eu/news/commission-earmarks-eu46-billion-boost-net-zero-technologies-2024-12-05_en#:~:text=Commission%20earmarks%20%E2%82%AC4.6%20billion%20to%20boost%20net%2Dzero%20technologies%20%2D%20European%20Commission.

[569] See European Commission, *Innovation Fund – Performance* (2024). Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/programme-performance-statements/innovation-fund-performance_en#rationale-and-design-of-the-programme.

[570] See *supra* sec. 2.2.1.

[571] See in detail: Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (Text with EEA relevance), PE/9/2023/REV/1, OJ L 130, 16.5.2023.

[572] Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, PE/11/2023/REV/1, OJ L 130, 16.5.2023.

[573] European Commission, *Social Climate Fund*. Available at: https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/social-climate-fund_en#implementation-of-the-social-climate-fund.

[574] See *supra* sec. 2.2.3.

2.4.2.3. Temporary solidarity contribution

The latest example of earmarking prescribed at the EU level can be observed in the introduction of special crisis-related levies. More precisely, the temporary solidarity contribution offers a new perspective on how earmarking can operate at the supranational level while formally assigning all revenue to the Member States.[575] Temporary solidarity contribution was introduced through a Regulation adopted in 2022, based on Article 122 TFEU, known as the solidarity clause. [576] In short, the Regulation was a response to the 2022 energy crisis, and it obliged Member States to impose at least a 33 % tax on excess profits of fossil fuel companies generated from surging energy prices.[577] The latter resulted in a "first pan-European tax on the Extra profits".[578]

This Regulation is significant because the Union intervened directly in Member States' revenue-raising powers by imposing an obligation to introduce a compulsory levy with essential features defined at the EU level. Second, although the revenues did not accrue to the Union budget, the EU determined the specific purposes for which Member States had to spend them, thereby shaping the use of national tax revenue. More precisely, this instrument was adopted as an emergency measure under the energy crisis framework, and it is explicitly earmarked for mitigating the social and economic impacts of extraordinary energy prices.[579] Thus, Regulation 2022/1854 obliged Member States to channel the revenue into the following expenditures: support for vulnerable households, compensation for energy-intensive industries, and measures reducing electricity demand.[580] What makes this instrument relevant is that the EU did not claim the revenue for itself. Instead, it steered national tax policy through a coordinated earmarking mandate. Although the measures were temporary, they demonstrate the Union's ability to shape both revenue generation and expenditure patterns across Member States when facing collective challenges that exceed national capacity. Importantly, the solidarity contribution illustrates that

[575] Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices ST/12521/2022/INIT, OJ L 261I, 7.10.2022. This Regulation is no longer in force.
[576] However, the choice of legal basis was contested, having in mind that solidarity contribution intervened in the area of taxation, but Article 122 TFEU did not require unanimity. For an in-depth analysis of the legal basis of solidarity contributions, see Bastien Lignereux, "Is the EU Contribution on Windfall Profits Based on the Right Treaty Provision?" *Intertax* 51, no. 11 (2023): 732-740.
[577] Article 16, Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices ST/12521/2022/INIT, OJ L 261I, 7.10.2022.
[578] Tarcisio Diniz Margalhães and Francesco De Lillo, "The Return of Windfall Taxation." *Intertax* 51, no.11 (2023): 722–731.
[579] Article 17, Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices ST/12521/2022/INIT, OJ L 261I, 7.10.2022.
[580] On the implementation of the Regulation (EU) 2022/1854 of 6 October 2022 in Germany, Italy, Croatia and Slovenia see *supra* sec. 2.3.

earmarking at the supranational level can operate even in the absence of an explicit EU-level revenue stream. Member States retained control of the revenue, but the Union decided its purpose. Thus, earmarking can be used as a governance tool that enhances coordinated fiscal action.

2.4.3 Earmarking as an instrument for achieving the objectives of the EU

Before assessing the potential of earmarking within the EU's public finance system, it is necessary recall the broader functional context of the Union. Although the EU is not a state, it nevertheless performs a set of tasks that are structurally comparable to the traditional functions of public finance traditionally identified by Musgrave: allocation, redistribution, and stabilisation.[581] Although the EU engages in some aspects of the three functions and aims to achieve a broad spectrum of policy objectives, it does not possess the appropriate fiscal powers that could support them.[582] It is in this context that the introduction of an earmarked levy should be considered. Beyond servicing the common debt, such a levy could serve as an instrument for advancing the Union's broader policy objectives. Therefore, the following section examines the potential of an earmarked own resource through the lens of the EU's functions and objectives.

2.4.3.1. Regulatory goals of the EU

Regulation can be defined as "the act or process of controlling by rule or restriction. "[583] In other words, "everything governments do to establish, monitor and control norms."[584] In this sense, the EU is recognised as a powerful regulator, with influence even beyond its borders, a phenomenon known as the "Brussels effect".[585] As Bradford states, the EU has been working

[581] See in detail Richard A. Musgrave, *The Theory of Public Finance: A Study in Public Economy* (New York: McGraw-Hill, 1959).
[582] In the redistributive sphere, the Treaties explicitly enshrine that the EU shall "counteract the cross-national and cross-regional inequalities created by the single market." With respect to the European public goods, such as food safety, they belong to the 'allocative' function. Finally, the stabilisation function is most clearly expressed in the mandate of the European System of Central Banks, where maintaining price stability constitutes a primary objective. In addition, for an in-depth study of the EU's fiscal capacity, see Fabian Amtenbrink, Menelaos Markakis, "Never Waste a Good Crisis: On the Emergence of an EU Fiscal Capacity," in *EU Fiscal Federalism: Past, Present, Future*, ed. Alicia Hinarejos and Robert Schütze (Oxford: Oxford University Press, 2023).
[583] See Bryan A. Garner, *Black's Law Dictionary*, 8th ed. (St. Paul, MN: Thomson/West, 2004), 1064.
[584] Esther Versluis, *The European regulatory state at risk? The EU as a regulator of complex policy problems*. (Maastricht: Maastricht University, 2016): 3. Available at:https://doi.org/10.26481/spe.20160219ev.
[585] Anu Bradford explains the "Bruxelles effect" as the Union's ability to unilaterally "regulate the global marketplace". Furthermore, she explains the phenomenon "where the EU does not need to impose its standards coercively on anyone—market forces alone are often sufficient to convert the EU standard into the global standard as multinational companies voluntarily extend the EU rule to govern their global operations." See in detail Anu Bradford, *The Brussels effect: how the European Union rules the World*. (Oxford: Oxford University Press, 2020).

on an initiative to establish a "European regulatory state". The latter is supported by the fact that the EU serves as a regulatory authority across a range of areas, such as protecting consumer health and safety, safeguarding the environment, promoting competition, and, more recently, ensuring the security of personal data. A key objective behind regulating all the above-mentioned areas has been the creation of a single market, enabling a harmonised regulatory framework and seamless trade across Member States.[586] Article 3(3) of the TEU outlines the Union's aims, including the creation of an internal market, sustainable development, price stability, a highly competitive social market economy, employment, social progress, environmental protection, social justice, and intergenerational solidarity. However, this provision does not confer direct rights or obligations but serves as a guide for interpreting other Treaty provisions that bring these objectives into effect.[587]

Furthermore, several legal scholars share the view that "in recent years, financing has become the EU's key tool for promoting its institutional agenda. While the Union does not formally legislate in areas of Member State competence, it actively uses its funds to steer Member States' choices in those areas.[588] De Witte named such a process "integration through funding."[589] Moreover, Bradford highlighted the interconnection between the EU's budget, which is modest in size, and the regulatory agenda. She states that "tight budgetary constraints restrict the Commission's ability to pursue direct-expenditure programs, such as large-scale industrial policy, innovation policy, or job creation programs at the EU level. In contrast, there is no limit for the number of regulations and directives the Commission can promulgate. Thus, the only way for the Commission to expand its influence without extensive financial resources is to engage in regulatory activity."[590]

Furthermore, the EU's regulatory role has often been catalysed by crisis. In recent EU history, several transboundary problems required a focused supranational regulatory action at the EU level. When it comes to public finance, the most prominent events in this sense were

[586] Bradford, *op. cit.* at pp. 9 -10.
[587] Marcus Klamert, "Article 3 TEU," in *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, ed. Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (New York, 2019; online edn, Oxford Academic), 32.
[588] See Bruno De Witte, "Integration Through Funding: the Union's Finances as Policy Instrument" in *The Financial Constitution of European Integration: Follow the Money?*, ed. Ruth Weber (Oxford: Hart Publishing, 2023); Päivi Leino-Sandberg, "Cohesion policy and the principle of subsidiarity: A legal analysis" *ZEW Discussion Papers*, No. 24-042, ZEW - Leibniz-Zentrum für Europäische Wirtschaftsforschung, Mannheim (2024): 5.
[589] De Witte, *ibid.*
[590] Bradford, *supra* note 585, at 16.

the so-called Euro crisis and the economic consequences of the COVID-19 pandemic.[591] For example, the Euro crisis led to the reinforcement of the Stability and Growth Pact, promoting stronger budgetary surveillance. The latter was achieved through the adoption of two groups of legislative acts – the Two-Pack and the Six-Pack.[592] Therefore, the EU took on the role of supranational regulator, especially in the sense of budgetary surveillance and fiscal discipline of the Member States. However, the Union's efforts in mitigating the crisis and preventing similar scenarios in the future were not accompanied by sufficient political consensus among its Member States to increase its revenue sources.

The regulatory role of the EU once again came to the fore during and after the COVID-19 pandemic. More precisely, the EU's recovery from the crisis went hand in hand with the EU regulatory agenda decided upon in 2019 - the European Green Deal (EGD). It represents a "package of policy initiatives, which aims to set the EU on the path to a green transition, with the ultimate goal of reaching climate neutrality by 2050."[593] The EU recovery plan, known as the NextGenerationEU, was envisaged to support the mentioned EU objectives set in the EGD. Therefore, it is set to finance green transition, digitalisation, and social inclusion.[594] To align fiscal and regulatory goals, the EU has proposed a green fiscal policy framework built on four pillars: greening revenues, EU expenditure, EU governance, and the issuance of European green bonds.

Steps towards the greening of EU resources were already made with the introduction of the plastic levy. The mentioned levy was introduced in 2020 as a contribution to be paid by Member States, calculated based on their non-recycled plastic packaging waste. At its core, it is based on a simple incentive mechanism - the more plastic packaging waste Member States recycle, the lower their contribution to the Union budget will be.[595] In addition to its fiscal function, the plastic levy also serves as a regulatory instrument within the EU's environmental

[591] See Nicolas Carnot et al., "The public debt outlook in the EMU post Covid: a key challenge for the EU fiscal framework," *Network of EU IFIs, European Commission* (2021): 3.
[592] The Six-Pack and the Two-Pack comprise a set of EU legislative measures adopted in 2011 and 2013 to reinforce the original framework of the Stability and Growth Pact by enhancing the coordination and surveillance of Member States' economic policies. They introduced a new procedure for addressing macroeconomic imbalances, established a framework for dealing with Member States facing financial stability challenges, and codified budgetary surveillance through the European Semester.
[593] European Council. European Green Deal. Available at: https://www.consilium.europa.eu/en/policies/green-deal/#what.
[594] Lionello *op. cit*. note 6, at 37. On specific aspects of digital transition, especially on the digitainability opportunities, see Pošćić, Ana, Adrijana Martinović and Narda Krnetić Blečić, "Exploring the "Digitainability" Potential of Sustainability Agreements Under the Commission's Guidelines On Horizontal Cooperation Agreements," *InterEULawEast* 13, br. 1 (2026): 141-161.
[595] Katarina Pantazatou, "Why EU revenue matters: A case for an EU digital levy," *European Law Open*, 3 no. 4, (2024): 930.

policy framework. Because Member States' contributions are directly linked to the amount of non-recycled plastic packaging waste they generate, the levy creates a clear financial incentive to improve recycling rates.[596] However, even after the introduction of the plastic levy, the current system of the EU's own resources supports the green transition and other EU policy objectives to a very limited extent.[597]

In addition, a similar dual function is evident in the existing proposals for the EU ETS new own resource and the proposed allocation of Carbon Border Adjustment Mechanism (hereinafter: CBAM) revenues. The CBAM is an EU instrument designed to address carbon leakage by imposing a carbon price on certain imported goods equivalent to that borne by products manufactured within the EU under the EU ETS.[598] CBAM revenues are expected to constitute a new source of financing for the EU budget, but its core purpose remains environmental and competitive. More precisely, by imposing a carbon price on imports equivalent to that paid by domestic producers under the ETS, it aims to reduce global carbon leakage and restore a level playing field in the internal market. Furthermore, it was previously stated that ETS revenue spending is governed by Article 30d(6) of Directive 2023/959, which provides that "Member States *shall* use their revenues for one or more of the purposes referred to in Article 10(3), giving priority to activities that contribute to addressing social aspects of the ETS." Following the reform of the EU ETS, the Directive prescribes the purposes for which revenues from the auctioning of allowances must be used, such as support for renewable energy and low-emission transport. Taken together, ETS and CBAM illustrate that the Union increasingly proposes fiscal instruments that are not merely revenue-raising but also linked to the pursuit of broader policy goals. Moreover, EU ETS is an example of a new direction in EU's revenue policy, which aims to align revenues and expenditures, thus increasing transparency of EU spending.

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[596] Margit Schratzenstaller et al., *New EU own resources: possibilities and limitations of steering effects and sectoral policy co-benefits.* Study requested by the Policy Department for Budgetary Affairs, Directorate-General for Internal Policies. (European Parliament, 2022): 37. See also: European Commission, *Press release: European Green Deal: Putting an end to wasteful packaging, boosting reuse and recycling*, Brussels, 30 November 2022. Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_22_7155/IP_22_7155_EN.pdf.

[597] In this regard, the ECB stated that to achieve the EU's 2030 agenda, an additional investment of EUR 477 billion of green investment will be needed each year, equivalent to 3.2% of 2023 GDP. See more: European Central Bank, *Green investment needs in the EU and their funding* (2025). Available at: https://www.ecb.europa.eu/press/economic-bulletin/articles/2025/html/ecb.ebart202501_03~90ade39a4a.en.html

[598] See the Recital of the Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance) PE/7/2023/REV/1,OJ L 130, 16.5.2023.

This also indicates that the potential of earmarking in supporting broader EU policy objectives is being recognised. For example, Schratzenstaller advocated the introduction of green own resources to strengthen the link between EU revenues and climate-related expenditure[599], while Scherleitner and Traversa proposed a European Climate Fund financed through an earmarked levy. [600] Thus, the EU may use its competencies to steer the market by encouraging the adoption of a certain behaviour or to cease an undesired one[601] to achieve its green policy objectives. This indicates that an earmarked levy at the EU level would achieve a twofold objective. Not only could it establish a connection between taxing and spending, but it could also represent a valuable and needed new resource which the EU budget needs to achieve its ambitious regulatory agenda.

Against the backdrop of the EU legal framework, an advantage of the introduction of an earmarked levy can also be observed from the viewpoint of the principle of good administration, enshrined in Article 41 of the EU CFR. There is an agreement in the legal scholarship that the principle of good administration is an umbrella principle, meaning that it encompasses a variety of different rights and principles.[602] In this regard, „a common objective of the umbrella principle of good administration may be defined as promoting transparency, legal certainty and predictability within administrative procedures."[603] Having in mind that collection of revenue, budget planning and finally, management of public expenditures represent administrative procedures, it seems appropriate that this principle also applies to all public authorities involved in the budgetary process. In this scenario, earmarking could contribute to attaining all of the common objectives of good administration. The latter is a consequence of the fact that earmarked funding provides "more information about the planned uses of taxes."[604] In this regard, the enhanced transparency leads to greater accountability as a second objective of good administration. Earmarking might "help policy-makers design and monitor tax systems better and advocacy groups to hold the government responsible for the earmarking."[605] Moreover,

[599] Margit Schratzenstaller, "Elements of a European Green Fiscal Policy," *Intereconomics: Review of European Economic Policy* 58 no. 6 (2023): 300-304.
[600] Moritz Scherleitner, Edoardo Traversa, "Will it be FINE-for EU? A Proposal for a mechanism funding pan-European green investment to promote the EU (still) meeting its climate goals" (December 1, 2023). Available at SSRN: https://ssrn.com/abstract=4650390 or http://dx.doi.org/10.2139/ssrn.4650390.
[601] Avi-Yonah, *supra* note 107, at 3.
[602] Tobias Lock, "Article 41 CFR: Right to good administration," in *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, ed. Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (New York, 2019; online edn, Oxford Academic), at 2205.
[603] Jane Reichel, "Between Supremacy and Autonomy: Applying the Principle of Good Administration in the Member States," in *General Principles of European Community Law in a Process of Development*, ed. Ulf Bernitz, Joakim Nergelius, and Cecilia Cardner (Kluwer Law International, 2008): 247.
[604] Camic, *supra* note 422, at 7, Kotha and Talekar, *supra* note 392, at 103.
[605] Kotha and Talekar, *supra* note 392, at 103.

introducing a connection between taxing and spending in the form of earmarking may also contribute to the overall willingness of taxpayers to contribute to a specific spending purpose.[606] In addition, the use of earmarking to finance a particular project ensures that legal certainty will be respected. The latter is not surprising since earmarking presupposes the process of allocating specific funds for previously designated purposes, typically through statutory provisions. Therefore, earmarking also contributes to the enhanced level of legal certainty for the EU fiscal management. All of the mentioned becomes even more relevant if considered in the light of the Report on the EU's fiscal landscape by the Court of Auditors, which called for an increase in accountability in the EU's fiscal management.[607]

2.4.3.2. Redistribution as a goal of the EU

As observed by Musgrave, the government's revenue and expenditure process inevitably impacts society and the economy. These effects can be strategically directed toward goals beyond merely meeting immediate public needs, such as adjusting the distribution of resources.[608] Redistribution, one of the three core government functions previously discussed, is also carried out by the EU. The legal basis for this action is found in Article 174 TFEU, which prescribes reducing disparities between different regions as one of the Union's objectives. In other words, "it allows the Union to address the disparate level of development between the Member States and their regions, as a complement to the economic integration produced by the operation of the internal market and the Economic and Monetary Union."[609] In this vein, recent studies indicated that the economic dynamics of the common market often exacerbate inequality, particularly due to the liberalisation of formerly protected sectors. As a result, redistributive policies are essential not only for the effective functioning of the internal market but also for maintaining the EU's broader economic cohesion.[610]

The EU budget serves as the main redistributive mechanism "that counteracts the cross-national and cross-regional inequalities created by the single market."[611] However, its impact on redistribution is limited. This is caused by wealthier Member States, which aim to prevent

[606] See *supra* sec. 2.2.4.
[607] See European Court of Auditors, *Special report: The EU's financial landscape: A patchwork construction requiring further simplification and accountability* (2023). Available at: https://www.eca.europa.eu/Lists/ECADocuments/SR23_05/SR_EU-financial-landscape_EN.pdf.
[608] Musgrave, *supra* note 581, at 17.
[609] Leo Flynn, "Title XVIII: economic, social and territorial cohesion," in *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, ed. Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (New York, 2019; online edn, Oxford Academic), 1476.
[610] Manuele Citi, Mogens K. Justesen, "Redistribution in a political union: The case of the EU," *European Journal of Political Research* 60, no. 2 (2021): 319.
[611] Citi and Justesen, *op. cit.*, at 317.

the centralisation of fiscal policy and correspondingly reduce transnational redistribution to keep as many resources as possible for national redistribution policies.[612] Consequently, the EU's redistributive policies are not intended to significantly address or mitigate transnational inequalities.[613] In this regard, "distribution in EU terms is not, in the first instance, inter-personal, the essence of the approach adopted in fiscal federalism, but among Member States and (...) its primary effect in the lexicon of the fiscal federalism model is to act as a form of fiscal equalisation."[614] Put differently, the term "redistribution" does not refer to interpersonal redistribution, as used in classical welfare-state theory, but to the reduction of regional economic disparities among Member States and their regions. The EU's redistributive instruments therefore function primarily as mechanisms of territorial cohesion and fiscal equalisation, rather than as tools for reallocating income between individuals.

The EU established several programs with a redistributive purpose, such as the European Regional Development Fund, European Social Fund Plus (ESF+), European structural funds, the Cohesion Fund, the Common Agricultural Policy (CAP) and more. Over time, these programs were increasingly used to support the EU's poorer regions and economic sectors experiencing crises. For example, the establishment of the EMU eliminated the option of national currency devaluation for the four least wealthy Member States at the time (Ireland, Greece, Spain, and Portugal). To ease the burden of economic transition, the EU pushed for a stronger commitment to economic and social cohesion and created the Cohesion Fund.[615]

Against this backdrop, the introduction of a new own resource in the form of an earmarked levy could make a dual contribution to the EU's redistributive objectives. On the one hand, it could be directed into existing EU funds designed to reduce disparities among Member States, such as the Cohesion Fund, thus reinforcing longstanding efforts to promote social cohesion. Such a measure would also respond to the broader need to strengthen the EU's fiscal capacity. On the other hand, earmarked levy may also serve for the creation of new instruments with similar redistributive objectives, for example, by providing specific assistance needed in sectors most affected by the green transition. Moreover, incorporating earmarked funding into the Union's redistributive framework could enhance transparency and, importantly, foster a greater sense of solidarity among Member States by visibly linking revenue sources to the expenditures for shared policy goals.

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[612] *Ibid.*
[613] Citi and Justesen, *supra* note 611, at 319.
[614] Ian Begg, "Fiscal Federalism, Subsidiarity and the EU Budget Review," *Swedish Institute for European Policy Studies*. Report 1/2009 (2009): 30.
[615] Flynn, *supra* note 610, at 1479.

2.5. Summary

The objective of the chapter was to identify the defining characteristics of a tax and to subsequently assess how these features interact with the practice of earmarking.

In contemporary constitutional democracies, taxation no longer calls for philosophical justification in the abstract, as its necessity for maintaining the state and securing fundamental rights is self-evident. From this perspective, taxation is not merely a fiscal mechanism, but a constitutional instrument through which property and wealth can be steered toward objectives of collective relevance. In this sense, the tax system embodies the functional dimension of solidarity. A tax reflects the constitutional demand that individuals contribute, according to their capacity, to the common good. Thus understood, taxation represents both the financial foundation of the state and an instrument of realising its fundamental commitments to social justice.[616]

Moreover, the notion of tax is grounded in a set of elements that remain stable across diverse historical and political contexts. Compulsion, legality, monetary form, and revenue-raising capacity and the absence of a direct benefit consistently define the notion of tax.[617] Against this background, earmarking may appear to constitute a partial departure from the established principle that tax payments are not linked to individualised benefits. Earmarking encompasses predefining the purpose of spending by law. Thereby, the legislator introduces a certain degree of connection between the tax and the potential benefit financed by it, such as, for example, taxes on fuel, which are then earmarked for road maintenance.[618] This may, at least superficially, blur the distinction between taxes and fees. Nevertheless, even where earmarking narrows this conceptual distance, it does not transform the tax into a fee. More precisely, earmarked taxes do not create a individual benefit for the taxpayers. As Ricci stresses, earmarked taxes do not grant taxpayers the right to reimbursement if funds are ultimately allocated to a different purpose, because the obligation to pay the tax arises from a taxable event and it is based on the ability to pay, not on the promise of receiving a specific service.[619] Thus, although earmarking may soften the no-direct-benefit characteristic of a tax, it does not eliminate it. Earmarked taxes remain taxes in conceptual legal terms.

Furthermore, earmarking demonstrates that taxes can be directed to specific public purposes without undermining their nature as taxes. The only element that earmarking

[616] See e.g. the previous analysis of the concept of tax and its perception in Italy in sec. 2.1.2.3.2.
[617] See *supra* sec. 2.1.1.
[618] See for example, *infra* sec. 2.3.2.
[619] Ricci, *supra* note 55, at 53.

contradicts, is that taxes are not destined for specific purposes. However, this element cannot be regarded as constitutive characteristic of taxation but as a frequent budgetary practice. Within this framework, earmarking does not emerge as a deviation so significant as to alter the legal nature of a levy. Although earmarked taxes depart from the general principle of budgetary universality, the comparative overview shows that all examined Member States recognise earmarking as a permissible exception. This confirms that earmarking is a familiar and constitutionally integrated fiscal technique in Europe, rather than an anomaly.[620]

Historically and comparatively, earmarking seems not as an exception but as a long-standing instrument of tax policy. Historical overview across selected Member States show that earmarking has been crucial in times of crisis, when linking new taxes to specific expenditure has assisted with the popular support.[621]

Furthermore, earmarking also proved to have a functional role at the Union level. Assigned revenue mechanisms in the EU budget exhibit that revenues can be allocated to specific uses, notwithstanding the universality principle. Aside from the budget, other specialised levies such as the Coal and Steel levy and the EU ETS demonstrate how earmarking has been applied to promote Union-wide objectives in industrial policy, and climate protection. These examples also illustrated that earmarking could bridge the gap between fiscal autonomy at the national level and shared European policy objectives. Thus, earmarking also aligns taxation with constitutional functions beyond revenue-raising at the national level, as well as in the context of EU's public finance. By visibly linking taxes to Union policy objectives, earmarked levies could strengthen transparency and legitimacy while enhancing citizens' sense of accountability in EU fiscal policy. Overall, earmarking is not incompatible with the legal concept of taxation. On the contrary, it has been historically used at both national and Union levels. Earmarking preserves the core characteristics of taxation, including compulsion, legality, monetary form, and revenue-raising capacity, while adding value in terms of transparency, legitimacy, and policy alignment.

Moreover, in examining earmarking within the EU's multi-level fiscal system, this chapter shows that traditional national classifications are insufficient, as they do not capture the interaction between national and supranational budgetary powers. To address this gap, the

[620] See *supra* sec. 2.3. All of the observed countries included several earmarked taxes in their respective tax systems.
[621] On earmarked taxes as an exceptional measure in German history, see *supra* sec. 2.1.2.3.1. as the *Reich* prepared for war. For the use of earmarking on a regular basis see supra: 2.3.1. The earmarked sales tax was used as a regular means of revenue raising for the Yugoslavian army, which represents a shared fiscal history of both Croatia and Slovenia.

chapter introduces a distinction between single earmarking, where the purpose of a levy is determined solely at one level of government (as in the ECSC levy), and double earmarking, where both national and EU legislation assign specific uses to the same revenue stream. The EU ETS exemplifies this vertically coordinated model, with revenues earmarked first by Member States and then again under EU law for defined Union programmes. This framework also illustrated that earmarking already operates well in the Union.

These findings are essential for the broader objectives of this thesis. Namely, this thesis seeks to develop a proposal for a new EU own resource. This own resource will inevitably exhibit tax-like characteristics, regardless of whether such resource will never be formally labelled as a tax. Therefore, it is necessary to ground the analysis in an understanding what constitutes a tax within the European legal context. Demonstrating that earmarking is compatible with national legal systems and with the generally accepted concept of taxation provides the foundation for assessing whether an earmarked, tax-based own resource can be integrated into the Union's public finance framework. Moreover, the confirmation of acceptance of earmarking across Member States reinforces its political and legal plausibility at the supranational level.

3. OVERVIEW OF THE EUROPEAN UNION PUBLIC FINANCE LEGAL FRAMEWORK

To understand whether and how an earmarked own resource can be incorporated within the EU's public finance legal framework, it is necessary to examine the evolution and current structure of the Union's public finance system. Thus, this chapter begins with a historical analysis of the EU's public finance system to discover how it developed and whether there is a need to strengthen the connection between the EU's revenues and expenditures. In addition, this chapter explores key principles underpinning the EU public finance legal framework, including subsidiarity, proportionality, solidarity, and Member States' sovereignty. This will serve as a basis for the subsequent design of a *de lege ferenda* proposal, since it must be in line with these fundamental principles. Finally, this chapter provides an overview of the current legal framework governing the EU's revenues and expenditures, to evaluate the advantages and disadvantages of its current legal framework. The focus will be on the analysis of Treaty provisions that could serve as a legal basis for introducing a new own resource.

3.1. The historical overview of the EU's public finance legal framework

3.1.1. European Coal and Steel Community as the first stage of European integration

Although efforts to unify Europe have existed throughout history, European integration began to take shape in the aftermath of World War II.[622] Its devastating impact, which left Europe in ruins, was a strong impetus for recognising lasting peace as the only possible foundation for the future. Thus, the founding fathers of the European Union conceived economic integration as a means of overcoming Europe's historical cycle of conflict and violence.[623] To achieve this objective, they entrusted the integration process to a newly created

[622] Panagiotis Liargovas, Christos Papageorgio, "The Genesis of the 'European Idea' and Its Early Implementation Efforts," in *The European Integration*, vol. 1. Springer Texts in Political Science and International Relations. (Cham: Springer, 2023), 11.

[623] In this regard, Jean Monnet, Robert Schuman and Paul Henri Spaak are referred to as the "founding fathers" of the European Community, because of their influence in the development and promotion of the EEC. See in detail: Roger Goebel, "An Historical Perspective I: From Community to Union (1957– 1993)" in *Oxford Principles of European Union Law: The European Union Legal Order Volume I*, ed. Robert Schütze, and Takis Tridimas, (Oxford: Oxford University Press, 2018), 6.

system of European governance endowed with legislative, executive, and judicial powers traditionally exercised by states.[624]

Several key events marked the early stage of European integration, including the Hague and London Conferences in 1948 and the Schumann Declaration in 1950.[625] The latter is regarded as the decisive turning point in Europe's post-war unification. Presented by Robert Schuman and shaped by the ideas of Jean Monnet, the Declaration proposed establishing a European authority to jointly manage French and German coal and steel production.[626] The recognition of these industries as the key sectors for reconstruction and integration led to the creation of the European Coal and Steel Community (hereinafter: ECSC) as the oldest EU predecessor.[627]

Following long negotiations, the ECSC Treaty was signed in Paris on 18 April 1951 between Belgium, France, Germany, Italy, Luxembourg and the Netherlands. As a result of political compromise, the regulatory oversight for the coal and steel industries in participating countries was assigned to the supranational High Authority. Other institutions of the ECSC were the Council of Ministers, the Assembly and the Court of Justice. Thus, the ECSC Treaty "certainly helped shape the model of the future EU Institutions."[628] In this vein, the First General report on the activities of the (ECSC) Community from 1953 stated that "for the first time in their history, these countries have assigned part of their sovereignty which they had exercised separately and against one another in the coal and steel industries, to the common institutions".[629] The latter is significant because it marked the first practical limitation on the exercise of exclusive national sovereignty, while demonstrating that shared governance could serve common policy goals.

The ECSC's policy agenda focused primarily on economic growth, increasing employment, and improving living conditions across its member states. This was to be achieved

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[624] Servatius Van Thiel, "Commentary on Chapter 1: Trends in European Direct Taxation: Tax Harmonisation, State Aid and Case Law" in *European Tax Integration: Law, Policy and Politics*, ed. Pasquale Pistone (Amsterdam, IBFD, 2018), 21.

[625] The Hague Conference in May 1948 brought together political leaders to discuss European integration, marking the first major forum for debating federalist and confederalist visions for the European future. Later on, a conference in London, which was held the same year, placed Ruhr's coal and steel production under international control while linking West Germany to the European Recovery Plan. The Petersberg Agreement from 1949 restored parts of Germany's sovereignty, enabled West Germany's associate membership in the Council of Europe, and allowed participation in international trade, industrial policy, and the Marshall Plan. See in detail: De Feo, *supra* note 521.

[626] Robert Schuman, "Declaration of 9 May 1950," May 9, 1950, accessed June 5, 2025. Available at: https://www.robert-schuman.eu/en/declaration-of-9-may-1950.

[627] De Feo, *supra* note 521, at 11.

[628] De Feo, *supra* note 521, at 18.

[629] ECSC, The First General Report on the activities of the European Coal and Steel Community (1953). Available at: First General report on the activities of the Community - Publications Office of the EU.

by creating a common market for coal and steel, thus establishing the most efficient distribution of production, ensuring high productivity levels and maintaining employment stability.[630] The ECSC did not rely on financial contributions from Member States to fund its activities. The rationale behind such a solution is that "directing revenue from national budgets to a European project, whose success was entirely unclear, would have arguably been difficult to justify before parliaments and citizens in a post-war period."[631] Instead, the ECSC was financed through two distinct revenue streams: the levy on coal and steel production and the proceeds from loans.[632] Article 49 of the ECSC Treaty explicitly stated: "The High Authority is empowered to procure the funds it requires to carry out its tasks: by imposing levies on the production of coal and steel; by contracting loans. It may receive gifts."

The legal design of the ECSC financing directly supported its core policy goals. Each of these resources served a distinct function. The coal and steel levy constituted the first example of a supranational own resource. As previously demonstrated,[633] it was paid by the coal and steel companies and strictly earmarked for specific purposes listed in Article 50 of the ECSC Treaty: administrative costs, non-repayable aid for worker readaptation, servicing of ECSC loans, and the promotion of technical and economic research.[634] Each of these expenditures was explicitly linked to corresponding provisions in the Treaty, ensuring that spending aligned with ECSC competencies. In addition, it is important to note that the ECSC levy was imposed on the entities operating in the coal and steel sectors, that is, on those who directly benefited from the supranational regulation of these markets and the improved market conditions, financial support, and other advantages associated with European integration.

The second revenue source for the ECSC was borrowing. The High Authority could use the funds obtained by borrowing only to grant loans directly to the coal and steel companies.[635] In addition, Article 72 of the ECSC Treaty stands out as the stepping stone toward a future customs union within the EU. Namely, this article authorised the ECSC to decide on the lowest and the highest customs rates for coal and steel.[636]

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[630] Article 2, The Treaty Establishing the European Coal and Steel Community and annexes I-III, Paris, 18 April 1951 (draft English text), available at EurLex, Document 11951K: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11951K. Hereinafter: The Treaty Establishing the European Coal and Steel Community.
[631] Breuer, *supra* note 517, at 31.
[632] Article 49, The Treaty Establishing the European Coal and Steel Community.
[633] See *supra* sec. 2.4.1.1.
[634] Article 50, the Treaty Establishing the European Coal and Steel Community.
[635] Article 51, the Treaty Establishing the European Coal and Steel Community.
[636] More precisely, Article 71(1) of the Treaty Establishing the European Coal and Steel Community prescribes: "Minimum rates below which Member States undertake not to lower their customs duties on coal and steel as against third countries, and maximum rates above which they undertake not to raise them, may be fixed by decision

Taken together, these two revenue sources illustrate an early model of policy-aligned financing at the supranational level.[637] The two sources of funds were legally designated to a specific set of purposes, and each category of spending was rooted in a corresponding Treaty provision. Thus, the ECSC's revenue sources were proposed not only because of their revenue-raising capacity, but also to promote improvement and growth of the coal and steel industries. This demonstrates that the early stages of European integration were characterised by the idea that supranational financing should be connected to the purposes for which the revenue is ultimately used. The prevailing view in the scholarship is that the financial independence of the ECSC was at an advanced level. Often referred to as "the first experiment in supranationalism", the ECSC indeed was a unique and successful example of integration.[638]

3.1.2. European Atomic Energy Community (Euratom)

In 1955, Jean Monnet stated that "the United States of Europe means: a federal power linked to the peaceful exploitation of Atomic Energy."[639] Euratom was established following this vision. Building on the successful establishment of the ECSC as a first stage of European integration, the participating states decided to expand their cooperation. Thus, in 1957, the six founding countries signed two Treaties, creating the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).[640] The latter was created with the purpose of "the raising of the standard of living (…) and the development of relations with other countries by creating the conditions necessary for the speedy establishment and growth of the nuclear industry."[641]

To achieve these goals, Euratom was conferred the power to promote research and the dissemination of technical information, as well as to develop uniform safety standards for the protection of workers and the general public.[642] Additionally, it was tasked with facilitating investment in nuclear energy and ensuring the fair distribution of ores and nuclear fuels within

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of the Council, acting unanimously on a proposal from the High Authority made on the latter's own initiative or at the request of a Member State."

[637] For the explanation of the phrase "policy-aligned own resources" see *supra* sec. 1.5.

[638] Finally, it is necessary to briefly address the effects of the ECSC Treaty's expiration in 2002. At the time of its dissolution, the value of the ECSC's assets was estimated to be 820 million euros. After the dissolution, its assets were transferred to the research funds for the coal and steel industry in the European Community.

[639] Michel Gaudet, "Euratom," reprinted from *Progress in Nuclear Energy Series* 10, no. 1, 2 *Law and Administration* (1959): 140.

[640] European Union, *History of the European Union 1945-1959*, available at: https://european-union.europa.eu/principles-countries-history/history-eu/1945-59_en

[641] Article 1, Treaty establishing the European Atomic Energy Community, signed 25 March 1957 in Rome, available at (in Italian): https://treaties.un.org/doc/Publication/UNTS/Volume%20296/v296.pdf. Hereinafter: Euratom Treaty.

[642] Article 2, Euratom Treaty.

the Community. Euratom was also granted oversight of nuclear material usage and ownership rights over special fissile materials. Furthermore, Euratom aimed to create a common market for specialised materials and equipment while fostering international cooperation for the peaceful use of nuclear energy.[643]

Its institutional framework was similar to that of the ECSC, consisting of the Council of Ministers, the Commission, the Parliamentary Assembly, and the Court of Justice.[644] However, the similarities disappear when it comes to its financing. Unlike the ECSC, which was completely financially independent from its Member States, Euratom's most important revenue was Member States' contributions. Pursuant to Article 172(1) of the 1957 Euratom Treaty, the contributions for the operational (administrative) budget were divided among the Member States in different proportions. In this respect, Germany, France and Italy were obliged to pay the highest contributions, while Luxembourg paid the lowest amount.[645] A similar formula was applied in Article 172(2) of the Treaty, which governed the research and investment budget. Hence, the Euratom Treaty established two budgets, the administrative budget and the separate budget for research and development. The apportionment formulas enshrined in Article 172 of the Treaty could be changed only by the unanimous decision of the Council.

Moreover, it is necessary to point out that Article 173 of the Euratom Treaty provided that financial contributions of the Member States could be replaced "in whole or in part by proceeds of levy collected by the Community in the Member States."[646] The wording of this Article is, to some extent, similar to the previously mentioned Article 50 of the ECSC Treaty. Both articles offered a legal basis for the supranational community to impose a levy as its own resource. However, the Euratom Community never imposed such a levy. These parallel provisions in the ECSC and Euratom Treaties demonstrate that, even at the earliest stage of European integration, the Member States recognised that supranational governance could not operate effectively without its own revenue. Therefore, the aforementioned Treaties provided a legal basis for the establishment of autonomous revenue sources to support the Communities' functions.

Finally, it should be emphasised that all the above-mentioned competencies of Euratom did not have an expiration date, unlike those of the ECSC. On the contrary, Article 208 of the

[643] Article 2, Euratom Treaty.
[644] Article 3, Euratom Treaty.
[645] The operating revenue shall include, irrespective of any other current revenue, financial contributions of Member States on the following scale: Belgium 7.9, Germany 28, France 28, Italy 28, Luxembourg 0.2, Netherlands 7.9. (Article 172(1), Euratom Treaty 1957).
[646] Article 173, Euratom Treaty.

Treaty explicitly prescribes that the Treaty is concluded for an unlimited period, and it has been in force up to this day.

3.1.3. European Economic Community (EEC)

The process of increased economic integration continued with the establishment of the European Economic Community (EEC) in 1957.[647] As the integration level increased, so did the number of policy goals that the EEC was envisaged to achieve. The overarching goal of the EEC was the creation of a common market and aligning Member States' economic policies to achieve economic growth.[648] The key point for meeting these objectives was the progressive elimination of trade barriers, which would subsequently allow the free movement of goods, persons, services and capital. In addition, the EEC aimed to establish a common customs tariff and a common commercial policy towards third countries and to develop a common policy regarding agriculture, transport and competition law.[649] Therefore, the EEC was authorised to coordinate the Member States' economic policies and approximate their laws to the extent required for the proper functioning of the common market.[650] The pursuit of these objectives could not be realised without an adequate and stable system of financing.

The first source of revenue mentioned by the EEC Treaty was the Member States' contributions, according to amounts prescribed in Article 200 of the Treaty. These amounts could be changed only by a unanimous decision of the Council. However, it is important to highlight Article 201(1) of the EEC Treaty, which stipulated that "the Commission shall study the conditions under which the financial contributions of Member States provided for in Article 200 may be replaced by other resources of the Community itself, in particular, by revenue accruing from the common customs tariff when the latter has been definitely introduced."[651] The EEC Treaty explicitly uses the plural when referring to the introduction of new own resources. Moreover, it highlights that one of them will be the revenue accruing from the common customs tariff. The Treaty's use of the term "replaced" rather than, for instance,

[647] It was established by the Treaty of Rome, signed on 25 March 1957 between the Benelux countries, Italy, Germany and France. The institutional framework followed the previously established pattern from the ECSC and Euratom. Hence, the institutions of the EEC were the Assembly, the Commission, the Council and the Court of Justice.
[648] Article 2, Treaty establishing the European Economic Community and related instruments, signed on 25 March 1957. Available at: https://netaffair.org/documents/1957-rome-treaty.pdf. Hereinafter: Treaty establishing the EEC.
[649] Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases and Materials*, 4th edn. (Oxford: Oxford University Press, 2008), 6.
[650] Article 3, Treaty establishing the EEC.
[651] Article 201(1), Treaty establishing the EEC.

"complemented" may suggest the original intention that Member State contributions should ultimately be phased out in favour of a fully autonomous system of Community own resources.[652]

Pursuant to Article 201 EEC Treaty, which allowed the introduction of several new resources, financial contributions from the Community for sugar producers were introduced as from 1st July 1968, to cover in part, or in total, certain expenses incurred in that sector."[653] More precisely, Regulation 1009/67[654] prescribed the introduction of a levy on the imports of sugar products, such as beet sugar and cane sugar, sugar cane, molasses and sugar syrups.[655] The sugar levy could also be introduced on the export of the products mentioned, under the conditions provided in the Regulation. It represents yet another example of the establishment of a specific revenue source to cover the expenses of market regulation for the specific type of goods, in this case, sugar products. Subsequent financial reports explicitly denote that "sugar and isoglucose producers pay levies on production to cover market support arrangements and to finance a system of equalisation of sugar storage costs introduced to ensure that sugar is released on the market regularly throughout the year."[656] Thus, there is a clear connection between this revenue source and its spending purpose. Such tighter alignment between revenues and expenditures at the early stages of the EU's development might be explained through the functionalist approach in the early stage of European integration, which pursued cooperation and unification following the "sector-by-sector" approach.[657] Similarly, the beneficiaries of the common organisation of the sugar market were also required to bear the financial burden of the levy financing that regime.

Attempts in the introduction of levies that would follow sectoral integration could be traced in the 1960s. Thus, in 1962, the Commission proposed to introduce a levy on dairy products to fund the common policy for that specific sector.[658] Moreover, "at its session in

[652] Martha Caziero, „What legal basis for an EU tax?" *Common Market Law Review* 61, no. 6 (2024): 1531.
[653] FAO, Sugar regime of the European Union. Available at: https://www.fao.org/4/x4988e/x4988e06.pdf.
[654] Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organisation of the market in sugar, Official Journal of the European Communities no. 308/1.
[655] Article 14 (1) Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organisation of the market in sugar, Official Journal of the European Communities no. 308/1.
[656] Directorate-General for Budget (European Commission) (1992) European Communities Financial Report 1991. Available at: Financial report 1991 - Publications Office of the EU.
[657] In-depth analysis of early stages of European integration, with a particular emphasis on sector integration and functionalism, was offered by Ernst B. Haas, *The Uniting of Europe:* political, social, and economic forces 1950-1957 (Notre Dame, Indiana: University of Notre Dame Press, 1958). See also: Massimo Fabio, *The Customs Law of the European Union* (Allphen an den Rijn: Wolters Kluwer, 2020), 7.
[658] See Proposal of the Commission to the Council of 7 May 1962: Regulation concerning the institution of a system of levies and the progressive establishment of a common organisation of the markets for milk and dairy products.

December 1963 the Council adopted a resolution on the introduction of a levy on imported vegetable and marine fats and on such fats produced in the Community. This levy is commonly known as the "margarine tax". This proposal also provided that the revenue collected through this levy, if adopted, would be assigned to the EEC.[659] This decision was reaffirmed in May 1968 as part of agreements related to dairy products. However, the levy was not implemented due to strong opposition from certain countries, particularly the Netherlands, and challenges related to establishing the Community's own financial resources.[660] Furthermore, in December 1968, the Commission recommended to the Council that a tax on oil cakes and fish flours be introduced.[661] The latter also did not become its own resource for the EEC. However, the rationale motivating the Commission to propose new sources of policy funding can be found in a "noticeable increase in the volume of expenditure due to the development of agriculture and structural policies."[662]

Thus, so-called traditional own resources were introduced to reduce the EEC's reliance on transfers from Member States.[663] More precisely, the Heads of State and Government met in 1969 and decided to create a system of own resources for the Communities, as outlined in the Treaties, to meet the needs of the EEC. The latter required the passing of a new legal act called the Own Resources Decision.[664] This system was gradually introduced in 1971.[665] "The Community's resources consisted primarily of levies on imports of agricultural produce and customs duties collected at Community borders, and a sugar levy introduced under the common agricultural policy."[666]

The analysis of own resources evolution, starting from the ECSC to the EEC, reveals that "the practice of segmentation and earmarking as well as the use of temporary funding

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[659] Supplement to BULLETIN of the European Economic Community N° 7, 1962, available at: https://aei.pitt.edu/6878/1/6878.pdf

[660] European Communities Joint Information Service, *Newsletter on the Common Agricultural Policy no 10, July 1968* (1968). Available at: https://aei.pitt.edu/6522/1/6522.pdf.

[661] In the newsletter on the CAP in 1968 it is stated that "If the Community is to have its own revenue, the national parliaments must agree, and it appears that the Dutch Parliament is only prepared to approve the proposal if the European Parliament is given adequate control over these funds." See: European Communities Joint Information Service, *Newsletter on the Common Agricultural Policy no 10, July 1968*.

[662] Gabriele Cipriani, „The EU Budget," in *The Routledge Handbook of European Public Policy*, ed. Nikolaos Zahariadis, Laurie Buonanno (London: Routledge, 2017), 143.

[663] Margit 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 Series* no. 3 (2016): 8.

[664] Giacomo Benedetto, *The History of EU Budget* (Brussels: Policy Department for Budgetary Affairs European Parliament, 2024): 8.

[665] Émile Noël, *Working Together: The Institutions of the European Community* (Office for Official Publications of the European Communities, 1988), 10.

[666] *Ibid.*

instruments constitute a continuity between both budget systems."[667] Additionally, it should be noted that the traditional own resources soon faced a decline in their revenue-raising power. Moreover, VAT harmonisation was "recognised as a prerequisite for successful economic integration".[668] Following the so-called Neumark report, from the late 1960s, the EU was working on the adaptation of turnover taxes to VAT.[669] Finally, in 1977, VAT became the first tax to be harmonised within the EU.[670] Therefore, this motivated the introduction of another own resource, which was the levy on national VAT receipts with a uniform call rate in 1979.[671] Nevertheless, at the beginning of the 1980s, the EU faced a budgetary crisis. Between 1980 and 1987, the budget doubled, but revenue from traditional own resources (customs duties and agricultural levies) stagnated due to tariff reductions and food self-sufficiency.[672]

While these provisions set out the framework for the Community's revenue system, the EEC Treaty also laid the foundations for how these resources would be spent. Thus, it introduced specific funds designed to support key policy objectives, beginning with the creation of the European Social Fund (ESF). The ESF aimed to improve employment opportunities for workers and to contribute to the raising of their standard of living.[673] Thus, Article 125 of the EEC Treaty provided: "At the request of a Member State, the Fund shall, within the framework of the rules provided for in Article 127, cover 50 % of expenses incurred after the entry into force of this Treaty by that State or by a body under public law for: (a) ensuring productive re-employment of workers by means of occupational re-training, resettlement allowances; and (b) granting aids for the benefit of workers whose employment is temporarily reduced or wholly or partly suspended." The ESF was also financed by the Member States' contributions, although the apportionment scale for the contributions differed from the scale for the EEC budget. The revenues and expenditures of the Fund were nevertheless included in the EEC budget.[674]

The evolution of funds as instruments for financing specific policy objectives continued. Beyond social policy, the Treaty also anticipated the need for common financing of agricultural

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[667] Breuer, *supra* note 517, at 33.
[668] Simon Cornielje, "The Costly Stalemate of EU VAT Harmonisation," *EC Tax Review* 31, no. 2 (2022): 85. https://doi.org/10.54648/ECTA2022007.
[669] Corneilje, *op. cit.* at 86.
[670] Craig and de Búrca, *supra* note 649, at 660.
[671] Jacques Le Cacheux, "Funding the EU Budget with a Genuine Own Resource: The Case for a European Tax," Notre Europe Study No. 57 (May 2007), Institut Delors, https://institutdelors.eu/content/uploads/2025/04/europeantaxlecacheuxnemay07-2.pdf.
[672] European Commission, *European Union Public Finance,* 5th ed. (Luxembourg: Publications Office of the European Union, 2014), 30.
[673] Article 3(j) and Articles 123-128 Treaty establishing the European Economic Community and related instruments.
[674] Article 199, 200 Treaty establishing the European Economic Community and related instruments.

measures. [675] Consequently, in 1960, the Commission proposed establishing a European fund specifically for agricultural markets, which was then subdivided into the European Agricultural Guidance and Guarantee Fund (FEOGA) and the European Fund for Structural Improvements in Agriculture (EFSIA).[676] Initially, the FEOGA revenues consisted of contributions by Member States.[677] More precisely, between 1958 and 1970, most of the EU expenditures were funded through voluntary *ad hoc* contributions from Member States, but this system of "membership fees" was intended to be a temporary arrangement.[678]

Moreover, the unification of the ECSC, Euratom and the EEC in 1967 resulted in the creation of the general budget of the European Communities, which represents the first form of the EU budget as it is today.[679]

Furthermore, the enlargement of the EEC in 1973 was the starting point of regional policies. This expansion, coupled with the first oil crisis, highlighted the need for solidarity to support rural and less prosperous regions, especially in Ireland.[680] Thus, the European Regional Development Fund (ERDF) was created in 1975 by a Council Regulation[681] to support disadvantaged regions, focusing on productive investments, infrastructure, and small businesses. With further enlargements to Greece in 1981 and to Spain and Portugal in 1986, regional disparities widened.[682] Unlike the very beginning of the EEC, where separate sources of funds were created for separate policy goals, the ERDF is financed by revenue collected in the Community's budget.[683] The latter indicates a departure from the connection between spending and expenditures which existed at the beginning of European integration.

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[675] In Article 40 (4), the EEC Treaty provided that, to enable the common organisation of agricultural markets to attain its objectives, one or more agricultural guidance and guarantee funds *may* be set up. Unlike ESF, whose creation was explicitly obligatory, the wording of this article is different, leaving the creation of such a fund to the decision of the Commission. See in detail: Francois Muller, F.E.O.G.A. The Agricultural Guidance and Guarantee Fund of the E.E.C. (Department of Agricultural Economics Archive 272872, University of Newcastle upon Tyne, 1970): 7. Available at: https://ideas.repec.org/p/ags/ukncar/272872.html#download.

[676] *Ibid.*

[677] The first part of the contribution was calculated based on their Gross National Product, while the second part was calculated based on the proportion of net imports from third countries. Consequently, the contributions faced severe fluctuations. This led to opting for a fixed amount of contributions in the following years.

[678] Schratzenstaller, M. et al. *supra* note 664, at 8.

[679] Jure Šimović, and Hrvoje Šimović, *Fiskalni sustav i fiskalna politika Europske Unije* (Zagreb: Pravni fakultet u Zagrebu, 2006): 51.

[680] Sandy Dall'Erba, *European Regional Development Policies: History and Current Issues*, University of Pittsburgh, AEI Archives, (2003), 2.

[681] Regulation (EEC) No 724/75 of the Council of 18 March 1975 establishing a European Regional Development Fund, OJ L 73, 21.3.1975.

[682] The area grew by 48 %, and the population by 22 %, but per capita GDP fell by 6 %, underscoring the need for transport infrastructure improvements and introducing coordinated, multi-year development actions. See more: Dall'Erba, *supra* note 680, at 2.

[683] See e.g. Directorate-General for Budget (European Commission) (1992) European Communities Financial Report 1991. This report clearly elaborates the amount of funds that were provided for each of these funds from the EU budget. Available at: Financial report 1991 - Publications Office of the EU.

In this vein, it is interesting to point out the 1983 Commission's Green Paper on the new own resources, where the Commission calls for the return to linking EEC resources to certain expenditures.[684] More precisely, the Commission indicated that "in addition to its general revenues, it might be advantageous for the Community to dispose of certain minor sources of income linked to the development of specific policies. The example of the ECSC Budget has shown that under certain conditions and up to a certain point, expenditure in connection with policies in particular sectors can satisfactorily be financed by levies from those same sectors."[685]

Moreover, already in 1987, the Commission stated that "recent and current developments in expenditure show that the present system of own resources is inadequate and this has disrupted the continuity of Community activity and forced it into stop-gap expedients."[686] In fact, the Commission concluded that the own resources available to the Community at the time were not sufficient even for existing policies, let alone for the ambitions that lay ahead. The latter led to the creation of GNI-based own resource, which was initially envisaged only to "make up any shortfall in revenue raised by the first three resources."[687]

Taken together, this historical overview illustrates the initial aspiration to align revenue with expenditure in the European public finance system. Moreover, it also revealed the initial idea that those who benefit from supranational market regulation should also contribute financially to the authority that makes such regulation possible. Yet, as the Communities gradually assumed an ever-broader range of policy responsibilities, it became impossible to preserve the tight revenue–expenditure link that had characterised instruments such as the ECSC levy or the sugar levy.

3.1.4. European Union

The beginning of the 1990s was marked by the adoption of the Maastricht Treaty, which "established a European Union based on the three European Communities, a common foreign

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[684] European Commission, *The "Green Paper" from the European Commission on the New Own Resources for the Community, 10 February 1983*. Available at EUI. https://archives.eui.eu/en/files/documents/90520.pdf?d=inline .

[685] European Commission, *The "Green Paper" from the European Commission on the New Own Resources for the Community*, 10 February 1983.

[686] Commission of the European Communities. *Making a success of the Single Act: a new frontier for Europe*, COM (87) 100 final. Brussels: 15. February 1987.

[687] Directorate-General for Parliamentary Research Services (European Parliament) The own resources of the European Union: Analysis and possible developments. (1997): 2. Available at: https://op.europa.eu/en/publication-detail/-/publication/ffbc99ab-d5c7-4c26-9710-57be034b4718/language-en

and security policy (CFSP), and cooperation in the fields of justice and home affairs (JHA)."[688] This deepening of integration revived longstanding concerns about whether the Union's revenue system was adequate for an expanding set of policy objectives.

Therefore, new proposals were set forward. In 1998, the European Parliament issued an in-depth analysis of the own resource system. Interestingly, the traditional own resources were straightforwardly described as "taxes assigned directly to the supranational level of government."[689] However, their revenue yield was considered inadequate. Moreover, VAT own resource and GNI-based own resource were criticised because they "undermined democratic accountability as no visible link existed between what was paid in taxes and what was spent on the Union level".[690] Therefore, new proposals were set forward, with an emphasis that new own resources should be "tax instruments linked to EU policies."[691] In 2001, European parliament emphasised that "'EU must move steadily away from dependence on transfers from Member States' and that in the long term, the own resources system must be modified with a view to achieving financial autonomy."[692] In addition, the Parliament noted that "the purpose of the reform should be to provide the Union with an autonomous source of revenue which is sufficient for its needs and directly linked to the taxpayers."[693] Such a discourse was present in the EU own resource agenda for decades and critique of existing own resource system persisted. The latter can be observed through e.g., the Commission's 2004 Report on the system of own resources, which highlighted "first, the insufficient transparency of the system for EU citizens combined with limited financial autonomy from national treasuries; secondly, the need to reform the existing mechanism for correction of negative budgetary imbalances." [694]

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[688] Fabio Pappalardo, The Treaty of Maastricht, CVCE. (European Navigator, 2003): 2. Available at: https://www.cvce.eu/en/education/unit-content/-/unit/d5906df5-4f83-4603-85f7-0cabc24b9fe1/e038b310-f139-407f-9bfb-a1b2e901fb56/Resources#623fb976-c100-466b-85ac-2e0104f625c7_en&overlay.

[689] Directorate-General for Parliamentary Research Services (European Parliament), The own resources of the European Union: Analysis and possible developments (1997), 1.

[690] Directorate-General for Parliamentary Research Services (European Parliament), The own resources of the European Union: Analysis and possible developments (1997), 3.

[691] *Op. cit.*

[692] European Parliament, European Parliament resolution on the situation concerning the European Union's own resources in 2001 (2001/2019(INI) Official Journal of the European Communities C65E/281 (2001): 7. Available at: https://www.europarl.europa.eu/doceo/document/A-5-2001-0238_EN.pdf.

[693] European Parliament, European Parliament resolution on the situation concerning the European Union's own resources in 2001 (2001/2019(INI) Official Journal of the European Communities C65E/281 (2001): 7.

[694] European Commission, Commission report of 14 July 2004, "The financing of the European Union - Report on the operation of the own resources system" COM (2004) 505 (2004).

Moreover, similar discourse continued in the Commission Staff Working Document on the EU budget from 2011[695], as well as the HLGOR Report from 2017.[696] Mario Monti, as the Head of the High-level Group on Own Resources[697] (HLGOR), pointed out several important aspects that were taken into consideration by the EU institutions in this regard. The HGLOR report highlighted the issues in the EU's public finance system, including complexity and lack of transparency, particularly due to national rebates and the VAT-based resource.[698] The "*juste retour"* position when negotiating the budget is fuelled by the fact that the budget depends mostly on national contributions.[699] Moreover, it was stressed that the EU revenues and expenditures are not adequately connected, thereby making the benefits of the EU budget expenditures less visible and obstructing the perception of European added value.[700] Finally, unanimity requirements as an unavoidable step in reforming the own resources system remain a permanent stumbling block for meaningful reform.[701] Proposals that were put forth to address these issues were the introduction of new EU taxes, such as a Financial Transaction Tax (FTT), a CO2 levy, or taxes on digital companies, to reduce reliance on GNI-based contributions.[702] However, all the initiatives did not result in the creation of new resources.[703]

On the other hand, new developments were taking place on the expenditure side. The Cohesion Fund was set up to support regional solidarity at the EU level. "Its goal was to carry out public investments in environmental and communication infrastructures in regions lagging behind in these areas and with a gross national income (GNI) of less than 90 % of the average income of the EU."[704] Following the ratification of the Single European Act in 1987, the Commission brought forward plans for a new interinstitutional agreement on a multiannual

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[695] European Commission, *Financing the EU budget: report on the operation of the own resources system* (2011). Available at: https://op.europa.eu/en/publication-detail/-/publication/24c2e4dc-80a8-4c69-ab01-fc64da171401/language-en.

[696] European Commission: Directorate-General for Budget, *Future financing of the EU – Final report and recommendations of the High-Level Group on Own Resources*, (EU Publications Office, 2017) Available at: https://data.europa.eu/doi/10.2761/36070.

[697] The High-level Group on Own Resources was founded in February 2014 to explore more transparent, straightforward, fair, and democratically accountable methods of financing the EU. The Group Members were designated by each institution, but they were authorised to work independently.

[698] European Commission: Directorate-General for Budget *Future financing of the EU – Final report and recommendations of the High-Level Group on Own Resources* (2017), 11.

[699] *op. cit.* at 7.

[700] *op. cit.* at 61.

[701] *op. cit.* at 18.

[702] *op. cit.* at 48.

[703] The latest new own resource is the so-called plastic levy, introduced in 2021 in the post-pandemic era, after a long period without any changes to the own resources system. See more *infra* sec. 3.5.3.4.

[704] Victor Forte-Campos, Juan Rohas, "Historical development of the European structural and investment funds" *Analytical Articles, Economic Bulletin* 3/2021 (2021): 5. Available at: https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/InformesBoletinesRevistas/ArticulosAnaliticos/21/T3/Files/be2103-art20e.pdf.

budget. From 1988 onwards, the EU budget operated under a Multiannual Financial Framework (MFF), which fixed expenditure ceilings for specific policy headings and contributed to a more systematic allocation of resources. [705] Various funds dedicated to different EU policy goals were later merged in 2015 into the European Structural and Investment Fund (ESIF). [706] However, these developments gradually loosened the earlier, tighter link between revenue sources and expenditure purposes, pushing the EU toward a more general budgetary structure.

Although agricultural and cohesion funding continue to represent the largest portion of the EU budget, the Union has also increasingly relied on "action programmes" in areas of supplementary competence, such as education, culture, and migrant integration. In these domains, where harmonisation of national laws is prohibited, financial support has become a primary policy instrument, enabling the EU to steer Member State behaviour despite limited legislative powers.[707]

Finally, two influential events which shaped the EU policy goals and public finance legal framework were the financial crisis (2008-2012) and the COVID-19 crisis (2020-2022).[708] The EU institutions concluded that the origin of the financial crisis was unsustainable public finance management. Thus, reforms in the financial crisis period transformed the economic governance in the EU, introducing stricter budgetary constraints and limitations on government spending.[709] On the other hand, the spending policies of the EU focused on financial assistance to Member States in need. The solutions to mitigate the financial crisis were found within the EU law, such as the European Financial Stabilisation Mechanism (EFSM), created based on Article 122(2) TFEU to grant financial aid to Greece. Some solutions to the Euro crisis were placed outside EU law, such as the European Financial Stability Facility (EFSF). It was created by the Euro area Member States as a company under Luxembourg law to offer financial

[705] Benedetto, *supra* note 664, at 10.
[706] Nowadays, ESIF encompasses five different Funds, which jointly create one of the largest investment instruments under the EU budget. See Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013.
[707] De Witte, *supra* note 588, at 227.
[708] On the impact of the COVID-19 crisis on the EU public finance framework, see Bruno De Witte, "The European Union's COVID-19 Recovery Plan: The Legal Engineering of an Economic Policy Shift," *Common Market Law Review* 58, no. 3 (2021): 635-682.; Paul Dermine, "The EU's Response to the COVID-19 Crisis and the Trajectory of Fiscal Integration in Europe: Between Continuity and Rupture," *Legal Issues of Economic Integration* 47, no. 4) (2020): 337-358. and Diane Fromage, "Towards Increasing Unity and Continuing Executive Predominance Within the E(M)U Post-COVID?" *Legal Issues of Economic Integration* 47, no. 4 (2020): 385-408.
[709] Federico Fabbrini, *Economic Governance in Europe*: *Comparative Paradoxes and Constitutional Challenges* (Oxford: Oxford University Press, 2016), pp. 2-3.

assistance to Member States in need.[710] Finally, yet another significant change in EU public finance caused by the financial crisis was "the amendment to Article 136 TFEU, which allowed the establishment of a permanent stability mechanism for the EMU."[711] However, the financial crisis did not result in the reform of the own resource system.

On the other hand, recovery from the economic consequences of the COVID-19 pandemic was incorporated into the EU law and aligned with previously set policy goals. In this regard, the roadmap for the EU recovery was found in the European Green Deal (EGD) adopted in 2019, constituting policy directions for further EU development, such as green and digital transition. Building upon the EGD, the Commission proposed an ambitious recovery plan named NextGenerationEU (NGEU)[712] which will be discussed in detail in the following chapter.[713]

In addition, the NGEU represents, as Fabbrini said, a "game-changer" of the EU recovery.[714] More precisely, Member States allowed the Commission to borrow funds on capital markets, thus creating a significant amount of EU debt. The funds were then subsequently distributed to Member States, but spending purposes were decided at the EU level. The Commission justified such an approach to expenditure, noting that "if left to individual countries alone, the recovery would likely be incomplete, uneven and unfair. But in our Union, where people, businesses and economies depend on each other, Europe is in a unique position to be able to invest in a sustainable recovery and future. This investment will be a common good for our shared future."[715] Therefore, the pandemic not only transformed EU spending but also revitalised the debate on how the Union should finance itself, with the need to repay common borrowing offering the Commission a powerful argument for expanding the system of own resources.[716]

This overview points out how the financing of the EU policy goals transformed over the years from having specific revenues for specific policy goals to funding various policy goals through the EU budget, with ESIF of ERDF being one of the examples. Thus, another conclusion stemming from the analysis above is that the EU public finance system has long

[710] Fabbrini, *op. cit.*, at 5-6.
[711] Fabbrini, *op. cit.*, at 6.
[712] European Commission, *Communication on 'Europe's Moment: Repair and Prepare for the Next Generation'*, 27 May 2020, COM (2020) 456 final (2020). On the interconnection between the EGD and NGEU, see section 4.1. of the Communication.
[713] See *infra* sec. 3.4.2.
[714] Federico Fabbrini, "The EU Economic Constitution After Covid-19 and "Next Generation EU" *REBUILD Centre Working Paper* No. 1 (2022):3. Available at SSRN: https://ssrn.com/abstract=4101979.
[715] European Commission (2020). Communication on 'Europe's Moment: Repair and Prepare for the Next Generation', 27 May 2020, COM (2020) 456 final (2020).
[716] See *infra* sec.4.2.

featured policy-driven instruments on the expenditure side. Conversely, there was a traditional lack of corresponding policy-oriented revenue sources. This misalignment was noticed and stressed out at the EU already in the 1980s. In its 1983 report on the Own Resource System, the Commission pointed out that "in addition to its general revenues, it might be advantageous for the Community to dispose of certain minor sources of income linked to the development of specific policies."[717] However, this goal was recently addressed through policy-oriented own resources proposals, which will be discussed in chapter 4.[718]

3.2. Fiscal governance in the EU: legal fundamentals

The EU's fiscal governance rests on the relationship between national sovereignty and supranational coordination, shaped by principles of conferral, subsidiarity, proportionality and solidarity. Fiscal governance in the EU extends well beyond taxation, encompassing budgetary surveillance and macroeconomic coordination. Recognising this broader framework is essential, as the principles discussed here apply not only to tax matters but to the full spectrum of EU fiscal oversight. Each principle plays a distinct role in defining how responsibilities are allocated between the EU and its Member States. Understanding these principles is essential for analysing both the limitations and potential of EU-level fiscal integration.

3.2.1. Conferral

The starting point for a discussion on the competence division in the EU is the principle of conferral, since it determines the boundaries of Union authority. The principle of conferral means the EU can act only within the powers granted to it by the Member States in the Treaties, and only to fulfil the objectives specified in those Treaties.[719] Thus, "compliance with the principle of conferral requires that the EU may only act in accordance with the type of competences it enjoys; that the EU legislator may only use the legal instruments which are expressly provided for in the relevant Treaty provision, and that the EU act in question may only be adopted pursuant to the decision-making process provided for in the Treaties."[720]

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[717] European Commission, *The Future financing of the Community (Communication from the Commission to the Council and to the European Parliament).* COM (83) 10 final (1983). Available at EUI: Historical Archives of the European Union https://publications.europa.eu/resource/cellar/11c93929-7887-4aa2-896d-35dcbd6981c2.0001.01/DOC_1.

[718] See *infra* sec. 4.2.

[719] Koen Lenaerts and Jose Antonio Gutierrez-Fons, "The European Union: A constitutional perspective," in *Oxford principles of European Union law: The European Union Legal Order Volume I*, ed. Robert Schütze, and Takis Tridimas (Oxford: Oxford University Publishing, 2018), 112.

[720] *Ibid.*

Although there was no explicit reference to conferral in the ECSC Treaty, Klamert points out that a similar meaning could have been derived from Article 6, which stipulated that ECSC's institutions *act within their powers*.[721] The first explicit codification of conferral in the Treaties can be traced to the EEC Treaty, which provided that its institutions "shall act within the limits of the powers *conferred upon* it by this Treaty".[722]

Nowadays, the principle of conferral is enshrined in several articles in the Treaties. Thus, Article 1(1) TEU establishes the EU as 'the Union', on which the Member States *confer competences* to attain objectives they have in common. Furthermore, Article 3(6) TEU stipulates that the Union must pursue its objectives "by appropriate means commensurate with the competences which are *conferred upon* it in the Treaties." Article 5 TEU lays down the central rule that the Union may act only within the powers granted by the Member States to attain the objectives set out in the Treaties, while all competences not conferred remain with the Member States. The latter was especially emphasised regarding taxation, since the Member States did not confer their competence in this area to the Union. Article 4 TEU reinforces this division, specifying that competences not assigned to the Union remain with the Member States and that national security remains their sole responsibility. Together, these provisions define what Klamert calls the vertical dimension of conferral.[723]

However, the division of competences is prescribed in Title 1 of TFEU, including: i) exclusive competences by the EU (Article 3); ii) competences shared between the EU and the Member States (Article 4), iii) coordinating competences of the EU (Article 5); and iv) complementary competences (Article 6).[724]

The EU has merely a few exclusive competences, having in mind that it results in "the consequences (that) are severe: the Member States have no autonomous legislative competence, and they cannot adopt a legally binding act."[725] These competences are: i) customs union; ii) internal market; iii) monetary policy; iv) the conservation of marine biological resources under the common fisheries policy; v) common commercial policy. The explicit enumeration of competences does not resolve the question of their limits.[726] Notwithstanding this division, Schütze points out that the teleological interpretation caused the "spill over" of the Union's competences in the "sphere that the Member States had believed to have remained within their

[721] Marcus Klamert, *Structural principles of EU law* (Oxford: Hart Publishing, 2025), 76.
[722] *Ibid.*
[723] *Ibid.*
[724] Robert Schütze, *European Union Law*, 2nd ed. (Cambridge: Cambridge University Press, 2018), 240.
[725] Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases and Materials*, 7th ed. (Oxford: Oxford University Press, 2020),108.
[726] *Ibid.*

exclusive competence".[727] Two Treaty provisions that served the aforementioned "spill over" were Article 114, which stipulates the Union's internal market competence, and Article 352, which governs its "residual competence."[728]

Shared competencies are stipulated in Article 4 TFEU in the following areas: i) internal market; ii) social policy; iii) economic, social and territorial cohesion; iv) agriculture and fisheries, excluding the conservation of marine biological resources; v) environment; vi) consumer protection; vii) transport; viii) trans-European networks; ix) energy; x) area of freedom, security and justice; xi) common safety concerns in public health matters, for the aspects defined in this Treaty. However, in some cases, a competence falling within this category, such as the internal market, may still affect the exercise of Member States' competences. A prime example of this is the field of direct taxation. Although it falls within the exclusive competence of each Member State, it must be exercised in line with fundamental freedoms, which are the core of the internal market.[729] However, the influence is also possible in the separate direction. As Traversa observes, "the area of tax incentives raises specific issues since it shows that tax incentives have a hybrid nature, as they pursue goals linked to non-tax competences, such as education, health and social policy, and more.[730] Because these policy fields affect the internal market to different degrees, their spillover effects vary. For instance, "the distorting effects of territorial tax incentives in the area of research, development and innovation cannot be compared to preferential tax measures applicable in the residential housing sector, an area where spillover effects on other Member States are much less important and certainly less damaging to European integration."[731]

Finally, areas where the EU has supporting, coordinating or supplementary competences are: i) protection and improvement of human health; (ii) industry; (iii) culture; (iv) tourism; (v) education, vocational training, youth and sport, vi) civil protection; vii) administrative cooperation.

3.2.2. Subsidiarity

Subsidiarity is usually understood as a "principle in social organisation holding that functions which are performed effectively by subordinate or local organisations belong more

[727] Schütze, *supra* note 724, at 233.
[728] *Ibid.*
[729] Craig and de Búrca, *supra* note 725, at 115.
[730] Edoardo Traversa, "Incentives and Territoriality within the European Union: Balancing the Internal Market with the Tax Sovereignty of Member States," *World Tax Journal* 6, no. 3 (2020): 330. https://doi.org/10.59403/mfddv0 .
[731] *op. cit.* at 331.

properly to them than to a dominant central organisation."[732] However, the meaning of the principle of subsidiarity within the EU legal system is broader than its general definition. In a multi-level governance system like the EU, subsidiarity functions as a guiding principle for determining where authority should lie. It helps assess, for each policy field, whether action is better taken at the national level or whether the Union should assume responsibility, clarifying the practical limits of national sovereignty.[733] The relevance of the principle of subsidiarity and the public finance system of the EU can also be attributed to the fact that "the principle of subsidiarity, which asserts that a policy should be located at the lowest level of government at which it can be efficiently delivered, relies on much the same reasoning as fiscal federalism."[734] Thus, subsidiarity anchors the allocation of fiscal powers in the same logic that underpins fiscal federalism, ensuring that competences and resources are matched at the level where they can generate the greatest public value.[735]

It is one of the pivotal legal principles of the EU since it "stands at the crossroad of questions about EU federalism and separations of powers, functionalism and institutional design and the ends and means of European integration through law."[736] Thus, subsidiarity is also tightly intertwined with conferral, which safeguards that the EU acts within the limits of the competencies that EU Member States have conferred upon it in the Treaties. In the areas where the EU's competencies are limited, the principles of subsidiarity and the principle of proportionality become important to regulate the exercise of the competencies not conferred upon the Union.[737]

The principle of subsidiarity was formally established by the Maastricht Treaty, which referenced it in Article 5 of the Treaty establishing the European Community.[738] According to

[732]See Merriam-Webster, "subsidiarity," accessed June 12, 2025, https://www.merriam-webster.com/dictionary/subsidiarity.

[733] See also Jonathan Golub, "Sovereignty and Subsidiarity in EU Environmental Policy," *Political Studies* 44 (1996): 686-703. https://doi.org/10.1111/j.1467-9248.1996.tb01749.x

[734] Ian Begg, "Fiscal Federalism, Subsidiarity and the EU Budget Review," *Swedish Institute for European Policy Studies. Report 1/2009* (2009):8.

[735] For example, this reasoning can be observed through the example of the EU funds, such as the ERDF and the Cohesion Fund. Namely, the Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund explicitly mentions that principles of subsidiarity and proportionality, as set out in Article 5 TEU, should be respected in the implementation of the ERDF and the Cohesion Fund. The EU provides funds, as well as policy goals to be funded, but Member States' authorities have the final say regarding which projects to finance. Additionally, Member States' authorities are responsible for the implementation of these funds locally, which allows an approach specific to a particular national need.

[736] Federico Fabbrini, "Principle of Subsidiarity," *iCourts Working Paper Series*, no. 66 (2016): 4.

[737] See e.g. Ben M.J. Terra and Peter J. Wattel, *European Tax Law*, 6th edn. (Deventer: Kluwer, 2012): 12.

[738] Article 5 of the Treaty establishing the European Community (Consolidated version 2002) reads as follows: "*The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein. In areas which do not fall within its exclusive competence, the Community shall take action,*

Craig, it "may have been the word that saved the Maastricht Treaty".[739] It was codified in the EC primary law as a way to mitigate the concerns of several Member States against the risk of over-centralisation of powers in Europe."[740] In its case-law in the mid-1990s, CJEU held that the principle of subsidiarity did not constitute a general principle of law capable of reviewing the legality of Community measures adopted before the entry into force of the Maastricht Treaty, which introduced an explicit subsidiarity clause into primary law.[741] However, the Treaty of Amsterdam annexed a Protocol on the application of the principles of subsidiarity and proportionality to the EC Treaty, thus elevating the 1992 Edinburgh European Council's subsidiarity guidelines from soft-law political commitments to treaty-level criteria and making compliance with them subject to judicial review by the Court of Justice.[742]

Finally, the Lisbon Treaty integrated subsidiarity into Article 5(3) TEU, as one of the fundamental principles of the EU legal framework, thus stating its constitutional relevance. The mentioned Article prescribes that "in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level."[743] An interesting viewpoint on subsidiarity is that it represents "the jurisdictional aspect of sovereignty. This touches on subsidiarity in the light of multilevel governance in the Member States of the Union."[744]

In addition, the principle of subsidiarity has two dimensions, both substantive and procedural. The substantive dimension concerns the criteria that guide the assessment of whether the Union's intervention is appropriate in light of the objectives pursued. The procedural dimension, by contrast, refers to the set of procedural requirements that EU institutions must observe when determining compliance with subsidiarity.[745] While the material

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in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty."

[739] Paul Craig, "Subsidiarity: A Political and Legal Analysis," *JCMS: Journal of Common Market Studies* 50, no. 1 (2012): 72. https://doi.org/10.1111/j.1468-5965.2011.02228.x

[740] Fabbrini, *supra* note 736, at 6.

[741] European Parliament, *The principle of subsidiarity* (2017). Available at: https://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/010202/04A_FT(2013)010202_EN.pdf

[742] European Parliament, *The principle of subsidiarity* (2017).

[743] Article 5(3), Consolidated version of the Treaty on European Union, Official Journal of the European Union, C 326, 26 October 2012, 13–46. (Hereinafter: TEU).

[744] Cornielje, *supra* note 668, at 93.

[745] Federico Fabbrini, "The principle of subsidiarity" in *Oxford Principles of European Union Law: the European Union Legal Order Volume I*, ed. Robert Schütze, and Takis Tridimas (Oxford, Oxford University Press: 2018), 227.

aspect can be traced directly to the Treaty provisions themselves, the procedural component was developed later and formalised through the Protocol on the Application of the Principles of Subsidiarity and Proportionality, first attached to the Amsterdam Treaty. [746] However, Wattel points out that "unclear language of Article 5(3) TEU and the lack of substantive practice by the Court of the EU make constitutional subsidiarity a rather elusive principle."[747]

Despite its broad wording, subsidiarity found its way to take on a more practical role: when the Commission proposes legislation, it has to elaborate why the legislative act is in line with principles of subsidiarity and proportionality. This obligation is grounded in the fact that the Lisbon Treaty annexed Protocol No. 2 on the Application of the Principles of Subsidiarity and Proportionality, which enabled national parliaments to scrutinise legislative proposals for compliance with the principle of subsidiarity.[748] This is especially important in the tax law arena, having in mind that Member States did not confer this matter to the EU. On the other side of the coin, it also serves as a foundation to "authorise intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, because of the scale and effects of the proposed action."[749]

All the previously mentioned roles of the subsidiarity principle can be observed in various legislative proposals by the Commission, including the recent BEFIT proposal.[750] The BEFIT initiative demonstrates the relevance of the principle of subsidiarity in the field of direct taxation. As cross-border tax issues cannot be effectively addressed through uncoordinated national measures alone, the proposal reflects the added value of action at the EU level. It thereby illustrates how targeted harmonisation in areas of non-exclusive competence may be justified to address issues which transcend national borders.[751]

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[746] *op. cit*. at 225.

[747] Peter J. Wattel, Otto Marres, Hein Vermeulen, *Terra/Wattel European Tax Law* (Aalphen aan den Rijn: Kluwer Law International, 2019): 40

[748] Tomasz Jaroszyński, "National Parliaments' Scrutiny of the Principle of Subsidiarity: Reasoned Opinions 2014–2019," *European Constitutional Law Review* 16, no. 1 (2020): 94. https://doi.org/10.1017/S1574019620000048.

[749] European Parliament, *The principle of subsidiarity*, (2017), 1. https://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/010202/04A_FT(2013)010202_EN.pdf

[750] Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), Strasbourg, 12.9.2023, COM/2023/532 final.

[751] These issues are, for example, reducing compliance burdens for cross-border businesses, preventing double non-taxation, and eliminating mismatches. See in detail: Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) COM/2023/532 final.

3.2.3. Proportionality

The conception of the proportionality principle stems from the constitutional traditions of EU Member States. Its roots are most clearly found in the jurisprudence of 19th-century Prussian courts. Following World War II, the use of proportionality expanded globally in parallel with the development of constitutional review across various legal systems.[752] Today, it is a constitutional principle „which enables courts to reconcile conflicting rights and norms by considering their relative value (balancing) and imposing requirements such as necessity and the use of the least restrictive means test."[753] In other words, it is „a tool that assesses the legality of the exercise of power where a legitimate aim is pursued but another interest deserving of legal protection (typically a right) is damaged."[754] In the EU, the principle of subsidiarity determines the appropriate level of governance at which a policy decision should be taken. Then, the principle of proportionality operates at a subsequent stage. It concerns the scope and intensity of EU intervention, ensuring that the measures adopted do not exceed what is necessary to achieve the objectives of the Treaties.[755]

Historically, the *Internationale Handelsgesellschaft* judgment marked a pivotal moment in its development at multiple levels. As previously mentioned,[756] the CJEU introduced the concept of "common constitutional traditions" as a foundation for protecting fundamental rights across the EU. The judgment also featured the first explicit reference to the principle of proportionality as a standard for reviewing the validity of policy measures adopted by EU institutions. Despite its early judicial application, at the time proportionality was not formally codified. However, it is interesting to note that at the beginning of its development in judicial practice, proportionality was envisioned as an instrument to protect individuals "from action by the Community institutions and by the Member States."[757] The Maastricht Treaty marked the point at which proportionality became an explicit legal principle, reflecting its growing importance within the EU legal order.

More precisely, proportionality was introduced alongside subsidiarity and the conferral of powers by the Maastricht Treaty, reflecting the rationale that the European Community should neither act unnecessarily nor overstep its bounds with overly intrusive measures, even

[752] Yutaka Arai-Takahashi, "Proportionality - a German approach," *Amicus Curiae* 19 (1999): 11.
[753] Wolf Sauter, "Proportionality in EU Law: A Balancing Act?" *Cambridge Yearbook of European Legal Studies* 15 (2013), 439.
[754] Vasiliki Kosta, „The Principle of Proportionality in EU Law: An Interest-based Taxonomy, " in *EU Executive Discretion and the Limits of Law*, ed. Joana Mendes (Oxford: Oxford University Press, 2019), 199.
[755] Lenaerts and Gutiérrez-Fons, *supra* note 719, at 116.
[756] On common constitutional traditions, see more *supra* sec. 2.1.2.2.
[757] Tridimas, *supra* note 147, at 176.

where action is justified.[758] The aforementioned principles all serve the same purpose, acting as a "constitutional restraint, clarifying the permitted scope of Union action and thereby limiting the potential for Union acts to usurp Member States' competences."[759] However, while the principle of conferral resolves the question of the existence of EU competences, proportionality concerns the exercise of these competences.[760] In this vein, proportionality is nowadays enshrined in Article 5 TEU, which prescribes that: "the limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. (…) Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties."[761] Thus, the proportionality principle in EU law is broadly understood as a requirement that an action taken by the EU must be appropriate to its objectives.[762] However, as Craig and De Búrca note, proportionality is a conceptually different principle from subsidiarity, although the Protocol on the Application of the Principles of Subsidiarity and Proportionality at times blurred the distinction between them.[763] For example, a distinctive factor is that proportionality applies to measures based on exclusive competences, such as in the common commercial policy, unlike subsidiarity.[764]

Furthermore, the proportionality principle fulfils several functions in the Union's law, as pointed out by Tridimas: i) being a ground for review of measures by the EU, ii) being a ground for review of national measures which may restrict the fundamental freedoms, and iii) it governs the exercise of the EU's legislative competence.[765] Thus, proportionality simultaneously protects individuals from overregulation and safeguarding the Member States from undue interference by the EU.[766] Caziero also stated that it has a market-regulating function, when it serves to balance two national or European opposing interests.[767] It is also important to note that since the Charter of Fundamental Rights of the EU[768] (hereinafter: CFR)

[758] Craig and de Búrca, *supra* note 649, at 155.
[759] Marcus Klamert, "Introduction" in *Commentary on the EU Treaties and the Charter of Fundamental Rights*, ed. Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (Oxford: Oxford University Press, 2019): 5
[760] Marcus Klamert, "Article 5 TEU: Commentary" in *Commentary on the EU Treaties and the Charter of Fundamental* Rights, ed. Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (Oxford: Oxford University Press, 2019): 64.
[761] Article 5, Consolidated version of the Treaty on European Union, *Official Journal of the European Union*, C 326, 26 October 2012, 13–46. (Hereinafter: TEU).
[762] Tridimas, *supra* note 147, at 137.
[763] Craig, and de Búrca, *supra* note 649, *op. cit.*
[764] Klamert, *supra* note 760, at 74.
[765] Tridimas, *supra* note 147, at 137.
[766] Klamert, *supra* note 760, at 64.
[767] See Martha Caziero, *The taxing powers of the European Union: a legal analysis of the levying of EU taxes* (Amsterdam: IBFD, 2025): sec 3.2.
[768] Charter of Fundamental Rights of the European Union (CFR) OJ C 326, 26 October 2012, pp. 391–407.

became legally binding, any situation falling within its scope requires that the proportionality assessment of the fundamental rights, following Article 52(3) of the Charter.[769]

Regarding the latter, in the context of fundamental rights, proportionality requires Member States, when implementing Union law, to choose methods that effectively achieve domestic objectives while being the least restrictive to Union principles and objectives.[770] Additionally, proportionality is embedded in the legal basis of many EU competences, particularly where the Treaties mandate "appropriate" action or measures. It further underpins exemptions for national rules of limited impact, such as the *de minimis* threshold in competition law and public procurement. The principle also guides the balancing of competing Union objectives, including conflicts between policy aims and fundamental rights. In addition, proportionality may serve as a ground for interpretation of Union law provisions.[771] Finally, it is important to mention the three steps of application of proportionality developed in EU law: i) is the measure in question is suitable or appropriate to achieve the objective pursued; ii) whether it could be attained by a less onerous method; and, possibly, iii) whether the burden imposed by the measure is disproportionate to the benefits secured.[772]

When it comes to the intersections of proportionality and the EU's public finance legal framework, it is worth starting from the legislative proposals in the mentioned field. According to the Protocol No. 2, "draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality."[773] Thus, proposals concerning harmonisation in the field of taxation must fulfil the proportionality criteria. The latter can be traced, for example, in the CCCTB proposal in 2011 and 2016, as well as in the ATAD and GLOBE Directive proposal.[774] Such a role of proportionality is not unique to the field of taxation but can be observed throughout EU law. In

[769] Kosta, *supra* note 754, at 200-201.
[770] Klamert, *supra* note 760, 74 -75
[771] Klamert, *supra* note 760, 74-75.
[772] Eirik Bjorge and Jack R. Williams, "The protean principle of proportionality: how different is proportionality in EU contexts?" *The Cambridge Law Journal* 75 no. 2 (2016):187.
[773] Consolidated version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 2) on the application of the principles of subsidiarity and proportionality, OJ C 115, 9.5.2008, pp. 206–209.
[774] See: a) Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM(2011) 121 final 2011/0058 (CNS), b) Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM/2016/0683 final - 2016/0336 (CNS), c) Proposal for a Council Directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, COM/2016/026 final - 2016/011 (CNS), d) Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union.

the tax sphere, however, it is particularly important because it helps balance the Union's interest in fiscal integration against Member States' tax sovereignty.

Furthermore, it was a ground for judicial review of the measures that were put in place during the global financial crisis. In *Gauweiler,* the CJEU had to reach a preliminary ruling concerning the validity of the decisions of the Governing Council of the ECB of 6 September 2012 on several technical features regarding the Eurosystem's outright monetary transactions in secondary sovereign bond markets ('the OMT decisions').[775] One of the questions was whether the OMT decisions violated proportionality, and the Court stated that any monetary policy measure must comply with this principle.[776] Although the Court emphasised the ESCB's broad discretion in technical and economic matters, it also stressed the importance of procedural safeguards, such as careful examination of relevant factors and sufficient reasoning under Article 296(2) TFEU.[777] The Court accepted the ECB's economic assessment that excessive spreads in sovereign bond markets undermined the effectiveness of monetary policy, considering the OMT measures suitable. Furthermore, the programme's necessity was supported by its conditional, limited, and temporary nature, only targeting Member States undergoing adjustment programmes and issuing bonds of short maturity.[778] Therefore, it concluded that the programme respected the proportionality principle and fell within the bounds of the ECB's mandate.

On a similar note, in *Weiss,*[779] the CJEU had to decide, among other questions, whether the ECB's instruments adopted to mitigate the financial crisis infringed the proportionality principle. The Court once again affirmed proportionality as a fundamental criterion for assessing the legality of Union measures, including those in the realm of monetary policy.[780] Given the technical complexity and economic discretion involved, the Court repeated that ESCB enjoys a broad margin of appreciation.[781] Nevertheless, the Court conducted a structured review, examining the suitability, necessity, and proportionality of the PSPP programme.It held that the programme was appropriate for addressing deflation risks, and that it included built-in safeguards to ensure it did not go manifestly beyond what was necessary.[782]

[775] CJEU, Judgment of 16 June 2015, C-62/14, *Gauweiler,* ECLI:EU:C:2015:400.
[776] CJEU, Judgment of 16 June 2015, C-62/14, *Gauweiler,* ECLI:EU:C:2015:400, para 66.
[777] CJEU, Judgment of 16 June 2015, C-62/14, *Gauweiler,* ECLI:EU:C:2015:400, para 68.
[778] CJEU, Judgment of 16 June 2015, C-62/14, *Gauweiler,* ECLI:EU:C:2015:400, para 86 – 88.
[779] CJEU, Judgement of 11 December 2018, *Weiss,* C-493/17, ECLI:EU:C:2018:1000.
[780] CJEU, Judgment of 11 December 2018, *Weiss,* C-493/17, ECLI:EU:C:2018:1000, para. 71.
[781] CJEU, Judgment of 11 December 2018, *Weiss,* C-493/17, ECLI:EU:C:2018:1000, para. 73.
[782] These criteria included temporality, purchase limits and eligibility criteria. See CJEU, Judgement of 11 December 2018, *Weiss,* C-493/17, ECLI:EU:C:2018:1000, para 82-86.

The principle of proportionality also played an important role in cases regarding taxation, especially when the CJEU had to decide on taxpayers' rights. In this vein, Kokott emphasised that in EU tax law, "it plays a paramount role at the level of justification by allowing only proportionate differences in treatment and impairments. Furthermore, the principle of proportionality is the main barrier to the restriction of fundamental freedoms through fiscal surveillance, abuse prevention, withholding of tax benefits, and sanctions."[783] This aspect of proportionality, however, lies beyond the scope of this dissertation, which examines the principle from the perspective of the EU's public finance framework rather than taxpayers' rights.

3.2.4. Solidarity

When discussing the cornerstones of the EU's legal system, solidarity emerges as an unavoidable value that underpins the Union's efforts to achieve cohesion, mutual support, and the distribution of resources among Member States and regions. At the beginning of European integration, the preamble of the ECSC Treaty emphasised that "Europe can be built only by concrete actions which create a real solidarity and by the establishment of common bases for economic development."[784] Moreover, "the process of European integration has been characterised, since its very beginnings, by the sharing of objectives and interests between the States and by a bond of solidarity that differentiated the Community treaties from ordinary international treaties, which generally aimed at defining and resolving conflicting interests."[785] The importance of solidarity was confirmed by the CJEU, which clearly stated that it represents one of the Community's foundations.[786] Finally, nowadays it has a twofold role since it is both a foundational value and an objective of the Union. This role is reflected in Article 2 TEU, which outlines solidarity as one of the EU's values, and Article 3 TEU, which enumerates its

[783] Julianne Kokott, *EU Tax Law* (Munich: Verlag C.H. Beck, 2022), 38.
[784] The Treaty Establishing the European Coal and Steel Community and annexes I-III, Paris, 18 April 1951 (draft English text), available at EurLex, Document 11951K: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:11951K.
[785] Francesca Pollachini, "Solidarietà, doveri e cittadinanza europea," in *Pago, dunque sono (cittadino europeo). Il futuro dell'UE tra responsabilità fiscale, solidarietà e nuova cittadinanza europea*, ed. Mauro Campus,et al. (Firenze: Firenze University Press, 2022): 18
[786] CJEU, Judgment of the Court of 29 June 1978, *Benzine en Petroleum Handelsmaatschappij BV and others v Commission of the European Communities*, C-77/1977, ECLI:EU:C:1978:141.

objectives.[787] Furthermore, the Charter of the Fundamental Rights of the EU also placed solidarity among the founding values of the EU.[788]

This is unsurprising since solidarity stems from the constitutional traditions common to the Member States. Thus, the Italian constitution explicitly states that "the Republic expects that the fundamental duties of political, economic and social solidarity will be fulfilled".[789] In Belgium, solidarity among generations is prescribed at the institutional level and in the article on the relations between the state and lower levels of government. A similar approach can also be found in the German *Grundgesetz*, which also relies on solidarity when prescribing some aspects of budget management and expenditure appropriation.[790] However, solidarity has multiple meanings, and its meaning in the national constitutional context does not have to correspond to its meaning within a supranational entity such as the EU.

Solidarity can be understood as a reference to the relations between the Member States, which is expressly provided for in Article 4(2) TEU.[791] More precisely, "the principle of the equality of Member States in paragraph 2 is closely connected with the unwritten principles of solidarity and mutual trust between the Member States."[792] In addition, solidarity among Member States can be understood from two different perspectives. Negative solidarity advocates that Member States should refrain from unilateral actions that undermine mutual trust, balance of rights and obligations, and their equality. Put differently, Member States should refrain from actions disrupting the EU legal framework. On the other hand, positive solidarity requires a proactive duty of Member States to support one another, including financial contributions, which is further developed under Articles 80 and 222 TFEU.[793] Solidarity also became a centrepiece of the Union's immigration and asylum policy, grounded in Articles 67 and 80 TFEU.[794] However, it is important to emphasise that the CJEU pointed out that the principle of solidarity, when it comes to energy policy, also encompasses rights and obligations

[787] Marcus Klamert and Dimitry Kochenov, „Article 2 TEU' in *Commentary on the EU Treaties and the Charter of Fundamental Rights,* ed. Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (Oxford: Oxford University Press, 2019), 24-25.
[788] Preamble, Charter of Fundamental Rights of the European Union. Charter of Fundamental Rights of the European Union. OJ C 326, 26.10.2012, p. 391–407.
[789] Article 2, The Constitution of the Italian Republic.
[790] Articles 104a, 109, 143c *Grundgesetz.*
[791] Klamert, and Kochenov, *supra* note 787, at 29.
[792] Marcus Klamert, "Article 4" in: *Commentary on the EU Treaties and the Charter of Fundamental Rights,* ed. Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (Oxford: Oxford University Press, 2019), 39.
[793] *op. cit.* at 41.
[794] For a more extensive legal analysis on solidarity in the context of migration policy in the EU, see Iris Goldner Lang "The EU financial and migration crises: two crises–many facets of EU solidarity" in *Solidarity in EU Law,* ed. Andrea Biondi, Eglė Dagilytė, and Esin Küçük (Cheltenham: Edward Elgar Publishing, 2018): 133-160.

of the EU towards Member States, solidarity among Member States, as well as solidarity of the Member States towards the common interest of the Union.[795]

Moreover, Article 122 TFEU is also known as the "solidarity clause", which creates the legal basis for the Union and its Member States to "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."[796] Furthermore, Article 122 TFEU also represents a legal basis for positive solidarity. In this regard, it provides that "in the spirit of solidarity" the Council can, on the Commission's proposal, adopt adequate measures in response to economic difficulties among Member States, particularly in cases of energy shortages. It also enables the Council to grant financial assistance to a Member State facing serious difficulties due to natural disasters or exceptional events beyond its control.[797]

Since there were not many decisions by the CJEU regarding the principle of solidarity, and having in mind the broad wording of articles mentioning solidarity, it is not surprising that the latter resulted in "a variety of different meanings and functions of solidarity in the EU law."[798] The latter "leaves room for diverse visions of solidarity and different interpretations of its meaning."[799] It may therefore be concluded that solidarity in the EU is multidimensional. It underpins both obligations among Member States and obligations between the Member States and the Union.

The importance of solidarity for the EU public finance legal framework was pointed out by the CJEU in the *Commission v Portugal* case,[800] where the Court invoked the obligations of joint financing of the EU budget. According to Klamert, the latter is just one of the possible embodiments of the solidarity principle, especially since German and French versions of the same judgement include the term "financial solidarity."[801] Against this backdrop, positive solidarity also encompasses the obligation of Member States to support each other financially, thereby having a direct effect on Member States' public finance systems. In this sense, Becker

[795] Marcus Klamert, "Loyalty and solidarity as general principles" in *General Principles in EU Law: Constructing Legal Orders in Europe*, ed. Katja S. Ziegler (Cheltenham: Edward Elgar Publishing Limited, 2022): 125.
[796] Goldner Lang, *supra* note 794, at 137.
[797] Article 122(2), Consolidated Version of the Treaty on the Functioning of the European Union (TFEU), OJ C 326, 26 October 2012, 47–390. On the growing importance of Article 122 TFEU as the Union's instrument to address various crises, see Chamon, Merijn, "The rise of Article 122 TFEU: On crisis measures and the paradigm change," *VerfBlog*, 2023/2/01, doi: 10.17176/20230203-113329-0.
[798] Klamert, *supra* note 795, at 129.
[799] Goldner Lang, *supra* note 794, at 137.
[800] CJEU, Judgment of 4 March 2010, Case C-38/06, *EC v Portugal*, ECLI:EU:C:2010:108.
[801] Klamert, *supra* note 795, at 126.

considers the EU budget as "a symbol of solidarity and an instrument for strengthening cohesion inside the EU through financial redistribution from richer to poorer Member States."[802]

Moreover, an obvious association on the interconnection of solidarity and public finance can be found in the European Solidarity Fund (EUSF). It was established in 2002 as a reaction to disastrous flooding in the EU earlier that year.[803] Since then, EUSF has served as the EU's main tool for aid in recovery from natural disasters. It allows the EU to provide effective assistance to Member States or candidate countries in managing the aftermath of significant natural disasters, including floods, forest fires, earthquakes, storms, or droughts.[804] Cohesion policy is another example of how solidarity is expressed in the broader field of EU public finance. In practice, over 755 million euros were paid through EUSF to four Member States in 2023 to support the recovery and reconstruction after natural disasters of 2021 and 2022.[805] In this regard, the Commission stated that "the European Union is a community of solidarity with parts of the EU budget serving a clear solidarity goal, while others fund the achievement of specific objectives through EU-agreed programmes."[806]

Although the EU's response to the global financial crisis reflected solidarity, the principle was explicitly mentioned only in the preamble of the Treaty establishing the European Stability Mechanism (ESM).[807] More precisely, the preamble refers to "fiscal solidarity". Additionally, Article 122(2) was used to establish the European Financial Stabilization Mechanism (EFSM).[808]

Conversely, the response to the economic crisis caused by the pandemic "endorsed solidarity as a guiding principle, improving thereby its legitimacy vis-a-vis the European citizens."[809] Preamble of the regulation establishing European instrument for temporary support

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[802] Peter Becker, "The European Budget and the Principles of Solidarity and Added Value," *The International Spectator* 47 no. 3 (2012):120. https://doi.org/10.1080/03932729.2011.628105

[803] Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund, OJ L 311, 14.11.2002.

[804] European Parliament, *Fact sheet: the Solidarity Fund*. Available at: https://www.europarl.europa.eu/factsheets/en/sheet/97/the-solidarity-fund.

[805] European Commission, *European Union Solidarity Fund – Performance.* https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/programme-performance-statements/european-union-solidarity-fund-performance_en.

[806] European Commission, *Commission report of 14 July 2004, "The financing of the European Union - Report on the operation of the own resources system"* COM (2004) 505.

[807] Goldner Lang, *supra* note 794.

[808] Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, OJ L 118, 12.5.2010, pp. 1–4.

[809] Dimitris Katsikas et al. "Introduction: A New Era? Permacrisis and the Challenges to Financial Stability, Economic Growth, and Democracy" in *Finance, Growth and Democracy: Connections and Challenges in Europe and Latin America in the Era of Permacrisis*, ed. Dimitris Katsikas et al. (Springer: 2024), 5.

to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak[810] refers to solidarity as the legal basis for the mentioned instrument. During the crisis, the European Parliament emphasized that solidarity among Member States is not an option but an obligation under the Treaties and is part of our European values. It further urged that all future actions by Member States should be guided by the Union's foundational principles of solidarity and sincere cooperation.[811] Dermine finds the Commission's broad interpretation of Article 122(2) TFEU particularly noteworthy, since it has been used not only to create an emergency mechanism like SURE, but also the NGEU as a long-term strategic plan for economic recovery.[812] In his opinion, using the emergency clause, whose decision-making process is primarily controlled by the Council and only requires informing the European Parliament to raise nearly one trillion Euros and implement unprecedented institutional reforms, is concerning. Therefore, solidarity proved as a pivotal element of the EU's strategies to mitigate financial crises.

A noteworthy example of introducing a new instrument in the EU public finance legal framework based on solidarity is Regulation 2022/1854 of 6 October 2022 on a temporary emergency intervention to address high energy prices.[813] It was adopted based on the Article 122(1) TFEU, which enables the Council to take measures appropriate to the economic situation in a spirit of solidarity. The Regulation imposed an obligation on Member States to levy a "solidarity contribution" on companies or PEs with activities in the crude petroleum, natural gas, coal and refinery sectors which obtained windfall profits due to unpredictable events in the energy market. Notwithstanding its nomenclature, the legal doctrine recognised it as a tax.[814] Thus, Regulation 2022/1854 is a rare example of the Union imposing a fiscal obligation on economic actors through secondary legislation, grounded not in a tax-specific legal basis but in the exceptional solidarity clause of Article 122 TFEU. This article allowed the Union to temporarily intervene in areas normally reserved to the Member States, since coordinated action was more effective than fragmented national measures. The choice of Article 122 TFEU as its legal basis was contested. For example, "it was therefore adopted by qualified majority voting

[810] Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, ST/7917/2020/INIT OJ L 159, 20.5.2020.
[811] Pollachini, *supra* note 785, at 21.
[812] Dermine, *supra* note 6, at 344.
[813] Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices ST/12521/2022/INIT OJ L 261I, 7.10.2022.
[814] See e.g. Bastien Lignereux, "Is the EU Contribution on Windfall Profits Based on the Right Treaty Provision?" *Intertax* 51 no. 11 (2023): 732-740; Joachim Englisch, "EU Excess Profits Tax Ultra Vires? On the Limits of Article 122 TFEU in EU Tax Policy," *EC Tax Review* 34, no. 3 (2022): 88-102.

(hereinafter: QMV), despite the negative votes of two Member States, and without involvement of the European Parliament. During the adoption procedure, however, some Member States objected that at least the provisions regarding the 'solidarity contribution' should have been adopted unanimously in the Council, since in their view the matter concerned EU tax legislation."[815] Nevertheless, it illustrated how solidarity in the EU is increasingly operationalised through financial mechanisms, as well as the The solidarity contribution the flexibility of Article 122 TFEU.

Finally, a significant question regarding solidarity is whether it can be regarded as a general legal principle in EU law. This question is also inevitably intertwined with the question of the enforceability of Article 2 TEU in general. A significant step forward in the demystification of the role of this article was taken by the CJEU in 2022 in its judgments regarding the rule of law conditionality mechanism.[816] More precisely, the Court stated that "s not merely a statement of policy guidelines or intentions, but contains values which, as noted in paragraph 127 above, are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States."[817] Following this decision, the remaining question was "how the provision can be invoked before the Court."[818] It is important to point out that the Commission recently relied directly on Article 2 TEU in an infringement procedure for the first time in history. Therefore, the CJEU was facing the challenge of answering the question regarding the enforceability of this article in the Commission v Hungary case.[819] It became a landmark decision because the Court based its decision on an interpretation of Article 2 TEU for the first time.[820] Namely, the Court found that Hungary has failed to fulfil its obligations under Article 2 TEU, stating that "regarding the context surrounding Article 2 TEU, the general scheme of the EU Treaty also speaks in favour of the values enshrined in that article

[815] Englisch, *op. cit.* at 88.
[816] CJEU, Judgment of the Court (Full Court) of 16 February 2022, C-156/21, *Hungary v European Parliament and Council of the European Union*, ECLI:EU:C:2022:97 and CJEU, Judgment of the Court (Full Court) of 16 February 2022, *Republic of Poland v European Parliament and Council of the European Union.* C-157/21, ECLI:EU:C:2022:98.
[817] CJEU, Judgment of the Court (Full Court) of 16 February 2022, C-156/21, *Hungary v European Parliament and Council of the European Union*, ECLI:EU:C:2022:97, para 232.
[818] Lena Kaiser, Andreas Knecht and Luke Dimitrios Spieker, "European Society Strikes Back: The Member States Embrace Article 2 TEU in Commission v Hungary," *VerfBlog*, (2026) Available at: https://verfassungsblog.de/european-society-strikes-back.
[819] CJEU, Judgment of 21 April 2026, *Commission v Hungary*, C-769/22, ECLI:EU:C:2026:326. See more on the Commission v Hungary procedure and its significance for Article 2 TEU in: Matteo Bonelli, Monica Claes, "Crossing the Rubicon? The Commission's use of Article 2 TEU in the infringement action on LGBTIQ+ rights in Hungary" *Maastricht Journal of European and Comparative Law* 30, no. 1 (2023): 3-14.
[820] CJEU, *Press Release No 59/26*, Luxembourg, 21 April 2026. Available at: https://curia.europa.eu/site/upload/docs/application/pdf/2026-04/cp260059en.pdf.

being of such binding nature."[821] Although the judgment did not specifically interpret the value of solidarity, its significance extends beyond the facts of the case. By confirming the binding and enforceable nature of Article 2 TEU, the Court strengthened the argument that all values enshrined therein, including solidarity, are capable of producing legal effects.

3.2.5. Member States' sovereignty

Sovereignty has been a central point in political and legal discourse for centuries.[822] However, its definition and understanding evolved.[823] Jean Bodin's 16th-century conceptualisation of sovereignty laid the foundation of the modern understanding of sovereignty as a supreme and indivisible state authority.[824] This idea was later reinforced by the Peace of Westphalia from 1648, which established the principle of territorial sovereignty and the supremacy of national governments within their borders. From the outset, it can be shortly described as "supreme power within a given territory."[825]

While traditionally linked to the authority of the nation-state, this concept faced new challenges in the modern era. More precisely, the growing number of international organizations altered the traditional notion of state sovereignty. Unlike in the 19th and early 20th century, modern states do not exercise absolute sovereign powers. Their foreign affairs and legal obligations are increasingly shaped by various international organizations, including the UN, the International Criminal Court, and the WTO, all of which impose legal and political constraints on state exercise of sovereignty.[826]

Against this backdrop, the very existence of the European Union and its ongoing integration once again brought the question of sovereignty to the fore.[827] The EU has challenged traditional notions of absolute state sovereignty, representing an authority which at the same time pools and limits sovereign prerogatives.[828] Thus, the EU redefined the concept of sovereignty, shifting it from a strictly national prerogative to a shared and layered governance

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[821] CJEU, Judgment of 21 April 2026, *Commission v Hungary*, C-769/22, ECLI:EU:C:2026:326, para 531.
[822] Dieter Grimm, *Sovereignty: The Origin and Future of a Political and Legal Concept* (New York: Columbia University Press, 2018) 3.
[823] Michael Isaenbert, *EC Law and the Sovereignty of the Member States in Direct Taxation* (Amsterdam, IBFD: 2010), 6.
[824] Samantha Besson, *Sovereignty*, in Oxford Public International Law (Oxford University Press, 2011), https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1472.
[825] Stjepan Gadžo, *Nexus Requirements for Taxation of Non-residents' Business Income: A Normative Evaluation in the Context of the Global Economy* (Amsterdam: IBFD, 2018), 22. See also Besson, *supra* note 824.
[826] Besson, *supra* note 824.
[827] Grimm, *supra* note 822, at 67, 71.
[828] Magdalena Góra, Elodie Thevenin, and Katarzyna Zielińska, "Nested, Pooled, or Exclusively National? Contested Sovereignty Models in Debates on the Future of Europe," *Politics and Governance, 13, Article 10017* (2025): 3. https://doi.org/10.17645/pag.10017 . See also: Michele Giuseppe Giuranno, "Pooling sovereignty under the subsidiary principle," *European Journal of Political Economy* 26, no.1 (2010): 125-136.

model. Nevertheless, "the European Treaties do not explicitly refer to the concept of sovereignty, either for the Member States or their Union. However, the Treaties determine the framework for the division of powers between the Union and its Member States, which is closely related to the concept of sovereignty and sovereign right."[829]

The question of sovereignty in constitutional jurisprudence has gained importance in EU Member States, particularly regarding the transfer of powers to supranational institutions without compromising sovereignty. For example, in France, the Constitutional Council distinguished between the impermissible "transfer" and the acceptable "limitation" of sovereignty. More recently, the Constitutional Council refers to a "transfer of competences" to ensure the preservation of essential national sovereignty.[830] In Germany, sovereignty is not defined in the Basic Law. However, in the Maastricht judgement, the BVerfG ruled that Germany remains sovereign within the EU but exercises this sovereignty jointly with other Member States when transferring powers.[831] This evolving jurisprudence reflects a shift toward the idea of shared sovereign powers within the European legal order. Sovereignty remains with the Member States, but there is a division among different sovereign powers which may be exercised jointly by the EU and the Member States. However, the EU now exercises these powers independently and with direct effect within national legal systems.[832]

In addition, as pointed out by Farri, the "clear and typical manifestation of sovereignty is the power that organised communities exert in the choice of the expenses to be made and in the regulation of the modalities to finance them, including the possibility of setting up taxes."[833] Thus, the fiscal aspect of sovereignty can also be defined as the absolute right of the legislature to decide on the state budget. This right stems from the centuries-long development of parliamentarism and represents one of the fundamental features of representative democracy.[834] Hence, none of the state functions could be fulfilled without revenue. Martha points out that „fiscal sovereignty" is one of the totality of powers a State may have under international law, under its sovereignty, emphasising that it should not be considered as a synonym for tax jurisdiction.[835] Although these concepts are inevitably intertwined, „jurisdiction is an aspect of

[829] Christina Eckes and Ramses A. Wessel, "The European Union: an international perspective," in *Oxford Principles of European Union law: The European Union Legal Order Volume I,* ed. Robert Schütze, and Takis Tridimas (Oxford: Oxford University Press, 2018), 92.
[830] Grimm, *supra* note 822, at 71.
[831] Grimm, *supra* note 822, at 71.
[832] Grimm, *supra* note 822, at 89.
[833] Francesco Farri, *Tax Sovereignty and the Law in the Digital and Global Economy* (Turin: Routledge, 2020), 9.
[834] Miloš and Kuzelj, *supra* note 144, at 1108
[835] Silvestre J. Martha, *The Jurisdiction to Tax in International Law: Theory and Practice of Legislative Fiscal Jurisdiction* (Deventer, Kluwer Law and Taxation Publishers:1989), 13.

sovereignty, it is coexistent with it, and indeed, incidental to but also limited by, the State's sovereignty."[836] Moreover, Cornielje identified the normative and functional elements of the fiscal aspect of sovereignty. The normative elements are, namely i) democratic legitimation and accountability, and ii) the division of jurisdiction in the light of the subsidiarity principle. The functional elements are i) control over revenue raising and ii) the control over financial and socio-economic policy, including tax competition.[837]

Against this backdrop, a crucial puzzle piece in describing the EU's public finance legal framework certainly is the Member States' tax aspect of sovereignty. This concept is usually understood as each state holding sovereign authority to regulate taxes in its territory. In doing so, the state should be free from interference by other states, accompanied by the reciprocal duty not to interfere with the rights of other states to exercise their taxing powers within their respective territories.[838] Bodin addressed the power to tax in *Six Books of the Republic*, regarding it as one of the key aspects of lawmaking and an attribute of sovereign power.[839] Thus, tax sovereignty may be viewed as an element of fiscal sovereignty, which in turn forms part of the broader concept of state sovereignty.

However, the process of European integration has challenged the traditional understanding of sovereignty in several areas, including taxation. Taxation was recognised as a potential disruptor of the integration process, since it creates obstacles to market integration.[840] Thus, the EU had to address the complex issue of taxation, and its institutions faced the difficult task of preserving the delicate balance between "reconciling the consequences of the fiscal sovereignty retained by EU Member States with the obligations flowing from EU law (an internal market without frontiers)."[841] Consequently, "the regulation of taxation within the EU has been influenced by two features: the functional approach of the construction of Europe adopted by the framers in the 1950s and national tax sovereignty".[842] Yet another issue in this regard is that tax sovereignty does not have a univocal understanding among Member States. On the contrary, Van der Vlugt points out that "taxation is a powerful expression *par excellence,*

[836] *op. cit.*
[837] Cornielje, *supra* note 668, at 92.
[838] Johan Lindholm, "Squaring the Constitutional Circle: An Overview of EU Fiscal Powers*"* in *The Power to Tax in Europe*, ed. Johan Lindholm and Anders Hultqvist (Oxford, Bloomsbury Publishing: 2023), 11.
[839] Klemenčić, *supra* note 73, at 685.
[840] Gianluigi Bizioli and Claudio Sacchetto, "European Constitutional Integration: The Case of Direct Taxation" in *Comparative Fiscal Federalism*, 2nd edn, ed. Reuven S. Avi Yonah, Michael Lang (Aalphen aan den Rijn: Kluwer Law International BV, 2016), 11.
[841] Sjoerd Douma, *Optimisation of Tax Sovereignty and Free Movement* (Amsterdam, IBFD: 2011), 4.
[842] Bizioli and Sacchetto, *supra* note 840, at 11.

and therefore, these constitutional peculiarities that have developed in distinct national settings have also translated into specific national accommodations for the power to tax. "[843]

In this regard, the starting point for analysing this complex relationship is the previously mentioned principle of conferral. Under this principle, the EU "can only legislate in specific areas explicitly assigned to it in the treaties."[844] Moreover, this principle should be interpreted alongside Article 2 TFEU, which enumerates exclusive and shared competences within the EU. Bizioli points out the functionalist approach as one of the key points of tax integration. In this regard, he states that a conclusion, consistent with the EU's functional development, is that taxation remains primarily within the competence of Member States, but the Union has the authority to harmonise or approximate tax policies when necessary for the proper functioning of the internal market. This power must be exercised following the principles of subsidiarity and proportionality.[845] Since only customs duties are explicitly mentioned in Article 2 TFEU, this may inspire a view that in the area of taxation, Member States prefer a Westphalian approach to sovereignty, understood as "the exclusion of external actors from domestic authority configurations."[846] Notwithstanding such division of competences, one of the instruments of interference of EU law in the Member States' tax legislation stems from principles created in the CJEU case law. Thus, Member States must adhere to the principle of supremacy of EU law[847], and national courts must respect the direct effect of EU legislation.[848] Nevertheless, to achieve its goal of creating an internal market, these principles are not sufficient to approximate the Member States' tax systems.

In this respect, the adoption of legislation concerning taxation, as well as policy coordination on the EU level, is also known as "positive integration".[849] Following the teleological interpretation of the Treaties, it seems that complete harmonisation of the tax system was not the EU's goal. Rather, it seeks harmonisation of tax law only as a tool to achieve its ultimate goal, which is the internal market.[850] The first significant EU intervention in taxation concerned customs duties, an area that falls within the Union's exclusive competence. Given the influence of indirect taxes on the internal market, it is unsurprising that the first major

[843] Sam Van der Vlugt, *Rethinking Tax Sovereignty in the European Union* (Amsterdam: IBFD, 2025), 458.
[844] Tin Valentin Meickmann, "Taxing Powers of the European Union," *Intertax* 52, no. 8/9 (2024): 523.
[845] Bizioli and Sacchetto, *supra* note 840, at 15.
[846] Jorge E. Núñez, "State Sovereignty, Concept and Conceptions," *International Journal for the Semiotics of Law* 37 (2024): 2136.
[847] CJEU, Judgment of 15 July 1964, *Flaminio Costa v E.N.E.L.*, Case 6/64, ECLI:EU:C:1964:66.
[848] CJEU, Judgment of 5 February 1963, *van Gend en Loos*, C-26/62, ECLI:EU:C:1963.
[849] Wattel, Marres, Vermeulen, *supra* note 747, at 1.
[850] See Marjaana Helminen, EU Tax Law – Direct taxation (Amsterdam: IBFD, 2022), sec. 1.2.1.

interference in the national tax systems and market integration emerged in this area.[851] In this vein, customs duties, as levies on imports and exports, had the potential to create significant barriers to the free movement of goods. Thus, their harmonisation became essential to eliminate trade distortions.[852] In this vein, Article 28(1) TFEU prescribes that the Union shall comprise a customs union which covers all trade in goods and prohibits customs duties on imports and exports and all charges having equivalent effect. This article also provides for the establishment of a common customs tariff towards third countries. In addition, Article 30 TFEU prohibits any charge on imports and exports between Member States that might have the same effect as a customs duty. The grammatical interpretation of Article 28 TFEU indicates a clear limit to the Member States' fiscal aspect of sovereignty. However, this can also be perceived as a shift in the exercise of the fiscal sovereignty competences, while the sovereignty itself remains vested in the Member States. The EU is a union of sovereign and democratic nations whose membership is based on the principle of voluntary membership, having in mind their right to exit. As Van der Vlugt points out, "the restraints that these Member States accept as an act of voluntary self-limitation are themselves an expression of exercising the competences and power that come with sovereignty in common."[853]

In addition, Articles 110 to 112 TFEU also impose limits on the exercise of Member States' tax sovereignty. While Member States remain free to design their tax systems, they may not use taxation in a manner that discriminates against products or economic activities from other Member States or undermines the functioning of the internal market.[854] Furthermore, Article 113 TFEU expressly concerns indirect taxation, stipulating that the Council, following a special legislative procedure and acting unanimously after consulting the European Parliament and the Economic and Social Committee, has the authority to harmonise laws related to turnover taxes, excise duties, and other types of indirect taxation. However, harmonisation is permitted only to the extent necessary to promote the establishment and proper functioning of

[851] Van der Vlugt, *supra* note 843, at 191.
[852] Craig and De Burca, *supra* note 753, at 638.
[853] Van der Vlugt, *supra* note 843, at 573.
[854] More precisely, Articles 110, 111 and 112 TFEU prohibit Member States from applying internal taxes on goods imported from other EU countries at rates higher than those on comparable domestic products, since it would result in discrimination. These articles ensure the neutrality of internal tax systems for trade within the EU. Moreover, the broad wording of Article 110 ensures its applicability to all forms of indirect taxes, charges, or levies, regardless of their specific structure. In addition, Article 110 has a direct effect and creates individual rights. However, Articles 110 and 111 TFEU cover only indirect taxes. Thus, Article 112 touches upon direct taxation, providing that repayments granted for exports to other MS and countervailing charges imposed on imports from other Member States are generally incompatible with EU law.

the internal market.[855] The most prominent example of harmonisation in this area is the VAT[856], but the EU also adopted directives on excise duties[857] and capital taxes. VAT harmonisation illustrates the EU's interference with the exercise of national tax sovereignty.

Despite the absence of an explicit Treaty competence for the harmonisation of direct taxation, the Union has nevertheless developed a path to act in this field. This has been achieved primarily through a dynamic use of Article 115 TFEU, which permits the approximation of national laws affecting the internal market, and which has served as the legal basis for several measures with direct implications for direct taxation. It has enabled the adoption of several directives in the field of direct taxation, including rules on mergers and acquisitions, and the taxation of parent companies and subsidiaries, as well as measures on administrative cooperation in tax matters.[858] Its predecessor, Article 94 TEC, was functionally equivalent and served the same harmonisation purpose before the Lisbon Treaty.[859] Notwithstanding these harmonisation efforts, the adoption of direct tax measures has remained politically sensitive, reflecting the close connection between taxation and Member States' fiscal sovereignty. This is illustrated by the lengthy legislative processes before the adoption of the Interest and Royalties Directive and the Parent–Subsidiary Directive.[860] Furthermore, Article 352 TFEU is also perceived as a potential legal basis for Union action in this field.[861]

More recently, the Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union represents a significant development in the field of direct taxation. Adopted in 2022 as

[855] Article 113, TFEU.
[856] Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax, OJ L 347, 11.12.2006.
[857] Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty
[858] Article 115 TFEU served as a legal basis for the following directives: i) Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (Codified version), OJ L 310, 25.11.2009.; ii) Council Directive (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States; iii) Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, OJ L, 2023/2226, 24.10.2023.
[859] For example, Article 94 TEC served as a legal basis for the Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.
[860] More precisely, the so-called Interest and Royalties Directive took thirteen years to be adopted, while the Parent-Subsidiary Directive spent twenty-one years in the legislative maze of EU institutions. See more:
[861] Helminen states that this provision allows the Union, where necessary to attain Treaty objectives, to act even in areas not expressly provided for in the Treaties, subject to unanimity in the Council, and has therefore been interpreted as potentially extending to direct taxation. Namely, Article 352 TFEU further reinforces this possibility as a residual legal basis enabling Union action where necessary to attain Treaty objectives, subject to unanimity in the Council. See more: Helminen, *supra* note 850, at 2.

the EU implementation of the OECD/G20 Pillar Two rules, it was based on Article 115 TFEU and justified by the need for a coherent and coordinated framework to prevent fragmentation of the internal market.[862] While it strengthens the Union's capacity to address tax base erosion and aggressive tax planning, it also affects Member States' tax aspect of sovereignty by harmonising several aspects of corporate taxation. Thus, it can be concluded that there is an inherent trade-off in EU tax integration, whereby an expansion of supranational regulation is necessarily accompanied by a corresponding limitation of Member States' regulatory autonomy. This results in the tension in EU tax law, namely the coexistence of the internal market's need for coordination of tax rules and the continued reluctance of Member States to allocate the exercise of taxing powers to the Union. The emphasis was intentionally put on the term "exercise" since sovereignty is not transferred to the EU. Rather, what is divided or shared is the manner in which certain sovereign powers are exercised

3.3. The EU budget

Given that the budget is one of the Union's primary tools for policy implementation, its expenditures serve as the most accurate indicator of the EU's policy objectives and regulatory agenda. At the same time, the EU budget remains comparatively small, which significantly constrains the Union's capacity to act and limits the number of policies that can be financed at the supranational level.[863] It accounts for around 1 % of the EU's GNI annually. To be more precise, the scale of the EU budget can be illustrated by the fact that it serves approximately 450 million inhabitants, but its annual expenditure remains below that of some individual Member States. For instance, in 2022 the EU budget amounted to approximately EUR 170 billion, compared with around EUR 240 billion for Austria alone.[864] Fasone described this as an "asymmetry which undermines its effectiveness and legitimacy."[865]

Nevertheless, financing transforms strategic objectives into concrete actions. Due to the unique nature of the EU's legal architecture, "the budget reflects both the priorities of EU institutions and national governments," revealing its dual nature.[866] Its structure reflects the

[862] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022.
[863] Bradford, *supra* note 585, at 16.
[864] Scherleitner and Traversa pointed out that the EU budget can be compared to the budget of Denmark when it comes to size. See Scherleitner, Traversa, *supra* note 600. However, Denmark has 6 million inhabitants, while the EU budget should serve 450 million inhabitants. See also: European Parliament, EU budget explained: size, sources and beneficiaries. Available at: https://eubudget.europarl.europa.eu/en/how-it-works/
[865] Cristina Fasone, "EU budget and spending powers" in *EU Fiscal Federalism: Past, Present, Future*, ed. Alicia Hinarejos and Robert Schütze (Oxford, Oxford University Press: 2023): 233.
[866] Patrick Bisciari et al. "The EU budget and the Next Generation EU Recovery Plan: a game changer?" *NBB Economic Review* (2021): 30.

distribution of powers and division of competences between the EU and its Member States, serving as a key indicator of the progress of European integration.[867]

TFEU lays down the rules governing the EU's financial framework, including budgetary procedures, the MFF, and the tackling of financial fraud that affects the economic interests of the Union. Moreover, among the sources of secondary law, the MFF regulation stands out as an important part of the legal framework governing the EU expenditures. [868] More precisely, it "sets out the maximum annual amounts that can be spent on EU policies during the 7 years. Annual EU budgets adopted during that period must comply with this overall framework."[869] On the other hand, the EU's revenues are governed by the Own Resource Decision. Thus, the following section will explore the legal framework surrounding the EU budget and expenditures. The specific features of the EU's revenue framework are addressed separately below.

3.3.1. Budgetary principles

A crucial puzzle piece of the EU budgetary legal framework is the Financial Regulation,[870] which governs the establishment, execution, and control of the EU budget in detail. Thus, Article 6(1) of the Financial Regulation enumerates the principles underpinning the EU budget, prescribing that "the budget shall be established and implemented in accordance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency."[871]

Similar to national budgets, the unit of account principle requires that the budget is prepared, executed, and reported in euros, while transparency, unsurprisingly, calls for the publication of budgetary documents and final accounts. The principle of equilibrium, which is also enshrined in Article 310 TFEU, ensures that revenue and expenditure remain balanced, prohibiting borrowing.[872] More precisely, this means that the EU budget is "expenditure-driven", with expenditures being planned first and revenues subsequently adjusted to match

[867] Gabriele Cipriani, "The EU Budget," in *The Routledge Handbook of European Public Policy* (London: Routledge, 2017): 142.
[868] 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.
[869] See EU, Summary of Regulation (EU, Euratom) 2020/2093 laying down the multiannual financial framework for the years 2021 to 2027, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4499418
[870] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024.
[871] Article 2, Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024.
[872] Cipriani, *supra* note 867, at 149.

them. However, the amount the EU can spend is limited in advance by the ceilings set in the MFF.[873]

In addition, the specification principle requires that "each appropriation is allocated to a particular kind of expenditure."[874] Interestingly, the wording of Article 28 of the Financial Regulation contains the term "earmarking" when describing this principle, noting that "appropriations shall be earmarked for specific purposes by title and chapter. The chapters shall be further subdivided into articles and items. "[875] This principle should ensure that the EU funds are spent only for previously determined purposes. Furthermore, the principle of annuality dictates that appropriations must be used within the designated financial year. This principle had to be reconciled with the usual practice of EU funding certain projects over several years. Thus, to manage long-term projects, the budget is divided into two types of appropriations. Commitment appropriations cover the total cost of a project when the EU commits to funding it, even if the project lasts several years. Conversely, payment appropriations cover the actual payments made during the year for ongoing or previously approved projects.[876] The universality principle requires that total revenue covers all expenditures without specific allocations.[877] Finally, sound financial management is an umbrella principle, meaning that it is an amalgam of the principles of economy, efficiency, and effectiveness.[878]

When it comes to earmarking and its reconciliation with budgetary principles, the principle of specification allows revenues to be directed toward particular purposes. Earmarking would also closely align with the principles of sound fiscal management and transparency in the EU context. By linking specific revenue sources to defined policy objectives, earmarking could enhance accountability and ensure that funds are used in a targeted and efficient manner. It would allow citizens to trace how revenues, especially from new own resources, are allocated, thereby strengthening public trust in EU budgetary decisions. In doing so, earmarking supports a more transparent fiscal framework, consistent with the Union's broader principle of good administration. However, earmarking causes tensions with the principle of universality, which

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[873] European Parliament, *Fact Sheets on the EU: EU Expenditures* (2025). Available at: https://www.europarl.europa.eu/factsheets/en/sheet/28/the-eu-s-expenditure.
[874] European Parliament, *Fact Sheets on the EU: EU Expenditures (2025).*
[875] Article 28, Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024.
[876] European Parliament, *Fact Sheets on the EU: EU Expenditures* (2025). Available at: https://www.europarl.europa.eu/factsheets/en/sheet/28/the-eu-s-expenditure.
[877] Cipriani, *supra* note 867, at 149.
[878] European Court of Auditors, *Special report 05/2023: the EU's financial landscape - a patchwork construction requiring further simplification and accountability* (2023): 11. Available at: https://www.eca.europa.eu/en/publications/SR23_05.

prohibits the assignment of specific revenue sources to specific expenditures. Moreover, there is a need to reconcile the principle of annuity with such practice. However, it is already an existing practice which is incorporated in the EU's legal framework. Notably, in recent years, the EU has already relied on mechanisms that resemble earmarking, as they involve allocating revenues from specific sources (e.g., the EU ETS or the CBAM) to designated policy areas, such as climate action or the Social Climate Fund.[879]

This evolution reflects a functional shift in how the EU uses its budget as a policy tool: while earmarking is not explicitly codified in the EU budgetary framework, certain legal and political instruments, like the establishment of dedicated funds or own resources tied to specific expenditures, create *de facto* earmarking within the system. Thus, earmarking calls for a dynamic interpretation of budgetary principles, particularly with the constraints imposed by the principles of universality and annuality. More broadly, these tensions that potentially may arise from the pursuit of funding specific policy goals are not unique to earmarking. EU public finance law has repeatedly witnessed the development of instruments operating outside the traditional budgetary framework in order to address particular policy needs. In this regard, Fasone points to development funds as examples of instruments established beyond the framework of the general EU budget[880], while also identifying the Refugee Facility for Turkey as a manifestation of Member States' budgetary creativity in navigating the constraints of the Treaty budgetary rules.[881]

3.3.2. The relationship between the annual budget and the MFF

EU budget management consists of two interconnected dimensions. Alongside the adoption of the annual budget, since 1988, the EU's revenues and expenditures have been expressed in the mid-term plan named the MFF. Having this in mind, "the MFF is an expression of political priorities as much as a budgetary planning tool, setting the maximum amounts that the EU may spend each year in various fields."[882] This budget management method enhances stability in financing expenditures and ensures the funding of multiannual programs. Moreover,

[879] The Social Climate Fund (SCF) is established by Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, PE/11/2023/REV/1, OJ L 130, 16.5.2023. It was established alongside with the so-called EU ETS 2, The Social Climate Fund (SCF) was established in conjunction with the introduction of ETS2, which extends emissions trading to fuel combustion in buildings, road transport, and other sectors. The SCF is designed to facilitate a just transition toward climate neutrality by mitigating the social and economic impacts associated with the expansion of emissions pricing.
[880] Fasone, *supra* note 865, at 238.
[881] *Ibid.*
[882] Cipriani, *supra* note 867, at 144.

it causes annual budgetary debates to take place within the parameters set by the multiannual framework.[883]

Since 1988, the EU's MFFs have reflected the evolving political and economic priorities of the Union. The first MFF, known as the Delors Package I (1988-1992), concentrated on completing the internal market and strengthening EU investment in research and development. Its successor, the Delors Package II (1993-1999), shifted the focus towards social cohesion policies and laid the groundwork for the introduction of the euro.[884] The EU enlargement shaped the MFF (2000-2006), while the 2007–2013 framework emphasised increasing employment to promote sustainable growth and competitiveness.[885] The MFF 2014-2020 continued to tackle unemployment through ESF and ERDF; it supported youth mobility via Erasmus, advanced research with Horizon 2020 and funded infrastructure and climate action.[886] Finally, the current MFF 2021-2027 represents a more pragmatic and modern approach. It prioritises key policy areas that deliver European added value, namely: i) innovation and digital transition, ii) cohesion policy, iii) agriculture policy and environmental protection, iv) migration and border management, v) security and defence, vi) external relations.[887] Notably, it also includes moderate reductions to the Common Agricultural Policy and Cohesion Policy allocations, reflecting the fiscal implications of the UK's withdrawal from the EU, while striving to maintain a fair and balanced distribution of resources.[888]

When it comes to institutional relations, there are differences between the annual budget and the MFF. The Council unanimously adopts a regulation laying down the MFF under the special legislative procedure after obtaining the consent of the European Parliament.[889] The role of the Parliament is more important when it comes to the expenditure side of the budget.[890]

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[883] Ákos Kengyel, "'New Headings – Old Problems: The Evolution and Future of the EU Budget," *Intereconomics* 51, no.2 (2016): 106.

[884] European Commission, *A modern budget for a Union that protects, empowers and defends: Questions and Answers* (factsheet, 2018). Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_18_3621/MEMO_18_3621_EN.pdf.

[885] See e.g. European Parliament resolution of 22 September 2010 on the proposal for a Council regulation laying down the multiannual financial framework for the years 2007-2013 (COM(2010)0072 – 2010/0048(APP)).

[886] European Commission, *Benefits of the EU budget: How the programmes and initiatives of the 2014-2020 long-term budget had an impact on European citizens' lives in different policy areas*. Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2014-2020/benefits-eu-budget_en.

[887] European Commission, *EU funding programmes.* Available at: https://commission.europa.eu/funding-and-tenders/find-funding/eu-funding-programmes_en#heading-6-neighbourhood--the-world

[888] European Commission, *A modern budget for a Union that protects, empowers and defends: Questions and Answers.* Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_18_3570

[889] Article 312 TFEU.

[890] Cristina Fasone and Nicola Lupo, "The Union Budget and the Budgetary Procedure" in *Oxford Principles of European Union Law: The European Union Legal Order Volume I*, ed. Robert Schütze, and Takis Tridimas, (Oxford, Oxford University Press, 2018): 811.

However, Cipriani points out that this means only a right of approval, not a genuine power of co-decision. "[891]

On the other hand, the situation is quite different when it comes to the annual budget. The Commission has a leading role in preparing the annual draft budget. Afterwards, the draft is delivered to the Council and later to the Parliament to adopt their position on the annual budget. If the Parliament agrees with the Council in this particular step, the budget is considered adopted.[892] In case of a disagreement, "a conciliation committee with representatives of both the Parliament and the Council is convened to reach an agreement on a joint text within 21 days of the Parliament adopting its position. After that, the Parliament and Council have 14 days to approve or reject the joint text. "[893]

When the focus is shifted to the amount of funds in the EU budget, as previously mentioned, it is undeniable that it is small in size, especially when compared to the budgets of some Member States.[894] The legal scholars often point out the discrepancy between the EU's objectives and the size of its budget. Although each Treaty reform has expanded the EU's competences, its budget has not grown proportionally, remaining stable at around 1 % of the EU's GNI since the late 1990s.[895]

Moreover, it is important to emphasise the developments regarding the EU budget during the COVID-19 crisis. More precisely, the negotiations for the MFF 2021-2027 were affected by the economic downturn caused by the pandemic. The Commission made a twofold proposal for the EU recovery.[896] The first cornerstone was the EU's long-term budget. Thus, the Commission proposed to significantly increase the MFF 2021-2027 to boost Member States' recovery.[897] The second pillar of the EU's crisis response was the NextGeneration EU recovery plan, based on debt financing.

The adoption of both the NGEU and the MFF 2021-2027 marked a turning point in the financial and political evolution of the EU budget because these two instruments constitute the largest financial package ever approved in the EU, with a combined value of EUR 2 trillion. In addition, the MFF 2021-2027 also introduced a new own resource based on non-recycled plastic

[891] Cipriani, *supra* note 868, at 144.
[892] Article 314 TFEU.
[893] See European Commission, *How is the EU Budget prepared*. (2025). Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/how-it-works/annual-lifecycle/preparation_en
[894] See *supra* sec. 3.3. Also: Fasone and Lupo *supra* note 890, at 809.
[895] Fasone and Lupo, *supra* note 890, at 811.
[896] See European Commission, *The EU Budget Powering the Recovery Plan for Europe* (2020). Available at: https://op.europa.eu/en/publication-detail/-/publication/e0956910-a0c9-11ea-9d2d-01aa75ed71a1.
[897] Fabbrini, *supra* note 11, at 191.

packaging waste and a commitment to establishing additional own resources.[898] Moreover, MFF 2021-2027 represents a shift in EU policy because the EU issued debt for the first time to finance common expenditures. However, the "borrowing powers conferred to the Commission under NGEU will remain limited in size, duration and scope."[899] Nevertheless, the legal architecture and successful adoption of the NGEU inspired a view that debt financing is a new pathway for raising the EU's fiscal power.[900]

3.3.3. Protection of the EU budget

Nowadays, the EU has several tools at its disposal to protect its budget from fraud and embezzlement. Against this backdrop, the European Anti-Fraud Office (OLAF) was established in 1999.[901] Its main objective is to "investigate fraud against the EU budget, corruption and serious misconduct within the European institutions, and develop anti-fraud policy for the Commission."[902] In this regard, it serves as both a guardian of the EU's revenue (e.g., through the prevention of smuggling) and of its expenditures. However, the OLAF's authorities stop at the national borders, since it cannot initiate a court proceeding to protect the Union's interest, and it is dependent on the collaboration with national authorities. The latter might be one of the reasons why in 2019, it was estimated that the cost of fraud for the EU budget was EUR 460 million.[903]

Based on Article 86 TFEU, the EU established the European Public Prosecutors' Office in 2021 as another institution in charge of budget protection.[904] The crucial difference is that OLAF represents a tool of administrative surveillance,[905] meaning that it cannot prosecute but recommends actions, like recovering funds or disciplining officials. On the other hand, the

[898] See *infra* sec. 3.3.4.
[899] Lionello, *supra* note 6, at 31.
[900] See e.g. Grund and Steinbach, *supra* note 3.
[901] OLAF was established by the 1999/352/EC, ECSC, Euratom: Commission Decision of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (notified under document number SEC (1999) 802) OJ L 136, 31.5.1999. However, its predecessor existed from 1988 within the Secretariat-General of the European Commission under the name Anti-Fraud Coordination Unit (UCLAF). It collaborated with national anti-fraud agencies, offering coordination and support to combat cross-border organised fraud.
[902] European Anti-Fraud Office, *Welcome to OLAF* (2025). Available at: https://anti-fraud.ec.europa.eu/index_en.
[903] European Commission, *Factsheet: The European Public Prosecutor's Office Protecting taxpayers against fraud and corruption.* (2021) Available at: https://commission.europa.eu/document/download/2eca387c-2d96-4ebc-8e4b-266d5009b6f3_en?filename=dg_justice_eppo_factsheet_en.pdf
[904] Maurizia De Bellis, Maurizio Bellacosa, "The protection of the EU financial interests between administrative and criminal tools: OLAF and EPPO," *Common Market Law Review* 60, no.1 (2023): 23-24.
[905] De Bellis, Bellacosa, *op. cit.*, at 25.

EPPO allows the Union to protect its budget as the "first supranational public prosecution office."[906]

Another major innovation in the framework for the protection of EU funds was adopted in the post-pandemic period. Namely, the introduction of the rule of law conditionality mechanism in December 2020 made compliance with this principle a condition for receiving EU funding.[907] More precisely, this mechanism is adopted as a Regulation which allows the suspension of EU funds in cases of rule of law deficiencies in Member States.[908] It was adopted as a response to the so-called "democratic decay" in some Member States, which entails degradation of the structures and substance of liberal constitutional democracy, often carried out through legal or political means by democratically elected actors, leading to the erosion of democratic institutions and public trust.[909] The adoption of such an instrument, expectedly, was not an easy task. However, the outbreak of the COVID-19 pandemic served as an accelerator in the process. The Commission proposed linking access to funds under the NGEU and the EU budget to compliance with the rule of law. This proposal faced strong opposition from Hungary and Poland, whose joint threat to veto both the recovery package and the MFF in November 2020 increased political tensions within the EU. Ultimately, the urgency to create a pandemic recovery instrument pushed the adoption of the Rule of Law Conditionality Regulation.[910] Since its adoption, the mechanism was activated only against Hungary in 2022.[911] This was a turning point for the EU's approach to safeguarding its fundamental values and its budget. The conditionality mechanism thus became an effective multi-purpose instrument, not only for the

[906] European Commission, *Factsheet: The European Public Prosecutor's Office Protecting taxpayers against fraud and corruption* (2021).
[907] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, *OJ L 433I*, 22.12.2020.
[908] For an in-depth analysis of the rule of law conditionality mechanism, see Antonia Baraggia, Matteo Bonelli, "Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges," *German Law Journal* 23, no. 2 (2022): 131–156. For an analysis of the rule of law conditionality mechanism in Croatian see Nataša Žunić Kovačević and Viktorija Pisačić, "Međuodnos vladavine prava i financijskih instrumenata Europske unije razvijenih tijekom pandemijskog razdoblja – nove prespektive," *Godišnjak Akademije pravnih znanosti Hrvatske* 15, no.1 (2024):177-195. https://doi.org/10.32984/gapzh.15.1.7.
[909] For a study on democratic decay, as an umbrella term which encompasses a wide range of terms and frameworks used to describe the global deterioration of democratic governance as an emerging field of research for legal scholars, as well as political scientists, see Tom Gerald Daly, "Democratic Decay: Conceptualising an Emerging Research Field," *Hague Journal of the Rule Law* 11, no. 1 (2019): 9-36.
[910] See Christophe Hillion, "Compromising (on) the General Conditionality Mechanism and the Rule of Law," *Common Market Law Review* 58, no.2 (2021): 273. https://doi.org/10.54648/cola2021020.
[911] Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, ST/14247/2022/INIT OJ L 325, 20.12.2022.

sound financial management of the EU budget, but also for the protection of the rule of law as a fundamental value of the Union.[912]

3.4. EU's Public Finance Legal Framework at a Crossroads: the impact of the COVID-19 pandemic

In the period preceding the outbreak of the COVID-19 pandemic, the EU institutions and Member States were fully immersed in the negotiations about the MFF 2021-2027. The negotiations regarding the future financing of the EU began in 2018 when the Commission put forth the MFF proposal under the title "A budget for the future", accompanied by the proposal for the rule of law mechanism.[913] According to the former President of the Commission, Jean-Claude Juncker, the aim was to "ensure sound financial management of the Union's budget and protect taxpayers' money."[914] Additionally, the Commission emphasised the need to align EU financing with its strategic policy objectives. Thereby, the proposal for MFF 2021-2027 was restructured around thematic spending priorities and policy clusters to reflect and communicate EU priorities. The European Parliament viewed this structural shift as a significant statement of political intent. The MFF 2021-2027 also had to respond to new challenges, including Brexit-related budgetary shortfalls, and was set at EUR 1,135 billion (1.11% of EU-27 GNI) in commitment appropriations.[915]

That said, several proposals regarding the EU's revenue sources were put on the table by the Commission during the MFF 2021-2027 negotiations. The driving force behind these proposals was the long-standing criticism of EU financing. The Commission proposed a revision of the traditional own resources through lowering the amount Member States keep from customs duties from 20 % to 10 % and simplifying the formula used for the VAT own resource. Moreover, it also proposed the introduction of three new own resources: i) a national contribution based on the Common Consolidated Corporate Tax Base (CCCTB), ii) a share of

[912] Žunić Kovačević, Pisačić, *supra* note 908, at 191.
[913] John Bachtler, Carlos Mendez, Fiona Wishlade, "Reforming the MFF and Cohesion Policy 2021-27: pragmatic drift or paradigmatic shift?" *European Policy Research Paper No. 107* (2019). https://strathprints.strath.ac.uk/69563/1/Bachtler_etal_EPRC_2019_Reforming_the_MFF_and_cohesion_policy_2021_27_pragmatic_drift_or_paradigmatic_shift.pdf.
[914] See European Commission, *Fact sheet: EU budget for a modern EU: budget for a Union that protects, empowers and defends* (2 May 2018).
[915] See *supra* sec 3.3.

the revenues generated by the EU ETS, and iii) and a national contribution based on the quantity of non-recycled plastic packaging waste generated in each Member State.[916]

The explanatory memorandum of the Commission's own resource proposal reveals a plethora of reasons used to justify such a reform. First of all, it was rightfully pointed out that the own resource system is obsolete since it has not been changed since 1988. [917] In addition, it was recognised that the connection between the revenue and expenditure in the EU budget must be stronger. The link for these two categories was found in the European public goods. The Commission pointed out that: "a sharper focus on public goods of a European dimension as well as efficient and sound management of public finances must characterise the expenditure side of the EU budget, but must also become a hallmark of revisions on the revenue side."[918] The latter reflects that the Commission accepted and built upon observations by the HLGOR.[919] Finally, the Commission put a special emphasis on the nature of the proposed new own resources, noting that: "the present proposal does not create any new tax for EU citizens. The EU does not have the power to levy taxes. Therefore, the introduction of new categories of own resources fully respects national fiscal sovereignty. "[920] Despite the Commission's efforts to rebuild the EU's budget, even through small steps such as the proposed reforms, Member States were still being guided by the "zero-sum" approach.[921]

Moreover, the aforementioned negotiation period was also seen as an opportunity to discuss and revisit the issue of the EMU imbalance, since the EU leads the monetary policy, but without equivalent authorities regarding the economic policy.[922] Thus, the European Parliament issued an in-depth analysis regarding the EU's fiscal capacity in 2019.[923] The concluding remarks of the analysis argue that the EU's fiscal capacity should be built based on new, genuine own resources, instead of national contributions. Such new own resources should be democratically legitimised through parliamentary representation. It asserts that the legal

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[916] European Commission (2018) Proposal for a Council Decision on the system of Own Resources of the European Union 2.5.2018 COM (2018) 325 final 2018/0135(CNS).
[917] European Commission, Proposal for a Council Decision on the system of Own Resources of the European Union 2.5.2018 COM (2018) 325 final 2018/0135(CNS), (2018): 1.
[918] *Ibid.*
[919] See *supra* sec 3.1.4.
[920] European Commission, Proposal for a Council Decision on the system of Own Resources of the European Union COM/2018/325 final - 2018/0135 (CNS), (2018): 3.
[921] Peter Becker, "A new budget for the EU: negotiations on the Multiannual Financial Framework 2021-2027," *Stiftung Wissenschaft und Politik Research Paper*, 11/2019 (2019): 31,34. On a similar note: Jörg Haas, Eulalia Rubio, Pola Schneemelcher, "The MFF Proposal: What's New, What's Old, What's Next?" Jacques Delors Institute Policy Brief (2018): 2.
[922] Federico Fabbrini, "Fiscal Capacity" in *Research Handbook on EU Economic Law* ed. Federico Fabbrini, Marco Ventoruzzo (Cheltenham: Edward Elgar Publishing, 2019), 107.
[923] European Parliament, *A Fiscal Capacity for the Eurozone: Constitutional Perspectives* (2019). https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/608862/IPOL_IDA(2019)608862_EN.pdf

basis to do so can be found among already existing provisions of the EU Treaties (using Articles 172, 173, 175(5), 182(1), and possibly 136 TFEU). Finally, based on the comparisons with the USA and Swiss federal systems, the analysis stresses that true fiscal capacity requires both spending and taxing powers at the EU level, with revenues directly collected by the Union.[924]

In addition, as the MFF 2021-2027 negotiations continued, related developments sparked the interest of the academic community. The Commission's efforts to reform the EU budget, equally on the revenue and expenditure side, were welcomed. However, an overall impression was that the proposed reform was not adequate to meet the EU's policy agendas and would most likely fail to be adopted even in the proposed scope.[925] Although the proposal for the own resource reform was welcome, it was described as insufficient. Thus, some scholars called for a subsequent introduction of additional new own resources.[926]

What no one could have foreseen, however, was the sudden outbreak of a global health crisis at the beginning of 2020, which would cause one of the most consequential shifts in the EU's public finance legal framework. The COVID-19 crisis redefined the boundaries of what was politically and legally conceivable within the Union's fiscal architecture. The outbreak of the COVID-19 pandemic at first seemed like a health crisis. Thus, in the early phase of the pandemic, Member States focused on preventing the spread of the virus, but its serious economic consequences soon came to the forefront.[927] Unemployment was rising, while consumption and investment decreased due to the lockdown measures. Thus, it soon became a fully-fledged economic crisis, which put the EU to another test. The economic downturn affected the public finance systems of all Member States similarly, significantly increasing their expenditures, which was referred to as a symmetric shock. However, the Member States' ability to tackle it was certainly asymmetrical.[928] Therefore, it became clear that a balanced recovery within the EU requires a supranational intervention at the EU level.

Unlike the response to the global financial crisis, the EU's reaction to the COVID-19 crisis was significantly faster in terms of proposing and adopting measures. Among the first adopted measures was the activation of the general escape clause from the Stability and Growth

[924] European Parliament, *A Fiscal Capacity for the Eurozone: Constitutional Perspectives* (2019) https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/608862/IPOL_IDA(2019)608862_EN.pdf
[925] See Margit Schratzenstaller, Alexander Krenek, "Tax-based own resources to finance the EU budget: Potential revenues, summary evaluation from a sustainability perspective, and implementation aspects," *WIFO Working Papers No. 581*. (2019): 29.
[926] Schratzenstaller, Krenek, *op. cit.*
[927] Fromage, *supra* note 708, at 391.
[928] Lionello, *supra* note 6, at 25.

Pact (SGP). [929] The SGP was introduced as a reinforcement of the Maastricht criteria to prevent excessive deficits in the Member States through oversight of national budgetary policies. However, the pandemic caused the activation of the general escape clause for the first time in history.[930] The Council adopted this measure in March 2020 to provide Member States with an "opportunity for an appropriate fiscal response."[931] The latter was a result of lessons learned during the global financial crisis. It was observed that it is necessary to incorporate specific provisions into the EU's fiscal framework to enable a temporary deviation from standard requirements for all Member States in the event of a generalised crisis.[932] The general escape clause was deactivated in 2023.[933]

Simultaneously with the efforts of the Commission, the European Central Bank (ECB) deployed monetary policy tools to safeguard the financial stability of the euro area. Thus, the ECB introduced a monetary policy instrument called the Pandemic Emergency Purchase Programme (PEPP) in March 2020. It was established through a non-legislative act of the ECB, specifically Decision (EU) 2020/440 of 24 March 2020 on a temporary pandemic emergency purchase programme.[934] The PEPP enabled the ECB to purchase various types of securities, thereby increasing their market price and lowering interest rates. It can be observed that the PEPP resembles the quantitative easing (QE) measures adopted by the ECB during the global financial crisis. The two instruments share the same objective: to mitigate the impact of adverse economic conditions and support economic recovery. Like QE, the PEPP involved the purchase of securities to stimulate economic growth and influence inflation in a favourable direction.[935]

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[929] Although its nomenclature might suggest otherwise, the General Escape Clause consists of several provisions from Regulation 1466/97 and Regulation 1467/97. Thus, Article 5(1) and Article 9(1) of Regulation 1466/97 provide that Member States may be permitted to deviate from the Maastricht criteria in the event of circumstances beyond the control of the state that have affected its financial position. Articles 6(3) and 10(3) of Regulation 1466/97 authorise the Union to disregard a deviation from a Member State's medium-term budgetary objective. Furthermore, it also includes Article 3(5) of Regulation 1467/97, which stipulates that, due to unexpected adverse economic developments affecting public finances, the Council may extend the deadline for the correction of a Member State's excessive deficit.

[930] European Commission, *Questions and Answers: Commission Proposes Activating Fiscal Framework's General Escape Clause to Respond to Coronavirus Pandemic* (2020). https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_500.

[931] Nataša Žunić Kovačević, "Posljedice i učinci pandemije bolesti COVID-19 na fiskalni sustav i oporezivanje" *Zbornik radova Pravnog fakulteta u Splitu* 58, no.2 (2021): 483.

[932] European Commission, *Questions and Answers: Commission Proposes Activating Fiscal Framework's General Escape Clause to Respond to Coronavirus Pandemic* (2020).

[933] European Commission, *Press release: Fiscal policy guidance for 2024: Promoting debt sustainability and sustainable and inclusive growth*. (2023). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1410.

[934] See Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17).

[935] For a detailed analysis of the Quantitative easing, see Philippe Andrade, P. et al., "The ECB's asset purchase programme: an early assessment," *European Central Bank Working Paper Series no. 1956/2016* (2016): Available at: https://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp1956.en.pdf.

The ECB was not the only actor from the banking sector to engage in the collective response to the crisis; the European Investment Bank (EIB) also played an active role in the implementation of recovery measures. Since EIB's primary mission is to support the development of the EU by providing loans and guarantees, in April 2020, the Council approved the establishment of the Pan-European Guarantee Fund in Response to COVID-19 (hereinafter: the Fund), to be managed by the EIB. This instrument, worth EUR 25 billion, was primarily intended to ensure that small and medium-sized enterprises (SMEs) with viable business plans could access the liquidity needed to overcome pandemic-related challenges.[936]

Moreover, the EU also established another instrument of fiscal policy to tackle the crisis, under the acronym SURE (European Instrument for Temporary Support to Mitigate Unemployment Risks in an Emergency). It was established in May 2020 in the form of the Council Regulation (EU) 2020/672 based on Article 122(1) TFEU.[937] More precisely, Article 122(2) TFEU, based on solidarity, authorises the Council to grant financial assistance to a Member State experiencing or seriously threatened with severe difficulties caused by natural disasters or exceptional circumstances beyond its control. Thus, SURE enabled the Union to assist Member States through loans. Moreover, using Article 122 TFEU as the legal basis was justified by the temporary nature of the SURE instrument.[938] Accordingly, Article 12(3) of Council Regulation 2020/672 included a sunset clause, stipulating that the availability period for SURE would end on 31 December 2022. Eligibility for funding under the SURE instrument depended on the extent to which the COVID-19 crisis in each Member State led to an increase in actual or planned public expenditure related to short-time work schemes, income support for the self-employed, and support for the healthcare sector.[939] Thus, the Union's reaction to the pandemic was swift and marked by a higher degree of coordination between fiscal and monetary policy at the EU level.

3.4.1. The NextGenerationEU and joint borrowing

Building on this foundation of coordinated crisis response, as well as on the fact that the MFF 2021-2027 was still being negotiated, the Next Generation EU (NGEU) recovery plan

[936] For details regarding the functioning of the European Guarantee Fund, see European Investment Bank, *Fact sheet: The Pan-European Guarantee Fund in response to COVID-19* (2020). Available at: https://www.eib.org/files/press/covid19-paneuropean-guarantee-fund-factsheet-en.pdf.
[937] Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, OJ L 159, 20.5.2020.
[938] De Witte, *supra* note 12, at 654.
[939] Article 3, Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, ST/7917/2020/INIT, OJ L 159, 20.5.2020.

emerged as a landmark instrument, designed to support sustainable growth, investment, and reform across Member States in the post-pandemic era. Having this in mind, it will be analysed in the following section. Although the EU's response to the COVID-19 crisis was swift, encompassing both fiscal and monetary policy instruments, the rapid deterioration of the situation revealed that the Union's economic stability requires a substantial financial instrument. Nevertheless, Member States were initially divided over which new measures should be introduced.[940]

The first step on the road to the NGEU was the joint letter that leaders of nine Member States sent to the President of the Council, proposing the creation of a common recovery instrument to be financed through joint borrowing.[941] The next important development was the "Franco-German Initiative,[942] calling for the establishment of a European recovery fund based on Union-level borrowing. More precisely, the mentioned initiative proposed the creation of an "ambitious, temporary and targeted Recovery Fund in the framework of the next MFF, boosting a frontloaded MFF during its first years. Given the exceptional nature of the challenge of the pandemic for economies across the EU, France and Germany proposed to allow the Commission to finance such recovery by borrowing on markets on behalf of the EU."[943] This initiative marked a significant shift in Germany's policy, which had previously opposed such an approach. Moreover, the aforementioned proposal went beyond the idea of mutual European debt. The proposal suggested digitalisation and green transition as the two pillars of EU recovery, taking into consideration the EU Green Deal as a policy roadmap for the future. Interestingly, it also called for continued efforts for the creation of a legal framework for fair taxation in the EU, followed by the establishment of a common corporate tax base.[944]

Shortly after the mentioned initiatives by the Member States, the Commission put forth a proposal for the recovery plan.[945] It was presented in the form of a regulation to ensure its direct applicability and general scope, following the ideas presented in the French-German

[940] For an analysis of the EU instruments which emerged during the pandemic (in Croatian) see Viktorija Pisačić, "Instrumenti Europske unije stvoreni u pandemijskom razdoblju: privremeno rješenje ili korak prema potpunoj fiskalnoj integraciji?" *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 45, no. 2 (2024): 357-378. https://doi.org/10.30925/zpfsr.45.2.4.
[941] De Witte, *supra* note 12, *op. cit.*
[942] French-German Initiative for the European Recovery from the Coronavirus Crisis (2020) Available at: https://www.elysee.fr/en/emmanuel-macron/2020/05/18/french-german-initiative-for-the-european-recovery-from-the-coronavirus-crisis.
[943] French-German Initiative for the European Recovery from the Coronavirus Crisis (2020): 2.
[944] *Ibid.*
[945] European Commission, Proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, COM/2020/441 final (Brussels, 28.5.2020)

proposal. [946] However, the amount of debt proposed was significantly higher in the Commission proposal, amounting to EUR 750 billion. The Commission accentuated the temporary and exceptional nature of such an instrument, which excluded the possibility of using the Recovery plan for any other purpose.[947] Unsurprisingly, such a proposal caused a debate within the Council. As expected, France and Germany were the advocates of this solution, but the group of EU Member States known as the "frugals" was trying to lower the proposed scope of the instrument.[948] Nevertheless, the urgent need to adopt a supranational remedy for the crisis pushed the Member States to overcome their disagreements, and the European Council reached an agreement on the NGEU in July 2020.[949]

The mentioned Regulation proposal was not the only legislative act which was necessary to adopt the recovery plan. More precisely, the NextGenerationEU recovery plan is a legal puzzle, consisting of several interconnected pieces. Thus, to incorporate the NGEU into the existing budgetary legal framework, the EU also needed the adoption of the Own Resources Decision (ORD). This was a necessary prerequisite for the NGEU functioning since ORD is necessary to "authorise the Union to borrow temporarily and exceptionally an amount of EUR 750 billion in 2018 prices and to increase the own resources ceiling to accommodate the liabilities and contingent liabilities for loans to the Member States."[950] Moreover, the NGEU adoption also required a consensus on the MFF Regulation, since the resources raised through the issuance of EU debt were envisaged to support the Union´s programmes under the next MFF.[951] The latter exposed the NGEU adoption to the possible obstacle of a veto, since both the ORD and MFF Regulations are subject to the unanimity requirement.[952] This became an issue when Hungary and Poland threatened a veto on the adoption of the MFF and the ORD since the Commission proposed to adopt yet another legal instrument within the NGEU, and that was the so-called rule of law mechanism. As described earlier, [953] it is a Regulation which

[946] European Commission, Proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, COM/2020/441 final (Brussels, 28.5.2020.): 3.
[947] European Commission, Proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, COM/2020/441 final (Brussels, 28.5.2020.): 14.
[948] Lionello, *supra* note 6, at 30.
[949] *Ibid.*
[950] European Commission, Proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, COM/2020/441 final (Brussels, 28.5.2020):1.
[951] See Explanatory Memorandum of the Proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, COM/2020/441 final.
[952] Unanimity requirement for the Own Resource Decision is prescribed in Article 311 TFEU, while this requirement regarding the MFF is provided in Article 312(2) TFEU.
[953] See *supra* sec. 3.3.3.

was presented as an instrument of sound fiscal management. However, it is also a powerful political tool since it allows the Union to withhold payments from its budget when breaches of the rule of law directly affect or seriously risk affecting the Union budget or the financial interests of the Union.[954] Notwithstanding this threat, the NGEU legislative package was ultimately adopted.

Furthermore, the supranational recovery plan faced another obstacle, even after the successful adoption. More precisely, the ORD amendment requires not only a unanimous decision but also a subsequent ratification in the national parliaments. Its ratification was contested by the German Federal Constitutional Court (*Bundesverfassungsgericht*).[955] More precisely, the Court received a constitutional complaint stating that the ORD violated Germany's constitutional identity and exceeded the EU's conferred powers, constituting an ultra vires act.[956] The latter was highly problematic for the NGEU adoption, having in mind that its legal architecture consisted of three interconnected instruments (RRF, EURI and the new ORD), which were co-dependent. Having in mind previous experiences in cases *Gauweiler* and *Weiss*,[957] the BVerfG's decisions were highly anticipated.[958] The decision regarding the ORD was reached in 2021, when the BVerfG issued a preliminary ruling that the ORD does not appear to violate the budgetary powers of the *Bundestag* and, hence, the identity of the German constitution.[959] The final judgment was reached in December 2022. The BVerfG concluded that NGEU represents a unique and one-off temporary response to the exceptional COVID-19 crisis, not a step toward a permanent transfer union. It was found constitutionally admissible because of its temporary, targeted, and constrained nature. The judgment was cautious, aiming to curb ambitions of using NGEU as a model for future EU integration or a permanent joint borrowing scheme.[960]

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[954] European Commission (2022). *Press release: EU budget: Commission publishes guidance on the conditionality mechanism*. Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1468.
[955] On details of BVerfG final judgment regarding the NGEu adoption see Hanno Kube "A Relieving Decision: The Interim Decision of the German Federal Constitutional Court in the Procedure against the 2020 Own Resources Decision", *VerfBlog* (2021). doi: 10.17176/20210427-221733-0.
[956] Paul Dermine, Ana Bobić, "Of Winners and Losers: A Commentary of the Bundesverfassungsgericht ORD Judgment of 6 December 2022: Cases 2 BvR 547/21 and 2 BvR 798/21, Own Resources Decision Judgment of 6 December 2022," *European Constitutional Law Review* 20, no. 1 (2024): 166.
[957] A brief insight into *Weiss* and *Gauweiler judgment* is given *supra* in sec. 3.2.3.
[958] Dermine, Bobić, *supra* note 956, at 166.
[959] Thu Nguyen, Martin van den Brink, "An early Christmas Gift from Karlsruhe? The Bundesverfassungsgericht's NextGenerationEU Ruling," *Verfassungsblog, 2022/12/09* (2022).
[960] Dermine, Bobić, *supra* note 956, at 189.

3.4.2. The NGEU Legal Architecture

Following the short but intense negotiations, the NGEU legislative package was finally adopted. One of the three NGEU pillars is the Regulation establishing the European Union Recovery Instrument (EURI) was adopted in December 2020.[961] De Witte described it as a "container instrument in which the total sum of 750 million euros is embedded and assigned to various spending programmes."[962] Based on the "solidarity clause" from Article 122 TFEU, it allowed the Union to allocate the funds acquired through borrowing in two different forms.[963] Thus, one part of the funds was used to issue loans to Member States, while the other was disbursed using the category of external assigned revenue, to provide non-repayable aid, financial tools like guarantees, and related spending. The latter is grounded in Article 21(5) of the Financial Regulation,[964] as a legal basis to assign this revenue.[965]

The largest amount of the NGEU funds was channelled through the Recovery and Resilience Facility (RRF), being the second important NGEU puzzle piece. It was established through a regulation[966] similar to the EURI. The legal basis for the RRF was found in Article 175 TFEU, which allows the Union to take specific actions beyond the use of Structural Funds to support economic, social, and territorial cohesion. The RRF envelope did amount to EUR 648 billion (in 2022 prices), which is approximately 90 % of the overall NGEU package. [967] It was designed as a "dedicated instrument to tackle the adverse effects and consequences of the COVID-19 crisis in the Union."[968] The RRF was supposed to financially support six policy areas of relevance for the EU's recovery ('six pillars'), namely: i) green transition; ii) digital transformation; iii) smart, sustainable and inclusive growth (…); iv) social and territorial cohesion; v) health, and economic, social and institutional resilience with the aim of increasing crisis response capacity; vi) and policies for the next generation, children and the youth, such as education and skills.[969] The so-called "twin transition", being the green and digital transition,

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[961] Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis, OJ L 433I, 22.12.2020 (hereinafter: EURI Regulation).
[962] De Witte, *supra* note 12, at 636.
[963] The exact formula for the allocation of funds is prescribed in Article 2 (2) of the EURI Regulation.
[964] Currently, the Financial Regulation is Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast) PE/99/2023/REV/1, OJ L, 2024/2509, 26.9.2024.
[965] Para 9, Explanatory memorandum of the EURI Regulation.
[966] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021 (hereinafter: RRF Regulation).
[967] European Union, *Summary of EU legislation - European Union Recovery and Resilience Facility*. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4509573.
[968] Para 8, Explanatory memorandum of the RRF Regulation.
[969] Para 10, Explanatory memorandum of the RRF Regulation.

was financed with half of the RRF funds, which highlighted those policy objectives as the EU's priorities. Moreover, it was expected that reforms financed through the RRF would contribute to the European added value.[970] Thus, to ensure that Member States' contributions to the mentioned policy objectives, the RRF regulation prescribed the obligation to submit Recovery and Resilience Plans (RRP).

The third NGEU pillar was the adoption of the new Own Resource Decision (ORD), since the previous own resource decision did not allow large-scale borrowing. The new ORD proposal has been on the table since the negotiations on the MFF 2021-2027 started in 2018.[971] However, the extraordinary circumstances pushed the question of ORD reform high up on the list of EU priorities. Thus, the Commission issued a proposal for a new ORD in 2020.[972] First of all, the new ORD allowed the Commission to raise a historically high amount of debt on the capital markets. Second, it was necessary to amend the 2018 ORD proposal to temporarily increase its own resources ceiling, allowing for an extraordinary and time-limited expansion of its budgetary capacity. Moreover, the amendment provided that the exact expiry date of the increased own resource ceiling would be 31 December 2058, once all liabilities have been fully settled.[973] The 2020 Proposal raised the ceiling to 1,40 % of the sum of the Member States' GNI at market prices for appropriations for payments and of 1,46 % for the appropriations for commitments.[974] The RRF served as an instrument of disbursement for the largest share of the NGEU funds, and the rest of the funds are dispersed through the Recovery Assistance for Cohesion and the Territories of Europe (REACT-EU), Horizon Europe, InvestEU, European Agricultural Fund for Rural Development or the Just Transition Fund (JTF).[975] When it comes to the introduction of new own resources, the mentioned proposal existed since 2018. Such a proposal will be issued following the NGEU adoption, in December 2021, which will be analysed below.[976]

Finally, it should be pointed out that the share of the EU funds was spent as direct financial assistance to the Member States, which means that there will be no liability of the Member States for their repayment (borrowing for spending). Thus, a large part of the NGEU

[970] Para 9, Explanatory memorandum of the RRF Regulation.
[971] European Commission, Proposal for a Council Decision on the system of Own Resources of the European Union, COM (2018) 325 final, 2018/0135(CNS), 2.5.2018.
[972] European Commission, Amended proposal for a Council Decision on the system of Own Resources of the European Union, COM (2020) 445 final 2018/0135(CNS), 28.5.2020.
[973] *Ibid.*
[974] European Commission, Amended proposal for a Council Decision on the system of Own Resources of the European Union COM/2020/445 final.
[975] European Commission, *Recovery plan for Europe* (2020). Available at: https://commission.europa.eu/strategy-and-policy/recovery-plan-europe_en#main-elements-of-the-package
[976] See *infra* sec. 3.4.3.

debt will have to be repaid by the EU, which is consequently calling for an increase in the EU's fiscal capacity. However, this question was postponed at the time of the NGEU adoption, leaving it for a time of repayment.[977] The mutualisation of debt inspired some authors to question whether this was the 'Hamiltonian moment' for Europe, comparing it with the creation of the first mutual debt of the USA in 1790, following the proposal of Alexander Hamilton.[978]

The aforementioned legislative acts, including the EURI Regulation, the RRF Regulation, and the revised Own Resources Decision, formed the legal backbone of the NGEU framework. This unprecedented legal architecture enabled the Union to collectively respond to the COVID-19 crisis. Moreover, these regulations suggest the flexibility of the EU's public finance legal framework to support reforms leading to a greater degree of fiscal integration.

3.4.3. Legal issues surrounding the NGEU adoption

Notwithstanding its successful adoption, the NGEU legislative package caused a stir, especially in academia. The first issue is its legal basis, which was found in Articles 122 TFEU and 175 TFEU. Their use is not unprecedented, given that they already served the Union during the global financial crisis in the creation of the EFSM.[979] Moreover, if we look back at the EFSM Regulation, it is clear that the legal basis is specified in Article 122(2) TFEU. On the other hand, the EURI Regulation does not specify which paragraph of this article exactly is the legal basis. De Witte pointed out that the instrument, in fact, has two legal bases: Article 12(1) and Article 122(2) TFEU. It is possible to do so since both paragraphs provide for the same legislative procedure for the adoption of measures based on this Article.[980] However, Article 122(1) TFEU provides for a broader basis, by authorising the EU to decide upon the measures appropriate to the economic situation. Article 122(1) provides a more specific solution, by authorising the Union to grant financial assistance to the Member States. Article 122 TFEU is a justified legal basis to grant loans, but it raised concerns about whether it is a right basis for the RRF, which will go beyond the objective of recovery, shaping the long-term EU policies.[981] Finally, if observed from the viewpoint of institutional balance, Article 122 TFEU has a flaw as a legal basis. The procedure provided in this Article does not provide for a significant role

[977] De Witte, *supra* note 12, at 680.
[978] See Lionello, *supra* note 6, at 22.
[979] See Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, OJ L 118, 12.5.2010.
[980] De Witte, *supra* note 12, at 655.
[981] *Ibid.*

of the European Parliament. Instead, "it is merely to be informed of the decision taken by the President of the Council."[982]

Moreover, Lionello pointed out the issue of the NGEU financing compatibility with the so-called "no bailout clause" in Article 125 TFEU.[983] This provision prescribes that "the Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project….".[984] The problematic relationship between the NGEU financing and "no-bailout clause" stems from the fact that Member States will be the beneficiaries of the funds, but they are not responsible for the repayment of the debt. Thus, this form of financing undermines their fiscal responsibility, while the Union might be perceived as their intermediary on the financial markets, securing cheaper interest rates that Member States might have obtained.[985]

Furthermore, the NGEU legislative package relies on two legal bases, the aforementioned Article 122(2) TFEU and Article 175 TFEU. When it comes to Article 175(5) TFEU, it is designed to support the objective of economic, social and territorial cohesion within the Union. Following this provision, the Commission emphasised the RRF's contribution to cohesion in the aftermath of the COVID-19 pandemic within the EU. The proposal for the RRF regulation repeatedly points out that "the overall objectives of the regulation is to enhance cohesion, through measures that allow improving the resilience of the Member States, mitigating the social and economic impact of the crisis and supporting the green and energy transitions.[986] However, there was a doubt whether RRF can be described as a pure cohesion policy instrument. Critiques pointed out that the Commission was trying to camouflage an economic policy agenda inside a cohesion policy instrument.[987]

In addition, a portion of borrowed funds will be qualified as the "external assigned revenue", which is a category of revenue dedicated to specific expenditures. Until the NGEU, the category of external assigned revenue made up around 5 to 11 % of the EU budget. Thus, it was not problematic to use this exception to the principle of budgetary balance in modest amounts of funds. However, the NGEU changed this picture. Externally assigned revenue will

[982] Fromage *supra* note 708, at 393.
[983] Lionello, *supra* note 6, at 34.
[984] Article 125(1) TFEU.
[985] Lionello, *supra* note 6, at 34.
[986] Proposal for a Regulation of the European parliament and of the Council establishing a Recovery and Resilience Facility, COM/2020/408 final.
[987] Dermine, *supra* note 6, at 346.

be around 20 % of both the NGEU and the MFF 2021-2027. Moreover, this type of revenue is subject to very limited oversight by the Parliament.[988]

Finally, it is important to have in mind the extraordinary circumstances in which NGEU came to be. The economic crisis required both swift and innovative measures, which most likely could not succeed without a pragmatic teleological and dynamic approach to EU law. Although certain legal ambiguities and procedural shortcuts may be identified, NGEU's transformative potential and European solidarity embedded in this instrument outweigh its design-related shortcomings.

3.4.4. Next Generation of Own Resources: Commission's 2021 proposal

Following the creation of genuine EU debt for NGEU financing, it became apparent that the EU would have to increase its fiscal capacity to secure the repayment of debt. In fact, the EU institutions obliged themselves to do so with the 2020 Interinstitutional Agreement.[989] This agreement found its legal basis in Article 295 TFEU, which provides that "the European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a binding nature." Although it is not necessary, the European institutions decided that this agreement will have a binding nature, to "implement budgetary discipline, to improve the functioning of the annual budgetary procedure and cooperation between the Institutions on budgetary matters as well as to ensure sound financial management and to implement a cooperation and establish a roadmap towards the introduction of new own resources."[990]

Annex II of the Interinstitutional Agreement is the roadmap for the introduction of new own resources. Its explanatory memorandum highlights that the repayment of the EURI should not result in a reduction of programme spending or investment tools within the MFF, nor in an increase in Member States' GNI-based contributions.[991] Moreover, it is pointed out that new own resources should be in line with the EU's policy objectives from the European Green Deal and a Europe fit for the Digital Age. Moreover, they should also contribute to fair taxation and

[988] Dermine, *supra* note 6, at 348.
[989] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resource OJ L 433I, 22.12.2020, p. 28–46. (Hereinafter: Interinstitutional agreement).
[990] Explanatory memorandum of the Interinstitutional Agreement.
[991] Annex II, Interinstitutional Agreement, point E.

to the fight against tax fraud and tax evasion.[992] EU institutions have chosen simplicity, transparency, predictability and fairness as the four criteria which all new own resources must fulfil. Also, the Interinstitutional Agreement mentions the term "fresh revenue", meaning that new own resources have to create additional revenue for the EU budget, rather than reallocating or repurposing existing funds. It was envisaged that the reform of the system could be achieved through a limited number of ORD revisions.[993]

In addition, this Roadmap for the introduction of the new own resources prescribed three elements of the first step of the reform: i) a new own resource as of 1 January 2021 composed of a share of revenues from national contributions calculated on the weight of non-recycled plastic packaging waste; ii) proposals on CBAM and on a digital levy by June 2021; and iii) proposal for a new own resource based on the EU ETS by June 2021. The second step of the reform predicts the introduction of these resources by 2023. Finally, as a third step, the Interinstitutional Agreement provided that the Commission will propose additional new own resources, which could include a financial transaction tax and a financial contribution linked to the corporate sector or a new common corporate tax base, by June 2024.

Following this agenda, in 2021 the Commission revealed a plan for the introduction of the so-called 'Next Generation of Own Resources' to mark their correlation with the recovery plan. In the first basket of own resources, the Commission proposed the following: i) revenues from ETS, ii) resources generated by the EU CBAM, and iii) the share of residual profits from multinationals that will be re-allocated to the EU Member States under the recent OECD/G20 agreement on a re-allocation of taxing rights ("Pillar One").[994] Regarding the latter, the Commission proposed that 15 % of the revenue accruing to EU Member States from the Pillar One taxing rights reallocation becomes an own resource, to include the EU in the taxation of the digital economy.[995]

Moreover, in 2023, the Commission issued an amended proposal for a Council Regulation amending Regulation (EU, Euratom) 2021/768 of 30 April 2021 as regards implementing measures for new own resources of the European Union. This proposal called for the introduction of a statistical own resource based on company profits. The latter is envisaged as a Member State's contribution to the EU budget calculated from existing national statistics

[992] Annex II, Interinstitutional Agreement, point H.
[993] Annex II, Interinstitutional Agreement, point K.
[994] European Commission, *Press release: The Commission proposes the next generation of EU own resources* (2021). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_7025.
[995] Pascal Saint-Amans, "Broader border taxes: a new option for European Union budget resources," *Bruegel Policy Brief 06/2024* (2024). Available at https://www.bruegel.org/policy-brief/broader-border-taxes-new-option-european-union-budget-resources.

on business income. Specifically, a rate of 0.5 % would be applied to the gross operating surplus (a measure of company profits). This system is meant to be temporary and would later be replaced by a new framework called Business in Europe: Framework for Income Taxation (BEFIT), once it is approved. BEFIT aims to create a single set of EU-wide rules for how companies calculate their taxable profits and to ensure that those profits are fairly divided among EU Member States.[996]

Some of the aforementioned proposals remain under consideration or are still pending adoption, and some of them have already been adopted. The plastic levy is the first new own resource adopted after almost 40 years of stagnation in this particular matter. One major reason for the relatively quick adoption of the plastic levy could be its neutrality concerning national tax sovereignty. The levy does not directly impose a tax on citizens or specific industries in Member States, and it is framed as a technical environmental contribution, rather than a harmonised tax. By contrast, the CBAM and the enhanced EU ETS required highly technical, cross-sectoral negotiations. These proposals touch on sensitive areas of trade policy and international law.[997] The slowest progress is noticeable with the design of a new own resource for the corporate sector. Here, the obstacles are even more pronounced. Corporate taxation is closely linked to the understanding of the national aspect of tax sovereignty. Unanimity is required for direct tax changes at the EU level, making consensus particularly difficult. Moreover, the technical and political challenge of designing a harmonised tax base, apportionment method, and collection system that is acceptable to all is, to say at least, complicated.

It should be pointed out that the Commission incorporated the introduction of a digital levy in the Annex for its work programme in 2021. Shortly after, it issued an Inception Impact Assessment regarding a Proposal for a Council Directive on a 'Digital Levy'.[998] The Commission indicated that a legal basis would be found in Article 113 or 115 TFEU, or even both of them.[999] Moreover, several other proposals were identified as possible future steps for harmonisation regarding the digital economy. In this regard, the Commission mentioned "additional policy options, such as: i) a corporate income tax top-up to be applied to all

[996] European Parliament, *System of own resources of the European Union* (2021). Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751480/EPRS_BRI(2023)751480_EN.pdf.
[997] See e.g. Ilaria Espa, Joseph Francois, Harro van Asselt, "The EU Proposal for a Carbon Border Adjustment Mechanism (CBAM): An Analysis under WTO and Climate Change Law." *World Trade Institute Working Paper no. 06/2022* (2022); Carlos A. Alonso Gayon, "The EU's CBAM, complying with the CBDR principle, could also mean compliance with WTO law," *Minnesota Journal of International Law* 32, no.1 (2023): 269-300.
[998] See Georg Kofler, "The future of digital services taxes," *EC Tax Review* 30, no. 2 (2021): 50-54.
[999] Commission Staff Working Document: *Impact Assessment* Accompanying the document *Proposal for a Council Directive* laying down rules relating to the digital levy.

companies conducting certain digital activities in the EU, ii) a tax on revenues created by certain digital activities conducted in the EU, iii) a tax on digital transactions conducted business-to-business in the EU.[1000]

3.4.5. The MFF 2021-2027

In addition to introducing new instruments for the protection of the EU budget, the Commission emphasised the need to align EU financing more closely with the Union's policy objectives. Thus, in the 2021-2027 MFF proposal, the programmes were „arranged around the main thematic spending priorities, corresponding to the headings in the formal budget structure. Within each priority, programmes were grouped in policy clusters, which will be reflected in the titles of the annual budget."[1001] According to the European Parliament's analysis, this represented an important shift in the design of the long-term EU budget, as it transformed the budgetary structure into a clearer expression of the Union's political priorities.[1002] Having in mind that the annual budget must remain within the expenditure ceilings established by the MFF, these priorities play a decisive role in shaping EU policies throughout each seven-year budgetary cycle.[1003]

At the same time, the reform sought to increase the EU budget flexibility. Thus, another objective of the MFF 2021-2027 was the "greater flexibility to respond to evolving needs and unforeseen emergencies in areas such as security and migration."[1004] Moreover, the MFF 2021-2027 also had the important task of addressing the UK's withdrawal from the Union, which resulted in a decrease in the EU's financing.[1005] The overall MFF budget was planned to amount

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[1000] *op. cit.*

[1001] For example, the number of programmes for financing through the EU budget was decreased to 37, in comparison with the former 58 programmes. See: European Commission, *Press release: EU budget: Commission proposes a modern budget for a Union that protects, empowers and defends* (2018): 2. Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_18_3570/IP_18_3570_EN.pdf.

[1002] European Parliament, *2021-2027 Multiannual Financial Framework and New Own Resources - Analysis of the Commission's proposal* (2019). Available at: http://www.epgencms.europarl.europa.eu/cmsdata/upload/db93fa39-84ce-44fe-b4fa-4c6824185e13/2021-2027_Multiannual_financial_framework_and_new_own_resources_-_Analysis_of_the_Commission%27s_proposal_.pdf.

[1003] Haas, Rubio, Schneemelcher, *supra* note 914. Available at: https://rsm-bst-stage.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/EZ_JDI_The_MMF_proposal_2018_ENG.pdf

[1004] *Ibid.*

[1005] European Parliament, *2021-2027 Multiannual Financial Framework and New Own Resources - Analysis of the Commission's proposal* (2019).

to EUR 1,135 billion in commitment appropriations (in 2018 prices) for the 2021-2027 period, corresponding to 1.11 % of the EU-27's GNI.[1006]

The areas of expenditure in the current MFF are divided into 7 categories: i) single market, ii) cohesion, resilience and values, iii) environment, iv) migration and border management, v) security and defence, vi) neighbourhood and the world, and vii) European public administration.[1007] Its main goals were "to bolster the EU's priorities, such as the green transition, digitalisation, and recovery from the economic and social shock caused by the COVID-19 pandemic."[1008]

The 2021-2027 MFF reflects the EU's policy agenda, as the Commission set the goal of spending at least 30 % of the 2021-2027 MFF to support the EU's environmental efforts and tackle climate change. The expenditures for this purpose are higher than in the last MFF, indicating the EU's stronger commitment to climate action in its long-term financial strategy. The second corollary of the EU's post-pandemic recovery is the digital transition. Accordingly, the MFF expenditures also reflect this policy goal. MFF 2021-2027 also "provides more funding for Europe's digitalisation. The Digital Europe programme invests in: (i) common data spaces; (ii) trustworthy artificial intelligence technologies; and (iii) cybersecurity, including secure quantum communication infrastructure (EuroQCI)."[1009]

The 2021 -2027 MFF faced several challenges in the first years of its application. More precisely, by the end of 2021, the supply and energy crises also caused rising inflation, with the general price level increasing from below 2 % to over 5 % by the end of the year. In addition, the beginning of the armed conflict in Ukraine in 2022 created another crisis, which required the EU's response.[1010] This polycrisis has become a significant challenge for ongoing EU programs and policies, including the NGEU and the European Green Deal.[1011] Consequently, in June 2023, the Commission proposed a mid-term review of the MFF, accompanied by a revision proposal. The aim was to address the mentioned pressing needs while ensuring the EU

[1006] European Parliament, *Multiannual Financial Framework 2021-2027: Commission Proposal - Initial comparison with the current MFF* (2018).
[1007] European Council, *EU long-term budget 2021-2027* (2024). https://www.consilium.europa.eu/en/policies/eu-long-term-budget-2021-2027/#areas .
[1008] European Commission's Directorate-General for Budget, *EU budget policy brief: Lessons for a future-proof EU budget* (2024)
[1009] European Commission's Directorate-General for Budget, *EU budget policy brief: Lessons for a future-proof EU budget* (2024): 9.
[1010] *Ibid.*
[1011] Emanuele Massetti, Theofanis Exadaktylos, "From crisis to crisis: the EU in between the Covid, energy and inflation crises (and war)," *Journal of Common Market Studies, 60* (Annual Review Issue) (2022): 6. See also Pošćić, Ana and Narda Krnetić Blečić, "Energetska solidarnost kao instrument energetske pravednosti: razvoj načela kroz praksu Suda Europske unije" *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 46, br. 3 (2025): 556.

could fulfil its legal obligations. The proposal focused on a targeted increase in the EU budget ceilings and enhancements in budgetary flexibility.[1012]

3.4.6. The MFF 2028-2034

On 16 July 2025, the Commission presented its proposal for the following MFF, under the slogan "budget for a stronger Europe". In the opening section of the proposal, the emphasis is put on the fact that the MFF will represent a "powerful expression of European solidarity".[1013] Moreover, it is acknowledged that the EU is facing growing responsibility to tackle transnational issues, and its budget must be prepared accordingly. The repayment of the funds borrowed under the NGEU programme will also constitute one of the key challenges for the forthcoming MFF. Accordingly, the Commission stressed that "modernising the financing of the EU budget is an essential part of this package and will allow for stable national contributions despite the increase in the size of the budget."[1014] It is specifically emphasised that the new MFF will be policy-based.

The introduction of National and Regional Partnership Plans (NRPPs) under the MFF 2028-2034 represents a substantial innovation in EU budget law. Unlike past cohesion policy frameworks, the NRPPs represent a tailored partnership model, bringing together the European Commission, Member States, and sub-national authorities to design investment and reform plans specific to local and regional needs.[1015]

Another novelty is the creation of the European Competitiveness Fund, "with a total envelope of EUR 409 billion, including Horizon Europe, to provide an unprecedented boost in EU budget support to research, innovation, development and deployment."[1016] This reflects the prioritisation of competitiveness in key policy documents and strategic assessments, including the Draghi Report[1017] and the EU Competitiveness Compass,[1018] both of which emphasised the urgency of enhancing the EU's productivity, innovation capacity, economic resilience, and

[1012] European Commission's Directorate-General for Budget, *EU budget policy brief: Lessons for a future-proof EU budget* (2024): 15.
[1013] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: a Dynamic EU Budget for the Priorities of the Future - The Multiannual Financial Framework 2028-2034, COM (2025) 570 final, 16.7.2025. (Hereinafter: MFF 2028-2034 proposal).
[1014] MFF 2028-2034 proposal, at 2.
[1015] MFF 2028-2034 proposal, pp. 3-5.
[1016] MFF 2028-2034 proposal, at 8.
[1017] Mario Draghi, "A competitiveness strategy for Europe" (2024). Available at: https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en.
[1018] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A Competitiveness Compass for the EU, COM (2025)30 final.

defence capacity. The Competitiveness Fund will be focused on delivering European public goods: clean transition and decarbonisation; digital leadership; resilience and security, defence industry and space; and health, biotech, agriculture and bioeconomy. It will also offer advisory services for project promoters. The latter proves that a focus on European public goods is gaining momentum, and connecting them with new sources of revenue would bring many policy advantages for the EU.

When it comes to the budget architecture, it is announced that "the next financial framework will have a simpler architecture, with fewer programmes, thus reducing administrative burden."[1019] The final part of the MFF proposal presents candidates for the new own resources, thus increasing the EU's fiscal capacity, while simultaneously reaching the policy-funding design.[1020] Furthermore, a part of the MFF 2028-2034 package will also be the announced Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management.[1021] If adopted, this Interinstitutional Agreement would replace its antecedent from 2020.[1022] It is divided in three sections, depending on the area of cooperation: i) cooperation related to the MFF and special budget instruments (Flexibility and Single Margin Instruments); ii) procedures for interinstitutional cooperation in ongoing budgetary matters, including financial programming and management of decentralized agencies, and iii) cooperation during the annual EU budgetary procedure, encouraging information exchange, regular trilogues, and efforts to reconcile positions. Overall, the proposal aims to increase transparency, predictability, and flexibility in EU budgetary governance, which are longstanding objectives of the EU fiscal management.[1023]

3.5. EU Own Resources

The following section is dedicated to the revenues of the EU budget. More precisely, this section aims to outline the developments which led to the current design of the EU's own resources system. Furthermore, it offers an overview of the current own resources system, as

[1019] MFF 2028-2034 proposal, at 24.
[1020] The aforementioned proposals will be presented in *supra* chapter 4, while the following section will lay the groundwork for the understanding of the EU's revenue and own resources system.
[1021] Proposal for an Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, COM (2025) 572 final, 16.7.2025.
[1022] Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources.
[1023] Proposal for an Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, COM (2025) 572 final, 16.7.2025.

well as the Treaty provisions that could serve as a legal basis for the future own resources. Finally, it outlines the main advantages and disadvantages of the current EU's revenue sources.

3.5.1. Own Resources: conceptual and functional evolution

As previously mentioned, the first predecessor of own resources was the coal and steel levy.[1024] Against this backdrop, it is important to emphasise that at the early stage of the European integration, this revenue source was repeatedly described as a tax, even in official ECSC documents. For example, in 1956, in a publication issued by the ECSC's High Authority, it is explicitly stated that "the High Authority has the power to levy and collect its own tax on coal and steel production."[1025] Furthermore, in the official European Community Information Service Report from 1960, the levy was referred to using the term 'tax'.[1026] Namely, the Report states that "the power to raise its own tax, together with a Guaranty Fund, constitutes the High Authority's credit standing."[1027] In 1961, the term tax is used once again in the working document issued by the Spokesman's Office of the ECSC High Authority, where the levy is described as "the first European tax."[1028] At the very end of the mentioned document, the achievements of the ECSC are declared as the "first bulwark of the future United States of Europe"[1029], thus seemingly calling for future federalisation of European countries.

However, available documents regarding the financing of the ECSC during the 1970s mostly returned to the term "levy",[1030] according to the terminology used in the ECSC Treaty. An intriguing exception can be found in the Report by the Court of Auditors of the European Communities for 1979. Namely, when referring to the revenues of the ECSC, it is stated that "the ECSC's principal sources of funds are its levy-taxing power and borrowings."[1031] Later on, in the financial reports from the 1980s and onwards, the levy on coal and steel has not been referred to as a tax.

[1024] On the development, objectives and financing of the ECSC, see in detail *supra* sec. 3.1.1.
[1025] Information service of the High Authority, *The facts: politics institutions economics, finance and labour* (September 1956): 6. Available at: https://aei.pitt.edu/52347/1/A7227.pdf
[1026] European Community Information Service Report: *The European Community (Coal & Steel, Common Market, Euratom) - The facts: Politics and economics, institutions, external relations*. Second edition, April 1960. [EU Commission - Working Document], 2nd Edition, April 1960, available at: http://aei.pitt.edu/52348/
[1027] *Ibid.* at 10
[1028] Spokesman's Office of the ECSC High Authority and European Community Information Service; *The ECSC.* (1961) 14. Available at: https://aei.pitt.edu/44279/1/A7194.pdf
[1029] *Ibid.* at 36.
[1030] See e.g. Court of Auditors of the European Communities, *Auditor's Report for the year 1973* (Submitted in Luxembourg, 30 June 1974). Available at EUI European Union Historical Archives, at https://archives.eui.eu/en/files/documents/274561.pdf?d=inline. See also European Parliament Working Documents Report drawn up on behalf of the Committee on Budgets on the report of the/ECSC Auditor for the financial year 1973, ECSC Financial Report for 1977, p. 35.
[1031] Court of Auditors of the European Communities, *Annual report pursuant to Article 78f (5) of the ECSC Treaty*, Financial year 1979, p. 10.

This indicates a shift from the initial certainty about how to conceptualise the coal and steel levy as a supranational revenue source, to the political choice to avoid the term tax. More precisely, the fact that official documents in the 1950s and 1960s referred to the ECSC levy as a "tax" shows that its nature was recognised as resembling domestic taxation. At the same time, calling it "the first European tax" reflects the period's federalist aspirations.[1032] Moreover, it seems that the conceptualisation of this revenue source as a tax may have been accepted due to the fact that it was characterised by a clear link between the source of revenue and the objectives it financed. It was used to support measures benefiting the coal and steel sectors, including social programmes for workers. As a result, those bearing the financial burden of the levy could perceive the benefits generated through its use.[1033] The subsequent shift to the neutral term "levy" might be a reflection of growing political sensitivity around sovereignty, leading to the avoidance of terminology which implies a supranational taxing power. Although the ECSC was financed through its own levy and debt financing[1034], the following stages of European integration did not follow the same pattern. On the contrary, the dependence on the Member States' contributions was on the rise in parallel with the evolution of European communities.

Following the conclusion of the EEC Treaty, European integration expanded beyond its original sectoral focus. This led to the creation of agricultural levies and customs-based own resource in 1971, following the adoption of the First Own Resources Decision. The first own resource, being the customs duties, was tax-based. Moreover, Caziero pointed out the 1978 report on the future of EU financing as a historical interpretation instrument of the term "own resources".[1035] This Commission's report described new own resources as direct charges on individuals or companies in the Community, which are independent of Member State influence since they have a nexus with the Community. Moreover, even if the Member States collect such levies, this would not affect their status as own resources.[1036] The latter indicates that a vision for tax-based own resources existed long before current debates on the need to expand the EU's fiscal capacities. The Commission noticed that spending on specific sectoral policies can be effectively financed through levies collected from those same sectors, and it was seeking those

[1032] Information service of the High Authority, *The facts: politics institutions economics, finance and labour* (September 1956): 6. Available at: https://aei.pitt.edu/52347/1/A7227.pdf. Spokesman's Office of the ECSC High Authority and European Community Information Service; *The European Coal and Steel Community* (1961), 19.
[1033] For example, the ECSC's High Authority invested funds in better working and living conditions of workers in coal and steel industries. More precisely, the ECSC invested in affordable housing for coal miners and workers in the steel industry. It also invested in modernisation of production in coal and steel industry, and worked towards free movement of workers in those industries. See more: Spokesman's Office of the ECSC High Authority and European Community Information Service; *The European Coal and Steel Community* (1961).
[1034] See supra sec 3.1.1.
[1035] Caziero, *supra* note 652, at 1532.
[1036] Caziero, *op.cit.*, at 1533.

resources which best reflect the overall interest of the Community, which enhance the attraction for all Member States and which best ensure a coherent relationship between the Community's revenues and its pattern of expenditure.[1037]

However, traditional own resources soon faced a decline in their revenue-raising power. Therefore, this motivated the introduction of the VAT-based own resource in 1979. However, "despite the increase in the maximum call-in rate for VAT from 1 January 1986, it soon became apparent that the Community budget was insufficient to cover the ever-growing costs associated with the extension of Community activities into new fields and the accession of new Member States."[1038] This was the reason which led the GNI-based contribution towards the position of the dominant EU revenue source,[1039] meaning that the EU departed from the goal to establish a better connection between revenues and expenditures.

As previously mentioned, the financial crisis had a profound impact on the European Union's system of public finance. In the context of own resources, the post-crisis period gave rise to several reform proposals, which ultimately were not adopted. In this regard, the EU proposed the introduction of the Financial Transaction Tax (FTT), which was imagined as a potential new own resource.[1040] Namely, it was proposed in response to the financial crisis, since "the financial sector has played a major role in causing the economic crisis, whilst governments and European citizens at large have borne the cost. There is a strong consensus within Europe and internationally that the financial sector should contribute more fairly, given the costs of dealing with the crisis and the current under-taxation of the sector."[1041] Notwithstanding the well-perceived political momentum for the adoption of the FTT, it was not adopted in 2011 nor two years later when it was re-launched. However, in 2012, eleven

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[1037] *Ibid*.

[1038] Laurence Maufort, "The development of the Communities' and the Union's own resources," CVCE.EU by UNI.LU (2016): 4. Available at: https://www.cvce.eu/en/obj/the_development_of_the_communities_and_the_union_s_own_resources-en-cc05b5ce-8f83-4443-8328-9922fc7bc07a.html

[1039] Kengyel, *supra* note 883, at 103. The GNI contribution continues to be the predominant source of revenue for the EU budget. Thus, in 2024 GNI contributions made up 66.5 % of the EU's revenues. See more on the 2023 budget of the EU in: EUBudget, *EU Budget Explained: How €185 Billion Gets Collected and Spent* (2026). Available at: https://www.eubudget.com/blog/eu-budget-explained-how-money-collected-spent. In 2023, GNI contributions were estimated to form 63,97 % of the EU budget. See in detail: "General Revenue" in Official Journal of the European Union 23.2.2023, L 58/45.

[1040] See Proposal for a Council Regulation on the methods and procedure for making available the own resource based on the financial transaction tax, COM/2011/0738 final - 2011/0334 (CNS).

[1041] Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC /* COM/2011/0594 final - 2011/0261 (hereinafter: FTT Directive Proposal). In this regard, FTT should have helped to reduce EU budget dependence on national contributions and to achieve a regulatory objective to make the financial sector more transparent. The legal basis for the FTT proposal was found in Article 113 TFEU, since it was envisaged to harmonise rules relating to the indirect taxation of financial transactions, to safeguard the proper functioning of the internal market. Although the FTT could generate substantial revenue, it raised concerns about potential market distortions.

Member States formally requested the Commission to authorise the use of enhanced cooperation, based on the Commission's 2011 proposal.[1042]

Notwithstanding the long-standing issues regarding the EU's own resources, there were no significant changes from 1988 until the post-pandemic period. More precisely, a plastic waste levy as a new own resource was finally introduced in 2020 as part of the "Next generation of own resources."[1043] As noted earlier, NGEU is a debt-financed instrument, which means that the Union had to begin developing new sources of revenue capable of supporting its repayment.[1044] Besides the plastic waste levy, the Commission put forth several proposals which are currently in discussion, which are explained in detail in Chapter 4.

3.5.2. Own resources decision

The legal foundation of the Union's system of own resources is laid down in the Own Resources Decision (ORD)[1045], which makes it one of the key legal instruments of EU public finance. It lays down rules on the allocation of own resources to the Union to ensure the financing of the Union's annual budget.[1046]

The legal basis for the ORD is found in Article 311 TFEU. Thus, the revenue powers of the EU are based on a single treaty provision.[1047] Article 311(1) TFEU prescribes that "the Union shall provide itself with the means necessary to attain its objectives and carry through its policies." In addition, Article 311(2) TFEU stipulates: "Without prejudice to other revenue, the budget shall be financed wholly from its own resources. "[1048] The wording in the first two paragraphs of the Article is broad,[1049] thus leaving space for a dynamic interpretation, depending on the context, for the introduction of a new own resource.

The term new own resources nowadays encompasses a variety of revenue sources flowing to the EU budget, including the tax-based own resources such as customs duties, as

[1042] The Commission concluded that such an initiative would not adversely affect the single market and proposed a Decision to authorise enhanced cooperation on the FTT. European Commission, Press release: Financial Transaction Tax under Enhanced Cooperation: Commission sets out the details (2013). https://ec.europa.eu/commission/presscorner/detail/en/ip_13_115.
[1043] See *supra* 3.4.4.
[1044] For a more detailed analysis of the plastic own resource, see: 3.4.3.4.
[1045] 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.
[1046] Article 1, 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.
[1047] Jakob Dürr, "Judicial Review of the EU Own Resources Decision by the ECJ," *Intertax* 52, no. 8 (2024): 561-578.
[1048] Article 311, TFEU.
[1049] See also Van der Vlugt, *supra* note 61, at 550.

well as VAT own resource and the GNI own resource, which are based on the Member States' contributions to the EU budget. The previous analysis of the historical development of the EU's public finance and the variety in the current basket of own resources indicates that there are no obstacles in the Treaties for the introduction of a tax-based own resource. Moreover, the newest members of the own resource family, including the plastic waste levy and the announced EU ETS and CBAM levy, in some points differ from the previously established traditional own resources.

In addition, the first two paragraphs of Article 311 TFEU are concerned with the substantive issues regarding own resources. The third paragraph provides the procedural aspects of the ORD adoption. That being said, Article 311(3) TFEU provides: "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 its 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. Thus, the own resources system is laid down in the Council decision, following a special legislative procedure. Article 311 TFEU provides only for the consultation of the Council with Parliament. The latter is a prerequisite before the unanimous decision in the Council and subsequent approval by the Member States following their respective constitutional requirements. Interestingly, the European Parliament does not have a prominent role in the process of deciding on the amendments or adoption of the new ORD. Nevertheless, the introduction of a new resource is currently subject to the requirement of unanimity, meaning that each of the Member States could use their veto and prevent its adoption. The latter often faced criticism. Barreau pointed out that the unanimity requirement prevented further European integration, which could have led to a European power to tax in the field of indirect taxation.[1050] Fabbrini noted that "the existence of a unanimity rule in the field of taxation places a formidable burden on the ability of the EU in the process of European integration."[1051]

In addition, the normative separation of revenues and expenditures of the EU budget is significantly different from the budgetary process at the national level. Namely, national budgets are generally adopted through a single budgetary procedure in which both revenue and expenditure are decided simultaneously, with parliament exercising the central democratic role.

[1050] François Barreau, "Legitimacy of the EU's Tax-Based Own Resources" in *The Power to Tax in Europe*, ed. Johan Lindholm and Anders Hultqvist (Oxford: Bloomsbury Publishing, 2023): 45.
[1051] Federico Fabbrini, *supra* note 704, at 167.

In contrast, the funding of the EU budget is decided by unanimous decision by the Council, in consultation with the European Parliament.[1052] On the other hand, the EU expenditures are decided through the budgetary procedure, which follows the 'Community method.' Under this framework, the Council decides by qualified majority and operates equally with the European Parliament, while the Commission proposes the draft budget.[1053]

Another important article for the own resources system is Article 322 TFEU, which stipulates that Member States have to make the own resources available to the Commission.[1054] More precisely, "the own resources are credited each month by the Member States to an account managed by the Commission, usually through the national central bank."[1055] Making resources available to the Commission is considered a legal obligation of the Member States, as confirmed by the CJEU jurisprudence. In its decision dating to 2005, the Court emphasised that "a Member State which fails to establish the Communities' own resources and to make the corresponding amount available to the Commission (...) fails to fulfil its obligations under Community law".[1056] Moreover, the Court concluded that the failure to comply with the mentioned obligation is itself sufficient to constitute a breach, regardless of the absence of adverse effects of such a breach.[1057]

In addition, ORD's legal nature is being debated. According to the classification of EU law, a decision is considered an act of secondary law, supported by the fact that decisions are mentioned alongside regulations and directives in Article 288 TFEU. This may inspire a view that the ORD belongs to the category of secondary law. Conversely, the adoption of ORD requires unanimity, and it also represents „the only Union act that requires ratification by MS to enter into force. The requirement for ratification by national parliaments renders the Council decision on own resources an act equivalent to primary legislation."[1058] The other argument in favour of ORD's status as a part of primary law is based on the requirement for Member State approval, as evidence that the ORD constitutes a form of Treaty revision, indicating it should be regarded as primary law. However, Durr concluded that "national approval is not a sufficient

[1052] Fasone and Lupo, *supra* note 890, at 813.
[1053] Fasone and Lupo, *supra* note 890, at 813.
[1054] Bernd-Roland Killmann, "Article 311" in *The EU Treaties and the Charter of Fundamental Rights; a Commentary,* ed. Kellerbauer, Manuel, Marcus Klamert, and Jonathan Tomkin (New York, 2019; online edn, Oxford Academic), 1979.
[1055] Massimo Fabio, *The Customs Law of the European Union* (Allphen an den Rijn: Wolters Kluwer, 2020), 31.
[1056] CJEU, Judgment of the Court of 18 October 2007, *Commission of the European Communities v Kingdom of Denmark*, C-19/05.
[1057] CJEU, Judgment of the Court of 18 October 2007, *Commission of the European Communities v Kingdom of Denmark*, C-19/05.
[1058] Killmann *supra* note 1054, at 1979.

condition for primary law status." [1059] A third perspective suggests that the ORD is a special act at the crossroads between primary and secondary law.[1060] The Court of Justice thus far has not decided on this particular question, although the legal classification of ORD would be decisive for the Court's decision.[1061]

The next important question for discussion is whether Article 311 TFEU is an adequate legal basis to introduce a tax-based own resource, or should it be supported by another Treaty provision. In this regard, Caziero points out the latter depends on the purpose of such own resource. More precisely, she concludes that: "if it serves both the goal of harmonising the domestic tax systems of the Member States and raising revenues for the EU budget, the EU tax must be adopted through two acts: a directive based on Article 113 or 115 TFEU, and an own resources decision for the allocation of its revenues. If the EU tax is solely aimed at raising revenues, operating alongside national tax systems rather than replacing them, the proper legal basis would be Article 311 TFEU alone."[1062] On the other hand, Van der Vlugt pointed out that "it would be preferable for Member States to rely on the exclusive competence provided under Article 311 TFEU, thereby avoiding the more delicate questions concerning the conferral of taxing powers to the Union under an internal market legal basis."[1063]

3.5.3. The EU's Own Resources

3.5.3.1. *Custom duties and agricultural levies*

Several revenue sources were covered by the common denominator "traditional own resources", including agricultural levies, sugar levies and customs duties as the most important category among them.[1064] Following the creation of the Customs Union, this own resource was introduced in 1970 with the Council Decision on the replacement of financial contributions from Member States by the Communities' own resources.[1065] Its introduction was justified by a

[1059] Jakob Dürr, „Judicial Review of the EU Own Resources Decision by the ECJ" *Intertax* 52, no.8/9 (2024):566.
[1060] Dürr, *op. cit.* at 564.
[1061] For a detailed explanation of how the legal status of ORD would impact the procedure before the CJEU see: Dürr, *op. cit*. at 564.
[1062] See sec. 2.4.4. in Martha Caziero, *The Taxing Powers of the European Union: a Legal Analysis of the Levying of EU Taxes* (Amsterdam: IBFD, 2025).
[1063] Sam Van der Vlugt, "Can the EU Levy its Own Taxes? A "Corporate Resource for Europe" (Re)enters a Legal Minefield" *VerfBlog*, 2025/7/28 (2025). Available at: https://verfassungsblog.de/can-the-eu-levy-its-own-taxes/.
[1064] See in detail Article 2(1)a 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.
[1065] 70/243/ECSC, EEC, Euratom: Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources, Official Journal L 094, 28.04.1970.

rise in expenditures during the 1970s, which required stable funding, such as the creation of ESF and ERDF. The revenue share from these own resource reached a peak in the late seventies at around 40 % of all resources, but the amounts collected have since then decreased steadily.[1066] In 2023, the revenue collected from customs duties amounted to approximately 15% of the total revenue accrued by the own resources.[1067]

In this regard, "with the legislative and revenue competence being at the level of the EU, these traditional own resources are factually like an EU tax, although the administration is left to the Member States that get rewarded by being allowed to keep 25 per cent of the collection costs."[1068] Thus, traditional own resources are collected by the Member States and then subsequently transferred to the EU budget.[1069] The aforementioned system has a weakness highlighted by the European Court of Auditors (ECA). More precisely, the ECA pointed out that inconsistencies in the implementation of Customs controls by Member States jeopardise the EU's financial interests.[1070] This indicates a double dependency of the EU on the Member States when it comes to accruing revenue. First, the EU depends on the Member States' contributions as the most important revenue source. Second, it also depends on the efficiency of their administrative and customs services in collecting customs duties. Another issue regarding the customs duties' own resources is that "the collection costs were not earmarked for customs and were transferred to the general budget of the Member States.[1071]

3.5.3.2. *GNI-based own resource*

The GNI-based own resource was introduced in 1988 as a residual resource because "traditional own resources kept losing in importance."[1072] However, it became the most important revenue source for the EU budget. According to the European Parliament policy brief, it makes up around 57 % of the EU's revenue.[1073] Moreover, it should be considered that

[1066] Tomas Kucirek, "50 years of the Customs Union from a revenue point of view" in *The EU Customs Union – 50 Concept to Continuum* ed. Ian Muscat (Gutenberg Press: 2018), 35.
[1067] See in detail European Commission, *EU spending and revenue 2021-2027* (2025) Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2021-2027/spending-and-revenue_en
[1068] Scherleitner and Traversa, *op. cit. supra* note 600, at 192.
[1069] Schratzenstaller, M. et al. *op. cit.* note 664.
[1070] European Court of Auditors, *Special report no. 19/2017: Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU* (2017). Available at: https://www.eca.europa.eu/en/publications?did=44169.
[1071] Pillath Carsten, Philippe Lefebure "Can Dreams Come True? The EU Customs Union and its Future Governance" in: 50 years of the Customs Union from a revenue point of view" in: *The EU Customs Union – 50 Concept to Continuum* ed. Ian Muscat (Gutenberg Press: 2018):159.
[1072] Schratzenstaller, *supra* note 660, at 9.
[1073] European Parliament, *System of own resources of the European Union* (2023). Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751480/EPRS_BRI(2023)751480_EN.pdf.

Member States' national budgets are financed mostly through taxes. Thus, it can be concluded that "the EU budget is primarily financed through contributions made by the Member States out of national tax revenue."[1074] Some advantages of this own resource are that "it is transparent, it leads to a distribution of the financing burden between Member States that is proportional to their respective capacities, and it allows Member States to finance their contributions through the taxes that are best suited to local conditions and local preferences, which is in line with the principle of subsidiarity."[1075]

However, it seems that criticism prevails in the assessment of GNI contributions as a dominant means of financing the EU. The fact that the largest share of the EU budget revenues comes from the Member States' contributions has been subject to criticism. More precisely, it is fostering the so-called *"juste retour"* position by Member States, meaning they calculate how much benefit they derive from the budget, compared to the paid contributions. More precisely, it encourages consideration of the EU budget in terms of net balances. This approach is not in line with the functioning of the EU budget in general, since it is not entirely composed of transfers from Member States' contributions. The EU is spending on public goods that benefit all Member States and their citizens while also adding value to the EU economy as a whole. As a result, when European public goods are financed through the EU budget, net balances provide a misleading indication of the national benefits derived from the budget.[1076] This issue was addressed in the policy brief by the BUDG committee, which pointed out that the *juste retour* mentality is a significant obstacle to EU policies. More precisely, "a net budgetary balance is a highly misleading indicator of the benefits from EU spending and EU membership. Budgetary decisions taken based on this indicator result in poor policies as they are biased towards programmes with monetary backflows into Member States."[1077]

Another critique towards GNI contributions being the largest portion of the EU budget revenue is the Union's dependence on Member States' contributions, which is „implying a continuous curtailment of the EU's financial autonomy. "[1078] In this vein, García Antón concluded that the EU's dependence on the Member States' contributions does not comply with the fiscal federalism principle, which calls for sufficient funding to cover the expenditure of

[1074] Clemens Fuest, Jean Pisani-Ferry, "Financing the European Union: new context, new responses," *Bruegel Policy Contribution 2020/16* (2020): 3.
[1075] Fuest and Pisani-Ferry, *op. cit. supra*, 4.
[1076] Fuest and Pisani-Ferry, *op. cit.*
[1077] See in detail European Parliament: *Briefing requested by the BUDG committee: Strategies to overcome the 'juste retour' perspective on the EU budget* (2020). Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/648186/IPOL_BRI(2020)648186_EN.pdf
[1078] Schratzenstaller, *supra* note 660, at 18.

each government level. That being said, introducing new own resources is a key solution for enhancing the Union's fiscal capacity and autonomy, and in doing so, it would significantly reduce the Union's dependence on contributions from Member States.[1079]

3.5.3.3. *VAT-based resource*

The prerequisite of introducing the VAT-based contribution as a new own resource was the harmonisation of indirect taxes, which dates to 1967 when the First Council Directive 67/227/EEC on the harmonisation of legislation of Member States concerning turnover taxes was adopted. The mentioned Directive prescribed that all Member States shall replace their present system of turnover taxes by the common system of VAT, as defined in this Directive.[1080] After the EU gained financial autonomy following Decision 70/243 in 1970, the own resource based on VAT was introduced. More precisely, the preamble of Decision 70/243 explains that the rationale for the introduction of this own resource was that "revenue accruing from agricultural levies and customs duties was not sufficient to ensure that the budget of the communities is in balance."[1081] At the time of its introduction, the highest limit of the call rate was prescribed at 1 %.

However, the amount of the call rate was often subject to changes, meaning that the amount of revenue collected by the mentioned resource fluctuated significantly. While in 1988 it accounted for 60 % of the total revenue, in 2017 its share was 12.2 %. Such a decrease can be attributed to policy reforms implemented through the 1988 and 1994 Own Resources Decisions, which introduced caps on VAT bases and reduced the call rate starting in 1995.[1082] According to the current Own Resources Decision, VAT-based own resource is collected by applying "a uniform call rate of 0,30 % for all Member States to the total amount of VAT receipts collected in respect of all taxable supplies divided by the weighted average VAT rate calculated for the relevant calendar year as stipulated in Council Regulation (EEC, Euratom) No 1553/89. For each Member State the VAT base to be taken into account for this purpose

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[1079] See Federico Fabbrini, *supra* note 922. A similar solution was also proposed by the European Parliament, *Briefing requested by the BUDG committee: Strategies to overcome the 'juste retour' perspective on the EU budget* (2020). Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/648186/IPOL_BRI(2020)648186_EN.pdf.

[1080] Article 1, First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, OJ 71, 14.4.1967.

[1081] See 70/243/ECSC, EEC, Euratom: Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources, OJ L 94, 28.4.1970.

[1082] European Commission, *Value added tax-based own resource*, available at: https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2014-2020/revenue/own-resources/value-added-tax_en.

shall not exceed 50 % of GNI."[1083] Finally, "this VAT-based own resource is paid from the Member States´ general budget, but here the underlying rules are subject to far-reaching harmonisation."[1084] The latter is the reason why this own resource is „often perceived as a second GNI-based resource due to the complex statistical calculation that weakens the link to actual VAT proceeds in Member States. "[1085]

3.5.3.4. Plastic own resource

The newest member of the own resources family is the so-called plastic levy. [1086] Its introduction is significant, since it is the first new own resource adopted since 1988.[1087] It was introduced in 2020 as a "next generation of own resources." This categorisation of the plastic resource relates to the fact that it was introduced following the adoption of the NextGeneration EU recovery plan. More precisely, it was introduced based on Article 311 TFEU, which allows the Union to introduce own resources in general. Although the plastic levy also has an environmental goal, Article 192 TFEU was not chosen as its legal basis, "probably to avoid that the revenue collected may, wholly or in part, be used to finance European spending policies relating to the environment, as they will have to contribute to the repayment of the loans."[1088]

The plastic levy is calculated by the application of a uniform call rate of EUR 0,80 per kilogram of non-recycled plastic packaging waste generated in each Member State.[1089] Although it was also dubbed as "EU plastic tax"[1090], such a denomination does not have any stronghold. In essence, it represents yet another form of the Member States' contributions. However, the purpose of its introduction is not solely to raise revenue for the EU budget. It also has a strong regulatory role, as it is envisaged to serve as an incentive to reduce plastic waste

[1083] Article 2 (1) b 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.
[1084] Scherletiner and Traversa, *supra* note 1068, at 192.
[1085] European Parliament: *Briefing requested by the BUDG Committee: Strategies to overcome the 'juste retour' perspective on the EU budget* (2020): 3.
[1086] Article 2 (1) c 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.
[1087] Dürr, *supra*, at 1044.
[1088] Claudio Sciancalepore, "The Reform of EU Own Resources under the Next Generation EU Programme: a Suitable Moment for the Introduction of a European Tax?" in: *The Power to Tax in Europe*, ed. Johan Lindholm and Anders Hultqvist (Oxford: Bloomsbury Publishing, 2023), 127.
[1089] Council Regulation (EU, Euratom) 2021/770 of 30 April 2021 on the calculation of the own resource based on plastic packaging waste that is not recycled, on the methods and procedure for making available that own resource, on the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income, ST/13142/2020/INIT, OJ L 165, 11.5.2021.
[1090] Euronews, *EU bungled plastic tax, auditors say* (2024). Available at: https://www.euronews.com/my-europe/2024/09/16/eu-bungled-plastic-waste-tax-auditors-say.

within the EU. „It was designed in compliance with the 'polluter pays principle' (PPP): the contribution is proportionate to the amount of non-recycled plastic, which is aimed at reducing plastic pollution by stimulating the reduction of single-use plastic products, promoting recycling and implementing the circular economy."[1091] Introduction of a plastic levy at the EU level was not accompanied by an obligation of Member States to introduce a tax to comply with the new Own Resources Decision. So far, Member States remain divided when it comes to the introduction of national plastic taxes. For example, Italy[1092] and Germany[1093] introduced plastic taxes but postponed their application. Spain also introduced a plastic tax, which is already in force.[1094] Moreover, several Member States introduced different types of charges, which are not necessarily taxes. For example, Poland introduced fees on certain single-use plastics and established a deposit-refund scheme in 2023 for fees,[1095] Denmark increased the excise duty on carrier bags and disposable tableware in January 2024.

A recent report on the plastic levy by the Court of Auditors revealed that it collected EUR 7,2 billion in the EU budget, which makes up 4% of the EU's revenue. However, the report also emphasised some downsides. The implementation of the plastic own resource based on non-recycled plastic packaging waste faced a challenge, as Member States were not adequately prepared and delayed in transposing key legal aspects. The latter caused an unharmonized application. All the mentioned downturns reflected in a revenue shortfall of EUR 1.1 billion, less than estimated, which required compensation through the GNI-based own resources to avoid impacting the EU budget.[1096]

3.5.3.5. Conceptual analysis of the own resources

Undoubtedly, the concept of own resources is a centrepiece of the EU's fiscal architecture, enshrined in Article 311 TFEU. The historical analysis of own resources development supports the conclusion that they were conceived as supranational revenues interconnected with the policy goals of the Union. Moreover, it seems that in the early stages

[1091] See Marta Villar Ezcurra, Marina Bisogno, "The New 'EU Plastic Contribution': Lights and Shadows under Scrutiny," *Kluwer International Tax Blog* (2022). Available at: https://kluwertaxblog.com/2022/01/31/the-new-eu-plastic-contribution-lights-and-shadows-under-scrutiny/.
[1092] Legge 27 dicembre 2019, n. 160, commi 634-658.
[1093] Federal Law Gazette (BGBl) 2023 I Nr. 124 vom 15.05.2023.
[1094] Law 7/2022, of April 8, on waste and contaminated soils for a circular economy.
[1095] The Act of 14 April 2023 amending the Act on the obligations of entrepreneurs for the management of certain types of waste and on product fees, (Journal of Laws 2023, item 877).
[1096] See in detail European Court of Auditors, Special report 16/2024: EU revenue based on non‑recycled plastic packaging waste – A challenging start hindered by data that is not sufficiently comparable or reliable (2024) Available at: https://www.eca.europa.eu/ECAPublications/SR-2024-16/SR-2024-16_EN.pdf

of European integration, there was no doubt that own resources could be tax-based. Initially, the ECSC levy was named a "tax" in several official ECSC documents.[1097] This early framing tied the ECSC levy directly to the exercise of supranational authority. However, as integration expanded, political motivation led to a shift in terminology and substance of the own resources, with subsequent EU financing increasingly dependent on national contributions.

Thus, the evolution and expansion of the EU also had an impact on the own resource system. Following the conclusion of the EEC Treaty, European integration gradually expanded beyond its original sectoral focus, which affected the own resources system. The introduction of agricultural levies and customs duties as own resources under the First Own Resources Decision demonstrated the ongoing understanding that own resources could be tax-based. This interpretation is further supported by the Commission's 1978 report on the future financing of the Community, which described potential new own resources as direct charges imposed on individuals or undertakings with a sufficient nexus to the Community.[1098] The report also emphasised that the most appropriate own resources should reflect the relationship between revenue and expenditure priorities.[1099] Consequently, the idea that tax-based own resources should be closely connected to Union policies and financed by those benefiting from the integration process is a recurring feature of the historical evolution of the EU's public finance system.

Nowadays, the meaning of own resources is broad. The term now encompasses a complex group consisting of traditional levies, a VAT resource, and direct national contributions calculated based on Member States' GNI. As demonstrated by the historical development, as well as the customs duties, there are no obstacles in the Treaties that would stand in the way of a tax-based own resource.[1100]

In parallel, new resources that are announced, such as the EU ETS's own resource and the CBAM's own resource, reflect a shift toward policy-aligned financing of the EU. Thus, it seems that an emerging trend in the EU's public finance arena is re-establishing the connections between revenues and expenditures. Having in mind the previously described characteristics of a tax, it seems useful to compare the Union's proposed own resources with those characteristics. For the customs own resource, the analysis is quite simple, since there is a broad understanding

[1097] See *infra* sec. 3.4.1.
[1098] Caziero, *supra* note 1035, *op. cit.*
[1099] See *supra* sec. 3.5.1.
[1100] Edoardo Traversa, Stefania Lotito Fedele, "La riforma delle risorse proprie e la possibile introduzione di un tributo europeo," in *Pago, dunque sono (cittadino europeo). Il futuro dell'Ue tra responsabilità fiscale, solidarietà e nuova cittadinanza europea*, ed. Mauro Campus et al. (Firenze: Firenze University Press, 2022): 137.

that customs are, in fact, taxes on imports and exports.[1101] VAT and plastic own resources are national contributions. However, the analysis is necessary in the case of the proposed resource based on CBAM. CBAM Regulation is adopted, as well as the EU ETS reform.[1102] Thus, these instruments already exist and have been put in place, which makes them more likely to become own resources.

Having in mind the political sensitivity surrounding the tax aspect of sovereignty in the EU Member States, it is not surprising that CBAM was presented as an environmental protection mechanism. However, if CBAM is analysed beneath its surface, it may easily fulfil all the elements of a tax.[1103] More precisely, it is a monetary contribution to the EU budget with a revenue-raising function, thus fulfilling two of the agreed-upon elements of a tax. Moreover, CBAM is a compulsory instrument, since there is no option for its voluntary payment. Instead, the obligation to pay for the CBAM allowances is prescribed by law.[1104] In fact, "an authorised CBAM declarant who fails to surrender, by 31 May of each year, the number of CBAM certificates that corresponds to the emissions embedded in goods imported during the preceding calendar year shall be held liable for the payment of a penalty."[1105] The difference between national-level taxes and CBAM is that the obligation to pay does not stem from national legislation. Instead, it is rooted in the secondary law of the EU. Moreover, there is no direct benefit for the subjects obliged to pay the CBAM certificates. Revenue collected through CBAM will connect the revenues and expenditures of the EU budget, flowing to the previously agreed spending purposes. This aligns CBAM with an earmarked tax. Furthermore, leaning into the analysis in the second chapter, the fact that it has partially decided spending purposes is not a constitutive element of a tax.[1106] A similar opinion was given by Klotz, Probst

[1101] For example, Navarro considers customs as a tax-based own resource. See Navarro, *supra* note 13, at 533.
[1102] See Consolidated text: Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance) PE/7/2023/REV/1, OJ L 130, 16.5.2023. See also Consolidated text: Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (Text with EEA relevance), PE/9/2023/REV/1, OJ L 130, 16.5.2023.
[1103] Sebastian Klotz, Simeon L. Probst, Oliver Hulliger, "The Carbon Border Adjustment Mechanism – A Tax in Disguise?" *European Taxation* 62, no.8 (2022): 350-353. Pascal Saint-Amans described CBAM as a „quasi tax". See Pascal Saint-Amans, „Broader border taxes: A new option for European Union budget resources," *Bruegel Policy Brief, No. 06/2024*, Bruegel, Brussels (2024).
[1104] See Articles 3(15), 4, 5 and 6 of the Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance), PE/7/2023/REV/1, OJ L 130, 16.5.2023.
[1105] Article 26(1), Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance), PE/7/2023/REV/1, OJ L 130, 16.5.2023.
[1106] See *supra* sec. 2.

and Hulliger, who stated that „practically speaking, the CBAM will be a tax on the importation of carbon-intensive products."[1107] Moreover, economists shared this perspective of CBAM, straightforwardly using the term „tax" to describe it.[1108] That being said, it can be concluded that CBAM can be considered a *de facto* tax on the EU level, although its name might not lead to such a conclusion.

The conceptual analysis confirms that the notion of an own resource can support the tax-based own resources. Both the historical development of the Union's financing system and the legal characteristics of contemporary own resources, and their proposals, demonstrate that tax-based own resources are aligned with the EU's public finance legal framework.

3.5.4. Criticism of the own resources legal framework

The current system of the EU's own resources, established progressively through the development of the European integration process, reflects inherent compromises of the Union's public finance framework. Initially rooted in ideals of fiscal autonomy and a direct connection between Community policies and revenue sources, the structure has evolved towards the dominance of Member states' contributions. The latter is also one of its disadvantages.[1109] The GNI-based own resource was initially envisaged as a residual balancing mechanism. The fact that the EU is heavily dependent on direct transfers from national budgets undermines the notion of genuinely "own" resources, since funding ultimately remains subject to national political processes and fiscal constraints, which can impact the timeliness and certainty of EU revenue flows. This represents a longstanding issue of the EU's revenues.[1110] The Member States' financial contributions were a source of tension, particularly regarding the UK's rebate.[1111] Moreover, reliance on the GNI contribution blurs the lines between the EU's revenues and expenditure. The latter contributes to the fact that "the Union is often criticised

[1107] Klotz, Probst, and Hulliger, *op. cit. supra* note 1103.
[1108] See e.g. Marie-Françoise Calmette, "Carbon tax at the borders, a step forward, but at what price?" (2023). Available at: https://www.tse-fr.eu/debate-border-carbon-tax.
[1109] See e.g. Gianluigi Bizioli, "Un passo ulteriore verso un sistema federale: un tributo per l'Unione Europea," *Pago, dunque sono (cittadino europeo). Il futuro dell'UE tra responsabilità fiscale, solidarietà e nuova cittadinanza europea*, ed. Mauro Campus et al. (Firenze: Firenze University Press, 2022).
[1110] As previously mentioned, back in 2003, the Sapir Report advocated for decreasing the reliance on national contributions in favour of revenue sources that more clearly reflect a European dimension.
[1111] The UK rebate was also known as the UK correction mechanism. It was introduced in 1985 as an ad hoc budgetary arrangement designed to reduce the UK's financial contribution to the EU budget. In 2014, the rebate amounted to €6.1 billion, effectively lowering the UK's national contribution by 35%, ranking the UK as the fourth largest net contributor. It remained in force until the UK's exit from the EU. The cost of financing the rebate was borne collectively by all other Member States, with various adjustments introduced over time to moderate the burden for certain contributors. Established in 1985, the rebate has remained largely unchanged in its fundamental design. See in detail: European Parliament (2016) Briefing: The UK 'rebate' on the EU budget: An explanation of The abatement and other correction mechanisms. Available at: https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2016)577973.

for funding programmes in Member States which do not provide genuinely European public goods. According to an often-repeated diagnosis, the current structure of the own resources system is partly responsible for this."[1112] Finally, the current system's reliance on national contributions, rather than levies with a truly European economic base, could weaken the perceived legitimacy of the EU budget among citizens. This dependence obscures the link between EU policies and their financing. Moreover, it can be politically abused to present the EU as an entity which drains funds from national budgets.

The misalignment of the EU's revenues and expenditures is an issue which was repeatedly pointed out for a long time. In 1983, the Commission called for the return to linking EEC resources to certain expenditures, stating that "in addition to its general revenues, it might be advantageous for the Community to dispose of certain minor sources of income linked to the development of specific policies."[1113] Moreover, in 2003, the so-called Sapir Report advocated for decreasing the reliance on national contributions in favour of revenue sources that more clearly reflect a European dimension. This recommendation aimed to shift the focus away from the entrenched logic of *juste retour* and net balances, which had gained prominence following the UK's accession to the EEC.[1114] In 2016, the HLGOR report emphasised that the new own resources should be linked with European public goods, thus clearing the fog between revenue and expenditure on the EU level and contributing to the increased transparency and accountability of the EU budget.[1115]

Moreover, the revenue and expenditure sides of the EU budget are governed by different decision-making procedures, with own resources being determined separately from budgetary expenditure. Own Resource Decision can be adopted only through a rigid procedure requiring unanimity in the Council, and subsequent approval by the national parliaments. The Parliament has merely an advisory role in this process. On the other hand, expenditures are determined through the annual and multiannual budgetary procedures. In contrast to the revenue side, the expenditure side is therefore adopted by a qualified majority in the Council and with the full co-decision powers of the Parliament.[1116] This asymmetry is problematic. While expenditure

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[1112] Christian Neumeier, "Political own resources: towards a legal framework, " *Common Market Law Review* 60, no 2 (2023): 323.
[1113] European Commission, *The "Green Paper" from the European Commission on the New Own Resources for the Community, 10 February 1983*, at 717. Available at EUI Archives: https://archives.eui.eu/en/files/documents/90520.pdf?d=inline.
[1114] See e.g. Giacomo Benedetto "Institutions and the route to reform of the European Union's budget revenue, 1970–2017," *Empirica 44* (2017): 615–633.
[1115] European Commission, *Future Financing of the EU: Final Report of the High-Level Group on Own Resources*. (Brussels: European Union, 2016), 48.
[1116] Fasone, *supra* note 866, at 237.

priorities can evolve through ordinary budgetary procedures involving the Parliament and qualified-majority voting in the Council, any reform of the revenue side requires unanimity and national parliamentary ratification.[1117] As a result, the EU's ability to raise funds remains rigid and politically constrained, even as its spending responsibilities expand. This not only limits coherent fiscal planning but also weakens democratic legitimacy, since the Parliament co-decides on expenditures but plays only a marginal role in determining how the budget is financed.

Another significant disadvantage is the limited flexibility and responsiveness of the system to political challenges, as it was shown during the Global Financial Crisis. The unanimity requirement for Own Resources Decisions and the need for national ratification constrain the EU's agility in reforming its revenue side, whether to address emergent crises or to respond to shifts in policy direction, such as the need to finance the green transition. The mentioned issue and the necessity to resolve it have been on the EU's policy agenda for a long time. For example, in the 1999 working paper on the reform of the EU budget, the unanimity requirement was pointed out as a significant obstacle towards reforming the EU's public finance system. In this regard, future enlargements of the EU were perceived as the opportunity to reform the own resources system.[1118] The Commission proposed a solution to circumvent the unanimity voting in taxation in 2019.[1119] More precisely, one proposal was to rely on the *passerelle clauses* of Article 48(7) TFEU.[1120] Namely, *passarelle* clauses are a specific Treaty mechanism that enables circumvention of prescribed decision-making procedures, since they allow certain areas previously subject to unanimity in the Council to be decided by qualified majority voting, or the replacement of a special legislative procedure with the ordinary legislative procedure.[1121] Another proposal to avoid unanimity was to rely on Article 192 TFEU. However, even if a measure is based on Article 192(1) TFEU and subsequently may become a candidate for a new own resource, this would require its inclusion in the Own

[1117] As described *supra* sec. 3.5.2.
[1118] The mentioned working paper was published in the light of the Berlin summit, scheduled for March 24th-25th, 1999, to finalise the long-term EU budget for 2000-2006. See John Peet and Kitty Ussher, "The EU budget: an agenda for reform?" https://www.cer.eu/sites/default/files/publications/attachments/pdf/2011/cerwp1-2811.pdf .
[1119] European Commission, Communication from the Commission to the European Parliament and the European Council towards a more efficient and democratic decision-making in EU tax policy. COM (2019) 8 final. 15.1.2019.
[1120] European Commission, Communication from the Commission to the European Parliament and the European Council towards a more efficient and democratic decision-making in EU tax policy. COM (2019) 8 final. 15.1.2019, at 3.
[1121] Silvia Kotanidis, Passerelle clauses in the EU Treaties: Opportunities for more flexible supranational decision-making (European Parliamentary Research Service, 2019): 3. Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659420/EPRS_STU(2020)659420_EN.pdf.

Resource Decision. This leads back to the unanimity requirement and subsequent approval in the national parliaments of the Member States. Therefore, policy measures that generate revenue for the Member States can be adopted without unanimity, but making that revenue part of the EU's own resources (i.e., using it to directly fund the EU budget) does require unanimity and national ratifications under Article 311 TFEU.

Moreover, the financial crisis also highlighted the longstanding issue of the EMU imbalance. On the one hand, monetary policy for the Eurozone countries is transferred to the supranational level, while on the other hand, fiscal policy remains in the hands of Member States.[1122] Another reason which contributes to the imbalance is the fact that the EU does not conduct its own fiscal policy, having in mind that it does not have sufficient revenue sources to have a meaningful impact on expenditures and redistribution. In this regard, Vanistendael pointed out the three-dimensional inadequacy of the EU's inadequate revenue-raising power. More precisely, "i) the EU has no power to raise taxes for its own treasury and as a consequence depends on its budget completely on decisions of the Member States, ii) the EU has only one power to intervene in national tax systems those systems to the functioning of the internal market (…), iii) any intervention in national tax system by way of directive or regulation depends on the unanimous consent by the Member States."[1123]

When it comes to the VAT own resource, its regressive character toward the economically weaker Member States was pointed out as a negative consequence, since "one generally assumes that the share of private consumption expenditure and, therefore, the VAT base declines with increasing wealth; poorer countries would have to contribute more to the EU budget relative to their wealth (measured in GDP or GNI)."[1124] This issue was subsequently addressed by capping the base of this resource, but this led to the diminished importance of the VAT resource.[1125] When it comes to the traditional own resources, the overall purpose of customs duties and agricultural levies was questioned, since revenue generation is not their primary objective. Rather, these resources were perceived as a secondary outcome of the EU's common trade and agricultural policies. Their prediction for traditional own resources was a decline in revenue-raising powers coupled with high administrative costs of their collection, which is another issue to be addressed.[1126]

[1122] Alicia Hinarejos, „The Euro Area Crisis and Constitutional Limits to Fiscal Integration," *Cambridge Yearbook of European Legal Studies* 14 (2012): 243 - 268

[1123] Frans Vanistendael, "Federalism and the Euro Crisis" *World Tax Journal* 3, no. 3 (2011): 432-433.

[1124] Friedrich Heinemann, Philipp Mohl, Steffen Osterloh, *ZEW Economic Studies*: *Reform Options for the EU Own Resources System* (Heidelberg, Physica Heidelberg: 2008), 48.

[1125] *Op. cit.* at 49.

[1126] *Op. cit.* at 49.

On the other hand, one of the main advantages of the current system lies in its stability and predictability. The three main sources, traditional own resources, the VAT-based resource, and the GNI-based own resource, have thus far provided a stable revenue flow to the EU budget.[1127] Moreover, the GNI-based resource has brought a degree of proportionality and fairness, linking contributions to Member States' ability to pay and thus reflecting relative economic strength within the Union.[1128] Another perspective on the national contributions is that it "respects the subsidiarity principle by leaving the decision on the distribution of the financial burden among individual taxpayers to the Member States."[1129] The regular negotiations and adoption processes for the MFF and the ORD compel Member States to reach consensus, reinforcing the collective nature of the EU's fiscal governance.

In addition, Article 311 TFEU, as the legal basis for the introduction of new own resources, offers a wide range of possible candidates for the EU's revenue sources. Its wording is broad enough to encompass various financial instruments, from tax-based resources to GNI contributions. Its flexibility appears as an advantage in current turbulent times, which require swift reactions by policymakers. However, the procedure provided in Article 311 TFEU, including unanimity and subsequent ratification of ORD in national parliaments, undermines its potential for swift adoption of a new own resource. Finally, the present EU's own resources system is marked by reliability and collective decision-making, but it struggles with meeting the expanded EU's policies. The misalignment of revenues and expenditures, along with the dominance of GNI contributions, undermines the capability of the EU budget to support European public goods.

3.6. The choice of the legal basis for a tax-based own resource

After examining the legal basis of EU public finance and the structure of both its expenditure and revenue systems, one crucial dimension remains: the Union's taxing powers. Understanding these powers is essential because they are an important part of the legal framework within which a tax-based own resource could operate. In other words, before assessing whether the EU could introduce such a resource, it is necessary to determine whether the Treaties allow the EU to introduce a tax-based own resource.

[1127] Alexander Krenek, *Sustainability-oriented tax-based alternatives to finance the EU budget*. (doctoral thesis, WU Vienna, 2025), 6
[1128] See also Heinemann, Mohl, Osterloh, *supra* note 1124, at 47.
[1129] Krenek, *supra* note 1127, at 6.

To begin with, it is essential to first clarify the meaning of the phrase taxing powers. In general, power is understood as "possession of control, authority, or influence".[1130] However, it is important to highlight that taxing power does not refer merely to imposing a tax. Instead, Meickmann points out that it comprises interconnected competencies: the power to levy a tax, the power to collect the tax and the power to allocate the tax revenue. On a similar note, Kofler ponts out that the power to tax "comprises legislative power, administrative power, entitlement to tax revenue and judicial authority in tax matters."[1131] The power to levy taxes "at its maximum, includes the ability to create new taxes, to modify those already existing, and to determine their rates and structures."[1132]

Against this background, there is no doubt that the EU has exercised its influence and used its authority in the field of taxation. Articles 113 and 115 TFEU have enabled the Union to shape Member States' tax legislation. The rationale behind the EU's involvement in taxation can be found in the origins of the EEC. Initially, taxes were primarily seen as tools for establishing and supporting the internal market, with the Union's budget being financed through the financial contributions from Member States. Key powers, such as adopting a common customs tariff with third countries, harmonising indirect taxes, and approximating direct tax measures, were delegated to the supranational level to support the creation of the single market.[1133] Accordingly, the EU possesses legislative authority in the field of taxation, the extent of which differs depending on whether indirect or direct taxation is concerned.

However, the question remains: can the EU impose a tax? Jukolla summed up this paradox, noting that "the evolution of EU law has resulted in a bifurcated composition of the EU power to tax: while the Union significantly regulates how Member States exercise national taxing powers, it lacks the authority to levy taxes."[1134] A strong proponent of such a strict interpretation of the Treaties is the German Federal Constitutional Court. Not only does the Court interpret sovereignty as an indivisible concept,[1135] but it also considers that the entire budgetary process is part of the national identity.

[1130] "Power." *Merriam-Webster.com Dictionary*, Merriam-Webster, Accessed: 2 June 2025. https://www.merriam-webster.com/dictionary/power.

[1131] Georg Kofler, "EU power to tax" in *Research Handbook on European Union Taxation Law*, ed. Christiana HJI Panayi, Werner Haslehner, Edoardo Traversa (Cheltenham, Edward Elgar Publishing, 2020), 12.

[1132] Meickmann, *op. cit.* supra note 844.

[1133] Gianluigi Bizioli, "A Hamiltonian moment for EU taxation?" *Intertax* 52, no.11 (2024): 2.

[1134] Jusi Jukolla, "From the Governance of National Tax Systems to Governing Through European Taxation: A Justification for the EU's Power to Levy Taxes" in *The Power to Tax in Europe*, ed. Johan Lindholm and Anders Hultqvist (Oxford, Bloomsbury Publishing: 2023): 59.

[1135] Tobias Lock, "Why the European Union is not a State: Some Critical Remarks," *European Constitutional Law Review* 5, no. 3 (2010): 407, 408.; See also Elisabetta Lanza, "Core of State Sovereignty and Boundaries of European Union's Identity in the Lissabon – Urteil" *German Law Journal* 11, no. 4 (2010): 405.

Nevertheless, it is also possible to interpret the Treaties in a way that they do, in fact, enable the Union to impose a tax. First of all, the already existing customs duty own-resource exhibits that the EU can encompass all the mentioned elements of the power to tax. The EU has legislative power over customs, receives a large portion of revenue collected, and the CJEU participates in the judicial oversight of customs. However, customs duties are an exclusive EU competence. For areas falling in the shared competences, it is necessary to find an answer to the question of whether the EU has the power to levy a tax. A useful point of view in this regard can be found in the Italian legal tradition.

More precisely, the reasoning underpinning the delegation of taxation authority from states to subnational governments in Italy might serve as a model for transferring similar powers to a supranational level. In this regard, it is interesting to point out that the Italian legal tradition distinguishes between *potestà tributaria*[1136] and *potestà impositiva*. The former represents an expression of sovereignty, that is, the state's inherent power to tax. Consequently, it underpins the latter (*potestà impositiva)* as an authority to impose specific taxes.[1137] This sovereign power allows the state to attribute its taxation competence to lower levels of government. Italian Constitutional Court supports such reasoning on the power to tax, by using a reference to "the legislative and taxation power (*potestà impositiva*) attributed to the Regions."[1138] Adopting a similar framework might be insightful in the supranational EU context, where tax sovereignty remains a sensitive issue when it comes to the introduction of the new own resources. Therefore, a useful step in the introduction of a new own resource and the power to impose a tax on the EU level should be a dual perspective on the term the power to tax. While Member States would retain the taxing power as an expression of their sovereignty, they might attribute the *exercise* of this power to the EU and consequently exercise parallel taxation powers. The latter could also help to circumvent the aforementioned BVerFG stance that sovereignty is an indivisible concept. If the Italian perception of the power to tax is applied, it is evident that sovereignty is also understood as an indivisible concept. The only aspect that will be divided is the authority to impose a certain tax.

Against this background, there are no obstacles in the Treaties for the EU to impose it's a tax-based own resource. Article 311 TFEU, which allows the EU to introduce new resources,

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[1136] "*potestà tributaria" in Enciclopedia Giuridica:* http://www.enciclopedia-juridica.com/it/d/potest%C3%A0-tributaria/potest%C3%A0-tributaria.htm

[1137] Sandra Bortolini, "I contorni dell'esplicazione della potestà impositiva delle Regioni alla luce della recente sentenza della Corte Costituzionale n. 274/2020 e della pregressa giurisprudenza," *Rivista telematica di diritto tributario*, Fascicolo 1 (2021): 505-511.

[1138] Corte Costituzionale, Decisione del 17.10.2011, Sentenza 280/2011 (ECLI:IT:COST:2011:280).

can also be analysed as a potential legal basis for establishing a genuine European tax in legal doctrine. Article 311 TFEU prescribes that "the Union shall provide itself with the means necessary to attain its objectives and carry through its policies." The EU Treaties do not define what constitutes an own resource.[1139] This absence of a formal definition offers a degree of flexibility that is advantageous for the Union. Incorporation of a rigid definition in the Treaties could constrain the interpretation of the concept and limit the Union's ability to adapt its revenue sources in response to changing socio-political and economic circumstances. Furthermore, having in mind the diverse character of the current basket of own resources, the broad wording of Article 311 TFEU could also encompass taxes.

A historical overview of the own resources development indicates that they were envisaged as supranational taxes, ideally with the taxable event or the taxpayer having a nexus with the supranational level of government.[1140] Caziero noted that Article 311 TFEU is an empowering norm, meaning that it provides which institution is competent to decide on own resources, a legislative procedure and the act of adopting such a measure.[1141]

The conclusion that the broad wording of Article 311 TFEU could also encompass taxes can also be based on a systematic interpretation of this provision, proven by already existing traditional own resources based on customs duties, which are taxes.[1142] Bizioli points out that Article 311 TFEU does not "deprive national Member States of sovereignty in taxation because the decision on the system of own resources shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements."[1143] Having this in mind, it seems that Article 311 TFEU could be a sufficient legal basis for the introduction of a genuine own resource, without any supplementary articles.

However, having in mind the political sensitivity of introducing a new revenue source for the EU, it seems useful to combine Article 311 TFEU with another Treaty provision which may ground the proposal even more in the EU's public finance legal framework. Moreover, in case of the introduction of an earmarked levy on the corporate sector at the EU level, the only logical solution would be to have a triad of legal basis: i) Article 311 TFEU as a basis for the introduction of a new source of funding for the EU, ii) Article 115 TFEU which would connect this levy with the proper functioning of the internal market, or iii) a supplementary Article that

[1139] A.R. Leen, „The Revenues of the European Union: Past, Present, and Future," in *International Relations, Culture and Global Finance*, ed. Akis Kalaitzidis (Athens: ATINER, 2011):263-274.
[1140] See Caziero, *supra* note 652, at 1532.
[1141] Caziero, *op. cit.*
[1142] Edoardo Traversa, Gianluigi Bizioli, "Solidarity in the European Union in the Time of COVID-19: Paving the Way for a Genuine EU Tax?" *Intertax* 48, no. 8/9 (2020): 743-753.
[1143] Bizioli, *supra* note 1109, at 5.

would serve as a justification of the spending purpose of such a levy and EU's competence to engage in the allocation of such a resource, if needed.

Furthermore, it is necessary to analyse other provisions of the Treaties in the light of the question whether they could serve as a legal basis for a new own resource. The wording of Article 113 TFEU indicates that its primary function is the harmonisation of indirect tax legislation, rather than the creation of new own resources. On a similar note, Barreau concluded that "a separation system based on new taxes could not be established based on Article 113 TFEU. Nevertheless, a transfer system and a surcharge system, such as the VAT system, could be introduced."[1144] Moreover, Article 113 TFEU suffers from a similar issue to the previously mentioned Article 311 TFEU. This issue is the requirement of unanimity. Accordingly, Article 113 TFEU is not, in itself, a sufficient legal basis for the introduction of a tax-based own resource.

Another possible legal basis of an own resource based on indirect taxation can be found in Article 192 TFEU, which becomes relevant in the light of environmental taxes. More precisely, it already served as a legal basis for the CBAM, which is now announced as own resource to be adopted in the following MFF period.[1145] This provision is intertwined with Article 191 TFEU, which outlines the objectives that Union environmental policy is intended to pursue. Consequently, Article 192(1) TFEU grants the Union the competence to act through the ordinary legislative procedure to achieve those aims. As an exception, Article 192(2)(a) TFEU provides that when the adoption of measures is deemed to be *primarily of a fiscal nature*, the Council must act unanimously under a special legislative procedure. However, the term *provisions primarily of a fiscal nature* is not explicitly defined within the Treaties, leaving the scope and interpretation of this clause open to uncertainty.[1146]

Thus, in case the EU decides to introduce a new own resource that will also have an environmental incentive, the question is what would prevail: revenue raising or the influence on the environment.[1147] In essence, taxes designed primarily to raise revenue fall under the category of "provisions primarily of a fiscal nature" and must therefore be adopted under Article 192(2)(a) TFEU, requiring unanimity. However, when the primary aim of a measure is

[1144] Francois Barreau, *supra* note 1050, at 43.
[1145] European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions a Dynamic EU Budget for the Priorities of the Future - The Multiannual Financial Framework 2028-2034, COM (2025) 570 final, 16.7.2025. (Hereinafter: MFF 2028-2034 proposal).
[1146] For an in-depth analysis of Article 192 TFEU, see Erika Scuderi, "Provisions Primarily of a Fiscal Nature: Time to Dispel Doubts," *EC Tax Review* 31 no. 5 (2022): 273-285.
[1147] See also Alice Pirlot, "Carbon Border Adjustment Measures: A Straightforward Multi-Purpose Climate Change Instrument?" *Journal of Environmental Law* 34, no.1 (2022):25–52, https://doi.org/10.1093/jel/eqab028

environmental, such as changing consumer behaviour, such measures could be grounded in Article 192(1) TFEU and adopted through the ordinary legislative procedure.[1148] On that note, "Article 194(3) provides a similar specific competence that permits the adoption of fiscal measures with a view to the objectives concerning energy policies in Article 194(1) TFEU."[1149] Thus, Articles 192 and 194 TFEU both have the potential to serve as a new own resource legal basis grounded in the EU's environmental policy agenda. Based on the legal design of the latter, they may have a different institutional pathway for their adoption.

Moreover, a historical analysis of its own resources showed that the ECSC, as a first form of European integration, had the power to impose a levy that would fall into a category of direct taxation. As previously explained,[1150] one of the most important revenue sources for the ECSC was the coal and steel levy, paid by the factories and mines in the mentioned industry and therefore falling in the category of direct taxes. Thus, it is worth exploring which legal basis nowadays might serve to introduce an own resource based on direct taxation.

The initiative to harmonise direct taxes originates from the EEC's early years, as can be observed from the Neumark report in 1962.[1151] The Neumark report not only recommended the harmonisation of direct taxes, but it also proposed the introduction of a special tax on companies.[1152] In addition, the Van den Tempel Report from 1970 followed a similar objective. Consequently, in 1975, the Commission proposed alignment of corporate tax rates between 45 % and 55 %. These early initiatives, however, encountered political and technical resistance, and by 1980, the European Commission formally recognised the improbability of achieving comprehensive corporate tax harmonisation. Consequently, the focus shifted from ambitious harmonisation to more targeted measures designed to reduce tax obstacles to the internal market.[1153] A significant step forward regarding direct tax harmonisation was made, followed by the publication of the 'Guidelines on Corporation Tax' in the 1990s, which paved the way for the adoption of three major legal instruments aimed at regulating cross-border corporate activity within the EU: the Merger Directive, the Parent-Subsidiary Directive and the Arbitration Convention.[1154]

[1148] Scuderi, *supra* note 1146, *op. cit.*
[1149] Schratzenstaller, Krenek, *supra* note 925, at 176.
[1150] See *infra* sec. 3.1.1.
[1151] Christiana HJI Panayi, "The Early Proposals for a European Corporate Tax Policy," in *Studies in the History of Tax Law, Volume 9,* ed. Peter Harris and Dominic de Cogan (Oxford: Hart Publishing, 2019), 369.
[1152] Panayi, *ibid.*
[1153] Jost Angerer and Vasiliki Papouliakou, *European Parliament Fact Sheets: Direct taxation: personal and company taxation* (European Parliament, 2025):1-2. Available at: https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.6.10.pdf.
[1154] Angerer, Papouliakou, *op.cit.*

Although it does not explicitly refer to taxation, Article 115 TFEU was used on several occasions as a legal basis to adopt EU legislation regarding direct taxes. The mentioned Article offers the Union a "general competence to harmonise national laws to create the internal market."[1155] More precisely, it prescribes that "without prejudice to Article 114 TFEU, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, 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." Thus, Article 115 TFEU prescribes a special legislative procedure and the requirement of unanimity in the Council, while the European Parliament only has a consulting role. Kofler points out that the broad substantive scope of this provision, which can serve to potentially affect all areas of law, has a counterbalance in its procedural requirements for its adoption.[1156] Directives that were thus far adopted based on Article 115 TFEU can be divided into two groups. The first set of directives aims to remove distortions to the internal market stemming from the tax legislation, while the second group of directives aims at the prevention of tax evasion and tax avoidance.[1157] Moreover, it served as a legal basis for the CCCTB proposal, and more recently, for the BEFIT proposal. In addition, Pistone pointed out that the requirement of unanimity caused "various proposals for tax directives left in a perennial limbo and those that were never formalised, even though they concerned tax problems that have a significant impact on the internal market and the rights of EU citizens".[1158] Unsuccessful attempts at positive integration due to the unanimity requirement resulted in forcing the ECJ to resolve them using negative integration.[1159] Thus, Article 115 TFEU offers only a legal basis for coordinating taxes in the Member States, which then may serve as a starting point for the introduction of a new own resource, collected at the EU level.

3.7. Summary

This chapter examined the evolution and current structure of the European Union's public finance legal framework to identify the normative foundations relevant for the subsequent formulation of a *de lege ferenda* proposal concerning a new own resource.

[1155] Kofler, *supra* note 1131, at 13.
[1156] Kofler, *supra* note 1131, at 18.
[1157] Kofler, *supra* note 1131, at 14-15.
[1158] Pasquale Pistone, "A Plea for Qualified Majority Voting and the Ordinary Legislative Procedure in European Tax Law," in *CFE Tax Advisers Europe 60th Anniversary – Liber Amicorum*, ed. Servaas van Thiel, Piergiorgio Valente, Stella Raventós-Calvo (Amsterdam: IBFD, 2019): 11-34.
[1159] *Ibid.*

The principles of conferral, subsidiarity and proportionality define the conditions under which Union action in the field of public finance is permissible. Moreover, while subsidiarity primarily functions as a limiting principle, it also has an enabling dimension, as it justifies Union action where Member States are unable to achieve certain objectives individually. From this perspective, subsidiarity also implies the need for an adequate Union-level fiscal capacity to ensure that such objectives can be effectively realised. Moreover, the principle of solidarity was already used as a legal basis for establishing financing mechanisms designed to pursue shared European objectives. Thus, the Union's fundamental principles support the development of new own resources, provided that they remain within the competences conferred upon the Union.

Tax aspect of sovereignty remains a sensitive issue when it comes to the introduction of the new own resources. Therefore, a useful step in the introduction of a new own resource could be a dual perspective on the term "the power to tax." While Member States would retain the taxing power as an expression of their sovereignty, they might attribute the *exercise* of this power to the EU.

From a historical perspective, the earliest stages of European integration were characterised by a strong link between revenues and expenditures. The financial architecture of the ECSC exemplified a model of policy-driven own resource. The coal and steel levy was the first supranational own resource, earmarked for treaty-defined purposes. This logic persisted, albeit in different forms, through the establishment of Euratom and the EEC, where specific funds and levies were introduced to finance specific policy goals such as the regulation of sugar market. These early examples illustrate that earmarking has been present in the EU legal system since the very beginning. In addition, the category of externally assigned revenue is an existing category of the Union's earmarked revenues, notwithstanding its contradiction with the principle of budgetary universality. Similarly, earmarking is also present in the EU ETS and the proposed CBAM system, thereby supporting that it is compatible with the EU's public finance legal framework.

In addition, this chapter highlighted how the EU financing evolved from a system in which specific revenues were linked to specific policy objectives towards a model where a wide range of policies are financed through the common EU budget. Consequently, the analysis reveals that the Union's expenditures have been characterised by policy-specific instruments, but its revenues traditionally lacked a corresponding connection with the Union's policy objectives. This structural asymmetry was already recognised by the Commission in its 1983 Report on the Own Resources System, which observed that, alongside general revenues, the

Community could benefit from additional sources of income linked to the development of specific policies.[1160] Recent proposals for new own resources, discussed in Chapter 4, reflect a renewed effort to address this imbalance by bringing the revenue system closer to the Union's policy objectives.

Furthermore, the historical overview also indicates that the term "own resource" can encompass a broad range of various instruments. The purpose of these instruments can be revenue raising, but they may also serve to support other policy goals. In this regard, the legal basis for the introduction of such own resources can be found without Treaty changes. More precisely, Article 311 TFEU allows the introduction of tax-based own resources, which is supported by its historical interpretation, as well as the systematic interpretation, having in mind the customs duties own resource.

Nevertheless, supplementing Article 311 TFEU with, for example, Article 115 TFEU would further strengthen the coherence of the proposed revenue source. Whereas Article 311 TFEU governs the Union's system of financing, Article 115 TFEU provides the legal basis for approximating national legislation where necessary for the functioning of the internal market. A corporate tax-based own resource would not merely pursue a revenue-raising objective; it would also address cross-border challenges that Member States cannot effectively resolve acting alone, including tax base erosion, profit shifting, and distortions of competition within the internal market. Linking Article 311 TFEU with Article 115 TFEU would also connect the Union's financing mechanism with the policy field from which the resource originates.

[1160] See *supra* sec.3.1.4.

4. DEVELOPMENTS AND REFORM PROPOSALS FOR THE OWN RESOURCES SYSTEM

Building on the previously identified shortcomings of the current own resources system, this chapter focuses on the reform proposals developed in response to these challenges. At the same time, the approaching repayment obligations arising from the NextGenerationEU borrowing programme have added renewed urgency to this debate. Against this backdrop, the chapter starts with an overview of proposals advanced by the EU institutions and legal scholars. In the next step, the chapter offers their systematic evaluation against four benchmarks. The first are the foundational principles of EU public finance law analysed in the preceding chapters, namely subsidiarity and proportionality. Given the need to strengthen the Union's fiscal capacity, the second benchmark is revenue potential. Particular attention is also devoted to the contribution of proposed own resources to the financing of European public goods, a criterion that may support the re-establishment of a closer link between revenue generation and Union policy objectives. Finally, the proposals are assessed from the perspective of administrability. The chapter concludes by examining whether a corporate tax-based own resource could constitute the missing element in the development of the Union's own resources framework. In doing so, it lays the analytical foundation for the *de lege ferenda* proposal advanced in Chapter Five.

4.1. Parliament's 2023 proposals for the new own resources

Although the Commission presented several proposals for new own resources in 2021, the process of rethinking the EU's system of financing did not end there. On the contrary, in the European Parliament launched an own-initiative procedure that culminated in a series of suggestions for additional revenue sources for the Union. These suggestions were adopted in a resolution entitled "*A new start for EU finances. A new start for Europe*."[1161] The resolution emphasised the necessity of consultation with the European Parliament before adopting any decision on own resources, since "the exercise of its budgetary powers by the Parliament

[1161] *European Parliament resolution of 10 May 2023 on own resources: a new start for EU finances, a new start for Europe* (2022/2172(INI)) (2023).

constitutes a fundamental event in the democratic life of the European Union."[1162] The Parliament expressed dissatisfaction with the progress made thus far in enhancing the EU's fiscal capacity, followed by the concern that the current financial construction of the EU budget would not suffice to cover the NGEU debt. Thus, the Parliament developed several proposals for the own resources which aligned with the aforementioned Interinstitutional Agreement, as well as some new proposals.

The European Parliament has expressed strong support for the development of statistics-based national contributions on company profits as new own resources, emphasising their potential to add value by incentivising the effective implementation of EU-level policies.[1163] The latter once again indicates the policy agenda which underlines the current own resource reform, based on the re-connection of the revenue and expenditure poles of the EU budget. Moreover, this particular section of the Parliament's resolution hints at the European added value as one of the desired results following the introduction of new own resources. Having this in mind, the Parliament called the Commission to explore and simulate how statistical based contributions, calculated using reliable, harmonised Eurostat data, could be applied in areas such as social and environmental policy. In the Parliament's view, these contributions could be designed with flexible rates and calibrated scopes to ensure distributive fairness among Member States. Besides revenue raising, such new own resources might also, in turn, make existing correction mechanisms, like rebates and lump sums, obsolete.[1164]

The following proposal was a well-known candidate for Union's own resource - FTT.[1165] Back in 2011, the Commission proposed the introduction of a harmonised FTT, which was motivated by the efforts to to tax the financial sector, having in mind its role in the global financial crisis.[1166] Despite the fact that it was not adopted in all EU Member States, the European Parliament has reiterated its support for the inclusion of FTT in the next basket of own resources proposal. On the same note, it also called for renewed momentum in the ongoing enhanced cooperation negotiations among Member States.[1167] The Parliament encouraged all participating states to reach an agreement by mid-2023, while also inviting the remaining

[1162] European Parliament resolution of 10 May 2023 on own resources: a new start for EU finances, a new start for Europe (2022/2172(INI)) (2023).
[1163] Para 24, *European Parliament resolution of 10 May 2023 on own resources: a new start for EU finances, a new start for Europe* (2022/2172(INI)) (2023).
[1164] Para 25, *European Parliament resolution of 10 May 2023 on own resources: a new start for EU finances, a new start for Europe* (2022/2172(INI)) (2023).
[1165] For the background of 2011 FTT proposal see *supra* sec. 3.5.1.
[1166] Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC, SEC (2011) 1102, SEC (2011) 1103, Brussels, 28.9.2011 COM (2011) 594 final 2011/0261 (CNS).
[1167] Para 18-19, European Parliament resolution of 10 May 2023 on own resources: a new start for EU finances, a new start for Europe (2022/2172(INI)) (2023).

Member States to join the initiative. Although the call for FTT is not thoroughly described, its high revenue potential was pointed out as its advantage.

In addition, the European Parliament drew attention to the growing trend of corporate share buybacks within the EU, a business practice in which companies repurchase their own shares from the market.[1168] That is, when a company buys back its own shares, this practice leads to a reduction of the total number of shares available on the market, but it does not alter its overall reported earnings. As a result, the companies' earnings per share increase, which should lead to a corresponding rise in the share price, according to common financial reasoning.[1169] Although buybacks are often used to return value to shareholders, the Parliament expressed concern that this increasingly widespread practice may do so at the expense of reinvestment into innovation, productivity, and long-term growth.[1170] The concern is expressed regarding the fact that such buybacks benefit foreign shareholders, potentially leading to a drain of capital outside the EU. Against this backdrop, the Parliament called on the European Commission to assess the feasibility of introducing an excise duty on share repurchases, suggesting that such a measure could serve dual purposes: generating new, policy-relevant revenue for the EU budget and acting as a disincentive against a financial strategy that may undermine long-term economic resilience. In this context, the Parliament also invited the Commission to explore a common and standardised EU withholding tax framework, which could contribute to greater tax harmonisation and improved transparency. Once again, it was pointed out that these proposals reflect the Parliament's broader interest in aligning the EU's fiscal instruments with its economic, social, and policy objectives, while also expanding the range of sustainable and equitable own resources.

Furthermore, the initiative to grasp digital services with supranational taxation has been on the European Parliament's agenda for a decade. In its 2015 Resolution, the Parliament called for updating the definition of "permanent establishment" to capture digital business activities and for defining minimum economic substance.[1171] Following this initiative, in 2018, the Commission put forth several proposals, including the proposal for a Directive laying down

[1168] See Merriam-Webster.com Dictionary, s.v. "buyback," accessed June 21, 2025, https://www.merriam-webster.com/dictionary/buyback

[1169] Justin Pettit, "Is a share buyback right for your company?" *Harvard Business Review* 79, no.4 (2001): 141.

[1170] European Parliament, *European Parliament resolution of 10 May 2023 on own resources: a new start for EU finances, a new start for Europe* (2022/2172(INI)), (2023).

[1171] European Parliament, Bringing transparency, coordination and convergence to corporate tax policies - European Parliament resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union (2015/2010(INL)) (2017/C 399/09).

rules relating to the corporate taxation of a significant digital presence.[1172] This Directive should have addressed "the issues raised by the digital economy by setting out a comprehensive solution within the existing Member States' corporate tax systems."[1173] The Commission also proposed a digital services tax (DST)[1174] structured as a 3% tax imposed on revenues from certain digital activities, including online advertising, digital intermediation, and the sale of user data, to tax companies with global revenues above EUR 750 million.[1175] The adoption of this proposal required unanimity, which once again served as an obstacle. Although neither of these proposals was adopted, the initiative to impose a supranational levy on digital services persisted. Against this background, the European Parliament once again emphasised the need for decisive action should international negotiations on the Multilateral Convention at the OECD level stall. More precisely, Parliament states that, in the absence of significant progress by the end of 2023, the Commission should move forward with a legislative proposal for a digital levy or a comparable unilateral measure. Such an initiative would not only address the challenges posed by the digital economy but could also serve as a foundation for a new own resource, with the potential to generate revenue for the Union by 2026.[1176]

Parliament also noted the potential contribution of large digital content providers to network infrastructure costs. This is particularly relevant considering the rapid expansion of the European data economy, which resulted in a dramatic increase in data traffic, especially during the pandemic, and delivered considerable profit to internet companies and the telecommunications sector. At the same time, Parliament also emphasised the environmental implications of rising data flows. It therefore called on the Commission to explore and assess measures aimed at optimising data traffic and considering its carbon footprint, potentially by targeted financial incentives. Taken together, these proposals reflect the importance of innovative and sustainable approaches to the EU's own resources, also encompassing the digital sector, which has the potential to support both economic and environmental objectives.

[1172] Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence, Brussels, 21.3.2018 COM (2018) 147 final 2018/0072 (CNS).

[1173] This was supposed to be achieved through the introduction of a common system for taxing digital activities in the EU, which properly takes into account the features of the digital economy.

[1174] The EU's DST proposal was analysed in several chapters of the IBFD's monograph dedicated to policy developments regarding taxation of the digital economy. See Pasquale Pistone, Dennis Weber, ed. *Taxing the Digital Economy. The EU Proposals and Other Insights.* (Amsterdam, IBFD, 2019). See also Christina Dimitropoulou, "The Proposed EU Digital Services Tax: An Anti-Protectionist Appraisal Under EU Primary Law," *Intertax*, 47, no.3 (2016): 268-281.

[1175] The prerequisite for the application of the EU DST on a particular company should have been its digital presence within the EU, meaning that its EU revenues are above 50 million euros.

[1176] Para 22-23, European Parliament resolution of 10 May 2023 on own resources: a new start for EU finances, a new start for Europe (2022/2172(INI)).

4.2. Own resource proposals in the MFF 2028-2034

In the MFF 2028-2034 proposal, the Commission also presented some already known and some new candidates for the EU's revenue sources. The "old" candidates that were on the agenda before drafting the MFF 2028-2034 were the EU ETS own resource and the CBAM own resource. Regarding the EU ETS, it is announced that 30 % of the revenue from the existing EU ETS will flow to the EU budget, reinforcing the link between environmental goals and fiscal autonomy. On a similar note, it was proposed that 75 % of the CBAM's new own resource flows to the EU budget, and it is expected to generate around EUR 1.4 billion annually, on average.[1177] The justification for such revenue apportionment is the close link of the CBAM to the Union's climate policy.

Among the new proposals, the Commission introduced a resource based on electronic waste (e-waste). It should be calculated based on the non-collected weight of electronic and electrical equipment, following Eurostat data. A uniform rate of EUR 2 per kilogram is envisaged to incentivise improved recycling outcomes and bolster strategic autonomy in critical raw materials.[1178] It is expected that this levy will "lead to positive environmental outcomes while supporting the Union's strategic autonomy in critical raw materials. "[1179] The mentioned proposal reflects the efforts to reconnect the EU's revenues and expenditures through policy-oriented financial instruments, which started with the plastic levy. Another similarity between the two resources is that both represent another Member state contribution paid from the national budgets.

In addition, the Commission proposed the Tobacco Excise Duty Own Resource (TEDOR) to support public health goals and reduce harmful cross-border tobacco shopping; a 15 % levy on tobacco products released for consumption is proposed, complementing but not contingent on reform of the EU excise duty directive.[1180] Thus, this instrument would simultaneously fulfil regulatory functions regarding public health and the reduction of cross-border tobacco shopping, while also raising revenue for the EU budget.

Finally, the Corporate Resource for Europe (CORE) is the fifth Commission's candidate to fund the EU budget in the forthcoming MFF period. It would target companies (EU-based or

[1177] European Commission, *Europe's Budget Own resources: factsheet* (2025).
[1178] European Commission, *Europe's Budget Own resources: factsheet* (2025).
[1179] Proposal for a Council Decision on the system of own resources of the European Union and repealing Decision (EU, Euratom) 2020/2053, COM (2025) 574 final, 2025/0574(CNS), Brussels, 16.7.2025, at 1.
[1180] Proposal for a Council Decision on the system of own resources of the European Union and repealing Decision (EU, Euratom) 2020/2053, COM (2025) 574 final, 2025/0574(CNS), Brussels, 16.7.2025, at 2.

established through a permanent establishment in the EU) with turnover above 100 million euros, directly linking financial responsibility with market benefits. The levy would be collected by the Member States' Tax Administrations before being sent to the EU budget. It is envisaged as an "annual lump-sum contribution differentiated per company's net turnover."[1181] Moreover, it was announced that certain subjects will be excluded from its scope. Thus, CORE will not apply to those entities whose specific purpose and legal status indicate that they generally do not engage in commercial or profit-driven activities. Accordingly, governmental bodies (except state-owned enterprises), international organisations, and non-profit entities should remain outside the ambit of the CORE. Thus far, the only legal basis announced for CORE is Article 311(3) TFEU.[1182] The previous analysis concluded that Article 311 TFEU as a legal basis may encompass various instruments, including tax-based own resources. However, having in mind the political sensitivity around imposing an instrument that does reassemble a genuine EU corporate income tax using a legal basis which requires unanimity, its adoption may be challenging.

In addition to new resources, the proposal included adjustments to existing mechanisms: inflation-indexing the plastic packaging waste call rate from EUR 0.80 to 1/kg. The rationale for the increase lies in the high inflation, which reduced the real value of the revenue from their own resource, which might in turn also reduce incentives for Member States to intensify their efforts to achieve the EU recycling target.[1183] The Commission also announced reducing Member States' retained collection costs for customs duties from 25 % to 10 %, and affirming e-commerce-related customs duties under the Union Customs Code. Overall, these proposals are a combination of revenue stability and policy coherence.[1184]

4.2. Conceptual shifts in the own resources framework: proposals for policy-aligned own resources

The aforementioned reform proposals reveal a shift towards what may be described as policy-aligned or policy-oriented own resources. As previously mentioned, this formulation could be used to describe revenue sources that are proposed not only because of their revenue-raising capacity, but also because they advance specific Union policy objectives. In this sense,

[1181] Proposal for a Council Decision on the system of own resources of the European Union and repealing Decision (EU, Euratom) 2020/2053, COM (2025) 574 final, 2025/0574(CNS), Brussels, 16.7.2025, at 2.
[1182] Proposal for a Council Decision on the system of own resources of the European Union and repealing Decision (EU, Euratom) 2020/2053, COM (2025) 574 final, 2025/0574(CNS), Brussels, 16.7.2025.
[1183] Proposal for a Council Decision on the system of own resources of the European Union and repealing Decision (EU, Euratom) 2020/2053, COM (2025) 574 final, 2025/0574(CNS), Brussels, 16.7.2025.
[1184] European Commission, *Europe's Budget Own resources: factsheet* (2025).

policy-aligned own resources also reflect a partial revival of the idea that EU financing should maintain a connection with the purposes for which the revenue is ultimately used.

Such an approach is rooted in the first-ever resource at the initial stage of European integration - the coal and steel levy. It was paid by the coal mines and steel factories, and then "returned" to these industries through direct and indirect benefits received from the ECSC.[1185] On a similar note, a sugar levy was introduced to fund the Community's efforts to regulate the sugar market.[1186] Once again, this revenue source was closely connected to the policy goals. However, the following period in the EU's history marked a significant shift from this initial model of financing. The connection between revenue and expenditure became less visible, as VAT and GNP contributions gained dominance in the EU budget. The issue of disconnection between revenues and expenditures was pointed out already in 1983, when the Commission stated that "the development of the Community's financing system must be viewed in connection with the development of the Community' s policies, particularly its expenditure policies."[1187] In addition, in the 2000 Agenda the Commission emphasised "the demand for the introduction of a new own resource to increase the percentage of tax-based own resources."[1188] Moreover, the 2000 Agenda explicitly declared that "the VAT and GNP contributions are perceived by Member States as transfers from the national budgets and not as real own resources of the Community."[1189] Furthermore, the aforementioned HLGOR report in 2017 stated that "own resources should not only be used to finance the EU budget in a sufficient, stable and fair manner. They should also be designed to support EU policies in key areas of EU competence: strengthening the Single Market, environmental protection and climate action, energy union, and reducing the fiscal heterogeneity in the Single Market."[1190] This brief overview of the EU's official policy documents indicates that the Union's own resource system suffered from the

[1185] According to Article 50 of the ECSC Treaty, the coal and steel levy could be spent for exact spending purposes, precisely: administrative expenditure of the Community, the non-repayable aid towards readaptation, loans raised by the High Authority and the promotion of technical and economic research. See *supra sec* 3.1.1.
[1186] See *supra* sec. 3.1.3.
[1187] See e.g. European Commission, The Future Financing of the Community (Communication from the Commission to the Council and to the European Parliament). COM (83)10 final (1983). Available at EUI: Historical Archives of the European Union https://publications.europa.eu/resource/cellar/11c93929-7887-4aa2-896d-35dcbd6981c2.0001.01/DOC_1.
[1188] European Commission, Agenda 2000 - Volume I - Communication: for a stronger and wider union. DOC/97/6 Strasbourg, 15 July 1997, available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/doc_97_6/DOC_97_6_EN.pdf
[1189] European Commission, Agenda 2000 - Volume I - Communication: for a stronger and wider union. DOC/97/6 Strasbourg, 15 July 1997.
[1190] Furthermore, in the HLGOR report, it is also emphasised that the new own resources, as well as decisions on the expenditure side, should be focused on generating "European added value". European Commission: Directorate-General for Budget (2017). *Future financing of the EU – Final report and recommendations of the High-Level Group on Own Resources*, (EU Publications Office, 2017): 5. Available at: https://data.europa.eu/doi/10.2761/36070

same “illnesses” for decades. It also emphasises that the solution was noticed early on, in the creation of new, policy-oriented new own resoruces.

The first major step towards the solution of some issues in the own resource system was made in the aftermath of the COVID-19 pandemic. The Commission’s proposal for new own resources followed the objectives set up in the Interinstitutional Agreement, which once again stipulated the need for reconstructing the connection between revenue and expenditure.[1191]

The first proposal that came to life was the introduction of the so-called plastic waste levy in January 2021, based on the amendment of the ORD in 2020. As previously mentioned, the amount to be paid to the EU budget is calculated based on the amount of plastic packaging waste that is not recycled.[1192] More precisely, Member States must pay EUR 0,80 per kilogram of non-recycled plastic waste. Alongside revenue raising, the aim to reduce plastic waste represents another policy goal of this new own resource. However, it is expected that its contribution to EU revenues will fall over the medium run, as the amount of non-recycled plastic waste should decrease.[1193]

The plastic levy is a first new own resource in many years, and it can also be described as a policy-oriented new own resource. However, it is not a step forward toward the creation of “fresh revenue” in the full sense of this expression.[1194] Concretely, the plastic waste levy is paid from the Member States' general budget. Thus, it may be called a plastic waste levy, but it is, in fact, another national contribution. Member States may or may not, introduce a national plastic tax to create additional revenue in their budget, which then may subsequently flow into the EU budget. However, the plastic waste own resource caused some degree of disintegration in the EU when it comes to the introduction of plastic taxes on a national level.[1195] An additional difficulty is that its calculation depends on national authorities in the Member States. Thus, the ECA stressed a significant variation in the methods used by EU Member States to compile

[1191] More precisely, new own resources should be aligned with Union policy objectives, supporting key priorities such as the European Green Deal and a Europe fit for the Digital Age, as well as contributing to fair taxation and enhanced efforts to combat tax fraud and tax evasion. See: Preamble, sec. F of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, OJ L 433I, 22.12.2020, pp. 28–46.
[1192] On the introduction and basic elements of the plastic own resource, see *supra* sec. 3.5.3.4.
[1193] See Margit Schratzenstaller, “Elements of a European Green Fiscal Policy,” *Intereconomics* 58, no. 6 (2023): 300-304.
[1194] “Fresh revenue“ is an expression used in the aforementioned International Agreement in 2020, meaning that EU needs its own resources that would not represent yet another form of a national contribution.
[1195] See *supra* sec. 3.5.3.4.

recycling data, with results often unbalanced and inconsistent. Only six Member States reported data at the stage where waste enters the recycling process, as required by EU legislation. Moreover, the absence of robust verification mechanisms increases the risk that some plastic packaging waste reported as recycled may, in fact, not undergo recycling.[1196]

Nevertheless, its introduction highlighted a change, bearing in mind that it was the first new own resource after more than 30 years.[1197] It represents the first step towards policy-oriented new own resources, as one of the objectives that was specifically stressed in the Interinstitutional agreement. Thus, the plastic levy embodies the goals mentioned in the European Green Deal. In this crucial EU policy roadmap, the Commission emphasised the aim of pursuing green finance and investment and ensuring a just transition.[1198] In this vein, it was stressed that the EU budget should play a key role in the mentioned aim, contributing to achieving climate objectives on the revenue side.[1199] Thus, the plastic levy has a dual function. On the one hand, revenue raising, and on the other hand, an incentive to encourage plastic waste recycling. However, it does not embody the renewal of the connection between the revenues and expenditures. More precisely, the plastic levy raises revenue based on the amount of non-recycled plastic waste, but its proceeds are not earmarked for any specific EU spending programme. They flow into the EU budget as a general own resource.

Against this background, the EU ETS and the CBAM own resource proposals that have yet to be adopted provide stronger evidence of a conceptual shift toward policy-oriented revenue sources. The Union's ETS was already covered regarding its functioning and its interrelationship with earmarking.[1200] To avoid any overlaps, this section will go further from these points of discussion and focus on the EU ETS own resource in the light of the conceptual shift towards policy-oriented revenues for the EU budget.

As previously mentioned, the EU ETS was introduced back in 2005 as an environmental protection measure to reduce GHG emissions within the EU.[1201] Before the 2023 reform, the revenue collected through the EU ETS allowances was flowing mainly to the Member States' budget, while a smaller portion was channelled to the EU's Modernisation Fund and the

[1196] European Court of Auditors. *News: Challenging start for the EU's revenue based on non-recycled plastic packaging waste*. (2024). Available at: https://www.eca.europa.eu/en/news/NEWS-SR-2024-16.
[1197] The last significant change of the Own Resources system, before the plastic levy adoption, was made in 1988. See also: European Court of Auditors. *News: Challenging start for the EU's revenue based on non-recycled plastic packaging waste* (2024). Available at: https://www.eca.europa.eu/en/news/NEWS-SR-2024-16.
[1198] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: the European Green Deal, COM (2019) 640 final (Hereinafter: the European Green Deal Communication).
[1199] European Green Deal Communication, at 15.
[1200] See *supra* sec. 2.4.2.2.
[1201] See *supra* sec. 2.4.2.2.

Innovation Fund.[1202] However, following the introduction of the so-called ETS2, revenue collected through this mechanism was acquired for a different purpose. The ETS2 is an acronym related to the new ETS system, which will encompass emissions from "the fuel combustion in buildings, road transport and additional sectors, mainly small industry not covered by the existing EU ETS."[1203] The important difference between the ETS and ETS2 is not only the different scope of subjects obliged to purchase allowances for their CO2 emissions[1204], but it can also be found in the revenue allocation. While the revenue collected by the ETS went into Member States' national budgets,[1205] the majority of ETS2 revenue will flow to the supranational level, to the Social Climate Fund (SCF).[1206]

The SCF is established by the Regulation,[1207] with legal basis being found in Articles Article 91(1) (d), Article 192(1), Article 194(2), and Article 322(1)(a) TFEU. The financing of the Fund is described as temporary and exceptional, and it will be incorporated in the EU's budgetary law as the external assigned revenue generated from allowances of the emission trading system.[1208] Thus, the EU decided to use the EU ETS as a policy-oriented revenue source. The EU institutions repeatedly emphasised the alignment of the EU ETS with the policy goals mentioned in the EGD and the Fit for 55 agenda. This is also expressed in the explanatory memorandum of Directive 2023/959, while the EU ETS is being described as the "cornerstone of the Union's climate policy and a key tool for cost-effectively reducing greenhouse gas emissions."[1209] Against this background, policy alignment of the EU ETS as an own resource may be easily discovered in the establishment of the SCF. This represents a clear manifestation

[1202] Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, PE/11/2023/REV/1, OJ L 130, 16.5.2023.
[1203] European Commission, ETS2: buildings, road transport and additional sectors, available at: https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/ets2-buildings-road-transport-and-additional-sectors_en.
[1204] The EU ETS initially encompassed emissions from the power generators and heavy industry, followed by the addition of the production of nitric acid and the aviation sector to its scope. See more: European Commission: Development of EU ETS (2005-2020). The EU ETS2 now includes emissions from road transportation and building sectors. Available at: https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/development-eu-ets-2005-2020_en.
[1205] European Commission, How does the EU ETS work. Available at: https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/about-eu-ets_en.
[1206] See Para 12, Preamble of the Regulation (EU) 2023/955 of the European Parliament and of the Council Of 10 May 2023 Establishing a Social Climate Fund and Amending Regulation (EU) 2021/1060.
[1207] Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, PE/11/2023/REV/1, OJ L 130, 16.5.2023.
[1208] See Article 10, Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, PE/11/2023/REV/1, OJ L 130, 16.5.2023.
[1209] Para 3, para 5, Explanatory memorandum of the Directive 2023/959 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, PE/11/2023/REV/1, OJ L 130, 16.5.2023.

of the EU's shift towards policy-oriented own resources. SCF will be financed through revenues generated by the auctioning of the so-called ETS2[1210] allowances, as well as 50 million allowances from the existing EU ETS. That being said, the SCF funding represents a clear link between climate policy and the Union's financing. With a projected envelope of at least EUR 86.7 billion for the 2026–2032 period, the SCF is envisaged as an operationalisation of the just transition goals. As such, the SCF is a clear example of how ETS revenues will be channelled through mechanisms that reinforce both climate and social cohesion goals, confirming the ETS's role as a genuine policy-oriented own resource proposal.

Contrary to the EU ETS, which is a long-standing segment of the EU's climate policy, the introduction of CBAM is a novelty in EU law. It was adopted as an environmental measure in 2023.[1211] Similar to the ETS as its "older brother", it is also aimed at contributing to the reduction of carbon emissions. However, CBAM will not affect enterprises within the EU, but those outside the EU borders.[1212] More precisely, it should address the risk of carbon leakage that results from the Union's increased climate ambition, while simultaneously promoting decarbonisation in third countries. Thus, it supports the policy goals of climate neutrality and green transition, embedded in the EGD. Using the CBAM revenue as a new own resource is mentioned with only one modest sentence in the CBAM regulation, stating that "the Union is working towards introducing a new own resource based on the revenues generated by the sale of CBAM certificates."[1213] However, this was reaffirmed in the latest MFF 2028-2034 proposal, where the CBAM own resource is explicitly mentioned among the proposals to reinforce the EU's budget.[1214] Currently, CBAM, as an environmental protection instrument, is in its transitional phase, and it will become fully operational in 2026.

The CBAM demonstrates the increasing effort to explicitly link EU expenditures and the design of new own resources. Although introduced primarily as a climate-policy instrument, its revenue stream has been earmarked to contribute to the repayment of NextGenerationEU borrowing, thereby tying a regulatory measure directly to the Union's budgetary needs. This dual function, in this case environmental correction and revenue generation, reflects a trend in which new own resources are structured to support specific spending commitments. Moreover,

[1210] On the ETS2, see in detail European Commission, *ETS2 Buildings, road transport and additional sectors*. Available at: https://climate.ec.europa.eu/eu-action/carbon-markets/ets2-buildings-road-transport-and-additional-sectors_en.
[1211] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance), PE/7/2023/REV/1 OJ L 130, 16.5.2023 (Hereinafter: CBAM regulation).
[1212] Para.10 Explanatory memorandum, CBAM Regulation.
[1213] Para 74, Explanatory memorandum CBAM Regulation.
[1214] European Commission *New own resources: factsheet* (2025).

it is another example of the renewal of the connection between revenue and expenditure, since its funds will be used to fund the just transition.

Thus, the plastic levy as an existing own resource, and CBAM and EU ETS as potential own resources reflect the new design which fulfils at least two policy goals, one of them being revenue raising, and the other is related to environmental protection. However, unlike the ETS and CBAM, the plastic levy does not embody a substantive link between the revenue collected and specific EU expenditure. In the case of ETS and CBAM, a portion of the proceeds is earmarked for clearly defined policy objectives, such as financing the SCF, thereby restoring the alignment between revenue generation and spending. The plastic levy lacks this feature because its revenue is not assigned to any particular policy field. Consequently, it represents a departure from the earlier model of European integration, where revenues from specific sectors, such as coal and steel, were channelled back into the same sector through targeted spending. Nevertheless, the recent proposals signal a clear shift toward own resources designed to serve dual functions and to re-establish a more explicit link between the Union's revenue sources and its expenditure priorities.

4.3. Overview of reform proposals developed in legal scholarship

Since the repayment of EU debt is a cloud looming over the horizon of the EU's public finance future, many scholars contributed to the discussion on the new proposals for the Union's own resources. This chapter will offer an overview through various scholarly contributions for the creation of new own resources, with a special emphasis on the proposals developed in the post-pandemic period.

4.3.1. Proposals based on environmental levies

Having in mind the close relationship of NGEU and the European Green Deal, which acted as a policy backbone for the EU's recovery, several authors designed their proposal in line with the green transition efforts. The latter is more than necessary, having in mind that an ambitious goal such as reaching climate neutrality requires significant investments. This pressing need inspired Traversa and Scherleitner to propose a mechanism for funding pan-European green investment.[1215] Nevertheless, their proposal did not offer a mechanism which would subsequently allow the Member States to grant or provide loans for green investment. Instead, having in mind the promotion of European public goods as a complementary policy

[1215]Scherleitner, Traversa, *supra* note 600, *op. cit.*

goal, they propose to raise revenue for pan-European green investments.[1216] The legal basis for the proposal was found in Article 192(1) TFEU, since it relates to the EU's environmental policy. This would also allow for this mechanism to be adopted in the ordinary legislative procedure, thus circumventing the unanimity requirement.[1217] However, the authors placed this mechanism outside of the EU budget. Contributors to this fund would be the MNEs, and they would pay the climate contribution. The latter is grounded in several convincing arguments, including their responsibility for emissions. More precisely, their operations, supply chains, and lobbying activities have contributed to environmental harm, making them responsible stakeholders in addressing climate change. Another argument was found in the economic benefits from the EU Framework, since MNEs use many advantages of cross-border business in the internal market[1218]. The climate contribution proposed under the FINE-for-EU mechanism would be paid by multinational enterprises (MNEs) that benefit from pan-European business opportunities and contribute significantly to emissions. The focus is on MNEs due to their substantial role in industrial emissions and their ability to benefit from the EU's internal market. Finally, the proposed scope of the measure would contribute to the progressivity of the EU's climate policy.[1219]

Moreover, a call for "greening" of their own resources also came from the experts in the economy. Schratzenstaller considers revenue-raising as one of the four pillars of the EU green fiscal policy, alongside the green bonds, greening of governance and greening of expenditures. Against this background, green new own resources would contribute to the connection between revenues and expenditures in climate policy. [1220] Besides the EU ETS and CBAM, as proposed new own resources contributing to the green transition, she called for European green levies that might include: a tax on cryptocurrencies, statistical own resources similar to the plastic own resource based on biowaste and energy taxes. The mentioned proposals were envisaged to contribute to the repayment of the NGEU debt, and later on, decrease the amount of national contributions to the EU budget.[1221]

[1216] *Op. cit.*
[1217] *Op. cit.*
[1218] *Op. cit.*
[1219] *Op. cit.*
[1220] See Margit Schratzenstaller, "Elements of a European Green Fiscal Policy," *Intereconomics: Review of European Economic Policy* 58 no. 6 (2023): 300-304.
[1221] *op. cit.*

4.3.2. Proposals based on indirect taxation

Although the VAT own resource already has an important role in the EU financing, some scholars decided to explore the wider potential that indirect taxation can offer for the new own resources. In 2008, Rubio recognised VAT surcharge as a potential candidate for an EU tax. More precisely, he considered that "it is undoubtedly the easiest to put into effect, as national VAT bases are already highly harmonised. Yet, being a general, broad-based consumption tax, it is not appropriate to promote specific EU policy goals."[1222]

Against this background, Traversa pointed out that the safest legal route toward establishing EU tax-based own resources lies in transforming existing taxes rather than introducing entirely new ones. This approach would avoid divisions between Member States and minimise legal and administrative complexity.[1223] Thus, a reformed VAT-based own resource, building on the existing system with a modest EU surcharge, was noted as one option, applicable across all Member States. In addition, an excise-style tax on digital services or the turnover of large digital firms, inspired by historical models like the European Coal and Steel Community levy, was pointed out as another possible solution. On the other hand, corporate, digital, and financial transaction taxes are seen as less viable in the short term due to the significant harmonisation and implementation challenges they present.[1224]

4.3.3. Proposals based on direct taxation

Moreover, recent proposals have increasingly turned to direct taxation as a potential foundation for more stable, transparent, and politically legitimate funding. The rebranding of the CCTB into the CCCTB proposal once again brought the prospect of corporate income tax as a new own resource into the spotlight, attracting renewed attention from both legal and economic scholars. In this context, Candau and Le Cacheux examined the potential of corporate income tax as an EU own resource from an economic perspective.[1225] Their research was motivated by revenue loss for European governments caused by tax evasion, as well as the issue

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[1222] Eulalia Rubio, "The case for a European tax: Benefits, practical aspects and options for endowing the EU with a veritable own resource," *Notre Europe Policy Paper No. 01* (2008). Available at: https://institutdelors.eu/content/uploads/2025/04/hec-symposiumcontribtion_01-2.pdf.

[1223] Edoardo Traversa, "The role of tax-based own resources in the EU fiscal architecture" in *Public finance: Current challenges – new solutions*, ed. Danuta Kopycińska & J. Patocka (Eds.), (pp. 303–309) (Wydawnictwo Uniwersytetu Łódzkiego, 2023) https://dspace.uni.lodz.pl/bitstream/handle/11089/55237/303-309_Traversa.pdf?sequence=1&isAllowed=y.

[1224] Traversa, *op. cit.*

[1225] Fabien Candau, Jacques Le Cacheux, "Corporate Income Tax as a Genuine Own Resource," *Centre d'Analyse Théorique et de Traitement des données économiques Working Paper No. 6* (2017). Available at: https://hal.science/hal-01847937v1/document.

of tax competition. More precisely, their contribution focused on intra-EU tax competition. They argue that low-tax jurisdictions, such as Ireland and Luxembourg, pursued competitive tax policies, effectively pressuring other Member States to follow. This has led to a progressive shift in the tax mix, where Member States increasingly rely on less mobile tax bases such as real property, consumption, and labour. [1226] As a result, immobile economic agents, such as domestic firms and workers, bear a disproportionate share of the tax burden, while large MNEs exploit mismatches to reduce their tax liabilities. This "race to the bottom" weakens national tax systems and undermines the EU's internal market by distorting competition and shifting the tax burden onto less mobile contributors.[1227] Finally, it is concluded that "a CIT at the European level on a specific basis can be another solution to finance the EU budget as a genuine own resource. CCTB may be a step in the proposed direction, but other routes are possible. And the full benefits from a European corporate tax rate cannot be reaped unless the consolidation of the tax base is achieved."[1228]

Vanistendael addressed the issue of a new own resource in 2021, following the developments in the EU's public finance during the COVID-19 pandemic.[1229] Considering the socio-economic circumstances of this proposal, it was pointed out that the EU faced a significant increase in expenses to "meet three immediate challenges of the EU: i) recovery from the COVID-19 crisis, ii) climate change and iii) immigration."[1230] Moreover, it was emphasised that this proposal could offer numerous policy advantages beyond revenue generation, especially the elimination of tax competition.[1231] The proposed own resource would serve as a meaningful step toward strengthening the Union's fiscal capacity in response to such rising demands. Vanistendael advocated for the introduction of an EU-level corporate income tax applicable to companies with annual revenues above EUR 750 billion. The justification for limiting the scope to large multinational enterprises is grounded in the observation that they derive the greatest benefit from the internal market's integration and efficiency.[1232] As such, they should contribute to the supranational authority tasked with its regulation. Such a tax would be designed with a single scope and tax base, where the revenue would flow directly to the EU budget. Subsequently, if the collected revenue exceeded the needs of the EU budget,

[1226] Candau, Le Cacheux, *op. cit.*
[1227] Candau, Le Cacheux, *op. cit.*
[1228] Candau, Le Cacheux, *op.cit.*
[1229] Vanistendael, *supra* note 13, *op. cit.*
[1230] Vanistendael, *op. cit.* at 758.
[1231] Vanistendael, *op.cit.*
[1232] Vanistendael, *op.cit.*

Member States would pay a lower amount of the GNI contribution as a compensation measure.[1233]

Moreover, the post-pandemic circumstances inspired another CIT-based proposal for a new own resource. Scherleitner and Traversa proposed a two-tier model for establishing corporate CIT as a genuine own resource for the EU, designed as an EU-level surcharge applied to a harmonised corporate tax base[1234], marking a significant departure from traditional methods of EU financing. Unlike other proposals that are focused on large MNEs with revenue thresholds over EUR 750 billion, this model should apply to all corporations operating within the EU, regardless of their size. This broad scope reflects an ambition to achieve comprehensive harmonisation across Member States, thereby promoting structural consistency and equitable tax treatment in the single market. It is further stressed that harmonisation efforts should encompass the entire corporate sector, to reduce fragmentation and tax-driven distortions within the internal market.[1235] At the same time, flexibility is identified as a necessary component of the system, particularly concerning the adoption or modification of corporate tax incentives. The two-tier model, combining a harmonised base with both national and EU-level rates, is presented as a better-suited alternative.[1236] By aligning centralised revenue collection with retained national sovereignty, this approach is seen as enhancing both the legitimacy and functionality of the Union's fiscal architecture.

Furthermore, besides CIT being considered as the next candidate for the own resource design, Caziero authored a unique evaluation of personal income tax (PIT) in this particular role.[1237] More precisely, she outlined three possible models of PIT-based own resource within the EU framework. The first option is described as a "top-up tax", that is, an EU-level surcharge imposed on top of the national PIT rate, with the underlying tax base remaining defined by Member States' domestic legislation. The second model involves a parallel EU PIT, determined at the supranational level and operating alongside national income taxes. According to the author, both of these forms could be introduced based on Article 311 TFEU. A third and more integrated approach would involve a fully harmonised PIT base, with the resulting revenues flowing directly into the EU budget. This model, the author notes, would require legal

[1233] Vanistendael, *op. cit.* at 759.
[1234] Edoardo Traversa and Moritz Scherleitner, "Involving the Corporate Sector in EU Financing: A Two-Tier Model for a Corporate Income Tax-Based Own Resource*"* In: *European Law Review* 2, no.1 (2024): 99-125.
[1235] Traversa, Scherleitner, *op. cit.*
[1236] Traversa, Scherleitner, *op. cit.*
[1237] Martha Caziero, "Personal Income Tax as an EU Own Resource" in *Blueprint for Individual Income Taxation Reform in a Globalised World*, ed. Ivan Lazarov, Sam van der Vlugt (Amsterdam: IBFD, 2025).

grounding in both Articles 311 and 115 TFEU.[1238] After a detailed assessment of each model, a parallel EU PIT stood out as the most promising solution.

While a personal income tax-based own resource would already represent a significant development in the EU's fiscal framework, proposals for wealth taxation at the Union level take the discussion even further. Once again, this section will draw on insights from economic scholarship. Having this in mind, another proposal should be addressed. In 2020, a European wealth tax was proposed as a way of mutualising the cost of the epidemic.[1239] More precisely, a progressive, time-limited European wealth tax targeting the top 1 % of the richest individuals was proposed as a temporary revenue source for the EU. The measure was envisioned to service the additional debt incurred through instruments such as Eurobonds or a common rescue fund, with the potential to repay the equivalent of 10 % of EU GDP over ten years. The progressive rate is projected to generate substantial revenue without adversely affecting economic growth.[1240]

On a similar note, three years later, the European Citizens Initiative for the introduction of a supranational wealth tax was launched.[1241] The initiative called on the European Commission to establish a European tax on great wealth, which would also serve as one of the new own resources. Similar to the proposal presented above, it would also target the top 1% of richest individuals, and the revenue would be used to support social justice and climate transition efforts. In this context, the leaders of this initiative stressed that such a proposal complements the EU's objective of social justice and environmental protection, as prescribed in Article 3 TEU.[1242] The leaders of the initiative even proposed a legislative framework to incorporate the wealth tax in the EU's legal framework. Its implementation would firstly require the adoption of a Directive based on Article 115 TFEU to approximate national laws on wealth taxation, addressing internal market distortions and preventing harmful tax competition among Member States.[1243] The second step would be an amendment to Council Decision 2020/2053, under Article 311(3) TFEU, to allow revenue from the wealth tax to contribute to the EU's own resources system, particularly for financing instruments like the Recovery and Resilience

[1238] Caziero, *op. cit.*
[1239] Emmanuel Saez, Gabriel Zucman, Camille Landais, "*A progressive European wealth tax to fund the European COVID response*" VoxEU (2020). Available at: https://cepr.org/voxeu/columns/progressive-european-wealth-tax-fund-european-covid-response.
[1240] Saez, Zucman, Landais, *op. cit.*
[1241] Commission Implementing Decision (EU) 2023/1487 of 11 July 2023 on the request for registration, pursuant to Regulation (EU) 2019/788 of the European Parliament and of the Council, of the European citizens' initiative entitled 'Taxing great wealth to finance the ecological and social transition' (notified under document C(2023) 4751) (Only the French text is authentic) C/2023/4751, OJ L 182, 19.7.2023, p. 197–198.
[1242] European Citizens Initiative "Tax the Rich" official website, available at: https://www.tax-the-rich.eu/ .
[1243] European Citizens Initiative "Tax the Rich" official website, available at: https://www.tax-the-rich.eu/.

Facility (RRF). Finally, to fulfil its envisaged spending purposes, it would be necessary to adopt Legislative proposals to allocate the revenue toward policies supporting a just green and social transition, including amendments to Regulations 2021/1056 and 2021/241 (covering cohesion and recovery funding). Additional legal bases, such as Articles 192(1), 149, 153, and 209 TFEU, are identified for aligning the tax with environmental, social, and development objectives.[1244] Due to the lack of collected signatures of support, the initiative was not considered by the European Commission.[1245]

4.4. Assessment of the reform proposals

The following section will focus on the evaluation of the aforementioned proposals. A structured assessment is essential, considering a new proposal needs to be grounded in the EU's fundamental legal principles while at the same time serving supranational policy objectives. Moreover, a new proposal should be practical to implement.

The first selected benchmark consists of subsidiarity and proportionality as fundamental principles of the EU's legal system. Subsidiarity and proportionality will be treated as a single benchmark because they function as complementary constraints on the exercise of EU powers, particularly in politically sensitive areas such as taxation.[1246] When applied together, they provide a framework for evaluating whether a new legislative proposal, including a new own resource, is necessary at the Union level and for designing it in the least intrusive manner. This is grounded in Protocol 2 on the Application of the Principles of Subsidiarity and Proportionality.[1247] In this sense, own resource proposals will be evaluated by examining whether they can achieve an objective that would otherwise be unreachable by the Member States. Additionally, it will be assessed whether a selected proposal is necessary and suitable for achieving a specific policy goal. By virtue of their constitutional entrenchment, subsidiarity and proportionality form the indispensable starting point for evaluating reform proposals. This joint assessment is especially important for tax-based own resources, where the EU's competence is limited and requires robust justification.

[1244] European Union, European Citizens' Initiative: Taxing great wealth to finance the ecological and social transition (2025). https://citizens-initiative.europa.eu/initiatives/details/2023/000006_en

[1245] A Citizens' Initiative should gain one million signatures of EU citizens to be considered by the European Commission.

[1246] See *supra* sec. 3.2.2. and 3.2.3.

[1247] Namely, Article 5 of the Protocol prescribes that „Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States (…). Consolidated version of the Treaty on the Functioning of the European Union on the Application of the Principles of Subsidiarity and Proportionality, OJ C 202, 7.6.2016, pp. 206–209.

Moreover, the new own resources proposals are assessed by their correlation with European public goods (EPGs). The latter is important, since it is expected that EPGs will gradually dominate the EU's policy agenda. EPG could be defined as "a good not supplied at an adequate level without public intervention, and which should be provided at the EU level to internalise externalities, reap benefits of scale, while ensuring that local preferences are taken into account."[1248] Connecting new own resoruces to EPGs is also grounded in the fiscal federalism theory, which calls for a system where "public goods must be financed at the level where they are produced."[1249] Thus, the concept of European public goods is linked to considerations of economic efficiency. Such goods encompass policies or activities that generate greater value for European citizens when provided at the Union level rather than by individual Member States. Therefore, the financing of EPGs through dedicated own resources could mitigate the long-standing disputes over net contributions by supporting supranational projects that generate clear cross-border spillovers.[1250] In this regard, Steinbach and Claeys stated that "the question 'should public goods be provided at the national or European level?' may be the wrong question to ask. The right question is how to find institutional arrangements for public-good provision, to maximise the benefits of public goods for EU members."[1251] Therefore, having in mind the current debate on the provision and financing the EPGs, own resource proposal will be evaluated regarding their capability to contribute to these supranational public goods. In addition, the contribution to EPGs could provide a coherent justification for earmarking, linking new own resources and common Union objectives.

Besides ensuring consistency with the EU's fundamental principles and alignment with its policy objectives, proposals for new own resources must also be assessed in terms of their revenue-generating capacity. A resource that cannot produce a stable and sufficient stream of funding cannot meaningfully contribute to financing the Union's priorities, especially in light of NGEU repayment obligations and long-term policy commitments. This benchmark is not grounded in our fiscal projections but draws on the Commission's impact assessments, official

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[1248] Armin Steinbach, "European Public Goods," *EU Law and Economics* (Oxford, 2025; online edn, Oxford Academic, 2025): 202. https://doi.org/10.1093/9780198920915.003.0021

[1249] Charles Wyplosz, "Which European Public Goods?" *In-depth analysis requested by the ECON committee* (2024): 9. Available at: https://www.europarl.europa.eu/RegData/etudes/IDAN/2024/755722/IPOL_IDA(2024)755722_EN.pdf

[1250] Ian Begg, „EU Finances in Search of a New Approach," *Intereconomics* 58, no. 6 (2023): 298.

[1251] Grégory Claeys and Armin Steinbach, "A conceptual framework for the identification and governance of European public goods," Bruegel Working Paper 14/2024 (2024): 1. Available at: https://www.bruegel.org/system/files/2024-05/WP%2014%202024_3.pdf.
See also Armin Steinbach, "European Public Goods," *EU Law and Economics* (Oxford, 2025; online edn, Oxford Academic, 6 Jan. 2025), https://doi.org/10.1093/9780198920915.003.0021.

revenue estimates, and findings in the academic literature, all of which underline the importance of financial viability as an essential criterion for evaluating potential own resources.

The next criterion to asses own resource proposals will be their administrability. Namely, this benchmark is used to consider whether a levy can be implemented efficiently across diverse national systems, with minimal compliance costs. In addition, convenience for the taxpayer should also be taken into account.[1252] Administrability is a relevant benchmark because the value of a potential own resource cannot be assessed solely by reference to its revenue potential or its potential for contribution to the EPGs. If a new own resource is legally complex and difficult to implement may ultimately undermine the efficiency of such a proposal. Thus, preference should be given to resources that have an already harmonised base, an existing administrative structure, and that can be administered with limited costs.[1253]

Finally, it is important to note that the following subsections are organised in the following manner. The proposals for new own resources are put together in groups based on their underlying policy rationale and subsequently evaluated against each of the mentioned benchmarks. Such an approach is intended to enhance analytical coherence and comparison. Thus, CBAM, EU ETS, electronic waste levy and the FINE for EU proposal by Scherleitner and Traversa will be analysed as environmental levies. TEDOR and VAT surcharge will be analysed as examples of levies based on indirect taxation. In this regard, a longstanding candidate among indirect levies was also the FTT. However, the Commission announced its withdrawal in its 2026 Work Programme, therefore, it is not included in this analysis.[1254] Finally, proposals based on direct taxation will encompass the CORE proposal, as well as two scholarly proposals. The levy that was proposed by the Commission in 2023 was the statistical own resource based on company profits. However, it has been abolished and replaced by CORE and other policy-aligned resources amid stalled Council progress. Therefore, it is also outside of the scope of this analysis.

4.4.1. Subsidiarity and proportionality

The benchmark consisting of subsidiarity and proportionality evaluation is the essential starting point for analysing new own resource proposals, since it requires that the goals pursued cannot be sufficiently realised by Member States acting individually and can be better achieved

[1252] Gadžo, *supra* note 821, at 221.
[1253] Alessandro D'Alfonso, "Reforming the financing of the EU budget: Outlook," *Perspectives on Federalism* 8, no. 2 (2016): 62.
[1254] See Annex IV in: European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission work programme 2026 Europe's Independence Moment COM/2025/870 final (2025).

at the Union level. Conversely, it allows the Union to act when an objective can be more effectively attained at the Union level due to the scale or impact of the proposed action.[1255] Being enshrined in Article 5(3) TEU, subsidiarity regulates the exercise of the Union's competences while safeguarding the Member States' discretion in areas that do not fall within the EU's exclusive competence.[1256] Thus, it is considered one of the "systemic principles underlying the constitutional structure of the Union and defining its nature."[1257] Moreover, „subsidiarity not only determines the conditions for the Union to take action (under non-exclusive powers, 'only if'), but also the extent to which this is allowed under Union law ('and in so far as'), the latter element also being covered by proportionality (with regard to all areas of competence)."[1258] Proportionality determines the scope and intensity of EU intervention, ensuring that the measures adopted do not exceed what is necessary to achieve the objectives of the Treaties.

Moreover, when the Commission proposes legislation, it has to elaborate why the legislative act is in line with principles of subsidiarity and proportionality. Therefore, the first step of the own resource proposal assessments starts with their alignment with the aforementioned fundamental principles.

4.4.1.1. Proposals based on environmental levies

Proposals based on environmental levies will be the first category of own resource proposals subject to analysis against the subsidiarity and proportionality benchmark. To begin with, it should be noted that environmental protection is one of the shared competences between the EU and the Member States.[1259]

The EU ETS has already satisfied the subsidiarity requirement as an environmental measure, since it addressed the necessity of the Union-level objective of emission reduction.[1260] Nevertheless, the proposal to use part of its revenues as an EU own resource requires a distinct subsidiarity assessment. To become the Union's own resource, the Council must adopt a new ORD. This is why the fiscal dimension of the EU ETS operates using a different legal basis,

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[1255] See European Parliament, The principle of subsidiarity, at 1. https://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/010202/04A_FT(2013)010202_EN.pdf

[1256] See *supra* sec. 3.2.2.

[1257] Marcus Klamert, "Article 5" in *Commentary on the EU Treaties and the Charter of Fundamental Rights*, ed. Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (Oxford: Oxford University Press, 2019): 64.

[1258] Klamert, *op. cit.* at 65.

[1259] Article 4(2)e, TFEU.

[1260] Para. 107, Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (Text with EEA relevance) PE/9/2023/REV/1, OJ L 130, 16.5.2023.

namely Article 311 TFEU, which vests the Union with the power to establish its own resources. The question is therefore not whether emissions trading should be organised at Union level, but whether assigning a share of its proceeds to the EU budget is in line with subsidiarity requirements.

Given that the ETS is a Union-wide mechanism, designed and administered at the EU level, allocating part of its revenues to the Union would ensure coherence in financing EU policies. Attributing part of its revenues to the EU budget supports an objective that cannot be sufficiently achieved by Member States, including the coherent financing of the just transition. Moreover, a part of the EU ETS revenue will also flow to the EU budget and enable the Union to repay the NGEU debt, which also represents a goal that needs to be achieved at the Union level. Thus, allocating a portion of its revenue is more effective at the EU level since this avoids fragmented financing and strengthens the link between Union policies and their financing. Moreover, when it comes to proportionality, allocating a share of EU ETS revenue to the EU budget would be limited to what is necessary to achieve this goal, having in mind that the EU would only get a partial portion of revenue, and it does not require the introduction of a new tax base at the national level nor does it affect already existing national carbon taxes.[1261]

Similar to the EU ETS, the CBAM was established at the Union level on subsidiarity grounds, since preventing carbon leakage and maintaining the integrity of the internal market cannot be effectively achieved by individual Member States.[1262] However, the proposal to allocate a portion of CBAM revenues as an EU own resource entails a separate subsidiarity consideration under Article 311 TFEU. This assessment concerns the fiscal dimension of the measure. In other words, the question is whether the objective of securing a stable, Union-wide revenue stream is justified on the grounds of subsidiarity. Given that CBAM is centrally designed and enforced by the EU, assigning part of its revenues to the Union budget enhances coherence and fairness in the financing of EU priorities regarding environmental measures, which Member States could not ensure with uncoordinated approaches. Assigning revenues acquired from carbon pricing to a supranational level of government can also be supported by economic analysis. In his analysis on international environmental taxation, Herber concluded

[1261] For example, Poland, Slovenia and Sweden introduced their domestic carbon taxes even before the EU ETS introduction by the EU. After the EU ETS introduction their tax rates and scope of these taxes remain quite diverse. See European Court of Auditors, *Review No 01/2022: Energy taxation, carbon pricing and energy subsidies* (2022). See: https://www.eca.europa.eu/lists/ecadocuments/rw22_01/rw_energy_taxation_en.pdf.

[1262] Para. 81, Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance) PE/7/2023/REV/1, OJ L 130, 16.5.2023.

that an international carbon levy would be an efficient measure.[1263] When discussing the level of government to impose such a levy, he identified supranational government as a "supranational body that would possess the advantage of a direct correspondence between the political authority to levy the tax and the geographical zone of the externalities."[1264] More precisely, fragmented subnational approaches to carbon pricing can undermine both environmental effectiveness and fiscal coherence, thereby justifying the intervention of the highest level of government. The latter was proven in the Canadian experience with carbon pricing. More precisely, Canadian provinces started introducing divergent provincial measures, ranging from carbon taxes to cap-and-trade systems, with several provinces adopting no carbon pricing at all. The latter created asymmetries in regulatory burden and environmental risks, amounting to a form of inter-provincial tax competition.[1265] The introduction of the federal "Carbon Backstop" in 2019 established a uniform minimum standard, ensuring that all provinces contribute equitably to national climate objectives. This centralised mechanism not only enhanced policy consistency but also increased overall revenue generation[1266], illustrating the benefits of federal coordination. By analogy, the EU's efforts to establish own resources based on the CBAM and the EU ETS reflect a similar rationale: supranational coordination is essential to prevent internal distortions, and to channel revenue towards Union-wide objectives. In both systems, entrusting the highest level of governance with a share of such revenues is justified, as the environmental externalities addressed by these instruments go beyond national boundaries and require collective action.

Moreover, a closer examination of revenue-allocation models proposed for an international carbon tax by Hubert supports the rationale for shared fiscal arrangements at the supranational level.[1267] This economic study is applicable in this matter, having in mind the previously conducted analysis of CBAM's nature as a tax in disguise.[1268] As previously mentioned, Herber argues that allowing states to retain all revenues domestically would undermine both equity and efficiency, as it would preclude redistributive mechanisms and coordination between jurisdictions.[1269] Conversely, allocating all or part of the revenues to a

[1263] Bernard P. Herber, "International Environmental Taxation in the Absence of Sovereignty," *IMF Working Paper 92/104* (1992): 25.
[1264] *Op. cit.* at 15.
[1265] Sean Dougherty and Andoni Montes Nebreda, "The multi-level fiscal governance of ecological transition," *OECD Working Paper No. 44.* (2023):16.
[1266] *Ibid.*
[1267] Herber, *supra* note 1263, at 17-19.
[1268] Sebastian Klotz, Simeon L. Probst, Oliver Hulliger "The Carbon Border Adjustment Mechanism – A Tax in Disguise?" *European Taxation* 62, no.8 (2022): 350-353. Also see *supra* sec.3.5.3.5.
[1269] Herber, *supra* note 1263, at 17-19.

supranational authority would enable a more balanced pursuit of collective goals by linking fiscal resources to treaty-based commitments.

Finally, reasoning to support the introduction of environmentally oriented new own resources at the EU level can be found in the fiscal federalism theory. According to Oates's decentralisation theorem, public goods whose costs and benefits are geographically aligned should be financed locally, whereas those producing cross-border spillovers require at least partial federal financing to internalise externalities.[1270] In the EU context, this logic supports treating revenues from the ETS and the CBAM as EU-level resources. Climate mitigation generates benefits and costs that extend beyond national borders. If such instruments were financed solely at the Member State level, collective underinvestment and competitive distortions could appear. ETS and CBAM revenues thus serve not only fiscal purposes but also ensure adequate provision of a transnational public good - climate stability.[1271]

Another member of the proposal for own resources based on environmental measures is the proposal for a levy based on non-recycled electronic waste. It mirrors the already existing own resource based on non-recycled plastic waste. In this regard, the alignment of the plastic levy with the principle of subsidiarity was based on the fact that this own resource "will provide an incentive to reduce the consumption of single-use plastics, foster recycling and boost the circular economy, but the Member States will be free to take the most suitable measures to achieve those goals."[1272] Thus, having in mind the similarities between the plastic waste levy and the electronic waste levy, the latter may also be justified on a similar basis. The Commission designed this proposal as another national contribution (not a harmonised EU tax), and only the calculation method is fixed at the EU level. Thus, the argument is that EU action does not displace national competences but coordinates how an EU revenue stream is determined. Moreover, the amount due by each Member State is proportional to the quantity of non-recycled plastic packaging waste (uniform call rate per kilogram), which is presented as a measure that does not go beyond what is necessary to create an incentive and to raise revenue.[1273]

Furthermore, among scholarly proposals, Scherleitner and Traversa proposed the creation of a Pan-European Climate fund, which would be financed through climate

[1270] Wallace E. Oates, "Toward A Second-Generation Theory of Fiscal Federalism," *International Tax and Public Finance* 12 (2005): 349–373.
[1271] Christakis Georgiou, "Federal fiscal capacity and the challenge of the green transition in the EU," *Journal of European Integration* 45, no. 6 (2023): 871–887.
[1272] Para 7. Explanatory memorandum of the 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
[1273] *Ibid.*

contributions paid by MNEs in scope.[1274] Their proposal for the FINE-for-EU mechanism starts from the premise that climate change is a challenge that transcends national borders and requires coordinated action at the EU level. Therefore, it cannot be effectively tackled by individual Member States due to the cross-border nature of environmental challenges. The FINE-for-EU mechanism is envisaged to fund pan-European green investment projects, which are considered European public goods. Thus, it could maximise environmental impact across the EU, rather than focusing on individual Member States' interests, which aligns with the principle of subsidiarity.

Overall, environmental levies align well with the subsidiarity principle because their objectives transcend national borders and require Union-level coordination. It is also aligned with the Parliament's observation that "pooling of resources at EU level can be more effective than national expenditure."[1275] In this case, centralised administration ensures coherence, and and efficiency, as illustrated by the Canadian federal carbon pricing experience. Allocating a portion of revenues to the EU budget further supports collective goals, including the funding for European public goods, making these instruments both environmentally effective and justified. In addition, all three instruments can be subject to the tripartite proportionality test, as described earlier.[1276] All of the proposed environmental measures, when used as a basis for own resources, i) are suitable to achieve both budgetary and environmental policy objectives, ii) are less intrusive than plausible alternatives such as significantly raising GNI-based contributions, and iii) their design is structured in a way that the burdens on Member States and private actors are not manifestly disproportionate to the environmental and budgetary benefits. The latter includes correction mechanisms, phased implementation, and national discretion on instruments to further support, e.g. digital waste disposal. Therefore, proposals relying on environmental levies are particularly well aligned with the principles of subsidiarity and proportionality.

4.4.1.2. Proposals based on direct taxation

The EU institutions and legal scholars have a long history of proposing new own resources based on harmonised CIT. Throughout the EU's history, the most prominent attempts to harmonise CIT in the EU were CCTB and CCCTB.[1277] Neither of the proposals was explicitly

[1274] See i*nfra* sec. 4.3.1.
[1275] European Parliament, *Briefing - Own resources of the European Union: Reforming the EU's financing system* (2021): 3. Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630265/EPRS_BRI(2018)630265_EN.pdf
[1276] See *supra* sec. 3.2.3.
[1277] See *supra* sec. 3.5.1.

introduced as a new own resource proposal. However, the EU institutions often hinted that, in case of their introduction, they could serve as a basis for a future new own resource.[1278] In this scenario, their harmonised structure would have reduced profit-shifting incentives, thereby enhancing fairness and efficiency in the internal market. Another recent example of a new own resource was the statistical own resource based on the gross operating surplus of companies. However, since it was not included in the 2028-2034 MFF proposal, it will not be analysed.[1279]

Although these proposals were withdrawn, both CCTB and CCCTB exhibited that a useful line of argument supporting proposals based on corporate taxation can be found in fiscal federalism theory. More precisely, from the perspective of fiscal federalism, the optimal level of tax assignment depends on the geographic distribution of costs and benefits and the degree of cross-border externalities. While local public goods and taxes with territorially contained effects should remain at the national level, taxes on highly mobile bases, such as CIT, are more efficiently managed at higher levels of government.[1280]

When applied only nationally, CIT generates fiscal externalities in the form of tax competition, profit shifting, and base erosion, which may result in a decline of tax revenues in some jurisdictions.[1281] In this respect, the subsidiarity assessment of potential EU own resources must consider not only legal requirements, but also the economic scale at which externalities occur. More precisely, the issue of tax evasion transcends national borders and represents a concern that Member States cannot fully address on their own. In this respect, the logic underpinning Union-level instruments such as the ETS and CBAM can also be applied to CIT. Namely, the need to address cross-border issues may also support a coordinated European approach to a corporate tax-based own resource.

In this regard, the latest CORE[1282] proposal can also be supported by subsidiarity justification. Because the contribution applies to companies with an EU-wide turnover above a

[1278] See European Parliament, *Briefing - Own resources of the European Union: Reforming the EU's financing system* (2021): 5.
[1279] The former statistical-based corporate own resource proposal did not entail EU-level taxation or EU-administered collection. Instead, it relied on harmonised national accounts, with the Commission relying on existing Eurostat data to calculate Member State contributions. From a subsidiarity perspective, this design significantly limited interference with national taxing powers. Accordingly, the measure also scores highly on proportionality, because it imposes only minimal administrative and regulatory burdens. It did not alter national corporate tax systems nor require operational changes to their administration. At the same time, its contribution to addressing cross-border externalities or improving the coordination of corporate taxation was limited, given that it does not influence firms' behaviour or reduce distortions arising from tax competition.
[1280] See Wallace E. Oates, "An essay on Fiscal Federalism," *Journal of Economic Literature* 37, no. 3 (1999): 1120-1149.
[1281] Tax evasion and tax avoidance were recognised as negative fiscal externalities. See Justin Marion, Erich Muehlegger, "Tax compliance and fiscal externalities: Evidence from U.S. diesel taxation," *Journal of Public Economics* 160, (2018): 1-13.
[1282] See *supra* sec. 4.2.

defined threshold, its enforcement requires the level of coordination that only the Union can provide. While its structure as a lump-sum levy limits the degree of fiscal integration, it nevertheless reflects the principle that revenue collection should occur at the level where the tax base is defined and controlled most effectively. Central administration of such a levy avoids distortions that might arise if Member States applied divergent definitions of eligible taxpayers or turnover.

When it comes to scholarly proposals, the proposal by Scherleitner and Traversa for an EU-level surcharge applied to a harmonised CIT base is embedded in the principle of subsidiarity. More precisely, a common EU CIT base could contribute to the avoidance of double taxation, the reduction of administrative complexity for cross-border businesses, and mitigate the externalities created by uncoordinated national tax policies. The harmonised structure would allow the Union to exercise fiscal authority only to the extent necessary to ensure effective coordination. The latter also fulfils the requirement that action at the EU level should be justified only when the Member States cannot sufficiently achieve objectives. Similarly, Vanistendael's model for a uniform EU corporate tax targeting large MNEs also finds support in subsidiarity logic since the scope of taxation corresponds to the transnational scale of corporate operations, and enforcement increases with central oversight.

4.4.1.3. Proposals based on indirect taxation

From the perspective of subsidiarity, a VAT-based own resource, as proposed by Traversa, is relatively unproblematic. VAT is already harmonised at the Union level through the VAT Directive, which establishes a common framework for taxable transactions, exemptions, and minimum rates. This harmonisation limits Member States' discretion and ensures a consistent tax base across the single market. All of the above are simultaneously conditions that may justify EU involvement in taking a portion of the revenue collected. Since the VAT system already operates through close administrative coordination between national authorities and the European Commission, assigning a small uniform EU surcharge would not represent an excessive centralisation of fiscal power.

When it comes to the recent TEDOR proposal, it may be justified within the existing framework of EU excise harmonisation. While excise duties remain under national competence, their structure and minimum rates are already coordinated through EU legislation to prevent market distortions and cross-border trade imbalances. This harmonisation establishes a supranational dimension, as the objective of protecting public health cannot be fully achieved by Member States acting individually. Allocating a small, uniform share of the excise revenues

to the EU budget would therefore not undermine national fiscal autonomy but would strengthen policy coherence between the Union's fiscal and health objectives. In this sense, TEDOR satisfies the subsidiarity requirement, as its aims are better realised at the supranational level.

4.4.2. Revenue potential

4.4.2.1. Proposals based on environmental levies

Having in mind that the EU ETS has operated for two decades, the EU ETS is likely the most reliable source for assessing future revenue as the EU's own resource, as it offers the most comprehensive data. Thus, in 2023, the Commission estimated that "the ETS own resource will generate about EUR 19 billion (2018 prices) per year at cruising speed, when the revenues from the new ETS enter into the EU budget."[1283] However, in 2025, the prediction was that "targeted adjustment of the revenues generated from ETS1 will go to the EU budget and they are expected to generate around EUR 9.6 billion euros annually, on average."[1284]

When it comes to CBAM, in 2023, the Commission estimated that it would generate about EUR 1.5 billion (2018 prices) per year as of 2028.[1285] On the other hand, the OECD estimated that "assuming a carbon price of 80 euros per tonne of CO2 equivalent in the EU ETS and taking into account existing carbon prices in partner countries, the CBAM, if fully in place, would generate EUR 14.7 billion yearly."[1286] The mentioned estimates are quite diverse. Such a discrepancy could be explained by differing assumptions regarding its scope, carbon price, and the extent of existing carbon pricing mechanisms in partner countries.

However, both the EU ETS and the CBAM are, by design, transitional revenue sources. Their fiscal potential is closely related to their environmental effectiveness: the more successful they are in reducing emissions, the smaller the revenue base becomes. While both may yield substantial proceeds in the medium term, their long-term trajectory points to a gradual decline. In addition, the in-depth analysis requested by the BUDG Committee indicated that "the ETS income resulting from auctioning off allowances is far from stable, as the price of these

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[1283] European Commission, *Questions and Answers: An adjusted package for the next generation of own resources* (2023). Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_23_3329/QANDA_23_3329_EN.pdf.

[1284] European Commission, *Press release: The 2028-2034 EU budget for a stronger Europe* (2025). Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/eu-budget-2028-2034_en.

[1285] European Commission, *Questions and Answers: An adjusted package for the next generation of own resources*. (2023).

[1286] OECD, *Policy brief: What to expect from the EU Carbon Border Adjustment Mechanism?* (2025). Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/03/what-to-expect-from-the-eu-carbon-border-adjustment-mechanism_a21e9b51/719d2ff9-en.pdf.

allowances is determined by the market. The auction price of CO2 varied between 2.65 and 30.92 euros per ton in the period 2013-2020, although the Market stability reserve, introduced by the Commission in 2019, should make the system more resilient to economic shocks."[1287] The aforementioned analysis marked both the EU ETS and CBAM revenue as volatile.[1288]

Moreover, a levy based on non-recycled electronic waste is another proposal interconnected with the protection of the environment. Its design will resemble the plastic waste levy, although its current proposal has a higher starting rate per kilogram of non-recycled waste, at EUR 2 per kilogram.[1289] It is expected that this own resource will bring around EUR 15 billion annually to the EU budget.[1290] However, since it will depend on the Member States' reporting and estimates of non-recycled e-waste, it might suffer from the same illness as the plastic waste levy when it comes to its enforcement. More precisely, the Union should design the levy to avoid difficulties such as inconsistent data collection and verification practices across Member States, which might undermine the accuracy of reported recycling or recovery rates.[1291]

Among scholarly proposals, FINE for the EU system developed by Scherleitner and Traversa would likely represent a modest but stable source of funding, depending on the scope of MNEs subject to the contribution and the rate applied. Since the proposal targets MNEs already operating within the EU, its base would overlap with existing corporate taxation structures, allowing for relatively predictable revenue streams. Its strength is the revenue reliability and policy alignment. Moreover, by earmarking revenues for pan-European green investment, the mechanism would directly link fiscal capacity to environmental objectives, potentially enhancing both political acceptability and compliance.

4.4.2.2. Proposals based on direct taxation

Currently, the newest proposal that the Commission put forward regarding direct taxation is the CORE proposal.[1292] The CORE is expected to provide a relatively stable and predictable source of revenue. According to the Commission's projections, the levy could

[1287] András Schwarcz, *Reform of the EU own resources*. In depth analysis requested by the Policy Department for Budgetary Affairs, Directorate-General for Internal Policies, European Parliament. PE 690.963 (2025).
[1288] Schwarcz, *op. cit.* at 15. See also: European Court of Auditors, *Opinion 04/2026 (pursuant to Article 287(4) TFEU) concerning the proposal for a Decision on the system of own resources of the European Union* (COM(2025) 574 final (2026):8.
[1289] European Parliament, *Parliamentary question - E-003104/2025: New EU tax on uncollected e-waste* (2025). Available at: https://www.europarl.europa.eu/doceo/document/E-10-2025-003104_EN.html.
[1290] European Commission, *Europe's budget Own resources* (2025). Available at: https://commission.europa.eu/document/download/80b07565-b336-41ae-9baf-a5401e7b528b_en?filename=MFF_New%20own%20resources_16.07-16h38.pdf.
[1291] For difficulties surrounding the plastic waste levy, see *supra* sec. 3.5.3.5.
[1292] See *supra* sec. 4.2.

generate approximately EUR 6.8 billion per year on average.[1293] Because the contribution is based on a fixed annual lump-sum from companies with a turnover above EUR 100 million, its yield is likely to be less sensitive to short-term fluctuations in corporate profitability, ensuring a steady flow to the EU budget.

As previously mentioned, legal scholarship also contributed to the debate on CIT-based own resources. In their proposal, Scherleitner and Traversa proposed a two-tier model for establishing CIT as a genuine own resource for the EU, designed as an EU-level surcharge applied to a harmonised corporate tax base.[1294] In terms of revenue potential, their proposal suggests a comparatively strong and stable yield. Since the surcharge would apply to all corporations operating within the EU, rather than being limited to large multinationals, it could generate substantial and recurring revenues. The model's reliance on a harmonised tax base would also enhance predictability and reduce the risk of profit shifting, thereby safeguarding the EU's revenue stream. A similar conclusion can be reached regarding Vanistendael's proposal for a uniform EU CIT applicable to companies with annual revenues above EUR 750 billion. By targeting MNEs that account for a substantial share of total EU corporate profits, the measure could ensure a stable and predictable revenue stream for the EU budget.[1295] Its uniform structure would simplify compliance and reduce distortions arising from divergent national tax rules. However, given its limited scope, the revenue yield would likely be more modest than under a comprehensive harmonised base.

Finally, although the statistical own resource based on company profits proposed in 2023 offered a stable income stream, bringing EUR 16 billion per year on average over the period 2028-2030 (in 2018 prices),[1296] it was not supported by the Member States. The latter indicates that Member States are willing to reject proposals with strong revenue-raising capacity when other elements of these porposals conflict with their interests.

[1293] See European Commission, *Europe's budget Own resources* (2025). Available at: https://commission.europa.eu/document/download/80b07565-b336-41ae-9baf-a5401e7b528b_en?filename=MFF_New%20own%20resources_16.07-16h38.pdf

[1294] See Scherleitner, Traversa op. cit. *supra* note 1234.

[1295] For example, in 2023, „large enterprises (more than 249 persons employed) represented only 0.2 % of the total number of enterprises in the EU's business economy (53 000 enterprises). However, they employed more than a third of the labour force (58.4 million persons, 36 %) and generated more than half (51 %) of the net turnover (EUR 19.6 trillion)." See more: Eurostat (2024). Large businesses make up only 0.2 % of EU enterprises. Available at:https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20241205-1#:~:text=However%2C%20they%20employed%20more%20than%20a%20third,number%20of%20enterprises%20(0.8%25%2C%20246%20000%20enterprises).

[1296] European Commission, Staff working document Accompanying the document Amended Proposal for a Council Decision amending Decision (EU, Euratom) 2020/2053 on the system of own resources of the European Union, COM (2023) 331 final (2023).

4.4.2.3. Proposals based on indirect taxation

Among the proposals based on indirect taxation, the recent TEDOR proposal stands out as the most prominent example. The Commission estimated its annual revenue, starting from 2028, to be around EUR 12 million.[1297] These estimates are based on the current Tobacco Excise Duty Directive[1298] and its proposed recast[1299], applying harmonised assumptions about excise bases and rates across Member States. The proposed recast of the Council Directive on the structure and rates of excise duty applied to tobacco and related products provides an important context for assessing TEDOR's revenue potential. More precisely, in its impact assessment, the Commission estimates that increases in minimum excise levels for traditional tobacco products could generate approximately EUR 14 billion in additional annual tax revenues across Member States, with further revenue gains of up to EUR 1.7 billion stemming from the inclusion of novel products and raw tobacco.[1300] While these revenues would primarily accrue to national budgets, the proposal for TEDOR envisages allocating a share of these receipts to the EU budget. Moreover, the aforementioned proposal for a recast of the tobacco excise duty directive stressed that it is a formally separate legal instrument from TEDOR.[1301] By first strengthening national revenue streams, the Commission aimed to create additional space for a modest EU share, without diminishing the total revenue of Member States. This may enhance the political acceptability of TEDOR. However, the ECA stressed that TEDOR's average annual revenue projections are based on the proposed Directive revision.[1302] The revenue projection would be lower if the recast is not adopted and the current Directive forms the basis for the own resource, which undermines the realistic assessment of this proposal.[1303]

Moreover, among scholarly proposals, a VAT-surcharge proposed by Traversa also seems to have a stable revenue potential. More precisely, since VAT is already harmonised and

[1297] European Commission, Report from the Commission to the European Parliament and the Council Long-term forecast of future inflows and outflows of the EU budget (2026-2034). COM (2025) 573 final (2025).
[1298] Current version is the Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (codification) OJ L 176, 5.7.2011.
[1299] European Commission, Proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco-related products (recast) Brussels, 16.7.2025, COM (2025) 580 final 2025/580 (CNS) (2025).
[1300] European Commission, Commission Staff Working Document Executive Summary of the Impact Assessment Report Accompanying the document Proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco-related products (recast) COM (2025) 580 final (2025).
[1301] European Commission, Proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco-related products (recast) (2025): 14.
[1302] European Court of Auditors, Opinion 04/2026 (pursuant to Article 287(4) TFEU) concerning the proposal for a Decision on the system of own resources of the European Union COM (2025) 574 final (2026): 21.
[1303] European Court of Auditors, Opinion 04/2026 (pursuant to Article 287(4) TFEU) concerning the proposal for a Decision on the system of own resources of the European Union COM (2025) 574 final (2026): 21.

collected across all Member States, even a small EU-level surcharge could generate significant and predictable income, accompanied by low collection costs.

4.4.3. Contribution to European Public Goods

As previously mentioned, the discussion on EPGs is gaining more attention from both EU institutions and legal scholars.[1304] The most prominent definition recognised among scholars was coined by Fuest and Pisani-Ferry in 2019: "EPGs are policies and initiatives whose value to the citizens is higher when conducted at the EU rather than at the national level".[1305] Focusing on the planned financing of such goods may bring several benefits to the EU's policy table. First, such an approach to the EU's expenditures may help to partially mitigate the *juste retour* logic where Member States evaluate the Union's budget primarily in terms of the difference between their national contributions and direct returns. Second, prioritising the production of EPGs could help to reduce tensions between perceived "creditor" and "debtor" countries and help mitigate the risk of opportunistic behaviour.[1306] Thus, establishing a new own resource with a clear connection to the EPGs might be beneficial. A new own resource may be connected to the provision of EPGs on different levels. First (and obvious), an own resource may contribute to the supply of an EPG by providing a stable and predictable source of financing for activities that exhibit clear cross-border goods, such as competitiveness, security and defence and climate action. As D'Alfonso states, "the link to a common EU policy can strengthen the rationale for assigning a resource to the EU level."[1307] In this sense, there would be a clear connection between an own resource and the expenditure. More precisely, revenue generated could be earmarked to explicitly fund goods that cannot be efficiently supplied by individual Member States acting alone.

The latter can be conceptually described as a single-function contribution to EPGs, since the role of a potential new own resources can be limited to revenue raising. In this case, the link between the own resource and the EPG operates solely through the expenditure side: the resource provides financing for EU-level initiatives but does not itself influence market behaviour. Second, a new own resource could also make a double-layered contribution when it also steers economic behaviour in ways that support an EPG. This occurs when the own

[1304] See *supra* sec. 4.4.
[1305] Clemens Fuest, Jean Pisani-Ferry, "A Primer on Developing European Public Goods", *EconPol Policy Report 16, European Network for Economic and Fiscal Policy Research* (2019): 1.
[1306] Marco Buti, Alessandro Coloccia, Marcello Messori, "European public goods. VoxEU column" (2025). Available at: https://cepr.org/voxeu/columns/european-public-goods.
[1307] D'Alfonso, *supra* note 1253, at 61.

resource has regulatory or corrective effects, such as reducing pollution. In such cases, the own resource may function both as a fiscal instrument and as a regulatory tool, thus providing a double EPG contribution.

4.4.3.1. *Proposals based on environmental levies*

Against this background, it is necessary to evaluate how proposals based on environmental levies interact with European public goods. The oldest among existing tools is the EU ETS. An own resource based on ETS allowances will provide double EPG contribution. The EU ETS already serves an environmental goal, being the reduction of greenhouse gas emissions. Thus, in the 2024 report on the European carbon market, it was emphasised that "since its launch in 2005, the EU ETS has helped drive down emissions from electricity and heat generation and industrial production by 47 %, while generating over EUR 200 billion in auction revenue."[1308] Following its revamp to become a revenue source of the EU budget, it will also gain a fiscal function on the supranational level. Thus, the EU ETS own resource will support achieving the climate action and environmental sustainability, which were identified as EPGs.[1309] Not only does it serve a regulatory goal regarding emission reduction, but it will also raise revenue, which will be streamed into the SCF and once again directed towards environmental purposes. Therefore, this new own resource proposal has a potential for a strong, multi-level contribution to climate action and environmental stability as one of the EPGs.[1310]

The following proposal for an own resource is the CBAM proposal. Similar to the EU ETS, it could also achieve a multi-level contribution to the EPGs. However, although CBAM offers some potential to support EU climate expenditures, its direct revenue-raising capacity is modest compared with more substantial sources such as the EU ETS. According to 2025 estimates, the annual revenue generated by the CBAM is projected to reach approximately EUR 1.9 billion, whereas the EU ETS is expected to generate around EUR 9.6 billion.[1311] Thus, CBAM's significance lies in its regulatory goal. It will support carbon leakage mitigation, thus supporting the EU's climate policy. It may also contribute to global decarbonisation by encouraging third countries to adopt comparable carbon-pricing regimes. Overall, the CBAM

[1308] European Commission, *Report from the Commission to the European Parliament and the Council on the functioning of the European carbon market in 2023*. Brussels, 19.11.2024 COM (2024) 538 final. (2024):2.
[1309] See Michael Thöne, "European Public Goods and the 2028-2034 Multiannual Financial Framework: Financing the EU in a decade of reform" *Briefing requested by the BUDG Committee, European Parliament* (2024): 2. Available at: https://www.europarl.europa.eu/cmsdata/290728/3.%20Thone%20-%20final.pdf.
[1310] Fuest, Pisani-Ferry *supra* note 1305, at 1.
[1311] European Commission, *Fact sheet: Europe's budget Own resources* (2025). https://commission.europa.eu/document/download/80b07565-b336-41ae-9baf-a5401e7b528b_en?filename=MFF_New%20own%20resources_16.07-16h38.pdf.

operates primarily as an instrument of externality correction that advances climate-related EPGs, while providing only a moderate prospect for direct budgetary support.

In addition, the proposal based on non-recycled electronic waste also has to be evaluated. At first sight, an own resource based on non-recycled electronic waste appears to exhibit a double contribution to EPGs. On the one hand, its revenues could be used to finance EU-level initiatives and help achieve digital and technological sovereignty, which are recognised as EPGs. On the other hand, increasing the cost of non-recycling creates incentives that support environmental protection. However, its actual contribution to EPGs crucially depends on its implementation model. If the e-waste resource follows the pattern of the existing plastic waste levy, it risks functioning as a *de facto* national contribution rather than a genuine own resource. Moreover, the experience with the plastic levy suggests that heterogeneous reporting practices, statistical uncertainties and divergent national strategies for addressing waste can undermine the effectiveness of such an instrument.[1312] Thus, in theory, the e-waste levy does have a strong connection to environmental and digital EPGs.

Finally, a prominent academic proposal is the FINE-for-EU mechanism proposed by Scherleitner and Traversa. It offers a strong conceptual link to the EPGs. By design, the contribution targets MNEs and channels the revenue into a Pan-European Climate Fund dedicated to green investment projects with cross-border benefits. The proposed mechanism would have a double contribution to EPGs: a contribution to climate action and environmental sustainability, as well as revenue raising.

4.4.3.2. *Proposals based on direct taxation*

When assessed against the benchmark of their capacity to contribute to the provision of EPGs, proposals based on direct taxation display varying degrees of EPG contribution.[1313]

The Commission's recent CORE initiative can be classified as a potentially stable revenue flow for the EU budget. It also modestly addresses a fairness externality: large firms that profit most from the single market would contribute to its financing. However, its

[1312] See supra sec. 3.5.3.4.

[1313] It is also worth mentioning that the former CCCTB and CCTB proposals can be characterised as instruments that would have had a double-layered contribution to the EPGs. Firstly, by reducing profit shifting, mitigating harmful tax competition, and lowering distortions in the internal market, they would generate a contribution to the single market, as one of the long-standing Union's EPGs. Furthermore, they could have served as a basis for the financing of EPGs by potentially enlarging the EU's fiscal capacity through a harmonised and more resilient corporate tax base. In addition, the former statistical own resource proposal was grounded in the gross operating surplus of corporations and it represented a single-layered contribution to EPGs. It would provide a predictable and administratively simple revenue stream to support the Union's general fiscal capacity, but its design did not seem to incline towards an influence on corporate behaviour. Its impact, therefore, remains confined to the revenue dimension, without an additional regulatory role.

regulatory effects remain limited, positioning the instrument somewhere between a purely single-layered mechanism and a double-layered one.

An EU-level CIT surcharge levied on a harmonised base, as proposed by Scherleitner and Traversa, has the potential to operate as a double-layered instrument. On the one hand, it would generate a stable and possibly earmarked source of EU revenue, capable of financing EPGs. On the other hand, depending on its design, it could materially reduce tax competition and promote an efficient allocation of corporate activity within the internal market, thereby supporting the broader set of EPGs associated with market integration.

Finally, Vanistendael's proposal for a uniform EU corporate income tax applicable to MNEs also exhibits a double-layered structure. It would secure a revenue stream from MNEs deriving substantial benefit from the single market, while simultaneously reducing regulatory fragmentation and internal market distortions.

4.4.3.3. Proposals based on indirect taxation

Indirect taxation instruments proposed as potential EU own resources also vary in the extent to which they contribute to the provision of EPGs, taking into account the revenue generation for EU-level public goods and behavioural or corrective effects that support those goods.

TEDOR can be characterised as an own resource with double contribution to EPGs. Its primary contribution is fiscal, since it will allocate a share of harmonised tobacco excise revenues to the EU budget. Thus, TEDOR can serve as a stable source of financing that could be directed toward public health–related EPGs, such as health and pandemic preparedness. At the same time, increases in excise duties on tobacco products are empirically associated with reductions in consumption.[1314] Therefore, TEDOR will also encompass the behavioural dimension by supporting public health objectives.[1315] In this respect, the instrument simultaneously strengthens revenue capacity and supports an EPG.

By contrast, a VAT-based EU surcharge is a single-layered contribution. It draws on an already harmonised tax base and would generate predictable, broad-based revenue for the EU budget. However, in the form proposed, it seems that it would not affect consumption patterns or correct market failures. Thus, it lacks a regulatory dimension which would represent another layer of contribution to EPGs. If the surcharge was linked to

[1314] See e.g. Frank J. Chaloupka, "Tobacco Tax Increases Remain Most Effective Policy for Reducing Tobacco Use" *A Tobacconomics Research Brief. Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago* (2017).
[1315] European Court of Auditors, *Opinion 04/2026 (pursuant to Article 287(4) TFEU) concerning the proposal for a Decision on the system of own resources of the European Union* COM (2025) 574 final (2026): 5.

differentiated VAT treatment, for example, to incentivise sustainable consumption, then it could also have a second dimension.

4.4.4. Adminsitrability

Own resources proposals score quite differently, if assessed against Adam Smith's classical canons of legal certainty, taxpayers' convenience, and efficiency, now captured under the broader notion of administrability.[1316] Instruments based on existing tax bases and established reporting infrastructures score more favourably. In contrast, those that require new tax bases, complex calculations, or extensive monitoring mechanisms raise administrative challenges. Accordingly, administrability may serve as a filter: theoretically attractive proposals may lose their potential if their implementation costs outweigh their benefits.

4.4.4.1. Proposals based on environmental levies

From an administrability perspective, an obvious benefit of the ETS own resource is a well-established legal and institutional framework which has proved efficient, although it remains administratively complex. The EU ETS requires continuous emissions monitoring, reporting, and verification, which imposes compliance obligations on regulated entities.[1317] This is noticeable in EU ETS compliance costs, which have risen over time, mainly because allowance prices have increased as the system has tightened. Costs went up after 2018 with the introduction of the Market Stability Reserve, then dropped temporarily in 2020 when COVID-19 reduced production and emissions. Compliance costs rose sharply again in 2021 as economic activity recovered and prices surged under more ambitious climate policy and reduced free allocation.[1318] Moreover, ETS's inherent technicality means that certainty for taxpayers is not guaranteed. More precisely, "the EU ETS, like many of the EU climate change policies, are facing uncertainty related to upcoming reviews as well as the impact of the 2040 target."[1319] However, the EU aims to compensate for this uncertainty. For example, the EU ETS operates based on multi-year compliance periods, the duration of which has increased over time. Thus, so-called Phase 3 spans eight years and Phase 4 extends to ten years. The duration of these periods has enhanced regulatory predictability for private operators. Similarly, the institutional practice of publishing the detailed regulatory framework well in advance of each new phase has

[1316] Gadžo, *supra* note 825, at 221.
[1317] OECD, *Implementing Effective Emissions Trading Systems: Lessons from international experiences. OECD Publishing, Paris* (2020). Available at: https://doi.org/10.1787/b7d0842b-en.
[1318] Andrei Marcu, A. et al., "State of the EU ETS Report" (2025): 21. Available at: https://ercst.org/2025-state-of-the-eu-ets-report/.
[1319] Marcu, A. *op. cit.* at 1.

contributed to legal certainty.[1320] Revenue depends on fluctuating allowance prices, and the system lacks predictability for both taxpayers and the EU budget. The auctioning process is centralised and generally efficient, but the need for constant regulatory adjustments increases administrative costs. Overall, the ETS performs well in terms of institutional capacity. However, in terms of simplicity, certainty, and stability, the ETS does not offer such a promising perspective.

The administrability of a CBAM-based own resource poses distinct challenges. Unlike the ETS, which is well-established, CBAM requires extensive coordination at the EU's external border and will apply to non-EU importers. It will apply as of 1 January 2026.[1321] This introduces new administrative tasks: customs authorities will have to verify embedded emissions, notify the Commission about the CBAM-related imports and enforce compliance against non-EU trade partners.[1322] Moreover, a challenge which relates to the certainty of the CBAM levy is that, under the current design, the price of CBAM certificates is tied to the weekly average auction price of EU ETS allowances.[1323] While this ensures consistency between the two systems, it also means that the CBAM own resource fluctuates with market conditions. From an administrability perspective, it seems that such weekly variation brings significantly less predictability for importers. The result is a levy which shifts from week to week, complicating firms' cost projections.[1324] In this sense, CBAM performs less favourably regarding convenience for the taxpayer and the predictability dimension of administrability. Moreover, CBAM revenue will initially be modest and shaped by transitional reporting requirements, meaning that administrative costs may be high in the early years.

Moreover, the proposed levy on non-recycled electronic waste also brings several challenges regarding administrability. However, the perspective on administrability here is different, since there are no entities or persons obliged to bear the cost of the levy. Instead, it will be paid from Member States' national budgets. Nevertheless, it can still be examined from the perspective of efficiency and certainty. Similar to the existing plastic waste levy, it will

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[1320] *Ibid.*

[1321] See the preamble of the Regulation (EU) 2025/2083 of the European Parliament and of the Council of 8 October 2025 amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism (Text with EEA relevance) PE/21/2025/REV/1, OJ L, 2025/2083, 17.10.2025.

[1322] European Commission, *Guidance document on CBAM implementation for importers of goods into the EU*. (2024). Available at: https://taxation-customs.ec.europa.eu/document/download/bc15e68d-566d-4419-88ec-b8f5c6823eb2_en?filename=TAXUD-2023-01189-01-00-EN-ORI-00.pdf.

[1323] European Commission, *Carbon Border Adjustment Mechanism* (2024). Available at: https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en.

[1324] See e.g. Clearblue , CBAM Market Insight: Forecast CBAM Costs & Compliance for EU Imports (2024). Available at: https://www.clearbluemarkets.com/news/cbam-market-insight-forecast-cbam-costs-compliance-for-eu-imports.

most likely rely on accurate and timely reporting from Member States, creating a strong dependence on national data systems.[1325] However, divergent methodologies for measuring, collecting, and verifying e-waste across countries can undermine the certainty of the levy.[1326] For example, plastic levy also suffered from differences in definitions of non-recycled electronic waste or in the calculation approaches, which may result in uneven contributions from similar economic activities in different Member States.[1327] Thus, ECA noted that "there is a risk that the data quality is not fit-for-purpose in the context of own resource calculations. Data for e-products put on the market may be under-reported, similarly to the data for plastics packaging."[1328] These factors suggest that its practical effectiveness and predictability may be questionable.

Finally, the FINE-for-EU mechanism, which proposes a Pan-European Climate Fund financed through contributions from MNEs, presents a high level of administrability. Its main strength lies in the clear identification of the taxpayer base: MNEs operating within the EU single market are well-defined. Thus, the proposed climate contribution would benefit from existing corporate reporting systems, so the administrative burden might be moderate compared to creating an entirely new levy. Nevertheless, the proposal also faces a few obstacles. Harmonisation across Member States is essential, as differences in corporate tax systems, accounting practices, and enforcement capacities could undermine uniformity and legal certainty. The novelty of the proposed mechanism implies that rules, thresholds, and definitions may evolve, limiting predictability for businesses. Finally, its administrability would be heavily dependent on strong EU-level coordination, uniform rules, and robust auditing capacity to ensure both efficiency and certainty.

[1325] On issues regarding application of the plastic levy see: European Court of Auditors, *Special report 16/2024: EU revenue based on non-recycled plastic packaging waste – A challenging start hindered by data that is not sufficiently comparable or reliable* (2024).

[1326] European Court of Auditors, *Opinion 04/2026 (pursuant to Article 287(4) TFEU) concerning the proposal for a Decision on the system of own resources of the European Union (COM(2025) 574 final. (2026*): 20. (hereinafter: Opinion 04/2026).

[1327] In its 2024 report, the ECA warned about issues with definitions for the application of the plastic waste levy. Auditors identified that at least one critical provision, such as the definitions of "plastic" and "packaging" or the methodology for calculating plastic waste generated and recycled, had not been properly implemented in the Member States. According to the auditors, resolving these discrepancies may take several years. The aforementioned issues can affect the accuracy of their reported contributions. See European Court of Auditors *Special report 16/2024: EU revenue based on non-recycled plastic packaging waste – A challenging start hindered by data that is not sufficiently comparable or reliable* (2024). Available at: https://www.eca.europa.eu/ECAPublications/SR-2024-16/SR-2024-16_EN.pdf

[1328] European Court of Auditors, Opinion 04/2026, *supra* note 1326, at 20.

4.4.4.2. Proposals based on direct taxation

The Commission's CORE proposal performs relatively well on administrability grounds, compared to previous attempts to touch upon corporate taxation, such as the CCCTB. More precisely, without introducing consolidation or formulary apportionment, it avoids many of the complexities inherent in the former CCCTB design.[1329] For taxpayers, CORE should reduce compliance burdens. On the one hand, CORE does not require preparing a consolidated EU-wide tax return. Companies continue filing separate returns in each Member State, but the underlying calculations are harmonised, avoiding the complex data restructuring and system changes demanded by the CCCTB. Furthermore, with no apportionment formula or consolidation rules to interpret, taxpayers would face fewer uncertainties and fewer potential disputes. By eliminating the need to compute a single EU-wide tax base and allocate it among Member States, CORE keeps the existing national assessment systems intact. Administrations can rely on familiar audit methods and information flows. According to the Commission, "net turnover is sufficiently standardised across Member States to serve as the basis for the own resource, whereas there is no equivalent harmonised profit base at the EU level."[1330] Because of this, CORE scores higher on the efficiency dimension of administrability. However, the administrability of CORE presupposes the ability of national tax administrations to implement common definitions, documentation requirements, and verification practices consistently, since it will be collected by the Member States on behalf of the EU.[1331] Differences in administrative capacity between Member States may still generate enforcement issues. As the ECA stressed, "many details on how this own resource will be implemented remain unclear, such as what data will be used and when, and how it will be verified."[1332] Thus, having in mind the current lack of information about this proposal, this analysis is limited.

When it comes to academic proposals, the FINE for the EU proposal by Scherleitner and Traversa calls for an EU surcharge applied to a broadly harmonised corporate tax base. This approach scores high on administrability, as it directly builds on existing national

[1329]The earlier CCCTB proposal, based on consolidation and formulary apportionment, faced several administrative challenges. CCCTB would have required not only harmonising the corporate tax base but also establishing a unitary taxation system in which the EU must determine the consolidated profit of a multinational group and apportion it across Member States according to a formula. From the perspective of administrability, this raised issues. MNEs would face new reporting categories that do not align with existing national tax data. The latter would subsequently require internal restructuring of accounting systems. On the other hand, national tax administrations would need new audit capacities to verify cross-border consolidated accounts, which would also increase administrative costs, thus undermining its efficiency. See Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) SWD(2016) 341 final, SWD(2016) 342 final. (Hereinafter: CCCTB proposal).

[1330] European Court of Auditors, Opinion 04/2026, at 22.

[1331] European Court of Auditors, Opinion 04/2026, at 22.

[1332] European Court of Auditors, Opinion 04/2026, at 23.

assessments. Because the surcharge is tied to a harmonised base, the scope of taxation is predictable. No new tax base is created. Taxpayers would file as usual with their national administrations, while the EU levy would be assessed on the same basis, ensuring minimal additional compliance burden. When it comes to efficiency, Member States' tax administrations already possess the necessary audit, reporting, and enforcement capacities. The main administrative challenges concern ensuring uniform interpretation of the harmonised base, but these are far more manageable than building a new European tax from scratch.

Finally, Vanistendael's proposal, an EU-level corporate income tax applied to multinational enterprises with annual revenues above EUR 750 billion, offers a distinct administrative profile. Because it targets only a very limited number of extremely large firms, administrability is improved by the narrow scope. These entities already maintain high-quality reporting systems and are subject to extensive documentation obligations under international tax standards. The small number of affected firms might enhance the clarity and stability of the rules because it reduces administrative effort. However, because the EU would need to assess, verify, and audit these entities directly or through coordinated supervision, new administrative structures would still be required. While far more administrable than a system covering the entire corporate sector, Vanistendael's model nevertheless introduces a new EU-level assessment, meaning that the EU, not Member States, must develop enforcement tools. Thus, administrability improves due to the narrow scope but remains burdened by the novelty of the tax base and the need for an EU audit capability.

4.4.4.3. Proposals based on indirect taxation

Proposals for the EU's own resources based on indirect taxation generally perform well when assessed against the classical administrability principles articulated by Adam Smith. The TEDOR proposal derives its administrability largely from the existing harmonised structure of tobacco excise duties across the EU. The Commission's revenue estimates for TEDOR are built on this structure, drawing on the current directive and the proposed recast. The synchronisation of the directive's revision with the introduction of TEDOR ensures that the underlying tax base is updated and stabilised before a portion of it is assigned to the EU level. The taxpayer will interact only with the national excise system. Moreover, the collection and monitoring systems for tobacco excises are already operational. No new administrative structures would be required beyond adjustments to the EU revenue transfers. Moreover, the Commission's strategy of first increasing national excise revenues through the directive's recast effectively creates fiscal space for the EU share. This enhances the overall efficiency of the proposal.

The scholarly proposal for an EU-level VAT surcharge similarly scores highly on administrability due to the exceptionally harmonised nature of the VAT system. EU VAT law provides a high degree of legal certainty, underpinned by a harmonised directive and uniform definitions of taxable transactions. The reliability and uniformity of the VAT system make it well-suited to supporting an EU-level levy with predictable outcomes. A VAT surcharge should not add additional compliance steps for businesses. The surcharge would function as an addition to an already familiar tax, thereby satisfying the canon of convenience. For Member States, the collection process mirrors current procedures for the VAT-based own resource, further reducing any operational burdens. VAT is one of the most efficiently collected taxes in the EU. Implementing a surcharge might cause some administrative costs. The ability to generate substantial and predictable revenue through an established infrastructure makes the VAT surcharge one of the most administratively efficient proposals.

4.4.5. Overall assessment

The analysis of the selected proposals against the four selected benchmarks, subsidiarity and proportionality, policy alignment with EPGs, administrability, and revenue potential revealed slight variations among the own resource proposals. Although each proposal responds to the fiscal needs of the Union, their performance across the benchmarks differs.

In general terms, all environmental policy-aligned instruments demonstrate the strongest overall justification: they score well on subsidiarity and proportionality. The latter stems from the nature of climate change, being an issue that transcends national borders. Thus, climate action would be more efficient if managed from the highest level of government. Moreover, the EU ETS and CBAM offer clear links between revenue and expenditure, thus embodying the policy goals of reconnecting these two sides of the EU budget. On the other hand, the electronic waste levy does not offer this particular benefit, since it flows to the general budget. Overall, environmental levies also score well on the administrability benchmarks since they can benefit from already existing collection structures. However, all the environmental-related proposals suffer when it comes to their assessment against the revenue collection benchmark. More precisely, both the EU ETS and CBAM suffer from being volatile. Also, in the long run, the EU ETS, CBAM and electronic waste levy are expected to raise less and less revenue.

Scholarly proposal by Scherleitner and Traversa reflects that it stems from an in-depth analysis of EUs own resource legal framework and current policy goals. The FINE-for-EU mechanism is designed to finance pan-European green investment projects that function as an

EPG. By directing resources toward objectives whose benefits extend beyond national borders, the instrument gains its justification under the principle of subsidiarity. In addition, it is completely aligned with the provision of EPGs, since it is envisaged to fund the Social Climate Fund. Moreover, by earmarking revenues for pan-European green investment, the mechanism would directly link fiscal capacity to environmental objectives. It is also designed taking into account its administrability, and it would rely on the already existing system for corporate taxation.

When it comes to proposals based on direct taxation, the CORE proposal may be sufficiently justified regarding subsidiarity and proportionality. More precisely, it is based in principle that revenue collection should occur at the level where the tax base is defined and controlled. This corresponds with subsidiarity. Having in mind that its enforcement requires the level of coordination that only the Union can provide, it is justified to impose such a levy on the supranational level. Its revenue potential is quite stable, especially compared to the EU ETS and CBAM. On the other hand, the mentioned environmental levies score better against the benchmark of contribution to EPGs. CORE could raise revenue, thus fulfilling its fiscal function. However, its regulatory function does not exist in the same way as it is present with environmental proposals. Finally, it scores well against the administrability benchmark, having in mind that Member States' tax authorities would not need to employ any new methods for its calculation. Moreover, it might also reduce compliance costs in general, which is another advantage of its design. Furthermore, the withdrawal of the statistical-based own resource proposal illustrated that high revenue potential alone is insufficient to secure political support, as seen with the 2023 statistical resource proposal. Member States' preferences remain shaped predominantly by perceived intrusions into national tax sovereignty and administrative burden, rather than by fiscal efficiency in financing Union-level public goods.

Besides CORE, there are no official Commission proposals based on corporate taxation. However, the mentioned proposals developed by prominent legal scholars were also evaluated. Thus, it is not surprising that both proposals by Vanistendael and Scherletiner and Traversa's proposal align with fundamental principles of subsidiarity and proportionality, as well as administrability. The latter stems from the fact that these proposals would use an already existing network for the collection of CIT. Thereby, both proposals have the potential to offer a stable source of revenue to the EU budget.

TEDOR is currently an actual proposal based on indirect taxation. The TEDOR proposal aligns well with the subsidiarity and proportionality benchmark. Excise duties are already partially harmonised to prevent market distortions and cross-border spillovers; a limited EU-

level call rate builds on an established supranational framework. Assigning a small, uniform share of excise revenues to the EU budget does not exceed what is necessary to achieve its objectives and preserves Member States' discretion over rates, design, and collection. Consequently, TEDOR can be regarded as a proportionate Union intervention to support shared fiscal and public-health goals, and it cannot be achieved as effectively by Member States acting alone. It scores highly regarding the support of EPGs, because it will not only raise revenue, but also support reducing tobacco consumption. It also fulfils the administrability criteria, since it will be based on already existing harmonised structure of tobacco excise duties across the EU, as well as the already operating collection and monitoring systems for tobacco excises. Moreover, it will be convenient for taxpayers since they will interact only with the national excise system, making the EU contribution effectively "invisible". Finally, ECA pointed out that the current revenue potential of this proposal cannot be realistically assessed, since at this moment it is not clear whether it will be connected to the directive recast.

The VAT surcharge, as another scholarly proposal, scores well in all benchmarks, except the multiple contribution to EPGs. A VAT-based own resource aligns with subsidiarity because VAT is already fully harmonised at the EU level, meaning that allocating a small, uniform share to the Union builds on an existing supranational framework without encroaching on national fiscal autonomy. The latter also indicates that such own resource would not be demanding in terms of administrability. In its proposed form, the VAT surcharge offered no regulatory effects or contribution to EPGs. However, it did offer solid revenue potential because even a modest EU-level rate applied to the broad and stable VAT base would yield predictable income.

Taken together, this benchmark-based evaluation reveals a clear pattern. Environmental instruments perform well in subsidiarity, proportionality, and policy alignment, yet their long-term revenue trajectories are unstable. Indirect-tax-based mechanisms, such as TEDOR, perform strongly on administrability and respect for national sovereignty but contribute modestly to EPG provision and offer limited scope for a durable revenue strategy. Against this backdrop, corporate-tax-based resources can meet the subsidiarity and proportionality standards, may be integrated into the existing CIT framework and offer sustainable revenue potential. Their stability derives from a broad and resilient tax, whose profits are closely tied to the functioning of the internal market, thereby justifying EU-level intervention. Moreover, the cross-border nature of corporate profit shifting and tax competition indicates the limits of national measures and the need for coordinated supranational action. If combined with earmarking, such own resources could explicitly contribute to EPGs and reconnect EU revenues

and expenditures. For these reasons, a corporate tax–based own resource emerges as a valid option for the future development of the EU's revenue system, capable of supporting European public goods, reinforcing the Union's fiscal autonomy, and contributing to the long-term sustainability of the budget, especially considering the repayment obligations arising from NGEU.

OR proposal	Subsidiarity and proportionality	Revenue potential	Contribution to EPGs	Administrability
EU ETS	Strong alignment	Volatile and likely to decline over time	Double: 1. emissions reduction 2. directly funding climate policies	High: established system
CBAM	Strong alignment	Volatile and likely to decline over time	Double: 1. prevents carbon leakage 2. directly funding climate policies	Medium: central enforcement, but border complexities
E-waste levy	Strong alignment	Likely to decline over time	Single: 1. Promotes recycling, but no explicit connection between revenues and expenditures for EPGs. Indirect contributions are possible via the EU budget.	Medium: Reporting challenges
FINE-for-EU (CIT surcharge)	Strong alignment	Stable, but limited by its scope	Double: 1. steering MNEs' actions 2. directly funding climate policies	High: established system
VAT surcharge	Strong alignment	Stable	Single: 1.It raises revenue, but no explicit connection between revenues and expenditures for EPGs. Indirect contribution possible via the EU budget.	High: based on the existing national VAT collection system
TEDOR	Strong alignment	Stable, likely to decline over time	Double: 1. reduces tobacco use 2. It raises revenue, but no explicit connection	High: based on existing excise infrastructure

OR proposal	Subsidiarity and proportionality	Revenue potential	Contribution to EPGs	Administrability
			between revenues and expenditures for EPGs. Indirect contribution possible via the EU budget	
CORE	Moderate alignment: targets some cross-border companies	Stable	Single: it raises revenue, but no explicit connection between revenues and expenditures for EPGs	High: uses existing accounting data and reporting obligations.

4.5. The missing piece? Corporate income taxation as a tool for fiscal integration

The road towards deeper fiscal integration within the EU has been long and fraught with numerous obstacles, particularly in the realm of corporate taxation. Although it stands out as a possible revenue source for the EU and an instrument for advancing EU policy objectives, its potential has not been fully utilised on the supranational level so far. Despite decades of economic integration, direct taxes, including CIT, remain within the tight grip of Member States' authority. The latter resulted in a patchwork of different tax rates, tax bases and incentives. For example, in 2025, Hungary and Bulgaria had the lowest statutory tax rates among the EU Member States, with Hungary's tax rate at 9 % and Bulgaria's at 10 %. At the complete opposite end, Malta had a statutory tax rate of 35 %, followed by Portugal with 30.5 %.[1333] However, unanimity requirements and divergent national interests have often slowed progress, leaving the EU with only partial harmonisation and persistent disparities in effective tax rates. Such significant differences in statutory corporate tax rates can cause profit shifting and tax-motivated investment decisions, distorting competition and undermining the EU single market.[1334]

The necessity to harmonise corporate taxation was recognised already in the 1962 Neumark report.[1335] In general, the Neumark Report made a clear distinction between

[1333] See Cristina Enache, Corporate Income Tax Rates in Europe (2025). Available at: https://taxfoundation.org/data/all/eu/corporate-income-tax-rates-europe/.
[1334] European Parliament, *Removal of taxation-based obstacles and distortions in the Single Market in order to encourage cross-border investment.* Executive Summary Requested by the FISC Subcommittee (2022).
[1335] Cees Peters, "A Governance Analysis of BEFIT: How the Member States' Wish to Obtain more Regulatory Authority is Driving a Revolution," *EC Tax Review* 32, no. 5 (2023). 195.

harmonisation and unification, emphasising that it is not necessary to achieve the full unification of national tax systems.[1336] Even in this early stage of integration, the Neumark Committee stressed that it is important to find a compromise between the necessity of eliminating the fiscal disparities among the Member States to ensure the proper functioning of the internal market on the one hand, and not interfere with the national policies that have a strong connection with the historical and social evolution of each Member State.[1337] When it comes to direct taxation, the Neumark Committee considered it desirable to levy the same type of single tax on income in all Member States with the same structure of scales, even if the rates were different. As far as company taxation was concerned, the committee recommended a special tax on companies.[1338]

Following the conclusion of the Neumark Committee, the Commission issued a programme in 1967 aimed at harmonising direct taxation. This initiative was a part of the broader agenda for tax harmonisation and reflected that the alignment of corporate tax systems as a prerequisite for advancing towards a unified single market.[1339] In the following years, efforts to harmonise corporate income tax continued. The 1970 Van den Tempel Report emphasised the need for coordinated corporate tax structures to support the internal market. Both of the reports served as a backbone for the Commission's 1975 proposal for harmonising corporate tax systems and dividend withholding, justified by the parallel push toward Economic and Monetary Union.[1340] Although the 1979 Nyborg Report of the European Parliament endorsed the need for deeper harmonisation, political resistance rooted in national sovereignty prevented progress. However, these early initiatives encountered political and technical resistance, and by 1980, the European Commission formally recognised the improbability of achieving comprehensive corporate tax harmonisation.

Consequently, the focus shifted to more targeted measures designed to reduce tax obstacles to the internal market.[1341] This eventually led to the adoption of specific legal instruments. In 1990, the EU adopted the Parent–Subsidiary Directive[1342] aimed to remove

[1336] The EEC Report on Tax Harmonisation: the Report of the Fiscal and Financial Committee (so-called Neumark report,1962). p. 99, 102. Available at: https://koflerge.org/wp-content/uploads/2019/01/neumark.pdf.
[1337] Neumark report at 99.
[1338] Neumark report at 119.
[1339] Christiana Hji Panayi, "The Early Proposals for a European Corporate Tax Policy" in *Studies in the History of Tax Law, Volume 9*, ed. Peter Harris, Dominic de Cogan, (Oxford: Hart Publishing,2019): 374.-375.
[1340] Panayi, op.cit. at 376-379.
[1341] European Parliament, *Fact Sheets: Direct taxation: personal and company taxation* (2025): 1-2.
[1342] It was adopted as the Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. Currently, it is in force as the Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (recast) OJ L 345, 29.12.2011, pp. 8–16.

double taxation of cross-border profit distributions within corporate groups and the Arbitration Convention[1343], establishing a mechanism to resolve transfer-pricing disputes. In 2003, another step towards CIT harmonisation was the Interest and Royalties Directive[1344], to eliminate withholding taxes on intra-group payments to ensure taxation occurs in the Member State of residence. Together, these instruments form a hybrid system of coordination, addressing double taxation through targeted harmonisation and dispute-resolution mechanisms rather than a unified EU-wide corporate tax system.[1345]

This overview indicates that the efforts to harmonise CIT in the EU have faced significant political challenges, especially when the proposals were aimed at harmonising the corporate tax base. The most prominent examples of such attempts were the CCCTB and CCTB proposals. The Commission launched a CCCTB proposal in 2011 to harmonise the corporate tax base and consolidate multinational corporations' profits across the EU, while Member States retained control over tax rates. However, Member States rejected this proposal and the Commission withdrew it. A similar initiative resurfaced in 2016, proposed as a two-step approach: introducing a common corporate tax base (CCTB) and a common consolidated corporate tax base (CCCTB). Despite the Commission's efforts, the second attempt was not successful either.

Nevertheless, EU institutions did not give up the attempts at harmonisation. Among other achievements, the adoption of the Global Minimum Tax Directive (so-called GLOBE Directive) stands out as a recent successful step in this direction. The mentioned Directive reflects ongoing attempts to address profit shifting and ensure a fair allocation of taxing rights, in line with the OECD's Pillar Two initiative.[1346]

Moreover, it is necessary to mention the adoption of Regulation (EU) 2022/1854 on an emergency intervention to address high energy prices,[1347] which is a peculiar instrument in the EU's corporate tax arena. The title of the Regulation does not, in any form, reveal that it is, in fact, closely connected to corporate taxation. However, the Regulation obliged the Member States to impose an additional tax on companies or PEs with activities in the crude petroleum,

[1343] 90/436/EEC: Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises - Final Act - Joint Declarations - Unilateral Declaracions, OJ C 160, pp. 11–22 (CS, ET, LV, LT, HU, MT, PL, SK, SL) OJ L 225, pp. 10–24 (ES, DA, DE, EL, EN, FR, IT, NL, PT).
[1344] Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ L 157, 26.6.2003.
[1345] Panayi, *supra* note 1339, at 380.
[1346] See explanatory memorandum of the Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, ST/8778/2022/INIT, OJ L 328, 22.12.2022.
[1347] Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices ST/12521/2022/INIT OJ L 261I, 7.10.2022.

natural gas, coal and refinery sectors which obtained windfall gains due to the unpredictable events in the energy markets. Although the Commission carefully chose the nomenclature for such a measure in the form of "solidarity contribution", it is, in fact a temporary tax on excess corporate profit.[1348] The Commission stated that its introduction is "a joint and coordinated measure which makes possible, in a spirit of solidarity, the generation of additional proceeds for national authorities to provide financial support to households and companies heavily affected by the soaring energy prices, while ensuring a level playing field across the Union. It should be applied in parallel to the regular corporate taxes levied by each Member State on the companies concerned."[1349] Its successful adoption was also supported because its legal basis was found in Article 122 TFEU, which allows the qualified majority voting procedure. Although it was designed as a temporary instrument, its adoption is a significant step in the process of fiscal integration. More precisely, unlike many previous initiatives touching upon direct taxation, where even minimal interference by the Union has triggered strong sovereignty-based resistance, Member States accepted a Regulation that effectively required that they impose a tax on excess profits. This stands in sharp contrast to their usual reluctance. One of the reasons for its acceptance might be found in the fact that the solidarity contribution channelled revenue to national budgets, not to the EU budget. In other words, Member States' sensitivity to EU involvement in taxation appears significantly reduced when the fiscal benefits accrue domestically.

Finally, the importance of corporate income tax as a tool for fiscal integration is underscored by its dual role. Not only it might generate substantial revenue, but it could also shape investment decisions, cross-border business activity, and the overall competitiveness of the European economy. As the EU seeks to strengthen its fiscal capacity and respond to new economic challenges, the harmonisation of corporate income taxation emerges as an important, yet still missing, piece in the architecture of fiscal integration. This subchapter explores the arguments in favour of corporate taxation as a basis for the potential new own resource, assessing its potential to contribute to a more cohesive and resilient fiscal union.

[1348] See also Joachim Englisch, "EU Excess Profits Tax Ultra Vires? On the Limits of Article 122 TFEU in EU Tax Policy," *EC Tax Review* 34 no.3 (2025): 89; Bastien Lignereux, "Is the EU Contribution on Windfall Profits Based on the Right Treaty Provision?" *Intertax* 51, no.11 (2023): 732-740.

[1349] Para 14, Explanatory memorandum of the Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices ST/12521/2022/INIT, OJ L 261I, 7.10.2022.

4.5.1. Fiscal federalism: lessons for the EU public finance legal framework

The EU's public finance and its legal framework are a unique construct, like the EU itself. Unlike traditional federal states, the EU operates as a supranational legal entity with divergent sovereign powers, depending on the policy area. The latter adds another level of complexity in this multi-level governance framework. What proved to be an especially sensitive subject is the allocation of fiscal powers, public spending policies and fiscal discipline among Member States.[1350]

The quest for a solution that would grant the EU additional fiscal powers while remaining within a legal framework in which Member States are the masters of fiscal policy is a difficult task.[1351] Against this background, fiscal federalism theory could be useful for understanding and evaluating additional proposals. At its core, fiscal federalism addresses how functions and resources should be optimally divided among different levels of government to achieve the objectives of efficient resource allocation, equitable redistribution, and macroeconomic stabilisation.[1352] By drawing on fiscal federalism, legal analysis can move beyond doctrinal interpretation to consider the broader implications of fiscal arrangements for governance, accountability, and the legitimacy of EU financial decisions.[1353] Thus, a broader perspective on the EU public finance reform would benefit from an interdisciplinary approach, including the insights from the fiscal federalism theory.

Although it was pointed out that the EU's public finance system has many deviations from the classic fiscal federalism theory,[1354] it is also important to note that "there is not one single sacrosanct form of federalism, but that fiscal federalism in particular can take on many different forms."[1355] Fiscal federalism, from the normative perspective, aims to identify the optimal division of public tasks and their funding, while simultaneously achieving a balance between unity and diversity. Against this background, EU citizens have started to expect more public goods from the EU, while its fiscal powers remained limited in scope. The latter

[1350] On a similar note, see also Ian Begg, "Fiscal Federalism, Subsidiarity and the EU Budget Review," *Report No. 1/2009.Swedish Institute for European Policy Studies* (2009).
[1351] On a similar note, see also Vanistendael, *supra* note 1123, at 401.
[1352] See Wallace E. Oates, "An Essay on Fiscal Federalism," *Journal of Economic Literature* 37, no.3 (1999): 1120-1149.
[1353] Thus, in the aftermath of COVID-19 historical reforms and the mutualisation of debt, the European Central Bank published a paper which explores the possibilities for the EU's fiscal capacity, grounded in the fiscal federalism theory and its comparative implementation across different states. See more Pablo Burriel et al., "A fiscal capacity for the euro area: lessons from existing fiscal-federal systems". *ECB Occasional Paper Series. No 239* (2020).
[1354] Hrvoje Šimović, "Fiscal System and Fiscal Relations in the European Union: Political Restraints and Alternative Approach to Public Finance" *EFZG working paper series*, no. 04 (2007): 1-11.
[1355] Vanistendael op.cit. *supra* note 1123.

represents an issue from the fiscal federalism perspective.[1356] It was emphasised during times of crisis, such as the global financial crisis and the COVID-19 pandemic, that a supranational solution was expected from the EU institutions.

If one seeks to address the issue outlined above through the lens of fiscal federalism theory, a logical starting point is the classic division of government functions: allocation, redistribution, and stabilisation. Fiscal federalism holds that the functions of redistribution and stabilisation are most effectively carried out by the central (or highest) level of government, due to its broader fiscal capacity, mobility of economic agents, and ability to respond uniformly to macroeconomic shocks.[1357] Moreover, according to fiscal federalism, taxes on highly mobile bases, like corporate profits, should be centralised to prevent harmful tax competition and ensure efficient resource allocation. More precisely, "central taxation of bases that are highly mobile across regions minimises distortions; reciprocally, less mobile bases are well suited for subnational government taxation. When tax avoidance leads to a shift of the tax base across regions, it gives rise to economic inefficiency because of suboptimal location."[1358] Economists proved that when several governments are competing for a mobile tax base, this will result in a sub-optimal provision of public goods. That is, the provision of public goods would be insufficient in volume and quality compared to an equilibrium with centralised taxation, due to the existence of horizontal tax externalities.[1359] Under this lens, assigning the EU a role in regulating and partially collecting CIT aligns with the fiscal federalism principles.

Moreover, from the perspective of expenditures to ensure public goods, Oates pointed out that allocation of national goods, such as security and defence, should be provided at the national level. On the other hand, decentralised governments are better for local public goods tailored to jurisdiction-specific preferences and costs.[1360] This principle raises the question of how the EU, as a unique supranational entity tasked with increasingly state-like responsibilities, fits into the architecture of fiscal federalism. With this assumption as a starting point, the normative implications of fiscal federalism theory suggest that the EU should possess regulatory authority over certain taxes, most notably the corporate income tax, which are best

[1356] Alicia Hinarejos and Robert Schütze "Introduction" in *EU Fiscal Federalism: Past, Present, Future*, ed. Alicia Hinarejos and Robert Schütze (Oxford: Oxford University Press, 2023): 2-3.
[1357] Oates, op. cit. *supra* note 1352, at 1120. See also Richard Musgrave, "Economics of Fiscal Federalism," *Nebraska Journal of Economics and Business*, 10 no.4 (1973): 3-13.
[1358] Julio Escolano, "Distribution of fiscal responsibilities in federations," in *Designing a European Fiscal Union: Lessons from the Experiences of Fiscal Federations*, ed. Carlo Cottarelli and Martine Guerguil (Routledge, 2014). Available at: https://www.elibrary.imf.org/display/book/9781138783225/ch001.xml.
[1359] Candau and Le Cacheux, *supra* note 1225, at 3.
[1360] Oates, *supra* note 1352, at 1121,1122.

suited to support supranational public goods, such as defence and security, environmental sustainability, research and innovation, digital infrastructure, and transnational cohesion, as policy areas that surpass national boundaries and demand collective fiscal effort.

Furthermore, although classical fiscal federalism theory proposes that redistribution and stabilisation should be carried out at the highest level of government, this premise faces serious challenges when applied to the EU. Vanistendael pointed out the EMU and the internal market as two key objectives „shaping the institutional relationship for the distribution of the taxing and spending powers between the various levels of government in the European Union. "[1361] From this perspective, it becomes both logical and necessary to consider the EU as a *de facto* highest level of government within a multilayered fiscal order. The first issue that fiscal federalism highlights is the lack of a genuine central fiscal authority, since the EU budget represents less than 1,5 % of the Union's GDP.[1362] Moreover, "regarding the lessons of the public choice theory, it is clear that the EU is at the wrong end of the spectrum of efficiency and effectiveness."[1363] As a result, its capacity to perform meaningful redistributive or stabilisation functions remains limited. The theory, as originally developed by Musgrave and later refined by Oates, presumes the existence of a centralised authority with sufficient democratic legitimacy and fiscal instruments at its disposal. While monetary policy is centralised within the euro area, fiscal policy remains largely national, creating the well-documented asymmetry of the EMU. This imbalance has been particularly evident during crises, such as the eurozone debt crisis or the COVID-19 pandemic, where the EU was compelled to create *ad hoc* instruments like the Recovery and Resilience Facility to fill gaps left by the absence of a central fiscal stabiliser.[1364]

Thus, rather than opting for the basic assumption that redistribution and stabilisation must be centralised, having in mind the specifics of the EU, a hybrid solution adapted for a specific socio-economic context seems the best option. Although fiscal federalism leans towards centralisation, it is not likely that it will happen in the full sense of this word.[1365] Vanistendael presented several reasons which prevent such a scenario. Regarding distribution, differences in social protection models among Member States would make centralised distribution from the supranational level impossible. Moreover, effective federalisation would

[1361] Vanistendael, *supra* note 1123.
[1362] Carlo Cottarelli, "A European fiscal union: the case for a larger central budget," *Economia Politica* 33 (2016): 3
[1363] Auke R. Leen, "The Revenues of the European Union: Past, Present, and Future," in *International Relations, Culture and Global Finance*, ed. Akis Kalaitzidis (ATINER, 2011): 263-274.
[1364] See e.g. Fabbrini, *supra* note 11, at 186, 203.
[1365] See Vanistendael, *supra* note 1123, at 436.

require transferring significant taxing and spending power (20-25 % of GDP) to the EU level, which would face significant political backlash. Finally, historical examples, such as the USA, show that achieving full fiscal federalism takes decades or centuries. The EU is unlikely to achieve such integration in the foreseeable future.[1366]

These arguments highlight the complexity and impracticality of full federalisation in the EU currently. Instead, the EU should seek *sui generis* instruments which will complement its *sui generis* structure. In this respect, the corporate income tax emerges as a particularly promising candidate for addressing the EU's fiscal limitations. As a tax with a strong link to economic capacity, a clear potential for harmonisation, and growing political relevance in the context of global minimum tax debates, CIT could serve as a source of revenue.

Against this background, compelling arguments to confer the Union a portion of corporate income tax revenue may be found in comparative analysis. For example, García Antón emphasised that comparative fiscal federalism analysis indicates that the EU budget would not be sustainable in the long term unless the Union has access to revenue derived from VAT and income taxes, especially corporate income tax.[1367] Moreover, his analysis highlighted that German fiscal federalism regarding CIT employs the shared system, where both the federal government and the *Länder* jointly determine the tax base and share revenues. More precisely, „tax bases and rates are determined at the federal level, whereby a majority of the *Bundesrat* and thus the approval of the executives of the *Länder* is required. That means that representatives in the *Bundesrat*, on behalf of the *Länder*, determine the definition of tax bases and tax rates of these shared taxes in cooperation with the federal government representatives. "[1368] Canada opted for a two-tier approach to CIT, with a separate federal income tax and provincial income taxes.[1369] Brazil also employs revenue sharing when it comes to the allocation of CIT. Thus, Article 157 of the Constitution of the Federative Republic of Brazil stipulates that "proceeds from collection of the federal tax on income and earnings of any nature, withheld from income paid, by whatever instrument, by them, their autarchies and by foundations they institute and maintain" shall be allocated to the States and Federal District.[1370] On the contrary, in Spain and Australia, the central level of government has exclusive authority

[1366] Vanistendael, *op. cit.*
[1367] Ricardo García Antón, "Mirroring Comparative Fiscal Federalism to Design the EU Revenue Side," *Intertax* 52 no. 11 (2024): 684-704.
[1368] García Antón, *op. cit.* at 691.
[1369] The Government of Canada, Provincial and territorial corporation tax (2025). Available at: Provincial and territorial corporation tax - Canada.ca
[1370] See Article 157 of the Constitution of the Federative Republic of Brazil. English translation available at: Brazil 1988 (rev. 2017) Constitution - Constitute.

over CIT. All in all, comparative experiences show that "income taxes (CIT and PIT) are often administered centrally to minimise costs – occasionally with formal or informal agreements between the centre and subnational governments."[1371] Although CIT is centralised in some federal states, such as Australia and Canada, fully centralised CIT without revenue-sharing mechanisms in the EU is not a possible scenario.

Although the Australian or Spanish model is not an applicable in te context of the EU's public finance legal framework, it does support the argument that CIT is best managed at the highest level of government. Conversely, the German model might serve as an inspiration for the EU's reform of CIT. It balances central coordination with subnational involvement and helps mitigate the fiscal imbalance, a core issue in the EU, where the Union lacks direct taxing power but bears growing expenditures. Applying a shared CIT model at the EU level, where Member States retain input into the base or rate design, but revenue is partially allocated to the EU, could promote both efficiency and political acceptability. If earmarked for EU-level goals, such as climate action, digital transition, or cohesion, it could help achieve the allocative and even redistributive functions that are currently underdeveloped at the supranational level.

4.5.2. Corporate taxation and the EU's policy objectives

As previously demonstrated, advocating for any new fiscal proposal within the EU requires a nuanced understanding of its historical evolution, current institutional dynamics, and long-term policy ambitions. Accordingly, the debate over corporate income tax reform, and its potential role as a future own resource, must be examined through the kaleidoscope of the Union's policy priorities. This section will focus on the policy goals related to corporate taxation, starting with the issue of tax avoidance and tax evasion.

Since the creation of the EEC, the Commission and tax experts recognised that an uncoordinated direct tax system was an obstacle to the functioning of the internal market. However, political and legal constraints kept progress minimal for decades. Unlike indirect taxation, where the Treaties provided a solid harmonisation framework, direct taxation relied on weak legal bases and unanimity, which stalled legislative initiatives.[1372] This landscape began to shift in the late 1990s, when growing concerns about harmful tax competition elevated corporate tax avoidance to the EU policy agenda. In 1997, this culminated in the ECOFIN agreement on the first comprehensive tax package, including the Code of Conduct for business taxation and commitments to advance directives on savings, interest and royalty payments. The

[1371] Escolano, *supra* note 1358.

[1372] Claudio M. Radaeli, "*Harmful Tax Competition in the EU: Policy Narratives and Advocacy Coalitions*" Columbia International Affairs Online (1999). Available at: https://ciaotest.cc.columbia.edu/isa/rac01/.

emergence of a shared narrative around harmful tax competition played a key role in enabling this renewed political momentum.[1373]

Nowadays, tackling tax avoidance and profit shifting is a global effort, led by the OECD and its BEPS initiative. Having in mind the importance of this initiative, we will briefly address its origin and most important features, before moving the focus back on the EU. Hence, it was the aftermath of the global financial crisis which drew the attention of politicians to the issues of tax avoidance and tax evasion.[1374] More precisely, it was noted that base erosion and profit shifting (BEPS) strategies used by MNEs to reduce their tax burden result in global revenue losses of approximately USD 100 - 240 billion per year, representing 4-10 % of total corporate income tax revenues worldwide.[1375] The loss is caused by MNEs' practices of shifting profits to low or no-tax jurisdictions with minimal economic activity, or by eroding tax bases through deductible payments such as interest or royalties. The latter had also impacted the EU. More precisely, low-tax jurisdictions such as Ireland, Luxembourg, and several Eastern European Member States have adopted competitive tax strategies that have pressured the rest of the EU to follow a similar path. As a result, many countries have shifted their revenue structures toward less mobile tax bases, including real property, consumption, and labour. This trend shifted the fiscal burden on immobile taxpayers, including domestic firms and workers. On the other hand, MNEs continued to exploit tax loopholes. The cumulative effect has been sustained tax competition across the Union, driving statutory corporate tax rates downward.[1376]

Thus, in 2012, the OECD and G20 launched the Base Erosion and Profit Shifting project, commonly referred to by its acronym, BEPS, which was named after its objective of addressing tax base erosion and profit-shifting strategies. The project resulted in 15 actions, representing a comprehensive 15-point Action Plan to address BEPS.[1377] Furthermore, it should be mentioned that further effort was made regarding the tax challenges of the digital economy

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[1373] Radaeli, *op. cit.*

[1374] Reuven S. Avi-Yonah, Haiyan Xu, "Evaluating BEPS: reconsideration of the benefits principle and proposal for un oversight," *Harvard Business Law Review* 6 no. 2 (2016): 185-238.

[1375] OECD, *BEPS undermines the fairness and integrity of tax systems* (2025). Available at: https://www.oecd.org/en/topics/base-erosion-and-profit-shifting-beps.html.

[1376] Candau, Le Cacheux, *supra* note 1225, at 1.

[1377] The 15 BEPS Actions concern the following issues: Action 1 - tax challenges posed by digital economy, Action 2 - the effects of hybrid mismatch arrangements, Action 3 - CFC rules, Action 4 – Counter harmful tax practices more effectively, taking intoaccount transparency and substance, Action 5 - harmful tax practices in IP regimes, Action 6 - treaty abuse, Action 7 - the artificial avoidance of PE status, Action 8,9 and 10 – transfer pricing issues, Action 11 – methodologies to collect and analyse dana on BEPS and the actions to address it, Action 12 – Require taxpayers to disclose their aggressive tax planning arrangements Action 13 - Re-examine transfer pricing documentation, Action 14 - dispute resolution, Action 15 - multilateral instrument development. See more: OECD *Action Plan on Base Erosion and Profit Shifting*. OECD Publishing (2013). Available at: http://dx.doi.org/10.1787/9789264202719-en.

when the OECD and G20 announced that the Inclusive Framework on BEPS had reached an agreement in principle on a two-pillar solution proposed by the OECD in 2021. Pillar One seeks to establish a more equitable allocation of taxing rights and corporate profits across jurisdictions, while Pillar Two aims to curb the global race to the bottom in corporate tax rates by introducing a worldwide minimum tax on the profits of the largest MNEs.[1378] The mentioned developments sparked a rich academic debate.[1379] The purpose of this section was solely to outline the broader context that triggered corresponding developments at the EU level, leaving a deeper analysis of these significant initiatives out of the scope of this thesis.

Against this background, the BEPS initiative sparked a range of reforms in the EU. Before diving into the measures adopted following the BEPS project, it should be noted that the EU started tackling tax avoidance even earlier. In 2014, the European Council stressed "an urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at the global and EU levels."[1380] Soon enough, the Commission presented a comprehensive Action Plan for Fair and Efficient Corporate Taxation. Key points of the action plan were the re-launch of CCCTB, enhanced transparency and ensuring effective taxation. All of the mentioned goals are tightly intertwined with corporate taxation. More precisely, all the above was aimed towards an ambitious agenda to tackle corporate tax avoidance. The CCCTB would introduce a unified system for calculating group taxable income for companies active in at least two Member States, though it did not propose a harmonised corporate tax rate. Unlike the 2011 proposal, the revised CCCTB was proposed as mandatory for EU-based MNEs and implemented in phases.[1381] The Commission's effort to align the EU's legal framework with the BEPS initiative went even further. In 2016, the Commission presented its Anti-tax avoidance package, as the Union's response to the OECD's BEPS Project, with the ATAD[1382]

[1378] IBFD, *Tax Insights: BEPS* (2025). Available at: https://us.ibfd.org/knowledge-hub/tax-insights/base-erosion-and-profit-shiftingbeps#:~:text=Base%20erosion%20and%20profit%20shifting%20(BEPS)%20refers,deductible%20payments%20such%20as%20interest%20or%20royalties.

[1379] See Michael Lang, Alfred Storck, Rafaelle Petruzzi, *Transfer pricing in a post-BEPS world* (Amsterdam: Kluwer Law International, 2016); Ana Paula Dourado, "May You Live in Interesting Times" *Intertax* 44 no.1 (2016): 2-5; Michael Lang, Jeffery Owens, Pasquale Pistone, *Implementing key BEPS Actions: where do we stand?* (Amsterdam: IBFD, 2018); Stjepan Gadžo, Šime Jozipović, "International Corporate Tax Regime Post-BEPS: A Regulatory Perspective" *Intertax* 48, no. 4 (2020): 432-445; Wheeler, *The Aftermath of BEPS* (Amsterdam, IBFD: 2020).

[1380] Explanatory memorandum of the Proposal for a Council directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, COM/2016/026 final - 2016/011 (CNS), COM (2016) 26 final.

[1381] See Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM/2016/0683 final - 2016/0336 (CNS), COM (2016) 683 final.

[1382] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193, 19.7.2016, p. 1–14.

being its centrepiece. Its adoption was a welcome but small step towards corporate tax harmonisation. On the other hand, the CCCTB was not adopted once again.

That being said, failure to adopt the CCTB and the CCCTB left a gap in the EU's efforts to tackle tax avoidance and harmonise corporate taxation. When it comes to harmful tax practices, there are several arguments to tackle this issue on the supranational level. The EU is a single market with free movement of goods, services, capital, and people. MNEs can easily structure transactions across borders to exploit differences in national tax systems. Individual Member States acting alone face limits in closing loopholes that are exploited through cross-border arrangements, as aggressive tax planning often takes advantage of mismatches between national rules.[1383] More precisely, MNEs can structure their activities across the single market in ways that circumvent national tax rules, often shifting profits to jurisdictions with low effective tax rates. The latter has subsequently intensified competitive pressures among Member States, contributing to a gradual decrease in statutory corporate tax.[1384] This dynamic has imposed high fiscal costs on Member States and simultaneously led to higher burdens on immobile tax bases such as labour, consumption, and real property.[1385] An EU-level response is thus essential to ensure tax fairness and protect the integrity of the internal market from the distortions created by uncoordinated national tax policies.

The necessity of such measures was underscored by the Commission, which confirms that profit shifting by MNEs remains a persistent challenge. In 2022 alone, around USD 1 trillion in corporate profits were transferred to low-tax or no-tax jurisdictions. The resulting revenue losses are substantial. For the EU, the estimated foregone revenue is EUR 100 billion in 2022.[1386] Although EU Member States have fewer options to compete in the "race to the bottom" due to state aid restrictions and the obligation to respect fundamental freedoms, they still compete indirectly. For example, preferential tax regimes, notional interest deductions, and tailored rulings all represent fragmented national approaches that deepen asymmetries within

[1383] See also Francesco Farri, "Sovranità tributaria e nuovi "luoghi" dell'economia nell'era della post-globalizzazione: serve ancora lo Stato al fisco?" in *La sovranità nell'era della post globalizzazione: Atti del Convegno di Foggia* ed. Valeria Mastroiacovo (Pacini Editore, 2019): 248. – 249.

[1384] For example, in the last two decades, statutory tax rates have decreased in EU Member States. More precisely, the average EU corporate tax rate in 2025 was 21 %, while in 2000 it amounted 32 %. See more: European Commission, *Annual Report on Taxation 2025, Directorate-General for Taxation and Customs Union.* Publications Office of the European Union, Luxembourg (2025), 55.

[1385] See Candau, Le Cacheux, *op. cit.* In addition, Lazarov pointed out that both capital and labour have the possibility to relocate to more productive jurisdictions. Nevertheless, capital has higher relative mobility. See Ivan Lazarov, *Anti-tax avoidance in corporate taxation under EU law: the internal market narrative* (Amsterdam: IBFD, 2022), 26.

[1386] European Commission, *Annual Report on Taxation 2025* (2025): 94. Available at: https://taxation-customs.ec.europa.eu/document/download/e6cad28a-cdd1-4abe-b88a-15d5b398c15f_en .

the internal market and weaken the capacity of Member States to tax multinational profits in a manner consistent with economic reality. Moreover, unilateral measures cannot fully address the cross-border nature of profit-shifting structures, which exploit mismatches between domestic tax bases. As a result, the EU remains vulnerable to revenue leakage.

Besides fostering the climate of tax abuse and subsequent revenue loss, divergence in national tax regimes leads to two more disadvantages. As pointed out by Lazarov, it affects the allocation of economic activity within the Union, as companies may structure their operations in response to tax differentials rather than genuine commercial considerations. Second, it influences the investment choices of third-country firms entering the EU, potentially steering them toward jurisdictions offering the most favourable tax treatment rather than those best suited to their economic needs.[1387]

Moreover, the European Commission's past efforts to introduce the CCTB and CCCTB illustrate the broad policy potential of corporate tax harmonisation, from administrative simplification to contribution to competitiveness.[1388] Firstly, adopting an EU-wide consolidated tax base would contribute to tax fairness, since it would result in taxation of value in the state where it is created. In addition, such a policy shift would "contribute to the elimination of obstacles which create distortions that impede the proper functioning of the internal market. On this premise, it is largely complementary to the EU-level legislation in company law."[1389] Moreover, harmonisation that would follow the path of CCCTB would simplify and reduce the cost of doing business within the EU, creating a more coherent and accessible framework for companies operating in more than one jurisdiction. It also holds the potential to facilitate the expansion of small and medium-sized enterprises (SMEs) beyond their national markets. Overall, the proposal is designed to strengthen the EU's internal market and contribute to its global economic competitiveness.[1390]

The latter is especially important in light of the Competitiveness Compass issued by the European Commission in January 2025. As a policy roadmap focused exclusively on the EU's competitiveness, it shows that it has risen on the policy agenda. Moreover, removing the barriers at the European and national levels is stressed as a necessity to reach this objective. Interestingly, the Competitiveness Compass hints that the Commission plans to "propose a 28th

[1387] Lazarov, *op. cit.* at 46.
[1388] For a detailed description of each proposal, see *supra* sec. 3.5.1.
[1389] Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM (2016) 683 final.
[1390] European Commission, *Press release: European corporate tax base: making business easier and cheaper* (2011). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_11_319.

legal regime, which will simplify applicable rules and reduce the cost of failure, including any relevant aspects of corporate law, insolvency, labour and tax law."[1391] That being said, it is necessary to address the BEFIT proposal, which is a step in the mentioned direction and may become the first step towards a corporate income tax–based new own resource.

4.5.3. Ongoing EU Initiatives in corporate tax coordination: BEFIT and HOT

In examining corporate taxation as a missing element of the EU's fiscal integration, it is necessary to turn the discussion to the EU's recent legislative initiatives in this field. Two proposals in particular, the BEFIT framework and the HOT regime[1392], represent the latest Commission's efforts to reduce fragmentation, enhance tax certainty, and address the structural weaknesses of the internal market. Although these initiatives are not designed as own resources, both are highly relevant for this dissertation. Namely, both proposals could become technical foundations upon which any corporate-tax-based Union revenue could be constructed. By harmonising elements of the corporate tax base and simplifying cross-border compliance, BEFIT and HOT illustrate the longstanding aim of the EU - overall simplification of corporate taxation. The roots for both initiatives stem from the 2021 Commission's Communication "Business Taxation for the 21st Century."[1393] For this reason, a brief analysis of these proposals is required to frame subsequent discussions on the Union's fiscal capacity.

4.5.3.1. BEFIT

Following the agenda of reducing the compliance costs for businesses operating in the EU and simplifying tax rules on the supranational level, the Commission issued a new proposal named BEFIT.[1394] The acronym stands for "Business in Europe: Framework for Income Taxation",[1395] and it represents a "new, single set of rules to determine the tax base of groups of companies."[1396] It represents a successor of the CCTB and the CCCTB proposals, built on the idea of a common consolidated tax base. However, it also reflects "the insights gained and

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[1391] European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A Competitiveness Compass for the EU, COM (2025) 30 final (2025).
[1392] Proposal for a Council Directive establishing a Head Office Tax system for micro, small and medium-sized enterprises, and amending Directive 2011/16/EU.
[1393] Angelika Xygka, "Tax Simplification 101: HOT is Moving Forward" (2024). Available at: https://www.ibfd.org/sites/default/files/2024-04/final-etf-2-hot.pdf. See also: European Commission, Communication from the Commission To The European Parliament and the Council "Business Taxation For The 21st Century", Brussels, 18.5.2021 COM(2021) 251 final.
[1394] See also Stijn Blaakman, Jasper Korving, "The Tax Base in BEFIT and Pillar Two: Harmony, Dissonance, or Off-Key?" *Intertax* 52 no. 5 (2024): 361–386.
[1395] Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), COM (2023) 532 final, 2023/0321(CNS), hereinafter: BEFIT proposal.
[1396] European Commission, *Press release: Questions and Answers on BEFIT and transfer pricing*. (2023). https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4407.

the changes in the modern economy characterised by increasing globalisation and digitalisation."[1397] Against this background, Peters points out that "one of the decisive factors for the auspicious start of the BEFIT initiative is probably that it was born under the lucky star of the work of the OECD."[1398] Thus, besides drawing insights from the previous unsuccessful proposals, BEFIT also reflects the EU's efforts to address challenges for tax systems arising from the digital economy and globalisation. Moreover, the Commission stressed that the proposal should „expand on the OECD's work on Pillar One about the definition of the tax base and the design of the formula. "[1399]

When it comes to its scope, this time the Commission proposed to introduce the BEFIT regime as mandatory only for large MNEs operating in the EU with an annual combined revenue of at least 750 million euros.[1400] More precisely, Article 2 of the BEFIT proposal provides that "Directive applies to companies resident for tax purposes in a Member State, including their PEs located in other Member States, and to PEs located in Member States of entities resident for tax purposes in a third country (…) and they belong to a domestic group or to a MNE group which prepares consolidated financial statements and had annual combined revenues of EUR 750 000 000 or more in at least two of the last four fiscal years." Additional criteria are prescribed which must be fulfilled for a subject to fall under the scope of the BEFIT, both for companies and PEs. The 750 million euros threshold was chosen to align this proposal with the already adopted Directive on global minimum tax.[1401] Furthermore, SMEs will have the option to participate in the new rules, provided they prepare consolidated financial statements.[1402] This voluntary inclusion may be especially attractive for SME groups with cross-border activities, as it can help them reduce the administrative burden and costs associated with different national corporate tax regimes.

Similar to its predecessors, BEFIT also found its legal basis in Article 115 TFEU. This is complementary to its goal of removing distortions to the internal market. As previously

[1397] BEFIT proposal, p. 1.
[1398] Peters, *supra* note 1336, at 195.
[1399] Peters, *op. cit.* at 196.
[1400] Article 2, BEFIT proposal.
[1401] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, ST/8778/2022/INIT, OJ L 328, 22.12.2022. This Directive is another example of the EU's efforts to implement the OECD's standards. More precisely, it establishes a minimum corporate tax rate of 15 % for large MNEs and significant domestic groups within the EU. Its main goal is to prevent profit shifting to low-tax jurisdictions by ensuring that these groups pay at least the minimum tax regardless of where they operate. This Directive aligns with the OECD's Pillar Two GloBE rules, which were designed to ensure that large MNEs pay a minimum level of tax in each of the jurisdictions where they operate.
[1402] BEFIT proposal, p. 12.

mentioned, the EU institutions are aware that differences across 27 tax systems represent a serious difficulty for doing business in the EU. Moreover, as governments were trying to adapt their respective tax legislation to the new issues for taxation arising from globalisation and the digital economy, the mismatches across various jurisdictions became even stronger. Having this in mind, the Commission proposed BEFIT, which is envisaged to bring several policy advantages to the EU. The first goal is a simplification of compliance for businesses which operate across borders. The enactment of a common framework of corporate tax rules should be prioritised to make it easier for businesses to comply with such rules when they operate across borders. It is estimated that the enactment of BEFIT would result in a reduction of businesses' current tax compliance costs up to 65 %.[1403] The latter should also serve to attract foreign investors who want to expand into the European market. Moreover, "a single set of corporate tax rules for international activity is expected to result in enhanced tax certainty and fewer tax disputes, as it would tackle distortions and decrease the number of cases of double and over-taxation. Furthermore, it would be critical to ensure for the future that the allocation of revenues is performed in accordance with a tool based on solid parameters that cannot be abused."[1404]

Finally, it is necessary to point out that BEFIT might serve as a first step for the introduction of a corporate tax-based new own resource. The latter is announced in the BEFIT proposal in the very first paragraph of the explanatory memorandum, addressing the reasons for and the objectives of the proposal. That is, the Commission stressed that the BEFIT proposal was included in the Commission Work Programme 2023, and it is also relevant from an own resource perspective, as set out in the 2021 Communication on the next generation of own resources for the Union budget.[1405] Later on, the proposal explicitly refers to the Interinstitutional agreement, where the common corporate tax base was identified as a potential basis for a new own resource that the Commission will propose.[1406]

[1403] European Commission, Commission Staff Working Document: Impact Assessment Report Accompanying the documents Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) and Proposal for a Council Directive on Transfer Pricing COM (2023) 532 final – SWD (2023) 309 final (2022).
[1404] Explanatory memorandum, BEFIT proposal
[1405] Explanatory memorandum, BEFIT proposal, p. 1.
[1406] See Part B, Roadmap towards the introduction of new own resources, Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, OJ L 433I, 22.12.2020.

However, the BEFIT proposal still must face its biggest enemy – unanimity voting. More precisely, according to the special legislative procedure, following consultation of the European Parliament and the European Economic and Social Committee, it requires unanimous agreement in the Council. Since the presentation of the proposal in September 2023, the progress for its adoption has reached the stage of the European Parliament's draft report on the proposal. First amendments made by the Parliament concern the BEFIT's contribution to competitiveness, innovation and job creation.[1407] This is in line with the latest Union's focus shift to increasing its competitiveness, as previously mentioned.[1408] Moreover, the possibility of enlargement of the scope of the Directive also found its place among the Parliament's amendments. When it comes to its interconnection with its new own resources, the Parliaments stressed the following: "A BEFIT-based own resource should link the financing of the Union budget to the benefits enjoyed by companies operating in the internal market and create a strong and stable resource over time. Under a BEFIT-based own resource, Member States should transfer part of their corporate income tax revenues to the Union budget. The roadmap provided for in the Interinstitutional Agreement foresees a new own resource linked to corporate taxation as part of a basket of new revenue sources and, in that respect, the BEFIT initiative constitutes an excellent starting point for a new own resource."[1409]

The trajectory of fiscal integration thus far reveals the limits of corporate tax harmonisation, as well as the potential of its supranational regulation. As this section has demonstrated, corporate taxation might become a pillar for a more coherent, competitive, and fiscally resilient Union. The latter is especially important, having in mind the current geo-political situation where the EU is trying to compete globally with the US and China. A harmonised CIT could enhance the EU's competitiveness, as well as offer a first step towards the introduction of a new own resource based on corporate taxation. Despite the legal obstacles for such a scenario, particularly the unanimity requirement, the rationale for EU-level action on CIT is compelling and might serve as an impetus to finally overcome the obstacles. It would reduce distortions in the single market, contribute to tax avoidance reduction, and simplify compliance. Moreover, drawing from fiscal federalism and its comparative models, it becomes clear that centralised oversight over corporate taxation, at least to some degree, is not only

[1407] European Parliament, Draft Report 2023/0321(CNS) on the proposal for a Council directive on Business in Europe: Framework for Income Taxation (BEFIT) COM(2023)0532 – C9-0341/2023 – 2023/0321CNS. Committee on Economic and Monetary Affairs Rapporteur: Evelyn Regner (2025).
[1408] On competitiveness as one of the EPGs see supra sec. 4.4.3.
[1409] European Parliament, Draft Report 2023/0321(CNS) on the proposal for a Council directive on Business in Europe: Framework for Income Taxation (BEFIT), COM(2023)0532 – C9-0341/2023 – 2023/0321CNS. Committee on Economic and Monetary Affairs Rapporteur: Evelyn Regner (2025).

compatible but also necessary for a functioning fiscal union. As the EU still works on its next generation of own resources, corporate income tax stands out as a pragmatic choice. Whether implemented through BEFIT, a shared tax base, or a partial allocation mechanism, CIT can bridge the gap between the EU's economic ambitions and its fiscal reality.

4.5.3.2. HOT proposal

In 2023, the European Commission issued a Directive proposal for establishing a Head Office Tax system (HOT) for micro, small and medium-sized enterprises.[1410] The Head Office Taxation is a centrepiece of the Union's efforts to reduce compliance burdens for small and medium-sized enterprises (SMEs) operating cross-border.[1411] Having in mind that 99 % of European businesses are SMEs, their significance for the Union's economy is significant.[1412] However, the existence of 27 separate national corporate tax regimes has been identified as a significant barrier to the cross-border expansion of SMEs. Compliance with multiple divergent tax systems imposes disproportionately high administrative costs and complexity that discourage SMEs from scaling beyond their home market.[1413] Unlike multinational enterprises, which often possess the legal and administrative capacity to manage this complexity, SMEs experience these burdens as a significant barrier to cross-border growth, which contributes to internal market fragmentation.[1414] Therefore, HOT aims to address this structural problem.

Under the HOT framework, an SME operating in several Member States would calculate its taxable profits exclusively under the rules of its head office jurisdiction (HOT), rather than under the tax laws of each Member State in which it has a PE. More precisely, the HOT proposal provides that "a one-stop-shop should be put in place, whereby the tax filing, tax assessments and the collection of the tax due by the permanent establishment(s) would be dealt with through a single tax authority (filing authority), i.e. the tax authority in the Member State of the head office. In full respect of Member States' sovereignty in tax matters, audits, appeals and dispute resolution procedures would primarily be kept domestic and in accordance with the procedural rules of

[1410] Proposal for a Council Directive establishing a Head Office Tax system for micro, small and medium-sized enterprises, and amending Directive 2011/16/EU, COM/2023/528 final. (2023).
[1411] European Commission, *Head Office Tax System for SMEs (HOT): A proposal to help SMEs expand across borders in the EU* (2025). Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/head-office-tax-system-smes-hot_en.
[1412] Eurostat, *Micro & small businesses make up 99% of enterprises in the EU* (2024). https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20241025-1.
[1413] Explanatory memorandum of the Proposal for a Council Directive establishing a Head Office Tax system for micro, small and medium sized enterprises, and amending Directive 2011/16/EU, COM/2023/528 final. (2023).
[1414] European Commission, Tax compliance costs for SMEs: An update and a complement, Final Report (2022):8.

the respective Member State."[1415] The head-office state would then transmit the relevant taxable share to other Member States through an automated procedure, ensuring revenue neutrality while eliminating duplicated administrative work for firms. In doing so, HOT provides a mechanism for administering cross-border taxation without harmonising national tax systems or affecting Member States' sovereignty over tax rates. It is a reflection of a broader EU tax policy towards administrative coordination and simplification. Given that the HOT proposal seeks to reduce obstacles faced by SMEs operating across borders, its underlying rationale clearly derives from the objective of improving the functioning of the internal market. Thus, its legal basis was found in Article 115 TFEU. The European Parliament issued an opinion on HOT proposal in 2024. It noted that "more than 24 million SMEs in the EU, represent two thirds of private sector jobs and are the backbone of the Union economy. By protecting SMEs, the EU will promote job creation, enhance growth, encourage fair and transparent competition, and attract investment."[1416] Thus, HOT proposal will also contribute to competitiveness, which became one of the EU's priorities.

Although it represents a welcome initiative for the simplification of the EU tax system, it also has certain drawbacks that were pointed out by legal scholars. Thus, Scherleitner and Mäki pointed out that "poorly founded and inconsistent exclusions of companies from being able to benefit from the genuine simplification the HOT proposal brings for the companies in scope. This matters because it can impose a significant disadvantage on certain taxpayers, without there being a compelling reason for doing so."[1417] Thus, the major flaw of its current design is reflected in its friction with fundamental freedoms, since it does not treat companies equally.[1418] In addition, Stevens pointed out that the HOT proposal failed to address another significant obstacle for SMEs' cross-border business operations, being the possibility do deduct loses.[1419]

For this dissertation, the relevance of the HOT proposal is in its potential to become a genuine European public good. By enabling SMEs to operate cross-border through a single tax regime administered at the level of the head office, HOT generates Union-wide benefits that

[1415] Para 7. Memorandum of the Proposal for a Council Directive establishing a Head Office Tax system for micro, small and medium sized enterprises, and amending Directive 2011/16/EU, COM/2023/528 final. (2023).
[1416] Xygka, *op. cit.* supra at 1394.
[1417] Moritz Scherleitner, Noora Mäki, "The HOT Proposal and Primary EU – An Examination and Suggestions to Address the Tensions," *World Tax Journal* 16, no. 3 (2024). Available at: https://www.researchgate.net/publication/383802754_The_HOT_Proposal_and_Primary_EU_Law_-_An_Examination_and_Suggestions_to_Address_Possible_Validity_Concerns .
[1418] See Stan Stevens, "Small Is Beautiful: An Analysis of the HOT Proposal," *EC Tax Review* 33, 6 (2024): 223-237. See also Scherleitner, Mäki, *op. cit.*
[1419] Stevens, *op. cit.* at 223.

individual Member States cannot provide on their own. This characteristic also establishes a potential nexus between SMEs and a potential EU-level levy: companies that benefit from a coordinated supranational framework could justifiably be asked to contribute, in a proportionate manner, to its financing. In addition, such a levy could be earmarked for the support of SMEs' cross-border expansion, thereby reinforcing both fairness and policy coherence. The revenue would, in effect, "return" to the sector from which it is raised. The latter would mirror the historical logic of the ECSC levy, where revenues collected from the coal and steel industry were reinvested into the same sectors to support their development. Applying a similar model to the SME context would strengthen the link between the financing of a European public good and the beneficiaries of that good, thereby enhancing the legitimacy, transparency, and acceptability of the proposed own resource.

4.5.4. Justifying corporate tax-based own resources

As the title of this subchapter suggests, a corporate tax-based own resource is a missing piece in the EU's fiscal integration. Its introduction requires a multi-layered justification. Since corporate activity in the internal market generates cross-border spillovers, creates mobile tax bases, and relies heavily on EU-provided public goods, the corporate tax is suited to support Union-level financing. The latter can be derived from fiscal federalism, benefit-principle reasoning, and internal-market logic.

As previously mentioned, from the perspective of fiscal federalism, a corporate-income-tax-based own resource is an instrument with the potential to address the structural weaknesses of the EU's current fiscal framework. Classical fiscal federalism distinguishes between allocation, redistribution, and stabilisation functions, and it emphasises that taxes on highly mobile bases, such as corporate profits, should be centralised.[1420] The latter contributes to the avoidance of harmful tax competition and corrects horizontal fiscal externalities. Applied to the EU, this logic supports granting the Union a role in defining and partially collecting CIT, as the internal market creates cross-border spillovers that Member States cannot internalise individually. At the same time, fiscal federalism acknowledges that full centralisation of redistribution and stabilisation is neither feasible nor desirable in the EU's unique constitutional setting. Instead, a hybrid, "sui generis" approach is appropriate, one that strengthens the EU's fiscal capacity without replicating the fiscal powers of federal states.

Comparative experiences confirm that CIT is commonly administered at the central level or shared between federal and subnational governments, as seen in Germany, Canada, and

[1420] Escolano, *supra* note 1359.

Brazil, because such arrangements minimise distortions and support coordinated economic policy.[1421] A partial assignment of CIT would therefore represent not a departure from fiscal federalism, but an adaptation of its core principles to the EU's multi-level governance structure. It would provide the EU with a stable, policy-linked source of "fresh" revenue consistent with its expanding responsibilities.

Against this background, the Union's internal market eliminated tariffs and most non-tariff barriers across 27 Member States, granting companies seamless access to 450 million consumers.[1422] This integration delivers economies of scale unattainable in fragmented national markets. For example, since 1999, intra-EU exports have expanded significantly: from approximately EUR 1.3 trillion to more than EUR 4 trillion by 2024. This reflects the deepening of the Single Market, whose success stems from the EU's four freedoms: free movement of goods, services, capital, and persons.[1423] These figures underscore the market's scale effects. Multinational enterprises (MNEs) particularly thrive in the internal market, since it supports regulatory stability, mutual recognition of standards, and a constant aim to reduce the compliance costs of 27 separate regimes.

Against this backdrop, the benefit principle in public finance provides one possible normative foundation for the justification of the EU's own resource imposed on the corporate sector. Historically, the "old" benefit principle held that individuals should contribute to government in proportion to the direct benefits they receive. This classical formulation was criticised as impractical, because public benefits are difficult to measure.[1424] However, the "new" benefit principle avoids these limitations by defining benefits in terms of the economic well-being made possible by the state's provision of security, legal order, and market-enabling infrastructure.[1425] Under this approach, taxpayers contribute according to how they benefit in the market economy, because that economic success is reliant on the institutional framework supplied by the government.[1426] Applied to the EU context, this modernised benefit principle offers a compelling justification: companies that derive substantial gains from the internal market should contribute to its maintenance and further development. This view is grounded in

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[1421] See *supra* sec. 4.5.1.
[1422] European Council, *The Single Market* (2025). Available at: https://www.consilium.europa.eu/en/topics/single-market/.
[1423] Eurostat, *Total annual goods exports by European Union member states to other countries within the EU from 1999 to 2024* (in trillions of Euros) [Graph]. (June 13, 2025). In *Statista*. Retrieved March 01, 2026, from https://www.statista.com/statistics/1375209/eu-internal-trade-intra-eu-exports-member-state/.
[1424] J.M. Dodge, "Theories of tax justice: ruminations on the benefit, partnership, and ability-to-pay principles," *Tax Law Review* 58, no. 4 (2005): 399.
[1425] *Ibid.*
[1426] *Ibid.*

the work of Professor Vanistendael, who identified large MNEs as the primary beneficiaries of the internal market who should contribute to its financing.[1427] The aforementioned perspective aligns with the concept of "European Added Value," which was used in doctrine to support the idea of introducing genuine EU tax.[1428] More precisely, "this justification aligns with the general acknowledgement that the levying of EU taxes can be legitimised by the "European Added Value", in other words, the EU's contribution in creating additional value (for the Member States) through its intervention."[1429] Moreover, historical examples of the coal and steel levy and the sugar levy followed the same underlying logic. Entities that were receiveing the benefits of coal and steel, or sugar market regulation, were at the same time obliged to contribute for this purpose.[1430]

Justifying a corporate tax-based own resource may also be connected with the discussion on earmarking. More precisely, economic theory, particularly the work of Musgrave and Musgrave, supports earmarking when the tax base can be meaningfully linked to the expenditure it finances. They advocated against rigid forms of earmarking, particularly when applied to broad-based consumption taxes whose revenue needs may fluctuate. However, they expressly recognise that earmarking is appropriate when the tax burden can be associated with those who either generate the need for expenditure or are identifiable beneficiaries of related public goods.[1431] This logic provides support for favouring direct taxes over indirect taxes in the context of designing earmarked own resources. Direct taxes, and in particular corporate income taxation, target clearly identifiable economic actors who derive substantial and demonstrable benefits from the internal market. As such, they could establish a transparent link between the revenue source and the European public goods to be financed, unlike indirect taxes such as VAT, which do not provide a reliable link between payer and benefit, a point underscored in OECD analyses of VAT incidence.[1432] Furthermore, earmarking a share of a corporate-based own resource for competitiveness, innovation, or SME-support programmes would therefore align with the economic structure of the tax base. It would also help overcome a structural weakness of the current EU financing system by providing a transparent and intuitive link between the beneficiaries of the internal market and the Union-level goods that

[1427] Vanistendael, *supra* note 13, at 759.
[1428] Katerina Pantazatou, "Why EU Revenue Matters: A Case for an EU Digital Levy," *European Law Open* 3, no. 4 (2024): 919–38.
[1429] *Ibid.*
[1430] See *supra* sec. 3.1.
[1431] Richard A. Musgrave, Peggy B. Musgrave, *Public Finance in Theory and Practice*, 5th edn (New York: McGraw Hill, 1989), 222.
[1432] OECD, *Consumption Tax Trends 2024: VAT/GST and excise rates, trends and policy issues*, OECD Publishing, Paris (2024).

sustain it. This approach mirrors historical precedents such as the ECSC and sugar levies, where revenue was collected from sectors benefiting from integration and channelled back into sector-specific Union policies. When situated within this broader fiscal and economic logic, a corporate-based, earmarked own resource emerges as a proportionate, rational and normatively grounded instrument for strengthening the Union's fiscal architecture.

Moreover, proposals like BEFIT have a strong potential to further concretise the benefits derived from the internal market by harmonising tax bases, reducing profit-shifting disputes, and lowering double-taxation risks. SMEs, historically burdened by cross-border barriers, would similarly gain from simplified rules under HOT, single-point tax administration, and reduced administrative hurdles. Thus, both instruments translate the abstract advantages of market integration into tangible, operational benefits for firms, reinforcing the argument that beneficiaries of an integrated regulatory and economic space should contribute proportionally to its development. In sum, a corporate-based own resource is justified not merely as a revenue-raising mechanism, but as a coherent instrument that reflects the benefits firms derive from the internal market, aligns with core tax-policy objectives and allows for earmarking that transparently links revenue to the European public goods it finances.

4.6. Summary

The analysis started from the premise that the EU's current system of public finances remains constrained by its heavy reliance on national contributions, limited autonomy, and a weak link between revenue instruments and the Union's expanding policy ambitions. Long-standing critiques of these weaknesses gained renewed force during the COVID-19 crisis, resulting with a number of new own resource proposals put forward by the Commission, the European Parliament, and legal scholarship. These include environmental levies designed to support climate objectives, indirect-tax-based resoruces and several forms of corporate-tax-based own resources.

An assessment of these proposals against selected benchmarks of subsidiarity, revenue potential, contribution to European public goods, and administrability shows that no existing proposal fully satisfies all criteria. Environmental levies offer strong policy alignment but suffer from volatility and uneven fiscal capacity.[1433] Indirect taxes provide administrability but lack a clear conceptual link to the economic actors most connected to EU-level benefits. Corporate-based proposals, particularly those linked to harmonised or partially harmonised tax bases,

[1433] European Court of Auditors, Opinion 04/2026 (pursuant to Article 287(4) TFEU) concerning the proposal for a Decision on the system of own resources of the European Union, COM (2025) 574 final (2026): 8.

demonstrate potential to combine stable revenue, policy coherence, and fair attribution of fiscal responsibility.

The aforementioned assessment emphasised the central role of corporate income taxation in advancing a more coherent and legitimate EU revenue system. Fiscal federalism theory suggests that taxes levied on highly mobile tax bases, such as corporate income tax, should be assigned to the highest level of government. From this perspective, entrusting the EU with a role in regulating and partially collecting corporate income tax could contribute to minimising harmful tax competition, preventing distortions in the allocation of economic activity, and ensuring a more efficient provision of public goods.Moreover, both MNEs and SMEs engaged in cross-border activities are among the principal beneficiaries of the internal market. Thus, aligning their fiscal contribution with the financing of European public goods responds to established principles of fairness, efficiency, and benefit-based taxation. Recent policy developments, most notably the BEFIT initiative, illustrate that the EU is still moving toward a more integrated corporate tax framework, thereby opening the possibility of allocating a share of corporate tax revenue to the supranational level.

Taken together, these findings suggest that the future of EU fiscal integration will likely depend on revenue instruments that combine substantial revenue potential with a clear economic and functional link to the activities and actors that derive value from the internal market. Corporate-tax-based own resource, particularly if earmarked for the financing of European public goods, emerges as a promising pathway for a new own resource.

5. *DE LEGE FERENDA* PROPOSAL

This chapter outlines a proposal for a new own resource, based on corporate taxation and strategically earmarked for financing EPGs. It will follow two possible scenarios. In the first scenario, our proposal will build upon some elements from the European Commission's BEFIT proposal and HOT proposal. In the second scenario, our proposal starts from the premise that BEFIT and HOT were not adopted.

Before turning to the legal and structural design of our proposal, it is necessary to briefly summarise systemic shortcomings that such an instrument seeks to remedy. The latter is important, since these considerations frame both its rationale and its practical relevance. Thus, the proposed own resource aims to enhance the EU's fiscal autonomy while aligning revenue generation with its policy objectives, particularly in areas that require collective action.[1434] Such a resource would establish a more genuine and sustainable financing mechanism for the EU budget.[1435] This approach would contribute to addressing the current issue of the EU's reliance on national contributions. Moreover, the proposed new own resource should contribute to overcoming the existing challenge of inconsistent national tax regulation, which currently allows MNEs to minimise their tax burdens.[1436] Furthermore, the adoption of a unified approach to corporate taxation could simplify compliance for businesses operating across the EU while simultaneously ensuring a fairer distribution of tax revenues among Member States.

That being said, this chapter starts with a legal and policy assessment of such a proposal, including the question of its legal basis and the choice of instrument for its implementation. In the second part, the chapter offers an overview of key parts of the proposal.

5.1. Legal and policy assessment

It is necessary to highlight that the proposal developed in this research rests on two central propositions: i) that an earmarked levy on the corporate sector could, in principle, be introduced without amending the Treaties, and ii) that Article 311 TFEU allows the establishment of an own resource structured as an earmarked corporate tax-based levy. Developing such a claim presupposes an examination of the existing legal bases, their historical

[1434] Margit Schratzenstaller, "Tax-based Own Resources as a Core Element of a Future-Oriented Design of the EU System of Own Resources," *Intereconomics* 53 no. 6 (2018): 302.
[1435] See also Candau, Le Cacheux, *supra* note 1225, at 1.
[1436] See also Elżbieta Kawecka-Wyrzykowska, "Assessment of the European Commission's proposals for financing the EU budget in 2021–2027," *International Journal of Management and Economics* 56, no. 3 (2020):193-208.

interpretation, and their relationship with the broader policy agendas currently being developed by the EU.

5.1.1. Alignment with conferral, subsidiarity and proportionality

The first step to introduce an earmarked corporate-tax-based own resource is its alignment with the principles of conferral, subsidiarity and proportionality set out in Article 5 TEU. These principles define both whether the Union may act and the limitations of its measures. These principles ensure that the proposed measure does not encroach upon Member States' sovereignty.[1437]

Under the principle of conferral, the Union may act only within the competences conferred upon it by the Treaties. While direct taxation remains primarily within Member States' competence, the Treaties expressly empower the Union to establish the system of own resources based on Article 311 TFEU. An own resource established on Article 311 TFEU, linked to a corporate tax base, therefore would not by itself harmonise national corporate income tax systems nor would it replace national taxing powers. Instead, it concerns the revenue side of the EU budget, which falls within a Treaty-based competence of the Union. Moreover, when the principle of conferral is observed in the Union's fiscal domain, it has characteristics of a dynamic rather than static interpretation, shaped by internal market needs. The exercise of the Union's Article 311 TFEU competence may therefore legitimately draw on tax bases already shaped by EU law, particularly where cross-border spillovers of national corporate tax rules generate internal market distortions.[1438] The corporate tax field, marked by fragmentation and asymmetric spillovers, thus provides a permissible and coherent basis for an own resource.

Furthermore, according to Article 5(3) TEU, the Union may act only if the objectives of the proposed measure cannot be sufficiently achieved by Member States acting individually but can be better achieved at the Union level. In the context of the proposed own resource, the justification for EU action is twofold. First, the persistent fragmentation of corporate tax systems generates negative cross-border effects, which are obstacles to the internal market. These spillovers arise precisely because corporate activity within the internal market does not respect national borders. As a result, unilateral Member State action cannot effectively remedy the EU-wide implications of corporate taxation, thereby meeting the "necessity" limb of subsidiarity. Second, and more positively, the proposal contributes to Union-level objectives that individual Member States cannot attain on their own. The internal market itself constitutes

[1437] See *supra* sec. 3.2.
[1438] See *supra* sec. 4.1.3.

a European public good, meaning that the benefits of its functioning are non-excludable, cross-border, and shared by all economic actors.[1439] From this perspective, levies connected to the "consumption" or use of the internal market are most appropriately assigned to the Union level. The proposed own resource follows this logic: it channels revenue into the financing of goods whose benefits will be inherently European, such as competitiveness-enhancing projects that strengthen the internal market. In doing so, the measure aligns the source of revenue with the scale of the public good it finances, fully satisfying the subsidiarity rationale for a supranational intervention.

Finally, under Article 5(4) TEU, the content and form of Union action must not exceed what is necessary to achieve the objectives of the Treaties. An earmarked corporate-tax-based own resource satisfies this requirement because its design does not require harmonisation of corporate tax rates beyond what is strictly necessary for determining this own resource. Furthermore, it relies on information and tax bases that Member States already administer, thereby limiting compliance and administrative burdens. It uses the least intrusive method to secure revenue for Treaty-based obligations, such as repayment of joint borrowing and financing of European public goods. Its design is narrowly tailored, linking the resource only to a defined share relating to corporate profits, thereby respecting national tax sovereignty.

Moreover, such an instrument might include a sunset clause, to be consistent with the MFF framework.[1440] In this scenario, the temporally constrained nature of such own resource would ensure that the measure is periodically reassessed through political and democratic scrutiny, preventing any open-ended transfer of fiscal powers. In this respect, the logic underpinning the BVerfG's assessment of the NGEU instrument inspired a conclusion that targeted and temporally bound measures are compatible with constitutional limits because they do not initiate a structural shift in fiscal competences but respond to clearly delimited Union needs.[1441] By analogy, a corporate-tax-based own resource that is purpose-bound, limited to a defined tax base, and subject to renewal only through unanimity and national ratification might satisfy concerns regarding subsidiarity and proportionality.

5.1.2. The issue of legal basis to implement the proposal

[1439] See Michael Thöne, Helena Kreute, "European Public Goods their Contribution to a Strong Europe," FiFo Institute for Public Economics, commissioned by and in collaboration with the Bertelsmann Stiftung (2023): 21.
[1440] See *infra* sec 5.1.2.
[1441] Dermine, Bobić, *supra* note 956 at 189.

Constructing our proposal requires not only identifying a legal basis to support the revenue-raising side of the proposed own resource, but also a basis for the expenditure-oriented dimension of such a levy. A solution may be found in a tripartite combination of Treaty provisions, each addressing one essential element of the proposal. Such a solution emerges through a combined reading of Article 311 TFEU, which authorises the creation of new categories of own resources, and Article 115 TFEU, which enables the harmonisation of legislation affecting the functioning of the internal market, including corporate taxation. These provisions could support the revenue-collecting function of the revenue, as well as its justification regarding removing distortions in the internal market.[1442] Moreover, these articles should be complemented by a third Treaty legal basis corresponding to the specific spending purpose linked to the earmarking.

First of all, it must be emphasised that Article 311 TFEU could arguably serve as a sufficient legal basis for establishing a tax-based own resource. However, the present proposal deliberately supplements it with Article 115 TFEU. This choice is informed by the controversy that arose during the adoption of the EU Solidarity Contribution, where several Member States questioned whether a fiscal measure requiring them to introduce a tax could rely on the selected legal basis, which in this case was Article 122 TFEU. Member States noted that EU fiscal measures normally require unanimity under the Treaties. They argued that if the Union measures have a fiscal nature, they should be adopted through a special legislative procedure requiring unanimity and parliamentary involvement.[1443] These objections stem from longstanding political and constitutional sensitivity surrounding Union measures perceived as influencing national tax systems.[1444] By anchoring the proposal not only in Article 311 TFEU but also in Article 115 TFEU, the legal design explicitly recognises this sensitivity: it ensures that the approximation of national corporate tax rules rests on a Treaty provision expressly intended for such harmonisation, while Article 311 TFEU governs the revenue-raising dimension.

More precisely, Article 311 TFEU is the foundation for the introduction of any own resources. If the term "own resources" is examined through its historical development, it can be concluded that it does not prevent the introduction of tax-based own resources, nor earmarking. This is supported by analysis conducted in Chapter 3, which exhibits that the coal

[1442] For a similar approach to the question of legal basis necessary to establish a tax-based own resource see: Caziero, *supra* note 652.
[1443] Jeroen Lammers, Blazej Kuźniacki, "The EU Solidarity Contribution and a More Proportional Alternative: A Study Under EU and International Investment Law," *Intertax,* 51 no. 6 (2023): 453.
[1444] Lammers, Kuźniacki, *ibid.*

and steel levy, as the first own resource in the history of European integration, was in fact earmarked for specific policy objectives.[1445] The next stage of integration, being the creation of EURATOM, also allowed this supranational organisation to replace financial contributions of the Member States "in whole or in part by proceeds of levy collected by the Community in the Member States."[1446] In addition, the introduction of the sugar levy continued to build upon the idea of policy-specific funding, since it was envisaged to fund the efforts by the EEC to govern the internal market of sugar. Both the ECSC levy and sugar levy align with the notion of tax. Both were introduced by law, thereby becoming compulsory contributions. Both raised revenue for the supranational budget without granting any direct benefits. However, their spending purpose was prescribed by law, thus aligning them with the concept of earmarked taxes. Therefore, the historical interpretation of the term "own resources" indicates that the financing of European integration was originally conceived as resting on tax-based levies that were closely connected with expenditures and represented a genuine revenue source for the supranational budget. Moreover, as pointed out by Caziero, historical interpretation therefore "supports the doctrinal position that own resources are taxes levied on individuals and companies, whose taxable event is linked to the European Union.[1447] This is also evident even from the official documents released by ECSC institutions, which did refer to the coal and steel levy as a "tax".[1448] The latter is not surprising, since it fulfilled all the aforementioned elements of a tax analysed in Chapter 2.

Moreover, the wording of Article 311 TFEU is sufficiently broad to encompass a tax-based resource,[1449] including one earmarked for a specific Union objective. This conclusion comes from a systematic interpretation of Article 311 TFEU, which already supports own resources based on customs, which are in fact taxes on import and export.[1450] Therefore, Article 311 TFEU allows the introduction of a tax-based own resource. Its historical interpretation also suggests that it does not preclude earmarking for specific policy goals, having in mind the first levies to support the European integration, such as the coal and steel levy and sugar levy.

[1445] See *supra* sec. 2.4.1.1.
[1446] Treaty establishing the European Atomic Energy Community (EURATOM) and connected documents. Luxembourg: Publishing Services of the European Communities, [s.d.]. 222 p. "Treaty establishing the European Atomic Energy Community (EURATOM)", p. 7-131.
[1447] Caziero, *supra* note 1432.
[1448] European Community Information Service Report: The European Community (Coal & Steel, Common Market, Euratom) - The facts: Politics and economics, institutions, external relations. Second edition, April 1960. [EU Commission - Working Document], 2nd Edition, April 1960, available at: http://aei.pitt.edu/52348/
[1449] See also: Bizioli, *supra* note 2, at 427.; Caziero, *supra* note 652, Van der Vlugt *supra* note 158, at 550. Also, see *supra* sec. 3.1.
[1450] For example, Navarro mentions customs as an example of a tax-based own resource. See Navarro, *supra* note 13, at 533.

Furthermore, the design of such a levy in the field of corporate taxation requires a legal basis enabling approximation or partial harmonisation of national tax rules. In this regard, Article 115 TFEU allows for the adoption of directives affecting the establishment or functioning of the internal market. Given that corporate tax fragmentation directly affects cross-border business activity, Article 115 TFEU plausibly supports the creation of an own resource which would be based on a partially harmonised tax base. These conclusions are based on already existing examples where Article 115 TFEU served as a legal basis for the harmonisation of certain areas related to corporate taxation, although its wording does not expressly refer to direct taxation. Through teleological and dynamic interpretation of this provision, the Union advanced positive integration by adopting directives addressing specific aspects of direct tax law, including common rules governing interest and royalty payments, cross-border mergers and acquisitions, and the taxation of profit distributions between parent companies and their subsidiaries.[1451] Thus, the advantage of Article 115 TFEU is that it represents a well-known legal basis, as it has a longstanding history of approximation of laws in direct taxation.

In addition, it is important to consider the procedural aspect of the Articles proposed as a legal basis for the revenue-raising side of our proposal. The proposed measure relies on a dual legal basis, Articles 311 and 115 TFEU, also because these articles are procedurally compatible. Following the reasoning developed by de Witte in his analysis of Article 122 TFEU as a composite legal basis for the EURI Regulation, a dual basis is acceptable where the relevant Treaty provisions require the same legislative procedure and pursue complementary objectives.[1452] Articles 115 and 311 TFEU both operate through a special legislative procedure requiring unanimity in the Council, which ensures procedural consistency and avoids the incompatibility that normally precludes the use of multiple legal bases.

In addition, the fact that Article 311 TFEU additionally requires approval by national parliaments does not undermine this compatibility. Rather, it reflects the distinct constitutional function of the Own Resources Decision and complements the unanimity requirement under Article 115 TFEU by providing an additional layer of democratic legitimacy. While Article 115 TFEU governs the approximation of tax laws necessary for the functioning of the internal market, Article 311 TFEU governs the Union's revenue-raising powers. When a measure simultaneously builds upon harmonisation of national tax bases and the establishment of a new

[1451] Although some of the mentioned Directives, such as Council Directive 2003/49/EC (Interest and Royalties Directive) were adopted based on Article 94 of the Treaty establishing the European Community, this provision is functionally equivalent to Article 115 TFEU, as both establish the Union's competence to approximate national laws in areas directly affecting the internal market. See *supra* sec. 3.2.3.1.
[1452] De Witte, *supra* note 12, at 654.

own resource, both objectives must be satisfied. The combination of Articles 115 TFEU and 311 TFEU therefore ensures that the tax elements and the budgetary-constitutional elements are each grounded in their appropriate legal bases, while their shared procedural core, unanimity in the Council, preserves coherence within the Union's legislative framework.

Van der Vlugt's analysis of the difficulties that arise when Article 311 TFEU is combined with another Treaty legal basis offered valuable guidance for designing this proposal.[1453] His concerns regarding both the temporal misalignment of legal instruments and the potential pre-emption of national competences under shared-competence provisions provided a constructive framework to refine our proposal. Rather than contradicting these observations, the proposed approach will try to incorporate them as design constraints.

First, Van der Vlugt highlights that an Article 115 TFEU instrument could outlive the corresponding Own Resources Decision unless it is equipped with a sunset clause aligned with the MFF cycle.[1454] This observation has been taken as a structural design recommendation. Accordingly, integrating a temporal limitation into our proposal could ensure that the harmonised base exists only for the duration of each MFF and expires unless a new ORD is adopted, requiring national-parliamentary ratification under Article 311 TFEU.

Second, Van der Vlugt argues that a shared-competence provision, such as Article 115 TFEU, may pre-empt future national action.[1455] Having this in mind, our proposal therefore limits approximation strictly to what is necessary to secure a part of the revenue for the EU budget, while leaving rate-setting powers entirely in the hands of Member States. In doing so, it respects the boundaries of shared competence and aligns with the fiscal-federalism rationale that harmonisation should occur at the level where cross-border externalities arise, but only to the extent required to address them.

Against this background, unanimity can be seen in two different ways. On the one hand, it may appear as an obstacle, since any single Member State can block the adoption of a new own resource. On the other hand, unanimity can be understood as an opportunity: a new revenue source that passes through the unanimous procedure and is subsequently ratified by national parliaments, acquires a higher degree of political and democratic legitimacy. The requirement of national parliamentary approval ensures domestic scrutiny, strengthens acceptance at the national level, and reduces the risk of subsequent legal or political contestation. In this sense,

[1453] Van der Vlugt, *supra* 1063. Available at: https://verfassungsblog.de/can-the-eu-levy-its-own-taxes/.
[1454] *Ibid.*
[1455] *Ibid.*

unanimity, rather than merely constraining the Union, can function as a mechanism to build a durable consensus around the introduction of a new own resource.

In addition, because the proposal centres on earmarking revenue for specific EPGs, an additional provision is needed to justify the spending purpose and to design the expenditure side of this proposal. Depending on the chosen policy objective, this could involve, for instance, Article 173 TFEU (industrial competitiveness), Article 191–192 TFEU (environmental protection and climate transition), or Article 182 TFEU (research and innovation). This third legal basis would legitimise the allocation of revenue to a dedicated Union objective, thereby aligning the fiscal instrument with the policy competence under which the expenditure falls.

In this vein, having in mind the Union's increasing strategic focus on competitiveness, this proposal supports competitiveness as the primary spending purpose of the earmarked own resource. Moreover, the taxpayers of the proposed own resource would be legal persons, namely companies. The empirical studies described in Chapter 2 clearly exhibited that contributors exhibit greater willingness to comply with a new levy when the purpose of the levy is transparent.[1456] Against this background, directing the proceeds of the resource into a dedicated fund for Union-level projects aimed at strengthening Europe's competitiveness could enhance the legitimacy and acceptability of the measure. Moreover, this would also ensure that revenue collection and expenditure are aligned with a priority policy objective of the Union, which represents a selected EPG.

Seen together, the proposed structure of legal basis enables a legally and conceptually coherent integration of an earmarked levy into the existing Treaty framework. Article 311 TFEU anchors the mechanism within the Union's own resources system. Article 115 TFEU has the capacity to connect the levy to corporate taxation and the functioning of the internal market. Finally, the third policy-specific basis ensures a valid link to the European public good that the resource is intended to support.

Finally, an important question that is inevitable is how to reconcile the design of such a levy with the principle of budgetary universality. This core budgetary principle typically mandates that all revenues are used to finance all expenditures without specific assignments, thereby preventing direct linkages between a particular revenue stream and a defined spending priority. The principle of universality, codified in Article 10 of the Financial Regulation, aims to enhance budgetary transparency and flexibility by avoiding the fragmentation of resources that earmarking can introduce. However, budgetary universality does not entirely preclude

[1456] See *supra* sec. 2.2.4.

earmarking, as exceptions exist on a national level in Member States.[1457] Moreover, the exception also exists on the supranational level in the form of "assigned revenues", which are specifically designated to finance particular items of expenditure.[1458]

Thus, the first pathway to circumvent collision with budgetary universality may be found in this category of EU revenues. The crucial distinction lies between internal assigned revenues, which remain within the general budget but are dedicated to specific purposes, and external assigned revenues, which are managed outside the general budget, often in dedicated funds. Therefore, an initial inquiry must address whether a new own resource can simultaneously function as an externally assigned revenue, given the unique characteristics and legal implications associated with each category.[1459] Careful examination of the EU's legal framework of public finance, as well as common constitutional traditions of Member States, show that Article 311 TFEU provides sufficient normative content for the ORD to classify a new own resource as assigned revenue.[1460] This classification, while legally permissible, requires detailed structuring to ensure compliance with both the ORD and the Financial Regulation. Moreover, the specific steps required for earmarking such a revenue stream involve not only its designation in the ORD but also explicit provisions within the subsequent legislative acts that define its application and allocation to a particular policy objective. This dual classification as both a new own resource and an assigned revenue would circumvent issues related to the EU budget's non-compliance with principles of unity and universality. The other possible solution to reconcile earmarking and the EU budgetary legal framework is the creation of a specific fund, which would collect the revenue from such a levy and allocate it for designated purposes.

5.1.3. Choice of the legal instruments

Designing an earmarked corporate-based own resource also requires determining the appropriate legal instrument through which such a mechanism could be introduced. The choice must be aligned with the division of competences under the Treaties, the procedural requirements attached to different types of Union acts, and the need to ensure coherence between the revenue-raising and expenditure-related dimensions of the proposal.

[1457] See *supra* sec. 2.3.
[1458] See *supra* sec. 2.4.1.2.
[1459] Grund, Steinbach, *supra* note 526.
[1460] *Ibid.*

First of all, from the perspective of the EU's revenue system, the cornerstone is the Own Resources Decision (ORD) adopted under Article 311(3) TFEU. The ORD is the only legal instrument for attributing revenue from a corporate levy to the Union. Its adoption requires unanimity in the Council and ratification by all Member States, which would contribute to its legitimacy and respect for national fiscal prerogatives. The ORD would establish the essential elements of the levy, including the EU's entitlement to the revenue and the classification of the proceeds as a new own resource. However, further discussion about legal instruments which may embody our proposal will be conducted in two possible scenarios.

The first hypothetical scenario presupposes that the BEFIT and HOT proposals were already adopted. Against this background, Article 311(3) TFEU establishes the EU's revenue entitlement to a share of the corporate levy, while Article 311(4) TFEU enables Council Regulations for implementation details such as base calculation methods, collection procedures, and revenue transfer modalities. Existing practice confirms this approach: the 2020 ORD was followed by a Council Regulation for the plastics and GNI own resources, prescribing technical specifications without requiring separate directives.[1461] With BEFIT and HOT already adopted, the BEFIT Directive under Article 115 TFEU harmonises the consolidated tax base for MNEs, and the HOT Directive provides the simplified cross-border base for SMEs. The ORD could reference these pre-existing directives as the framework defining the harmonised bases. Although in this scenario it would be beneficial to include a reference in the explanatory memorandum of BEFIT and HOT that they may serve as a basis for a future own resource. Article 311(4) TFEU implementing regulations would then specify the EU surcharge rate, the precise calculation formula, collection and transfer mechanisms from Member States to the EU, and reporting or supervision requirements. This scenario would avoid an additional legislative step. It represents an alignment with precedents like the plastics own resource that relied solely on ORD and follow-up regulations, and respect for Member State sovereignty since national authorities retain control over rates and administration while the EU claims only a fixed percentage of the harmonised base.

The second hypothetical scenario presupposes that neither the BEFIT nor the HOT proposal were not adopted. In this case, an ORD alone would be insufficient to complete this proposal. For this reason, a secondary legislative act is required to coordinate the

[1461] See e.g. Council Regulation (EU, Euratom) 2021/770 of 30 April 2021 on the calculation of the own resource based on plastic packaging waste that is not recycled, on the methods and procedure for making available that own resource, on the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income ST/13142/2020/INIT, OJ L 165, 11.5.2021.

implementation of the levy within national tax systems. Given that the measure concerns corporate taxation and seeks to approximate national laws affecting the functioning of the internal market, a Directive based on Article 115 TFEU presents an appropriate legal instrument. A Directive would enable the harmonisation of key elements of the tax base or calculation method necessary to ensure a uniform and predictable source of revenue, while leaving procedural and administrative aspects to national authorities. This approach is consistent with the existing EU acquis in direct taxation, which relies on directives that are closely interconnected with the choice of their legal basis. Without BEFIT or HOT, no pre-existing EU legislation would provide the consolidated MNE base or simplified SME framework needed for a stable, manipulation-resistant revenue source. The ORD under Article 311(3) TFEU can establish the EU's entitlement to levy proceeds, and Article 311(4) TFEU regulations can handle collection mechanics, but neither can create the substantive tax base rules affecting national corporate tax systems. These fall squarely within the internal market approximation competence of Article 115 TFEU, which requires Council adoption by unanimity.

Finally, because the levy is conceived as an earmarked instrument, the choice of legal instrument must also encompass the expenditure side. Earmarking must be grounded in a valid Treaty competence corresponding to the European public good financed by the levy. Depending on the policy objective, this could require legislation based on Article 191–192 TFEU (environment), Article 173 TFEU (industrial competitiveness), or Article 182 TFEU (research and innovation). In this context, the earmarking mechanism could be formalised either through an amendment of the Financial Regulation to classify the proceeds as external assigned revenue, or through a dedicated Regulation establishing a Union fund to which the revenue is attributed.

Taken together, this combination of instruments respects the Treaties' constraints, preserves Member States' sovereignty in taxation, and ensures that the fiscal instrument is appropriately linked to the European public goods it is intended to support.

5.1.4. Policy perspective

Designing a new own resource for the EU presupposes awareness of the current policy agenda, as well as goals that such an instrument is meant to address. A guiding thought was found in the statement by the Commission that "a sharper focus on public goods of a European dimension as well as efficient and sound management of public finances must characterise the expenditure side of the EU budget, but must also become a hallmark of revisions on the revenue

side."[1462] Thus, our proposal aims to support the reconnection of EU revenues and expenditures, while also promoting the EPGs. As early as 1998, it was recognised that the acceptability of an EU tax would be enhanced if it were seen to have links to common policies or objectives of the EU.[1463] Therefore, dedicating the funds from this own resource to spending purposes that would enhance the competitiveness of the EU corporate sector might contribute to the better acceptance of such a levy.

Against this backdrop, an earmarked levy on the corporate sector emerges not merely as a revenue-raising tool, but as a policy instrument for supporting the EU's long-standing goals in corporate taxation. In this vein, competitiveness and sustainable growth have been on the EU's policy agenda for more than two decades.[1464] In the field of direct taxation, the Commission already in 2011 identified the need for enhanced coordination, simplification, and the fight against tax fraud.[1465] Although these objectives could contribute to the competitiveness policy goal, many of these remain on the Union's policy to-do list. Moreover, EU institutions have chosen simplicity, transparency, predictability and fairness as the four criteria which all new own resources must fulfil. Also, the Interinstitutional agreement mentions the term "fresh revenue", meaning that new own resources have to create additional revenue for the EU budget, rather than reallocating or repurposing existing funds. It was envisaged that the reform of the system could be achieved through a limited number of ORD revisions.[1466] Thus, it is not surprising that the Council nowadays highlights three goals of the EU's tax policy. First, the EU aims to promote fairness within the internal market by preventing national tax rules from creating cross-border distortions. Second, taxation is increasingly viewed as an instrument for sustainable growth and competitiveness. Tax measures are expected to contribute to current regulatory challenges, including digitalisation, globalisation, and the climate transition, while fostering economic cohesion. Finally, taxation plays a role in financing the EU budget. Certain

[1462] *Ibid.*

[1463] European Parliament, Directorate-General for Parliamentary Research Services, The own resources of the European Union: Analysis and possible developments (1997): 19.

[1464] See Mark Bowler Smith, *The Taxing Road to Sustainable Growth: Resource Productivity and Corporate Taxation* (Amsterdam, IBFD: 2012): 1.

[1465] Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee Tax policy in the European Union - priorities for the years ahead (2001/C 284/03) (Text with EEA relevance) COM (2001) 260 final.

[1466] Annex II, point K, Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, OJ L 433I, 22.12.2020.

national taxes provide revenue for the Union, reflecting the growing link between tax policy and the EU's fiscal capacity.[1467] Any credible new own resource must therefore integrate all three dimensions: restoring fairness, reinforcing competitiveness, and providing a stable, policy-linked source of fresh EU revenue.

Therefore, our proposal for an earmarked levy on the corporate sector, applied to MNEs under the BEFIT framework and SMEs under a simplified HOT regime, responds directly to the three objectives currently guiding EU tax policy. First, it promotes fairness within the internal market. Integrating BEFIT groups and SMEs under HOT ensures that all firms benefiting from the internal market contribute under a consistent and transparent framework, thereby strengthening horizontal equity. Second, it supports sustainable growth and competitiveness. Moreover, this policy direction aligns with the Commission's recent objectives, including those articulated in the BEFIT proposal and the 2025 Competitiveness Compass.[1468] An earmarked corporate levy, grounded in a harmonised base, would complement these initiatives by linking corporate taxation to the financing of European strategic priorities. Adoption of BEFIT as a first step for its own resource would tackle the longstanding issue of high costs of compliance for enterprises operating within the EU. This would contribute to the reduction of fragmentation and increased competitiveness, which is recognised as one of the EU's policy priorities.[1469] The latter is also in line with the 2026 Commission's work plan, since it aims to simplify administrative burden for enterprises operating in the EU.[1470]

By earmarking the proceeds for Union-level programmes that enhance competitiveness, such as innovation funding, digital transition, and industrial resilience, the levy operates not only as a revenue instrument but as a targeted policy tool. Because its taxpayers are corporate actors who benefit most directly from a well-functioning internal market, the mechanism strengthens the link between economic activity and EU-level strategic investment. Third, it reinforces the EU's fiscal capacity. The levy provides a stable and autonomous source of "fresh money" for the Union, reducing reliance on GNI-based national contributions and improving the resilience of the revenue system. Its earmarked nature reconnects revenue and expenditure

[1467] European Council, *How EU tax policy works* (2025). Available at: https://www.consilium.europa.eu/en/policies/eu-tax-policy/#why.

[1468] European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: a Competitiveness Compass for the EU, COM (2025) 30 final. Brussels (2025).

[1469] Mario Draghi, *The future of European competitiveness Part A: A competitiveness strategy for Europe*. (Luxembourg: Publications Office of the European Union, 2024): 30.

[1470] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Commission Work Programme 2026 Europe's Independence Moment, Com/2025/870 Final.

at the EU level, aligning financial flows with Union priorities while increasing transparency and democratic acceptability.

International developments, particularly the OECD/G20 BEPS project and the subsequent Two-Pillar Solution, reinforced this need for coordinated, supranational action. While these initiatives have addressed specific loopholes and introduced minimum standards, they do not eliminate the structural weaknesses within the EU's public finance legal framework. The aforementioned issues underscore the relevance of a corporate-based own resource designed at the Union level. By defining a harmonised tax base and ensuring equal treatment of multinational enterprises across all Member States, such a levy would tackle several policy challenges simultaneously. It would help restore a connection between corporate activity in the single market and the financing of European public goods, ensuring that beneficiaries of the internal market contribute fairly to its functioning.

5.2. Overview of the key elements of our proposal

5.2.1. Subjective scope

Although the benefit principle cannot be applied with mathematical precision in modern tax systems, aligning an obligation to contribute with a specific benefit from this contribution strengthens both the legitimacy and the political acceptability of a tax measure. In the context of an EU-level corporate own resource, this reasoning suggests that the design of the levy should reflect the extent to which different categories of enterprises derive advantages from participation in the internal market. This provides a policy basis for differentiating the scope of the levy between SMEs and large MNE groups, while still ensuring coherence within a single legal framework.

To begin with, large MNEs, the proposed BEFIT framework offers a meaningful benefit. If adopted, BEFIT would establish a unified set of rules for determining the tax base of corporate groups operating in at least two Member States. The taxable results of all group members would be aggregated into a single tax base, which would then be allocated to Member States according to a transitional allocation formula reflecting the average taxable outcomes over the preceding three fiscal years. This model offers significant administrative simplification for businesses, replacing 27 separate corporate tax base calculations with a single EU-wide computation. It would reduce compliance costs, as well as tax certainty. In this sense, BEFIT confers a substantial operational advantage on large MNEs, especially those with complex intra-group structures. Integrating an EU-level, earmarked corporate levy into the BEFIT

framework could lean into this benefit structure. Since large corporate groups gain from a centralised, simplified, and predictable system for computing their tax base, it is reasonable that they contribute proportionately to the financing of European public goods that support the functioning of the internal market in which they operate.

In addition, SMEs are undoubtedly the most important actors of the EU's economy. According to Eurostat, they make 99 % of all enterprises in the EU. The Commission recognised that not only large MNEs, but also SMEs face disproportionately high compliance burdens when operating across borders. Therefore, in 2023, it proposed a Head Office Taxation (HOT) regime for SMEs. More precisely, the Commission proposed a Directive that would allow eligible SMEs to compute their tax liability in all Member States based on the rules of their Member State of head office, with assessments coordinated by a single "Head Office Tax Administration." This system is envisaged to substantially simplify tax administration and reduce compliance costs. If adopted, it would provide a tangible benefit for SMEs wishing to expand cross-border. Positioning SMEs within the scope of an earmarked corporate levy can therefore be justified on benefit-based grounds. In this scenario, SMEs obtain access to a tax framework set up by the EU, which lowers their administrative barriers to operating in the internal market. Thus, requiring them to contribute to the financing of EPGs, such as digital infrastructure or the single market programme, would reflect a connection between revenues and expenditures. The pairing of reduced compliance burdens with a modest, earmarked EU contribution would reinforce the normative logic of the instrument and support its broader political acceptability.

Together, the HOT and BEFIT proposals provide a conceptual foundation for designing the scope of an earmarked corporate levy. SMEs benefit from reduced administrative burdens through a single assessment point. Large MNEs benefit from a harmonised tax base and simplified allocation system. Both categories derive substantial value from access to the internal market. Accordingly, linking a corporate-sector–based own resource to these reforms offers a solid policy narrative: those who benefit most directly from regulatory simplification and the freedoms of the internal market contribute to funding the European public goods that sustain those very benefits. This alignment might help to strengthen the legitimacy, transparency, and acceptability of an EU-level earmarked levy, framing it not merely as a revenue-generating measure but as a mutually reinforcing component of the Union's broader fiscal and tax policy architecture.

A further argument in favour of a broad subjective scope is the need to avoid differential treatment between categories of firms operating within the internal market. Limiting the levy

exclusively to large multinational groups, or conversely only to SMEs, could raise concerns of unequal or discriminatory treatment, particularly in light of the general non-discrimination principle and the fundamental freedoms of the Treaties. This risk is especially salient in the case of large MNEs, many of which have non-EU parent companies. A levy that applies solely to this group could be perceived as disproportionately targeting foreign enterprises and thereby undermining the neutrality of the internal market. By contrast, a design that encompasses all firms operating cross-border within the Union, while tailoring the practical modalities of the levy to the respective regulatory frameworks of HOT for SMEs and BEFIT for multinational groups, ensures horizontal consistency and strengthens the normative justification of the instrument. In this way, each category of taxpayers contributes in line with the benefits it derives from EU-level simplification and coordination, while the overall structure remains non-discriminatory and compatible with the economic freedoms of the Treaties.

The latter is especially important, having in mind recent developments in the international taxation arena. More precisely, the latest agreement under the OECD/G20 Inclusive Framework is that more than 145 jurisdictions have consented to broad exemptions for US-headquartered multinationals from additional overseas taxation. This development revealed that major economies are willing to characterise targeted tax measures as discriminatory and to threaten retaliatory taxation if they perceive their firms to be disproportionately affected. Against this backdrop, an EU surcharge that applied solely to large multinational groups could be vulnerable to similar accusations, particularly since many of the largest MNEs operating in the internal market are headquartered outside the Union. Establishing a levy that also covers EU-based SMEs opting into a harmonised base mitigates this risk: it broadens the tax base, distributes the burden more evenly, and signals that the measure is not designed to single out foreign companies. At the same time, such a surcharge would provide the Union with at least a modest revenue stream from highly mobile global groups.

5.2.2. Design of the proposal and determination of the taxable event

The effectiveness and legitimacy of an EU-level corporate own resource depend crucially on the definition of an administratively feasible taxable base. This proposal, therefore, adopts a model in which the EU levy takes the form of a corporate income tax surcharge, calculated without interfering with Member States' competence over corporate tax rates. In this approach, we learn and offer some adaptations to the proposal by Scherleitner and Traversa,

which was analysed supra.[1471] Such a design respects national fiscal sovereignty while providing a stable foundation for a supranational revenue source.

A surcharge model requires a defined and uniform base. For multinational groups, the most suitable framework is the BEFIT consolidated tax base, which aggregates the taxable results of all group members operating in the Union. Before the group base is allocated back to individual Member States for domestic taxation purposes, it constitutes a neutral and manipulation-resistant base upon which the EU surcharge can be calculated. This method ensures that the levy is applied to the economic reality of group-wide activity within the internal market, rather than to fragmented national accounts.

For SMEs, a different but conceptually aligned mechanism is appropriate. Building on the proposed Head Office Taxation (HOT) system, SMEs engaging in cross-border activity would compute their taxable base in accordance with the rules of their head office jurisdiction, while interacting only with a single tax administration. Applying the EU surcharge to the HOT-determined base provides administrative simplicity while reflecting the benefit SMEs derive from reduced compliance costs and the removal of internal market barriers.

The taxable event underlying the surcharge is the generation of taxable profits attributable to economic activity within the internal market. This link between the revenue source and the EU legal order satisfies the requirement, identified in the historical interpretation of Article 311 TFEU, that an EU own resource must possess a substantive connection to the Union.

By combining a consolidated base for MNEs with a simplified base for SMEs, this proposal ensures both neutrality and proportionality. All firms that benefit from the internal market and the simplification offered by BEFIT and HOT contribute to the financing of European public goods. Meanwhile, the surcharge ensures that there is no discriminatory treatment among categories of taxpayers. The use of existing assessment structures also ensures administrative efficiency and renders the instrument more politically acceptable.

To operationalise the surcharge, it is necessary to specify a rate that is both economically proportionate and politically acceptable for a low surcharge, set initially at 1 % to 1.5 % of the harmonised taxable base.

5.2.3. Earmarking collected revenue for EPGs

[1471] See *supra* sec. 4.3.3.

A central feature of the proposal developed in this chapter is that the corporate levy is conceived not merely as a mechanism for generating revenue, but as an instrument directly aligned with EPGs. The rationale for this linkage is grounded in the historical evolution of own resources, which started as policy-oriented instruments.[1472]

EPGs are difficult or impossible for individual Member States to provide efficiently on their own. Whether in the domains of climate protection, energy security, strategic infrastructure, or digital capacity, the benefits of investment extend beyond national borders, while the costs are often borne territorially. This asymmetry creates an under-investment problem that can only be overcome through coordinated supranational financing.[1473] The EU budget is uniquely situated to address this gap, but its reliance on national contributions weakens the stability needed to fund large-scale EPGs.[1474]

Against this backdrop, earmarking the proceeds of a corporate-based own resource creates a direct, functional link between the beneficiaries of the internal market and the financing of goods essential to its long-term sustainability.[1475]

Moreover, the introduction of earmarking serves a dual purpose. First, it enhances transparency by making the contribution structure visibly aligned with a defined Union objective. Second, it strengthens legitimacy by demonstrating that the revenue is not an open-ended transfer, but a targeted mechanism with a clear spending purpose. This aligns with empirical evidence suggesting that earmarked fiscal instruments receive higher public support when contributors can observe a connection between the levy and the financed policy outcome.[1476]

Linking the levy to EPGs also ensures that revenue is allocated to areas where the Union possesses clear legal competence and where joint action provides demonstrably higher European added value. This responds directly to concerns raised throughout the academic literature and institutional reports that the existing revenue structure is not sufficient to support high-cost, high-spillover investments such as energy interconnections, climate infrastructure, cybersecurity, or critical technology capacity.[1477] Earmarking, when grounded in a valid Treaty

[1472] Explanation of the term „policy-oriented“ own resources can be found *supra* in sec. 4.2. Historical evolution of the Union's own resources, which started from the policy-aligned revenue sources and gradually developed in a budget predominantly financed by Member States' contributions, is described *supra* in sec. 3.1.
[1473] See *supra* sec. 2.4.3.1.
[1474] See *supra* sec. 3.3.
[1475] See *supra* sec. 4.5.4.
[1476] On the advantages of earmarking, see *supra* sec. 2.2.4.
[1477] According to the ECB, achieving the objectives of the Fit for 55 package by 2030 will require additional annual investment of approximately EUR 520 billion. Against this backdrop, Traversa and Scherleitner proposed a mechanism for financing pan-European green investment. See Scherleitner and Traversa, *supra* note 600.

competence, such as Articles 191–192 TFEU for climate action, Article 173 TFEU for industrial competitiveness, or Article 182 TFEU for research, ensures both legal certainty and policy coherence. Finally, connecting the new own resource to EPGs contributes to the long-term fiscal sustainability of the Union.

6. CONCLUSION

This dissertation set out to examine whether a corporate-tax–based own resource, designed as an earmarked levy, could strengthen the European Union's fiscal autonomy while addressing long-standing deficiencies in its public finance legal framework. To do so, it was necessary to start from the notion of tax. This step had multiple purposes. First, the notion of tax analysis provided the basis for a subsequent normative inquiry into how earmarking interacts with the notion of tax. Second, this inquiry was subsequently used to analyse whether the Union's own resources can be considered as taxes, having in mind their conceptual characteristics. Thus, the second chapter laid the conceptual foundation of this research. After demonstrating that compulsion, legality, monetary form, and revenue-raising capacity are common elements of taxation across selected Member States with various historical and political backgrounds, it was necessary to examine whether and how earmarking can be reconciled with the notion of tax.

Historical, comparative, and constitutional evidence across Italy, Germany, Slovenia, and Croatia confirmed that earmarking has long been embedded in national tax systems. It has been used particularly in moments of crisis, where linking new levies to a public purpose enhanced legitimacy, or the political acceptance of new burdens.[1478] Moreover, earmarking can coexist with constitutional tax principles, provided that the measure is enacted through law and serves a constitutionally recognised public aim.[1479] This insight is crucial for the EU context: it means that earmarking is compatible with the functional logic of taxation and may even enhance transparency, legitimacy, and policy coherence. The latter was important, having in mind the thesis aimed to propose a tax-based own resource that would be earmarked for pan-European purposes.

Against this background, earmarking illustrates that dedicating tax revenue to specific public purposes does not alter the fundamental nature of a levy. The only feature with which earmarking appears to conflict, the idea that tax revenues are generally not assigned to expenditures, cannot be regarded as a constitutive element of taxation, but rather as a common

[1478] When it comes to the imposition of earmarked taxes during crisis periods, there is an example of the„military tax" (*vojnica*), which was imposed in September 1929 as a surtax on direct taxes on all citizens of the Kingdom of Yugoslavia, and it was earmarked to finance the military between the two world wars. Similarly, in Germany, earmarked taxes served as a public finance instrument to support the ongoing expenses during both World Wars. See *supra* sec. 2.3.

[1479] The German approach to the reconciliation of earmarking and the budgetary principle of universality is particularly relevant. Namely, BVerfG considers earmarking to be consistent with the budgetary principle of universality (non-affectation principle). In this regard, see *supra* sec.2.3.5.

budgetary convention.[1480] Within this conceptual framework, earmarking does not constitute a departure significant enough to change the legal character of a tax. The latter is also intertwined with the principle of budgetary universality. The comparative analysis demonstrates that all examined Member States accept earmarking as a legitimate and functionally justified exception, expressed variously through constitutional jurisprudence, legislation, or established fiscal practice.[1481] This confirms that earmarking is a well-recognised and constitutionally embedded technique within European public finance.

Furthermore, the second chapter also engaged in the evaluation of the benefits and limitations associated with earmarking as a possible legal design of taxes. This assessment also relied on the findings of economic scholars. Thus, Buchanan argued that earmarking enhances democratic participation by allowing citizens, directly or through representatives, to express preferences over specific spending priorities.[1482] This helps explain why scholars observed that earmarking may reduce resistance to taxation, as illustrated in the acceptance of the federal gasoline tax increase and payroll tax rises for Social Security in the USA.[1483] Subsequent empirical studies confirmed this conclusion. For example, similar results emerged from Vogel's 1970s study in Sweden,[1484] where the inclination towards tax evasion declined when payments were linked to specific benefits, and from Norwegian focus groups (2010), which indicated a strong public preference for linking revenues and expenditures.[1485] An experiment conducted in Germany in 2008 showed that willingness to contribute rises significantly when taxpayers are informed of the specific use of funds.[1486] Hemel and Porter's 2019 research conducted in the USA further demonstrated that support for earmarked taxes increases when there is "source-use alignment" - a perceived fairness between who pays and what the revenue finances.[1487]

From a tax law perspective, scholars argued that earmarking enhances transparency, stability, and predictability by insulating certain expenditures from annual political bargaining and by binding future governments to long-term commitments.[1488] Moreover, earmarking may raise revenue more effectively by reducing resistance to taxation and lowering administrative

[1480] See *supra* sec. 2.3.1.
[1481] See *supra* sec. 2.3.
[1482] Buchanan, *supra* note 389, at 458
[1483] Wilkinson, *supra* note 404, at 122.
[1484] Vogel, *supra* note 427.
[1485] Kallbekken and Aasen *supra* note 419.
[1486] Hundsdoerfer et al., *supra* note 396.
[1487] Hemel and Porter, *supra* note 420.
[1488] Camic, *supra* note 422.

costs through more stable funding streams. Because earmarked revenues align spending with current receipts, they may also reduce reliance on debt financing.[1489]

Nevertheless, earmarking also has several drawbacks, such reduced fiscal flexibility, especially in emergencies, and the risk that earmarked revenue streams may not keep pace with inflation, requiring supplementary funding. A structural concern shared across systems is the need to reconcile earmarking with the principle of budgetary universality, which requires revenue to flow into a unified budget. Comparative practice shows, however, that this tension can be managed. Germany recognises earmarking as constitutional under certain conditions. Croatia preserves formal universality, but still routes earmarked revenue through the state budget. Italy explicitly provides for exceptions within its constitutional framework. [1490] Taken together, these examples demonstrate that although earmarking imposes certain design constraints, it remains a widely accepted and versatile fiscal instrument across European legal systems.

Against this background, the analysis of earmarking subsequently focused specifically on the EU context. The analysis of earmarking in the ambit of European integration demonstrated that it has been used at various stages of the EU's history. More precisely, the ECSC, as the first attempt at European integration, heavily relied on earmarking in its financing.[1491] It did not rely on national contributions from its Member States. Instead, its two revenue sources, the ECSC levy and borrowing, were predetermined to finance specific purposes prescribed in the ECSC Treaty. The coal and steel levy was paid by entities in the coald and steel industry. Put differently, entitites who benefited from the regulation of coal and steel market were the ones obliged to pay the coal and steel levy. Thus, the first supranational own resource followed the logic that those who benefit from European integration should contribute to its financing.

As integration progressed, it became increasingly difficult to develop new revenue sources that preserved such a direct link between the origin of the revenue and the policy objective they were intended to finance. As the EU assumed a vast array of competences, this expansion inevitably weakened the connection between its revenues and expenditures.[1492] The Union became reliant on Member States' GNI-based contributions, which provide a stable and predictable revenue stream, but reinforce the *juste retour* logic and deprive the Union's

[1489] Mc Cleary, *supra* note 406.
[1490] See *supra* sec. 2.3.
[1491] See *supra* sec. 2.4.1., and sec. 3.1.1.
[1492] Departure from the close cnnection between supranational revenue and expenditure to the current situation, where GNI contributions make up the largest share of EU budget is described in sec. 3.1.

financing system of any meaningful policy signalling function.[1493] Nevertheless, the Union's institutions consistently advocated for the renewal of this connection to enhance the autonomy, transparency, and policy coherence of the EU budget by ensuring that revenue sources reflect and support Union-level objectives.

Moreover, when examining earmarking within the EU's multi-level fiscal system, it can be observed that traditional national classifications of earmarking are inadequate, as they fail to capture the dynamic interaction between national and supranational budgetary authority. To bridge this conceptual gap, the chapter proposed a distinction between single earmarking, where the use of revenue is determined exclusively at one level of government (as in the case of the ECSC levy), and double earmarking, where both national and EU law prescribe specific spending purposes for the same revenue stream.[1494] The EU ETS represents this vertically coordinated model: revenues are first earmarked by Member States and subsequently subject to a second layer of earmarking under EU legislation for defined Union programmes. This framework illustrates not only that earmarking already functions within the Union's fiscal architecture, but also that it operates in a structurally more complex manner than in purely national systems. Thus, double earmarking restores the connection between ravenue raising and expenditures, which is also beneficial from the viewpoint of sound financial management.

In addition, earmarking was then subject to an examination regarding its contribution to the achievement of the EU's policy goals. It has a promising potential to align Union's own resources with its expenditures, thus simultaneously promoting Union's regulatory policy. In addition, it may also help the Union to achieve its redistributive goals, depending on the design and the use of earmarked revenue sources.[1495] Finally, it may contribute significantly to the level of transparency and accountability in the EU budget management. By linking revenue sources to Union priorities, earmarking embeds taxation within the broader constitutionally assigned tasks of the EU, supporting environmental protection, cohesion, or market regulation. Through this, earmarking enhances the substantive constitutional functions of taxation while preserving its essential legal characteristics. Moreover, the traceability of earmarked funds could contribute to easier assessment of the effectiveness of public spending in the EU. Thus, the relationship between the collected revenue and achieved results becomes more transparent.

Taken together, the previously mentioned arguments support the first hypothesis of the dissertation. Earmarking is aligned with the notion of tax. Moreover, it enhances the alignment

[1493] See *supra* sec. 3.5.4.
[1494] On the existing forms of earmarking see *supra* sec. 2.2.3.
[1495] On the role of earmarking as an option for policy design in the EU see *supra* sec. 2.4.

of taxation with constitutional functions beyond revenue collection. Earmarking reinforces taxation's role by linking the act of revenue raising with the public purposes and constitutional values on the national level, and European principles and objectives prescribed in the Treaties. By visibly linking taxes to Union policy objectives, earmarked levies could strengthen transparency and legitimacy while enhancing citizens' sense of accountability in EU fiscal policy. Earmarking preserves the core characteristics of taxation, while adding value in terms of transparency, legitimacy, and policy alignment.

Moreover, in the third chapter, the analysis shifted to the supranational level. Since the thesis aims to propose a possible solution for the establishment of the Union's own resources, it is necessary to first understand the fundamentals of the legal system where such a proposal needs to be embedded.

A historical analysis of the evolution of the EU's public finance legal framework highlighted how the EU's revenue structure originates from the idea of tax-based own resources, which is exhibited in the coal and steel levy and sugar levy, as well as in historical documents that name those instruments as "taxes".[1496] Moreover, the EU's public finance system was initially based on instruments that closely aligned revenues and expenditures. Nevertheless, as the integration process began to develop more swiftly and the Union's expenditures broadened, revenue sources were not adequate, and they were supplemented with GNI contributions. This shift, although necessary at the time, weakened the autonomy, stability, and visibility of the EU budget. Also, it facilitated the "juste retour" calculations and constrained the Union's ability to invest adequately in cross-border policy priorities.

Moreover, it was necessary to examine the core principles underpinning the EU's public finance legal framework, including the principle of conferral, subsidiarity, proportionality, solidarity and Member States' sovereignty. The latter is an inevitable step, since the introduction of its own resources must be in line with these constitutional principles that govern the Union's fiscal competencies. Taken together, these principles do not prevent the creation of a new earmarked levy. Rather, they outline the conditions under which such a measure is justified.

Conferral defines the boundaries of EU action, but it does not exclude the creation of tax-like instruments, as it was already demonstrated with the customs own resource. Although the Treaties do not grant an explicit taxing power to the EU, they allow the establishment of a system of own resources. Historical analysis supports the claim that there are no obstacles in

[1496] An overview of historical development of own resoruces is offered *supra* in sec. 3.1., as well as sec. 3.5.

the Treaty for a tax-based own resource. The ECSC levy, the EU ETS, and the 2022 Solidarity Contribution all demonstrate that the Union may adopt fiscal measures where they are functionally tied to a substantive area of EU competence, such as environmental protection, energy security, or market stability. Thus, conferral permits a targeted EU levy if it is anchored in a Treaty objective and follows the prescribed legislative procedure.

Subsidiarity strengthens the case for an earmarked own resource when the objective pursued is inherently supranational. Many EU public goods cannot be sufficiently achieved through fragmented national action. They involve cross-border spillovers, require scale, and suffer from coordination failures when left solely to Member States. An EU-level revenue stream dedicated to such purposes offers efficiency. In this sense, subsidiarity provides the analytical basis for demonstrating the EU's added value of collective financing.

Proportionality ensures that any EU measure does not exceed what is necessary to achieve its goal. In the case of an earmarked levy, proportionality requires showing that the measure is suitable for financing the designated EU public good, that no less intrusive alternative would achieve the same outcome, and that its impact on national fiscal autonomy remains limited. EU case law, particularly Gauweiler and Weiss, indicates that the Court accepts far-reaching financial instruments when they include adequate safeguards and are clearly linked to Treaty objectives.[1497] A carefully designed levy serving a specific EU purpose would therefore meet proportionality requirements.

Solidarity, as a constitutional value, supports the creation of a shared revenue instrument for the EU. The evolution of EU fiscal responses, from the European Solidarity Fund to SURE, NGEU, and the 2022 Solidarity Contribution, shows that solidarity is increasingly realised through financial mechanisms that pool risks and resources across Member States.[1498]

Finally, Member States' sovereignty remains intact, but its exercise has long been shared or constrained where necessary for the functioning of the internal market or the achievement of common objectives. Harmonised VAT, excise duties, corporate tax directives, ATAD, and the GLOBE Directive illustrate that limited interference in the tax aspect of sovereignty is accepted. If the introduction of earmarked own resources based on corporate taxation is analysed in the light of Member States' sovereignty, the following conclusion emerged. The introduction of a new own resource designed as an earmarked levy on the corporate sector, where a part of the overall revenue is allocated to the supranational level and earmarked for specific pan-European purposes, would undoubtedly cause tension. Following

[1497] See *supra* sec. 3.2.3.
[1498] The interconnection of solidarity and the EU's public finance instruments is described *supra* in. 3.2.4.

the previously mentioned analysis by Cornielje, regarding the normative and functional elements of fiscal aspects of sovereignty, with the introduction of such a levy, the EU would fulfil all the criteria. It would be interesting to see if earmarking such a levy for a shared exceptional pan-European concern, such as funding security or defence, would help to overcome the possible scepticism towards an increase in the EU's fiscal capacity. Finally, it seems that the EU is performing more of the functional acts of fiscal sovereignty, while sovereignty formally remains with the Member States.

Subsequent analysis of the EU's revenue and expenditures resulted in the conclusion that the current Union's public finance legal framework suffers from various drawbacks. For example, the EU currently lacks genuine fiscal autonomy. Union's dependence on Member States contributions contradicts the idea of "own" resources and makes the EU budget vulnerable to political constraints. Moreover, the dominance of GNI-based contributions in the EU budget strengthens the juste retour logic, undermines solidarity, and weakens the perception of the EU budget as a provider of European public goods. The latter also blurred the connection between the Union's revenues and expenditures.

Moreover, there is a systemic mismatch between revenues and expenditures since they are decided under different legal procedures. While a decision on the Union's revenue requires unanimity and national ratification, expenditures can be decided based on QMV. The latter makes the decisions on the EU's revenue slow, politically sensitive to national vetoes, and ill-suited to respond to crises or emerging EU-level needs. Thus, financing mechanisms like SURE or NGEU were created outside the ordinary system precisely because the own resources framework is too rigid. Moreover, the European Parliament has only a limited consultative role in deciding on the EU's revenues.[1499] This asymmetry creates rigidity on the revenue side, making it impossible for the EU to adjust financing to evolving political priorities. Finally, over time, the EU budget lost the historical connection between revenue sources and policy purposes. Thus, for decades, reports requested by the Commission reiterated the need to realign EU revenues with European public goods. The question which is raised following this observation is whether the Union can overcome some of these obstacles without changing the Treaties. In this regard, Article 311 TFEU is substantively flexible but procedurally rigid. In substance, it allows for a wide range of potential own resources, including tax-based resources. Moreover,

[1499] As it was demonstrated in sec. 3.5.4., one of the elements of the EU's public finance legal framework often subject to criticism is the discrepancy of the Parliament's role when it comes to revenues and expenditures. More precisely, expenditure can be adjusted through the ordinary budgetary framework involving qualified majority voting and the European Parliament, any reform of the own resources system requires unanimity in the Council and ratification by all Member States., with the Parliament having only consultative role.

Article 311 TFEU supports may serve as a legal basis for such own resource without a treaty change. Although some authors see the unanimity requirement as an obstacle, on the other hand, this procedure ensures its legitimacy.

In addition, Chapter 4 showed that decades of critiques of the own resources system, including its lack of transparency, genuine fiscal autonomy, and direct link to EU policies, gained significant momentum in the post-pandemic period. Through NGEU, the EU adopted extraordinary measures such as joint borrowing. The necessity to repay the NGEU debt incentivised proposals for a new generation of policy-aligned own resource proposals.[1500] The chapter reviewed all major reform proposals at the institutional and academic levels, demonstrating the need for a revenue system that reflects EU policy priorities, ensures financial stability, and reduces the Union's dependence on national contributions. Academic contributions have stressed that corporate taxation, owing to its economic significance for the single market and the EU's competitiveness and its role in addressing cross-border profit shifting, represents a promising candidate for a future own resource.[1501] The assessment of chosen own resource proposals against the four selected criteria revealed that a corporate-based, policy-aligned levy could satisfy all key requirements for an own resource. If the EU connects the revenue raising of such a resource with a specific spending purpose through earmarking, this will establish a clear connection between its revenue and expenditure. Moreover, corporate tax-based own resources, depending on their design, could benefit from the already existing tax collection framework in Member States. The latter would contribute to its administrability. Finally, it offers high and stable revenue, addresses a source of market distortion, enhances fairness, and aligns with sectors that benefit from integration.

Building upon the mentioned findings, the fifth chapter developed and assessed a detailed proposal for an EU-level levy based on a harmonised corporate tax base. The proposal builds on elements of the Commission's BEFIT initiative and the Head Office Tax (HOT), both of which aim to reduce compliance burdens and ensure equal treatment of firms operating cross-border.[1502] The dissertation argues that BEFIT and HOT might provide an institutional and technical foundation for a corporate-based own resource and that their underlying logic may be used to align them with the aims of EU-level revenue raising. However, even if these resources are not adopted, such a levy may be introduced without Treaty changes.

[1500] See the own resource proposals developed by the omission in 2021 *supra* n sec. 3.4.4. Also, for the proposals put forward by the European Parliament see *supra* sec. 4.1.
[1501] Regarding the potential of CIT to become the basis for a Union's own resource see *supra* sec. 4.5.
[1502] An overview of BEFIT and HOT initiative is presented *supra* in sec. 4.5.3.

More precisely, this thesis advocates that such a levy can be introduced through a tripartite legal basis: (i) Article 311 TFEU, which authorises new own resources; ii) Article 115, which provides the internal market link and justifies measures addressing distortions in corporate taxation; and (iii) a policy-specific Treaty basis for the earmarked expenditure, ensuring legal certainty and coherence with EU competences. The legal analysis showed that the wording, historical evolution, and teleological purpose of Article 311 TFEU allow considerable discretion for designing both tax-based and earmarked own resources.[1503] Importantly, revenue collected by Member States on behalf of the Union preserves its nature as an EU resource, meaning that the administrative machinery of national tax authorities can be utilised without affecting the legal character of the measure. The policy assessment further established that linking the levy to EPGs enhances legitimacy by making the relationship between contributions and benefits visible and rational. EPGs, such as climate mitigation, energy security, digital infrastructure, or technological competitiveness, cannot be delivered effectively by Member States acting alone. A corporate-based own resource finances precisely those areas where the internal market and its key beneficiaries generate the greatest spillovers.

This research also concluded that corporate taxation is the missing pillar of the EU's public finance architecture. A levy based on corporate tax base, earmarked for EPGs, provides a path toward strengthening the EU budget. While unanimity in tax matters remains a political challenge, the legal and policy arguments advanced here indicate that the Treaties already contain the tools necessary to achieve meaningful progress. By connecting contributions to clearly identifiable European objectives, an earmarked corporate-based own resource can enhance transparency, restore fairness, and reinforce the shared responsibility for collective goods in a highly integrated economy. Such a measure would not only strengthen the EU's fiscal capacity but would also align its funding instruments with its strategic ambitions. Following the logic developed at the earliest stages of European integration, entities that engage in cross-border activities benefit from the internal market, and thereby should support its functioning through a portion of their corporate tax burden. Although MNEs benefit the most in this respect, SMEs doing business in several Member States should also be included in the contribution to finance the Union's internal market.

In this respect, the dissertation concludes that a corporate-income–based own resource is not merely a technical adjustment to EU financing, but a structural innovation capable of

[1503] For the review of Article 311 TFEU as a potential legal basis for a tax-based own resoruce see *supra* 3.6.

supporting the Union’s transition into a more resilient union, one able to meet the demands of the 21st century.

BIBLIOGRAPHY

Books, articles and book chapters

1. Adams, Charles W. *Za dobro i zlo: utjecaj poreza na kretanje civilizacije,* 2nd ed. (Zagreb: Institut za javne financije, 2006).
2. Adjei, Moses, Judith Van Leeuwen and Helder Pereira. "Towards decarbonising shipping: Governance challenges and barriers to the implementation of EU emission trading system (ETS)." *Maritime Studies* 25, no. 23 (2026).
3. Amtenbrink, Fabian, and Menelaos Markakis. "Never Waste a Good Crisis: On the Emergence of an EU Fiscal Capacity." In *EU Fiscal Federalism: Past, Present, Future* edited by Alicia Hinarejos and Robert Schütze (Oxford: Oxford University Press, 2023).
4. Anesi, Vincent. "Earmarked taxation and political competition." *Journal of Public Economics* 90, no. 4,5 (2006): 679-701.
5. Antonini, Luca. "Introduzione al diritto costituzionale tributario: nella prospettiva del terzo millennio." In *Il diritto costituzionale tributario nella prospettiva del terzo millennio,* edited by Valeria Mastroiacovo, Giuseppe Melis, (Torino: Giappichelli Editore, 2022).
6. Arai-Takahashi, Yutaka. "Proportionality - a German approach." *Amicus Curiae* 19 (1999): 11-13.
7. Arbutina, Hrvoje. "Ustavna i nadnacionalna ograničenja ovlaštenja na oporezivanje." *Zbornik Pravnog fakulteta u Zagrebu* 62, no. 5-6 (2012): 1283-1322.
8. Arbutina, Hrvoje, Nataša Žunić Kovačević and Stjepan Gadžo. "Croatia." In *History and Taxation: The Dialectical Relationship between Taxation and the Political Balance of Power*, edited by Peter Essers (Amsterdam: IBFD, 2022).
9. Aris, Avgousti, et al. "The Climate Change Challenge and Fiscal Instruments and Policies in the EU." *SSRN Electronic Journal* (2023).
10. Arlović, Mato. "Ustavnopravni okvir ograničenja prava vlasništva u Republici Hrvatskoj." *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 46, no.1 (2025): 235-259.
11. Artuković, Tomislav. "Neki aspekti osiguranja i naplate poreza i drugih javnih davanja u sudskoj praksi." *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 44, no.1 (2023): 225-248.
12. Avbelj, Matej. "The EU and the Many Faces of Legal Pluralism Toward a Coherent or Uniform EU Legal Order?" *Croatian Yearbook of European Law & Policy* 2, no.1 (2006): 377-391.
13. Avi-Yonah, Reuven S. "The Three Goals of Taxation." *NYU Tax Law Review* 60, no. 1 (2006): 1-28.
14. Avi-Yonah, Reuven S. "Taxation as Regulation: Carbon Tax, Health Care Tax, Bank Tax and Other Regulatory Taxes." *Accounting, Economics, and Law a Convivium* 1, no.1, *Article 6* (2011).
15. Bach, Stefan. "100 years of the modern German tax system: Foundation, reforms, and challenges." *DIW Weekly Report 9.46/48* (2019): 408-414
16. Bačlija Brajnik, Irena and Marjetka Rangus. „Local tourism development: earmarked taxes for enhancing tourism in Slovenian municipalities." In *Contemporary issues in tourism*, ed. Maja Borlinič and Milica Rančić Demir (Maribor: University of Maribor, University Press, 2022).
17. Bačlija Brajnik, Irena, Vladimir Prebilič and Luka Kronegger. "Explaining strategies in setting own local taxes in Slovenia." *Lex Localis-Journal of Local Self-Government* 20, no.1 (2022): 239-257.
18. Balladares Saballos, Reynaldo. "Profili costituzionali delle imposte con fini extrafiscali." *Rivista di diritto tributario internazionale 3/2012* (2012): 77-88.

19. Baraggia, Antonia, Matteo Bonelli. “Linking Money to Values: The New Rule of Law Conditionality Regulation and Its Constitutional Challenges.” German Law Journal 23, no. 2 (2022): 131–156.
20. Barassi, Marco, and Lorenzo del Federico. “The notion of tax and the different types of taxes.” In *The Concept of Tax*, edited by Bruno Peeters et al. (Amsterdam: IBFD, 2010).
21. Barreau, François. *The Legitimacy of the Taxing Powers of the EU and Its Impact on the Direct Taxation of Businesses* (PhD diss., Vienna University of Economics and Business, 2023).
22. Barreau, François. “Legitimacy of the EU’s Tax-Based Own Resources.” In *The Power to Tax in Europe*, edited by Johan Lindholm and Anders Hultqvist (Oxford: Bloomsbury Publishing, 2023).
23. Barić, Sanja. “Načelo jednakosti u Italiji: ustavnopravni koncept u službi punog razvoja osobnosti.” *Zbornik Pravnog fakulteta u Zagrebu*, 65 no. 1 (2015): 87-113.
24. Becker, Peter. “The European Budget and the Principles of Solidarity and Added Value,” *The International Spectator* 47 no. 3 (2012): 116-129.
25. Becker, Peter. “A new budget for the EU: negotiations on the Multiannual Financial Framework 2021-2027,” *Stiftung Wissenschaft und Politik Research Paper*, 11/2019 (2019).
26. Begg, Ian. “Fiscal Federalism, Subsidiarity and the EU Budget Review.” *Swedish Institute for European Policy Studies*. Report 1/2009 (2009).
27. Begg, Ian. “EU Finances in Search of a New Approach.“ *Intereconomics* 58, no. 6 (2023):295-299.
28. Belvisi, Francesco. “The Common Constitutional Traditions and the Integration of the EU.” *Diritto & Questioni Pubbliche: Rivista di Filosofia del Diritto e Cultura Giuridica* (2006): 21-37.
29. Benedetto, Giacomo. *The History of EU Budget* (Brussels: Policy Department for Budgetary Affairs, European Parliament, 2024).
30. Benedetto, Giacomo. “Institutions and the route to reform of the European Union’s budget revenue, 1970–2017.” *Empirica 44* (2017): 615–633.
31. Besson, Samantha. *Sovereignty*, in Oxford Public International Law (Oxford University Press, 2011).
32. Bezzolato, Simone. L'autonomia finanziaria degli enti locali. Riflessioni sullo stato di attuazione del federalismo fiscale (master thesis, Università di Padova, 2022) 33-34.
33. Bird, Richard M. “Fiscal Federalism in Russia: A Canadian Perspective.” *Public Finance and Management* 3 (2003): 419-459.
34. Bird, Richard M. and François Vaillancourt. “Introduction and Summary.” In *Perspectives on Fiscal Federalism*, edited by Richard M. Bird and François Vaillancourt (World Bank Institute, Washington D.C., 2006).
35. Bisciari, Patrick, et al. “The EU budget and the Next Generation EU Recovery Plan: a game changer?” *NBB Economic Review* (2021): 29-67.
36. Bizioli, Gianluigi. “A Hamiltonian moment for EU taxation?” *Intertax* 52, no.11 (2024): 705-712.
37. Bizioli, Gianluigi. “Building the EU Tax Sovereignty: Lessons from Federalism.” *World Tax Journal* 14, no. 3 (2022): 407-433.
38. Bizioli, Gianluigi. *Il processo di integrazione dei principi tributari nel rapporto fra ordinamento costituzionale, comunitario e diritto internazionale* (Padova: CEDAM, 2008).
39. Bizioli, Gianluigi. “Un passo ulteriore verso un sistema federale: un tributo per l’Unione Europea.“ In *Pago, dunque sono (cittadino europeo). Il futuro dell’UE tra responsabilità*

fiscale, solidarietà e nuova cittadinanza europea, edited by Mauro Campus et al. (Firenze: Firenze University Press, 2022).
40. Bizioli, Gianluigi. *L'autonomia finanziaria e tributaria regionale* (Torino: Giappichelli Editore, 2012).
41. Bizioli, Gianluigi and Ekkehart Reimer. "Equality, ability to pay and neutrality." In *Research Handbook on European Union Taxation Law*, edited by Christiana HJI Panayi, Werner Haslehner and Edoardo Traversa (Cheltenham: Edward Elgar, 2020).
42. Bizioli, Gianluigi and Claudio Sacchetto. "European Constitutional Integration: The Case of Direct Taxation." In *Comparative Fiscal Federalism*, 2nd edn, edited by Reuven S. Avi Yonah, Michael Lang (Aalphen aan den Rijn: Kluwer Law International BV, 2016)
43. Bjorge, Eirik and Jack R. Williams. "The protean principle of proportionality: how different is proportionality in EU contexts?" *The Cambridge Law Journal* 75 no. 2 (2016): 186-189
44. Blažič, Anita. "Pravica do dobre uprave" *Aktuelnosti: Časopis za društvena pitanja* 47 (2023): 7-20.
45. Stijn Blaakman, Jasper Korving. "The Tax Base in BEFIT and Pillar Two: Harmony, Dissonance, or Off-Key?" *Intertax* 52 no. 5 (2024): 361–386.
46. Bohinc, Rado. "Regulation of Public Finances in Slovenia in Light of Financial Constitutionality." In *Regulation of Public Finances in Light of Financial Constitutionality*, edited by Zoltan Nagy (Miskolc, Budapest: Central European Academic Publishing, 2022).
47. Bomsdorf, Eckart. "Weg mit dem Soli, her mit einem neuen, transparenten und flexiblen Einkommensteuertarif." *IFO Schnelldienst*, IFO Institut – Leibniz-Institut für Wirtschaftsforschung an der Universität München 73, no. 1 (2020): 34-39.
48. Bonelli, Matteo, and Monica Claes. "Crossing the Rubicon? The Commission's use of Article 2 TEU in the infringement action on LGBTIQ+ rights in Hungary." *Maastricht Journal of European and Comparative Law* 30, no. 1 (2023): 3-14.
49. Boria, Pietro. *Taxation in the European Union*, 2nd ed. (Cham: Springer, 2017).
50. Bortolini, Sandra. "I contorni dell'esplicazione della potestà impositiva delle Regioni alla luce della recente sentenza della Corte Costituzionale n. 274/2020 e della pregressa giurisprudenza." *Rivista telematica di diritto tributario*, Fascicolo 1 (2021): 505-511.
51. Bös, Dieter. "Earmarked taxation: welfare versus political support." *Journal of Public Economics* 75, no. 3 (2000): 439-462.
52. Bouvier, Michel. *Introduction au droit fiscal général et à la théorie de l'impôt*, 10th edn. (Paris: Lextenso, 2010).
53. Bowler Smith, Mark. *The Taxing Road to Sustainable Growth: Resource Productivity and Corporate Taxation.* (Amsterdam, IBFD: 2012).
54. Bradford, Anu. *The Brussels effect: how the European Union rules the World*. (Oxford: Oxford University Press, 2020).
55. Brauner, Yariv. "The International Tax Regime and Social Security." In *Double Taxation Conventions and Social Security Conventions*, edited by Michael Lang (Wien: Linde Verlag, 2006).
56. Breuer, Johanna Lorraine. "Revisiting Early Fiscal Centralisation in the European Coal and Steel Community in Light of the EU's Transfer Budget." *Politics and Governance* 11, no. 4 (2023): 28-39.
57. Brokelind, Cécile. "Introduction" in *International Tax Law: New Challenges to and from Constitutional and Legal Pluralism*, edited by Cécile Brokelind (Amsterdam: IBFD, 2016).

58. Buchanan, James M. “The Economics of Earmarked Taxation,” *Journal of Political Economy* 71, no.5 (1963): 457-469.
59. Buggeln, Mark. “Was Nazi Germany an 'Accommodating Dictatorship'? A Comparative Perspective on Taxation of the Rich in World War II.” *Central European History* 56, no. 3 (2023): 1-21.
60. Burazin, Luka. “Antinomies between Implicit Legal Principles: A Solution to the Total-Partial Antinomy.” In *Courts, Interpretation, and The Rule of Law*, edited by M. Jovanović and K.E. Himma (The Hague: Eleven International Publishing, 2014).
61. Burton, Steve J. “Normative Legal Theories: The Case for Pluralism and Balancing.“ *Iowa Law Review* 98, no. 2 (2013): 535-572.
62. Bury, Yannick, and Lars P. Feld. “Fiscal Federalism in Germany.” In *The Forum of Federations: Handbook of Fiscal Federalism*, edited by Jean-François Tremblay (Cham: Palgrave Macmillan, 2023).
63. Camic, Susannah. “Earmarking: the potential benefits,” *Pittsburgh Tax Review* 4, no. 1 (2006): 55-84.
64. Candau, Fabien and Jacques Le Cacheux. “Corporate Income Tax as a Genuine Own Resource.” *Centre d’Analyse Théorique et de Traitement des données économiques Working Paper No. 6* (2017).
65. Carsten, Pillath, and Philippe Lefebure. “Can Dreams Come True? The EU Customs Union and its Future Governance” in: 50 years of the Customs Union from a revenue point of view.” In *The EU Customs Union – 50 Concept to Continuum* edited by Ian Muscat (Gutenberg Press: 2018).
66. Caziero, Martha. “What legal basis for an EU tax?“ *Common Market Law Review* 61, no. 6 (2024): 1455-1470.
67. Caziero, Martha. *The taxing powers of the European Union: a legal analysis of the levying of EU taxes* (Amsterdam: IBFD, 2025).
68. Caziero, Martha. “Personal Income Tax as an EU Own Resource.” In *Blueprint for Individual Income Taxation Reform in a Globalised World*, edited by Ivan Lazarov, Sam Van der Vlugt (Amsterdam: IBFD, 2025).
69. Cermignani, Mario. “Il dovere tributario come dovere di solidarietà sociale.” *Innovazione e Diritto* 6/2017 (2017): 231-274.
70. Cindori, Sonja and Valentino Kuzelj. “Socijalni aspekt kriznoga poreza: fiskalni instrument ili devijacija poreznog sustava?” *Ekonomska misao i praksa* 27 no. 2 (2018): 479-502.
71. Cipriani, Gabriele. “The EU Budget.“ In *The Routledge Handbook of European Public Policy*, edited by Nikolaos Zahariadis, Laurie Buonanno (London: Routledge, 2017).
72. Citi, Manuele, and Mogens K. Justesen. “Redistribution in a political union: The case of the EU.” *European Journal of Political Research* 60, no. 2 (2021): 317-338.
73. Chaloupka, Frank J. “Tobacco Tax Increases Remain Most Effective Policy for Reducing Tobacco Use.” *A Tobacconomics Research Brief. Health Policy Center, Institute for Health Research and Policy, University of Illinois at Chicago* (2017).
74. Chamon, Merijn. “The rise of Article 122 TFEU: On crisis measures and the paradigm change.” *Verfassungsblog, 2023/2/01*, (2023).
75. Christians, Allison. “Introduction to Tax Policy Theory.” (2018).
76. Claeys, Grégory and Armin Steinbach, “A conceptual framework for the identification and governance of European public goods.” *Bruegel Working Paper 14/2024* (2024).
77. Clague, Ewan and Joel Gordon. “Earmarking tax funds for welfare purposes.” *Social Security Bulletin*, 3 no. 1 (1940): 10-20.

78. Colcelli, Valentina. “Overview of the relationship between the Italian Constitutional Court and EU law, with particular reference to the Italian Constitutional Court’s approach to Renewable energy policy.” *EU and Comparative Law Issues and Challenges Series (ECLIC) 2* (2018): 63-84.
79. Cooper, Graeme S. “The benefit theory of taxation.” *Australian Tax Forum* 11, no. 4 (1994): 397-509.
80. Corasaniti, Giuseppe. “National Report: Italy.” In *Double Taxation Conventions and Social Security Conventions,* edited by Michael Lang (Wien: Linde Verlag, 2006).
81. Cornielje, Simon. “The Costly Stalemate of EU VAT Harmonisation,” *EC Tax Review* 31, no. 2 (2022): 85-96.
82. Cossa, Luigi. *Primi elementi di scienza delle finanze* (Ulrico Hoepli: Milano, 1919).
83. Cottarelli, Carlo. “A European fiscal union: the case for a larger central budget,” *Economia Politica* 33 (2016): 1-8.
84. Craig, Paul. “Subsidiarity: A Political and Legal Analysis,” *JCMS: Journal of Common Market Studies* 50, no. 1 (2012): 72-87.
85. Craig, Paul, and Gráinne de Búrca, *EU Law: Text, Cases and Materials,* 4th edn. (Oxford: Oxford University Press, 2008).
86. Craig, Paul, and Gráinne de Búrca. *EU Law: Text, Cases and Materials,* 7th ed. (Oxford: Oxford University Press, 2020).
87. Cuéllar, Mariano-Florentino. “Earmarking earmarking.” *Harvard Journal on Legislation* 49, no. 2 (2012): 249-301.
88. Ćapeta, Tamara. “Croatian Constitution in EU Integration.” In *National Constitutions and EU Integration*, edited by Stefan Griller, Lina Papadopoulou and Roman Puff (London: Bloomsbury Publishing, 2022).
89. D’Alfonso, Alessandro. “Reforming the financing of the EU budget: Outlook.” *Perspectives on Federalism* 8, no. 2 (2016): 46-82.
90. Daly, Tom Gerald. “Democratic Decay: Conceptualising an Emerging Research Field.” *Hague Journal of the Rule Law* 11, no. 1 (2019): 9-36.
91. Dall'Erba, Sandy. *European Regional Development Policies: History and Current Issues*. (University of Pittsburgh, AEI Archives, 2003).
92. De Bellis, Maurizia, and Maurizio Bellacosa. “The protection of the EU financial interests between administrative and criminal tools: OLAF and EPPO.” *Common Market Law Review* 60, no.1 (2023): 15-50.
93. De Feo, Alfredo. *A history of budgetary powers and politics in the EU: the role of the European Parliament. Part I: The European Coal and Steel Community 1952-2002*“ (Luxembourg: Publications Office of the European Union, 2015).
94. De Mita, Enrico. *Principi di Diritto Tributario*, 7th ed. (Milano: Giuffrè Francis Lefebvre, 2019).
95. De Mita, Enrico. “Il diritto tributario tra diritto comune e principi costituzionali” *JUS – Rivista di scienze giuridiche.* 1/1997. (1997): 33-50.
96. De Witte, Bruno. “The European Union’s COVID-19 Recovery Plan: the Legal Engineering of an Economic Policy Shift.” *Common Market Law Review*, 58 no. 3 (2021): 635-682.
97. De Witte, Bruno. “Integration Through Funding: the Union’s Finances as Policy Instrument.” In *The Financial Constitution of European Integration: Follow the Money?*, edited by Ruth Weber (Oxford: Hart Publishing, 2023).
98. Del Federico, Lorenzo. *Tasse, Tributi Paracommutativi e Prezzi Pubblici*. (Torino: G. Giappichelli Editore, 2000).

99. Dermine, Paul. “The EU’s Response to the COVID-19 Crisis and the Trajectory of Fiscal Integration in Europe: Between Continuity and Rupture.” *Legal Issues of Economic Integration* 47, no. 4 (2020): 337-358.
100. Dermine, Paul, and Ana Bobić. “Of Winners and Losers: A Commentary of the Bundesverfassungsgericht ORD Judgment of 6 December 2022: Cases 2 BvR 547/21 and 2 BvR 798/21, Own Resources Decision Judgment of 6 December 2022,” *European Constitutional Law Review* 20, no. 1 (2024): 163-190.
101. Dimitropoulou, Christina. “The Proposed EU Digital Services Tax: An Anti-Protectionist Appraisal Under EU Primary Law.” *Intertax*, 47, no.3 (2016): 268-281.
102. Diniz Margalhães, Tarcísio, and Francesco De Lillo. “The Return of Windfall Taxation.” *Intertax* 51, no.11 (2023): 722–731.
103. Dodge, J.M. “Theories of tax justice: ruminations on the benefit, partnership, and ability-to-pay principles.” *Tax Law Review* 58, no. 4 (2005): 399-462.
104. Douma, Sjoerd. *Legal Research in International and EU Tax Law* (Deventer: Kluwer, 2014).
105. Douma, Sjoerd. *Optimisation of Tax Sovereignty and Free Movement* (Amsterdam, IBFD: 2011).
106. Dourado, Ana Paula. “Chapter 10: No Taxation without Representation in the European Union: Democracy, Patriotism and Taxes.” In *Principles of Law: Function, Status and Impact in EU Tax Law*, edited by Cécile Brokelind. (Amsterdam: IBFD, 2014).
107. Dourado, Ana Paula. “May You Live in Interesting Times.” *Intertax* 44 no.1 (2016): 2-5.
108. Dougherty, Sean and Andoni Montes Nebreda. “The multi-level fiscal governance of ecological transition.” *OECD Working Paper No. 44.* (2023): 1-39.
109. Duff, David G. “Benefit taxes and user fees in theory and practice.” *University of Toronto Law Journal* 54 no. 4 (2004) 391-448.
110. Dürr, Jakob. “Judicial Review of the EU Own Resources Decision by the ECJ,” *Intertax* 52, no. 8 (2024): 561-578.
111. Đorđević, Jovan. “Remarks on the Yugoslav Model of Federalism, Publius, Federalism and Community: A Comparative View.” *Publius: the Journal of Federalism* 5, no. 2 (1975): 77-88.
112. Eckes, Christina and Ramses A. Wessel. “The European Union: an international perspective.” In *Oxford Principles of European Union law: The European Union Legal Order Volume I*, edited by Robert Schütze, and Takis Tridimas (Oxford: Oxford University Press, 2018).
113. Elliffe, Craig Macfarlane. “Justifying Source Taxation in the Digital Age.” 53, no.3 *VUWLR* (2021). Available at SSRN: https://ssrn.com/abstract=3833990.
114. Englisch, Joachim and Henning Tappe. “The Federal Republic of Germany.” In *Tax Aspects of Fiscal Federalism*, edited by Gianluigi Bizioli and Claudio Saccheto (Amsterdam: IBFD, 2011).
115. Englisch, Joachim, and Hanno Kube. “Constitutional requirements for substantive tax law in the Federal Republic of Germany.” *Review of International and European Economic Law* 2, no. 3 (2023): 1-19.
116. Englisch, Joachim. “EU Excess Profits Tax Ultra Vires? On the Limits of Article 122 TFEU in EU Tax Policy.” *EC Tax Review* 34, no. 3 (2022): 88-102.
117. Engstrom, Erik J. and Georg Vanberg. “Assessing the Allocation of Pork: Evidence from Congressional Earmark.” *American Politics Research* 38, no. 6 (2010): 959-985.
118. Essers, Peter, ed. *History and taxation: the dialectical relationship between taxation and the political balance of power.* (Amsterdam, IBFD: 2011).

119. Espa, Ilaria, Joseph Francois and Harro van Asselt. “The EU Proposal for a Carbon Border Adjustment Mechanism (CBAM): An Analysis under WTO and Climate Change Law.” *World Trade Institute Working Paper no. 06/2022* (2022).
120. Fausto, Domenicantonio. *Lineamenti di storia della finanza pubblica in Italia* (1861-2011) (Bologna: Il Mulino, 2023).
121. Fabio, Massimo. *The Customs Law of the European Union* (Allphen an den Rijn: Wolters Kluwer, 2020).
122. Fabbrini, Federico. “On Banks, Courts and International Law: The Intergovernmental Agreement on the Single Resolution Fund in Context.” *Maastricht Journal of European and Comparative Law 21, no. 3* (2014): 444-463.
123. Fabbrini, Federico. “The Legal Architecture of the Economic Responses to COVID-19: EMU Beyond the Pandemic.” *Journal of Common Market Studies*, 60 no. 1 (2021): 186-203.
124. Fabbrini, Federico. “Fiscal Capacity.” In *Research Handbook on EU Economic Law* edited by Federico Fabbrini, Marco Ventoruzzo. (Cheltenham: Edward Elgar Publishing, 2019).
125. Fabbrini, Federico. *Economic Governance in Europe*: *Comparative Paradoxes and Constitutional Challenges* (Oxford: Oxford University Press, 2016).
126. Fabbrini, Federico. “Principle of Subsidiarity,” *iCourts Working Paper Series*, no. 66 (2016).
127. Fabbrini, Federico. “The principle of subsidiarity” in *Oxford Principles of European Union Law: the European Union Legal Order Volume I*, edited by Robert Schütze, and Takis Tridimas (Oxford, Oxford University Press: 2018).
128. Falsitta, Gaspare. *Manuale di Diritto Tributario: parte generale* (Padova: Cedam, 2020).
129. Farri, Francesco. *Tax Sovereignty and the Law in the Digital and Global Economy* (Turin: Routledge, 2020).
130. Farri, Francesco. “Sovranità tributaria e nuovi “luoghi” dell’economia nell’era della post-globalizzazione: serve ancora lo Stato al fisco?” In *La sovranità nell’era della post globalizzazione: Atti del Convegno di Foggia*, edited by Valeria Mastroiacovo (Pacini Editore, 2019).
131. Fasone, Cristina. “EU budget and spending powers.” In *EU Fiscal Federalism: Past, Present, Future*, ed. Alicia Hinarejos and Robert Schütze (Oxford, Oxford University Press: 2023).
132. Fasone, Cristina and Nicola Lupo. “The Union Budget and the Budgetary Procedure.“ in *Oxford Principles of European Union Law: The European Union Legal Order Volume I*, edited by Robert Schütze, and Takis Tridimas, (Oxford, Oxford University Press, 2018).
133. Fichera, Franco. “L'oggetto della giurisdizione tributaria e la nozione di tributo.” *Rassegna tributaria* 4. (2007): 1059-1104.
134. Fichera, Franco. “I contributi speciali e le tasse.” In *Trattato di diritto tributario*, vol. IV, edited by Andrea Amatucci (Padova, Cedam: 1994): 297-345.
135. Fichera, Franco. *Le agevolazioni fiscali*. (Padova: Cedam, 1992).
136. Fichera, Massimo and Oreste Pollicino. “The Dialectics Between Constitutional Identity and Common Constitutional Traditions: Which Language for Cooperative Constitutionalism in Europe?” *German Law Journal* 20, no.8. (2019): 1097-1118.
137. Flynn, Leo. “Title XVIII: economic, social and territorial cohesion.“ In *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, edited by Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (New York, 2019; online edn, Oxford Academic).

138. Forte-Campos, Victor, and Juan Rohas. “Historical development of the European structural and investment funds.” *Analytical Articles, Economic Bulletin* 3/2021 (2021).
139. Fregni, Maria Cecilia. “Italy.” In: *History and Taxation: The Dialectical Relationship between Taxation and the Political Balance of Power*, edited by Peter Essers (Amsterdam: IBFD, 2011).
140. Fromage, Diane. “Complexity in the EU’s Resolution Mechanism: An Expanding but Unavoidable Phenomenon?” *European Business Organisation Law Review* 26, no. 1 (2025): 113-132.
141. Fromage, Diane. “Towards Increasing Unity and Continuing Executive Predominance Within the E(M)U Post-COVID?” *Legal Issues of Economic Integration* 47, no. 4 (2020): 385-408.
142. Fuest, Clemens, and Jean Pisani-Ferry. “A Primer on Developing European Public Goods”, *EconPol Policy Report 16, European Network for Economic and Fiscal Policy Research* (2019).
143. Fuest, Clemens, and Jean Pisani-Ferry. “Financing the European Union: new context, new responses.” *Bruegel Policy Contribution 2020/16* (2020).
144. Gadžo, Stjepan. *Nexus Requirements for Taxation of Non-residents' Business Income: A Normative Evaluation in the Context of the Global Economy* (Amsterdam: IBFD, 2018).
145. Gadžo, Stjepan and Šime Jozipović. “International Corporate Tax Regime Post-BEPS: a Regulatory Perspective.” *INTERTAX* 48, no. 4 (2020): 432-445.
146. Gadžo, Stjepan. “Prilog istraživanju sadržaja načela pravednosti kao kriterija evaluacije normi međunarodnog poreznog prava.” *Pravni vjesnik* 31, no. 2 (2015): 131-155.
147. Gallo, Franco. „La funzione del tributo al tempo delle grandi disuguaglianze.“ In *Il diritto costituzionale tributario nella prospettiva del terzo millennio*, edited by Valeria Mastroiacovo, Giuseppe Melis. (Torino: Giappichelli.Editore, 2022).
148. García Antón, Ricardo. „Building up the EU Revenue Side: But What is a Tax in EU Law? “ *Politics and Governance* 11, no. 4 (2023): 17-27.
149. Garner, Bryan A. *Black’s Law Dictionary*, 8th edn. (St. Paul, MN: Thomson/West, 2004).
150. Gayon, Carlos A. Alonso. “The EU's CBAM, complying with the CBDR principle, could also mean compliance with WTO law.” *Minnesota Journal of International Law* 32, no.1 (2023): 269-300.
151. Georgiou, Christakis. “Federal fiscal capacity and the challenge of the green transition in the EU.” *Journal of European Integration* 45, no. 6 (2023): 871–887.
152. Giuranno, Michele Giuseppe. “Pooling sovereignty under the subsidiary principle.” *European Journal of Political Economy* 26, no.1 (2010): 125-136.
153. Goebel, Roger. “An Historical Perspective I: From Community to Union (1957– 1993).” In *Oxford Principles of European Union law: The European Union Legal Order Volume I*, edited by Robert Schütze and Takis Tridimas (Oxford, Oxford University Publishing, 2018).
154. Going, Chase M. “German War Finance.” *Journal of Political Economy*, 24, no.6 (1916): 513-546.
155. Golub, Jonathan. “Sovereignty and Subsidiarity in EU Environmental Policy,” *Political Studies* 44 (1996): 686-703.
156. Goldner Lang, Iris. “The EU financial and migration crises: two crises–many facets of EU solidarity.” In *Solidarity in EU Law*, edited by Andrea Biondi, Eglė Dagilytė, and Esin Küçük (Cheltenham: Edward Elgar Publishing, 2018).
157. Góra, Magdalena, Elodie Thevenin, and Katarzyna Zielińska. “Nested, Pooled, or Exclusively National? Contested Sovereignty Models in Debates on the Future of Europe.” *Politics and Governance, 13, Article 10017* (2025).

158. Grimm, Dieter. *Sovereignty: The Origin and Future of a Political and Legal Concept*. (New York: Columbia University Press, 2018).
159. Groenendijk, Nicolaas Stijn. "Revenue Capacity of the EU: Taxes, Tax Sharing, and Resource Pooling." *Politics and Governance* 11, no. 4 (2023): 6-16.
160. Grund, Sebastian, and Armin Steinbach. "Debt-Financing the EU." *Common Market Law Review* 61, no. 4 (2024): 993-1018.
161. Grund, Sebastian, and Armin Steinbach, "European Union Debt Financing: Leeway and Barriers from a Legal Perspective" *Bruegel Working Paper 15/2023* (2023).
162. Guastini, Riccardo. *Sintaksa prava*, 3rd ed. (Zagreb: Naklada Breza, 2019).
163. Haas, Jörg, Eulalia Rubio and Pola Schneemelcher. "The MFF Proposal: What's New, What's Old, What's Next?" *Jacques Delors Institute Policy Brief* (2018).
164. Haase, Isabel et al. "The use of auctioning revenues from the EU ETS for climate action – An analysis based on eight case studies," *Ecologic Institute*, Berlin (2022).
165. Harald Hagemann. "Germany: economics in the 20th century." In *The New Palgrave Dictionary of Economics* 3rd edn., edited by Steven N. Durlauf and Lawrence E. Blume. (London: Palgrave Macmillan, 2008).
166. Heij, Gitte. *Who Pulled the Strings? A Comparativ-e Study of Indonesian and Vietnamese Tax Reform* (PhD diss., University of Groningen, 2007).
167. Heinemann, Friedrich, Philipp Mohl, and Steffen Osterloh. *ZEW Economic Studies*: *Reform Options for the EU Own Resources System* (Heidelberg, Physica Heidelberg: 2008).
168. Helminen, Marjaana. *EU Tax Law – Direct taxation* (Amsterdam: IBFD, 2022).
169. Hemel, Danil and Ethan Porter. "Aligning taxes and spending: theory and experimental evidence." *Behavioural Public Policy* 6, no. 3 (2022): 464-484.
170. Herber, Bernard P. "International Environmental Taxation in the Absence of Sovereignty." *IMF Working Paper 92/104* (1992).
171. Hey, Johanna. "Effectiveness of Regulatory Taxes: Control Through Proceedings v. Judicial Control: A German Constitutional Perspective." *INTERTAX* 48, no. 4 (2020): 360-368.
172. Hillion, Christophe. "Compromising (on) the General Conditionality Mechanism and the Rule of Law," *Common Market Law Review* 58, no.2 (2021): 267-284.
173. Hinarejos, Alicia. "The Euro Area Crisis and Constitutional Limits to Fiscal Integration." *Cambridge Yearbook of European Legal Studies* 14 (2012): 243 -268.
174. Hinarejos, Alicia and Robert Schütze "Introduction." In *EU Fiscal Federalism: Past, Present, Future*, edited by Alicia Hinarejos and Robert Schütze (Oxford: Oxford University Press, 2023).
175. Hrženjak, Juraj. *Moja prava, moje dužnosti: pravni savjetnik* (Zagreb: Grafički Zavod Hrvatske, 1979).
176. Hundsdoerfer, Jochen et al. "The Name Game for Contributions – Influence of Labelling and Earmarking on the Perceived Tax Burden." *Freie Universität Berlin, School of Business & Economics Discussion Paper No. 2010/12* (2010): 1-28.
177. Isaenbert, Michael. *EC Law and the Sovereignty of the Member States in Direct Taxation* (Amsterdam, IBFD: 2010).
178. Jeremy Jackson, "Tax earmarking, party politics and gubernatorial veto: theory and evidence from US states," *Public Choice 155* (2013): 1-18.
179. Jareb, Mario. "Kuna kao simbol novčane vrijednosti i heraldički znamen u prošlosti i sadašnjosti," *Povijesni prilozi* 41, no. 62 (2022): 5-45.

180. Jaroszyński, Tomasz. “National Parliaments’ Scrutiny of the Principle of Subsidiarity: Reasoned Opinions 2014–2019.” *European Constitutional Law Review* 16, no. 1 (2020): 91-119.
181. Jelčić Božidar et al. *Financijsko pravo i financijska znanost* (Zagreb: Narodne novine, 2008).
182. Jelčić, Božidar. *Razvoj javnih financija u Jugoslaviji* (Zagreb: Pravni fakultet u Zagrebu, 1984), 4.
183. Jelčić, Božidar, Predrag Bejaković. *Razvoj i perspektive oporezivanja u Hrvatskoj* (Zagreb: HAZU, 2012).
184. Jiménez, Alberto J. Martín. *Towards Corporate Tax Harmonisation in the European Community: An Institutional and Procedural Analysis* (Alphen aan den Rijn: Kluwer Law International, 1999).
185. Jukolla, Jussi. “From the Governance of National Tax Systems to Governing Through European Taxation: A Justification for the EU’s Power to Levy Taxes.” In *The Power to Tax in Europe*, edited by Johan Lindholm and Anders Hultqvist (Oxford, Bloomsbury Publishing: 2023).
186. Kaiser, Lena, Andreas Knecht and Luke Dimitrios Spieker. “European Society Strikes Back: The Member States Embrace Article 2 TEU in Commission v Hungary.” *Verfassungsblog* (2026).
187. Kallbekken, Steffen, Stephan Kroll and Todd L. Cherry, “Do you not like Pigou, or do you not understand him? Tax aversion and revenue recycling in the lab.” *Journal of Environmental Economics and Management* 62, no. 1 (2011): 53-64.
188. Kallbekken, Steffen and Marianne Aasen. “The demand for earmarking: Results from a focus group study.” *Ecological Economics* 69 (2010): 2183–2190.
189. Kawecka-Wyrzykowska, Elżbieta. “Assessment of the European Commission's proposals for financing the EU budget in 2021–2027,” *International Journal of Management and Economics* 56, no. 3 (2020):193-208.
190. Kengyel, Ákos. “'New Headings – Old Problems: The Evolution and Future of the EU Budget,” *Intereconomics* 51, no.2 (2016): 100-106.
191. Killmann, Bernd-Roland. “Article 311.” In *The EU Treaties and the Charter of Fundamental Rights; a Commentary*, edited by Kellerbauer, Manuel, Marcus Klamert, and Jonathan Tomkin (New York, 2019; online edn, Oxford Academic).
192. Klamert, Marcus. *Structural principles of EU law*. (Oxford: Hart Publishing, 2025).
193. Klamert, Marcus, and Dimitry Kochenov, „Article 2 TEU.’ In *Commentary on the EU Treaties and the Charter of Fundamental Rights*, edited by Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (Oxford: Oxford University Press, 2019),
194. Klamert, Marcus. “Introduction.” In *Commentary on the EU Treaties and the Charter of Fundamental Rights*, edited by Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (Oxford: Oxford University Press, 2019).
195. Klamert, Marcus. “Article 5 TEU: Commentary.” In *Commentary on the EU Treaties and the Charter of Fundamental Rights*, edited by Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (Oxford: Oxford University Press, 2019).
196. Klamert, Marcus. “Article 4 TEU: Commentary.” In *Commentary on the EU Treaties and the Charter of Fundamental Rights*, edited by Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (Oxford: Oxford University Press, 2019).
197. Klamert, Marcus. “Loyalty and solidarity as general principles.” In *General Principles in EU Law: Constructing Legal Orders in Europe*, edited by Katja S. Ziegler (Cheltenham: Edward Elgar Publishing Limited, 2022).

198. Klemenčić, Irena. "Državna suverenost i porezna jurisdikcija u kontekstu novih politika u međunarodnom oporezivanju." In: Sloboda i društvo u 21. Stoljeću. Liber Amicorum Slaven Ravlić, edited by Dario Čepo, Siniša Zrinščak, Ksenija Grubišić, (Zagreb: Sveučilište u Zagrebu, Pravni fakultet, 2024).
199. Klotz, Sebastian, Simeon L. Probst, and Oliver Hulliger. "The Carbon Border Adjustment Mechanism – A Tax in Disguise?" *European Taxation* 62, no.8 (2022): 350-353.
200. Kofler, Georg. "The future of digital services taxes." *EC Tax Review* 30, no. 2 (2021): 50-56.
201. Kofler, Georg. "EU power to tax." In *Research Handbook on European Union Taxation Law*, edited by Christiana HJI Panayi, Werner Haslehner, Edoardo Traversa (Cheltenham, Edward Elgar Publishing, 2020).
202. Kokott, Julianne. *EU Tax Law* (Munich: Verlag C.H. Beck, 2022).
203. Koprivica-Oštrić, Stanislava. "Konstituiranje Države Slovenaca, Hrvata i Srba 29. listopada 1918. Godine." Časopis za suvremenu povijest 25, no.1 (1993): 45-71.
204. Kotha, Ashrita Prasad and Pradnya Satish Talekar. "Earmarked taxes: an Indian case study." *eJournal of Tax Research* 19, no. 1 (2021): 97-120.
205. Kotha, Ashrita Prasad. "Earmarking of taxes for Disruption and Recovery." In *Tax Law in Times of Crisis,* edited by Dominic DeCogan, Alexis Brassey, Peter Harris (Oxford: Hart Publishing, 2023).
206. Kosta,Vasiliki. "The Principle of Proportionality in EU Law: An Interest-based Taxonomy. " In *EU Executive Discretion and the Limits of Law*, edited by Joana Mendes (Oxford: Oxford University Press, 2019).
207. Krenek, Alexander. *Sustainability-oriented tax-based alternatives to finance the EU budget*. (doctoral thesis, WU Vienna, 2025),.
208. Kube, Hanno, and Ekkehart von Reimer, eds. *Solid Financing of the EU* (Berlin: Lehmanns Media, 2021).
209. Kube, Hanno. "A Relieving Decision: The Interim Decision of the German Federal Constitutional Court in the Procedure against the 2020 Own Resources Decision", *Verfassungsblog* (2021).
210. Kucirek, Tomas. "50 years of the Customs Union from a revenue point of view." In *The EU Customs Union – 50 Concept to Continuum* edited by Ian Muscat (Gutenberg Press: 2018).
211. Lang, Michael, Pistone, Pasquale, Schuch, Josef et al., eds. *Corporate Income Taxation in Europe* (Cheltenham, UK: Edward Elgar Publishing, 2013).
212. Michael Lang, Jeffery Owens, Pasquale Pistone, *Implementing key BEPS Actions: where do we stand?* (Amsterdam: IBFD, 2018).
213. Lanza, Elisabetta. "Core of State Sovereignty and Boundaries of European Union's Identity in the Lissabon – Urteil." *German Law Journal* 11, no. 4 (2010): 399 – 418.
214. Lauc, Zvonimir. "Načelo vladavine prava u teoriji i praksi." *Pravni vjesnik* 32, no. 3-4 (2016): 45-67.
215. Lazarov, Ivan. *Anti-tax avoidance in corporate taxation under EU law: the internal market narrative* (Amsterdam: IBFD, 2022).
216. Le Cacheux, Jacques. "Funding the EU Budget with a Genuine Own Resource: The Case for a European Tax," Delors Institute *Notre Europe Study No. 57* (2007).
217. Leen, A.R. "The Revenues of the European Union: Past, Present, and Future." In *International Relations, Culture and Global Finance*, edited by Akis Kalaitzidis (Athens: ATINER, 2011).

218. Leino-Sandberg, Päivi. “Cohesion policy and the principle of subsidiarity: A legal analysis.” *ZEW Discussion Papers*, No. 24-042, ZEW - Leibniz-Zentrum für Europäische Wirtschaftsforschung, Mannheim (2024).
219. Lenaerts, Koen, and Jose Antonio Gutierrez-Fons. “The European Union: A constitutional perspective.” in *Oxford principles of European Union law: The European Union Legal Order Volume I*, edited by Robert Schütze, and Takis Tridimas (Oxford: Oxford University Publishing, 2018).
220. Lepsius, Oliver. “Constitutional Review of Tax Laws and the Unconstitutionality of the German Inheritance Tax.” *German Law Journal* 16, 5 (2015): 1191-1226.
221. Liargovas, Panagiotis, and Christos Papageorgio. “The Genesis of the ‘European Idea’ and Its Early Implementation Efforts.” In *The European Integration*, vol. 1. Springer Texts in Political Science and International Relations. (Cham: Springer, 2023).
222. Lienert, Ian. “The Legal Framework for Public Finances and Budget Systems.” In *The International Handbook of Public Financial Management,* edited by Richard Allen, Richard Hemming, and Barry Potter (London: Palgrave Macmillan, 2013).
223. Lignereux, Bastien. “Is the EU Contribution on Windfall Profits Based on the Right Treaty Provision?” *Intertax* 51 no. 11 (2023): 732-740.
224. Lindholm, Johan, and Anders Hultqvist, eds. *The Power to Tax in Europe* (Oxford: Bloomsbury Publishing, 2023).
225. Lionello, Luca. “Next Generation EU: Has the Hamiltonian Moment Come for Europe?” *EUROJUS* no. 4 (2020): 22-42.
226. Lock, Tobias. “Treaty on the European Union: Article 6” in *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, edited by Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (New York, 2019; online edn, Oxford Academic).
227. Lock, Tobias. “Article 41 CFR: Right to good administration,” in *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, edited by Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (New York, 2019; online edn, Oxford Academic).
228. Lock, Tobias. “Why the European Union is not a State: Some Critical Remarks,” *European Constitutional Law Review* 5, no. 3 (2010): 407 – 420.
229. Loughlin, Martin. *Foundations of public law* (Oxford: Oxford University Press, 2010).
230. Łukowiak, Dominik. “Combating the COVID-19 Crisis within the European Union: A Critical Assessment of the ‘Next Generation EU’ in the Context of the Budgetary Balance,” *Utrecht Law Review* 19, no. 1 (2023): 53-71.
231. Macdonald, James. “From Sovereign Nations to Federal States. Creating Stable Systems of Public Finance in America and Germany: Lessons for the Eurozone.” *Cambridge Working Papers in Economic and Social History*, Working Paper No. 17 (2014): 1-22.
232. Mangiameli, Stelio. “The Constitutional Traditions Common to the Member States in European Law, as a Tool for Comparison among MS Legal Orders in the Construction of European Fundamental Rights.” *Italian Papers on Federalism*, no. 3/2016 (2016): 1-18.
233. Martha, Silvestre J. *The Jurisdiction to Tax in International Law: Theory and Practice of Legislative Fiscal Jurisdiction.* (Deventer, Kluwer Law and Taxation Publishers:1989
234. Mason, Henry L. *The European Coal and Steel Community*: *Experiment in Supranationalism* (Springer, 1955).
235. Marcheselli, Alberto. *Accertamenti Tributari: Poteri del fisco strategie del difensore*, 3rd edn. (Milano: Giuffre Francis Lefebvre, 2022).
236. Marelja, Miran and Valentino Kuzelj. “Evolucija fiskalnoga suvereniteta u Engleskoj: od sredstva ograničenja vladara do prerogativa zakonodavne vlasti.” *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 41, no. 2 (2020): 509-529.

237. Marion, Justin, and Erich Muehlegger. “Tax compliance and fiscal externalities: Evidence from U.S. diesel taxation.” *Journal of Public Economics* 160, (2018): 1-13.
238. Martens-Weiner, Joann. “The Dream Is Alive: WU Tax Policy with a Common Consolidated Corporate Tax Base and Formulary Apportionment.” In *The Allocation of Multinational Business Income: Reassessing the Formulary Apportionment Option*, edited by Reuven Krever and François Vaillancourt (Alphen aan den Rijn: Wolters Kluwer, 2020).
239. Massetti, Emanuele, and Theofanis Exadaktylos. “From crisis to crisis: the EU in between the Covid, energy and inflation crises (and war).” *Journal of Common Market Studies, 60* (Annual Review Issue) (2022).
240. Mayers, Stephanie. *Formulary Apportionment for the Internal Market* (Amsterdam: IBFD, 2010).
241. McCleary, William. “The Earmarking of Government Revenue: A Review of Some World Bank Experience.” *The World Bank Research Observer* 6, no 1 (1991): 81-104.
242. McGregor, Gwyneth. “Taxation in the ancient world.” *Canadian Tax Journal* 4, no. 4 (1956): 271-277.
243. Meadows, Damien, Mette Quinn and Beatriz Yordi, “The EU Emissions Trading System” in *Delivering a Climate Neutral Europe*, edited by Jos Delbeke (London: Routledge, 2024).
244. Meickmann, Tin Valentin. “Taxing Powers of the European Union.” *Intertax* 52, no. 8/9 (2024): 522-532.
245. Messina, Giovanna, Marco Savegnago and Andrea Sechi. *Il prelievo locale sui rifiuti in Italia: benefit tax o imposta patrimoniale (occulta)?* Banca d'Italia. (2018).
246. Michael, Joel. “Earmarking State Tax Revenues.” *Policy brief: Research Department, Minnesota House of Representatives* (2015).
247. Mihaljević, Josip. “Ustavna uređenja temeljnih prava u Hrvatskoj 1946.–1974.” *Časopis za suvremenu povijest,* 43, no. 1 (2011): 25-51.
248. Mihaljević, Josip. “Pravna ili partijska država? – Položaj pojedinca u Ustavu SFRJ 1974.” In *Pola veka ustava Socijalističke Federativne Republike Jugoslavije iz 1974. – Između mitova i prošlosti*, edited by Mijodrag Radojević, (Beograd: Institut za političke studije, 2025).
249. Miller, Margaret S. “Taxation in Soviet Russia: II.” *The Slavonic Review* 4, no. 11 (1925): 418–432.
250. Miloš, Matija, and Valentino Kuzelj. “Ostvarenje i zaštita ustavnog ideala porezne pravednosti u svjetlu zahtjeva socijalne država,” *Zbornik radova Pravnog fakulteta u Splitu*, 58 no. 4 (2021): 1101-1120.
251. Morselli, Emanuele. *Teoria Generale della Finanza Pubblica*. (Padova: CEDAM, 1935).
252. Musgrave, Richard A. *The Theory of Public Finance: A Study in Public Economy* (New York: McGraw-Hill, 1959).
253. Navarro, Aitor. “Protecting EU Financial Interests in the Collection of Tax-Based Own Resources.” *Intertax* 52 no. 8 (2024): 533-549.
254. Nguyen, Thu, and Martin van den Brink. “An early Christmas Gift from Karlsruhe? The Bundesverfassungsgericht’s NextGenerationEU Ruling,” *Verfassungsblog, 2022/12/09* (2022).
255. Neumeier, Christian. “Political own resources: towards a legal framework.“ *Common Market Law Review* 60, no 2 (2023): 319-344.
256. Noël, Émile. *Working Together: The Institutions of the European Community* (Office for Official Publications of the European Communities, 1988).

257. Núñez, Jorge E. “State Sovereignty, Concept and Conceptions.” *International Journal for the Semiotics of Law* 37 (2024): 2131–2150.
258. Núñez Vaquero, Álvaro. “Five Models of Legal Science.” *Revus: Journal for Constitutional Theory and Philosophy of Law* 19 (2013): 53-81.
259. Oates, Wallace E. “An Essay on Fiscal Federalism.” *Journal of Economic Literature* 37, no. 3 (1999): 1120-1149.
260. Oates, Wallace E. “Toward A Second-Generation Theory of Fiscal Federalism.” *International Tax and Public Finance* 12 (2005): 349–373.
261. Ofak, Lana. “Primjena načela zabrane diskriminacije u izradi općenormativnih akata s posebnim osvrtom na uređivanje novčane pomoći povodom rođenja djeteta.” *Zbornik radova Pravnog fakulteta u Splitu*, 60 no. 2 (2023): 367-393.
262. Ostojić, Mladen. “Yugoslav Self-Management as a Model of Participatory Municipal Governance? Local Communities in Belgrade in the 1980s.” In *Participatory Democratic Innovations in Southeast Europe*, edited by Ivana Fiket et al. (London: Routledge, 2024).
263. Padjen, Ivan. *Metodologija pravne znanosti.* (Rijeka: Pravni fakultet u Rijeci, 2015).
264. Påhlsson, Robert. “Equality in Taxation: Reflections on the Social Construction of Comparability in Tax Law”. In *Principles of Law: Function, Status and Impact in EU Tax Law*, ed. Cecile Brokelind (Amsterdam: IBFD, 2014).
265. Panayi, Christiana HJI. “The Early Proposals for a European Corporate Tax Policy.“ In *Studies in the History of Tax Law, Volume 9*, edited by Peter Harris and Dominic de Cogan (Oxford: Hart Publishing, 2019).
266. Pantazatou, Katarina. “Why EU revenue matters: A case for an EU digital levy,” *European Law Open*, 3 no. 4 (2024): 919-938.
267. Peters, Cees. “A Governance Analysis of BEFIT: How the Member States’ Wish to Obtain more Regulatory Authority is Driving a Revolution.” *EC Tax Review* 32, no. 5 (2023): 195-202.
268. Peeters, Bruno, et al. *The Concept of Tax* (Amsterdam: IBFD, 2010).
269. Peeters, Bruno. “The Design of Covid-19 Recovery Contributions: Taxes or Social Security Contributions?” *EC Tax Review* 30, no. 5 (2021): 236-241.
270. Pettit, Justin. “Is a share buyback right for your company?” *Harvard Business Review* 79, no.4 (2001): 141-147.
271. Pinelli, Cesare. “Tradizioni Costituzionali Comuni ai Popoli Europei fra Apprendimenti Virtu Trasformative.” *Il Giornale di Storia Costituzionale* (2005): 11-20.
272. Pirlot, Alice. “Carbon Border Adjustment Measures: A Straightforward Multi-Purpose Climate Change Instrument?” *Journal of Environmental Law* 34, no.1 (2022): 25–52.
273. Pisačić, Viktorija. “Instrumenti Europske unije stvoreni u pandemijskom razdoblju: privremeno rješenje ili korak prema potpunoj fiskalnoj integraciji?” *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 45, no. 2 (2024): 357-378.
274. Pistone, Pasquale et al. *Fundamentals of taxation*. (Amsterdam: IBFD, 2010).
275. Pistone, Pasquale and Dennis Weber, ed. *Taxing the Digital Economy. The EU Proposals and Other Insights.* (Amsterdam, IBFD, 2019).
276. Pistone, Pasquale. *Tax procedures.* (Amsterdam, IBFD, 2022).
277. Pistone, Pasquale. “A Plea for Qualified Majority Voting and the Ordinary Legislative Procedure in European Tax Law.” In *CFE Tax Advisers Europe 60th Anniversary – Liber Amicorum*, edited by Servaas van Thiel, Piergiorgio Valente, Stella Raventós-Calvo (Amsterdam: IBFD, 2019)
278. Pistone, Pasquale. “The EU Common Constitutional Tradition and Its Impact on Tax Law in the European Union: A Systematic Assessment.“ In *The Common Constitutional Tradition of the European Union and Its Impact on Tax Law*, edited by Pasquale Pistone (Amsterdam: IBFD, 2026) forthcoming.

279. Pollachini, Francesca. “Solidarietà, doveri e cittadinanza europea.” In *Pago, dunque sono (cittadino europeo). Il futuro dell’UE tra responsabilità fiscale, solidarietà e nuova cittadinanza europea*, edited by Mauro Campus, et al. (Firenze: Firenze University Press, 2022).
280. Pošćić, Ana and Narda Krnetić Blečić. “Energetska solidarnost kao instrument energetske pravednosti: razvoj načela kroz praksu Suda Europske unije.” *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 46, br. 3 (2025): 555-579.
281. Pošćić, Ana, Adrijana Martinović and Narda Krnetić Blečić. “Exploring the “Digitainability” Potential of Sustainability Agreements Under the Commission’s Guidelines on Horizontal Cooperation Agreements.” *InterEULawEast* 13, br. 1 (2026): 141-161.
282. Procopio, Massimo. *Il sistema tributario italiano: Principi istituzionali*. (Padova: CEDAM, 2013).
283. Reichel, Jane. “Between Supremacy and Autonomy: Applying the Principle of Good Administration in the Member States.” In *General Principles of European Community Law in a Process of Development*, edited by Ulf Bernitz, Joakim Nergelius, and Cecilia Cardner (Kluwer Law International, 2008).
284. Reisenhuber, Karl, ed. *European Legal Methodology*, 2nd edn. (Cambridge: Intersentia, 2021).
285. Ricca Salerno, Giuseppe. *Scienza delle Finanze. Manuali Barbera di scienze giuridiche, sociali e politiche*. (Firenze, G. Barbera Editore: 1888).
286. Ricci, Concetta. *Tributi di scopo, vincoli di destinazione e obblighi di rendicontazione* (Pisa: Pacini Editore Srl., 2023).
287. Rubio, Eulalia. “What the EU Budget Can and Cannot Do in Response to the War in Ukraine.” *Jacques Delors Institute Policy Brief* (2022).
288. Rubio, Eulalia. “The case for a European tax: Benefits, practical aspects and options for endowing the EU with a veritable own resource.” *Notre Europe Policy Paper No. 01* (2008).
289. Saint-Amans, Pascal. “Broader border taxes: A new option for European Union budget resources.“ *Bruegel Policy Brief, No. 06/2024*, Bruegel, Brussels (2024).
290. Sacchetto, Claudio. “Analysis of Fiscal Federalism from a Comparative Tax Law Perspective.” In *Tax Aspects of Fiscal Federalism*, edited by Gianluigi Bizioli and Claudio Sacchetto (Amsterdam: IBFD, 2011).
291. Sauter, Wolf. “Proportionality in EU Law: A Balancing Act?” *Cambridge Yearbook of European Legal Studies* 15 (2013): 439 - 466.
292. Scherleitner, Moritz, and Edoardo Traversa. “How to Achieve the EU’s Climate Goals? A Model Proposal for an EU Climate Fund Contributing to Fill the Green Investment Gap.” *Aalto University Publication Series Business + Economy 2/2024* (Aalto University, 2024): 1–32.
293. Scherleitner, Moritz and Noora Mäki. “The HOT Proposal and Primary EU – An Examination and Suggestions to Address the Tensions.” *World Tax Journal* 16, no.3 (2024).
294. Scherleitner, Moritz, and Edoardo Traversa. “Involving the Corporate Sector in EU Financing: A Two-Tier Model for a Corporate Income Tax-Based Own Resource.” *European Law Review* 49 no. 2 (2021): 99-125.
295. Schön, Wolfgang, Ulrich Schreiber, and Christoph Spengel, eds. *A Common Consolidated Corporate Tax Base for Europe – Eine einheitliche Körperschaftsteuerbemessungsgrundlage für Europa* (Berlin: Springer, 2008).
296. Schön, Wolfgang. “Taxation and Democracy.” *Tax Law Review* 72, no. 2 (2019): 235-304.

297. Schratzenstaller Margit et al. *New EU Own Resources: Possibilities and Limitations of Steering Effects and Sectoral Policy Co-Benefits* (Policy Department for Budgetary Affairs, Directorate-General for Internal Policies, European Parliament, 2022).
298. Schratzenstaller, Margit, et al. "Other Revenue for the EU Budget – Status Quo and Potential," *Intereconomics* 60, no. 5 (2025): 281-289.
299. Schratzenstaller, Margit. "Elements of a European Green Fiscal Policy." *Intereconomics: Review of European Economic Policy* 58 no. 6 (2023): 300-304.
300. Schratzenstaller, Margit. 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 Series* no. 3 (2016).
301. Schratzenstaller, Margit, and Alexander Krenek. "Tax-based own resources to finance the EU budget: Potential revenues, summary evaluation from a sustainability perspective, and implementation aspects." *WIFO Working Papers No. 581*. (2019).
302. Sciancalepore, Claudio. "The Reform of EU Own Resources under the Next Generation EU Programme: a Suitable Moment for the Introduction of a European Tax?" In *The Power to Tax in Europe*, edited by Johan Lindholm and Anders Hultqvist (Oxford: Bloomsbury Publishing, 2023).
303. Scuderi, Erika. "Provisions Primarily of a Fiscal Nature: Time to Dispel Doubts." *EC Tax Review 31* no. 5 (2022): 273-285.
304. Smerdel, Branko. *Ustavno uređenje europske Hrvatske* (Zagreb: Narodne novine, 2013).
305. Smits, Jan M. "What is legal doctrine? On the aims and methods of legal-dogmatic research." *Maastricht European Private Law Institute Working Paper* No. 2015/06 (2015).
306. Sruk, Josip. *Ustavno uređenje Socijalističke Federativne Republike Jugoslavije,* 3rd edn., (Zagreb: Informator, 1982).
307. Schütze, Robert. *European Union Law*, 2nd ed. (Cambridge: Cambridge University Press, 2018).
308. Steinbach, Armin. "European Public Goods," *EU Law and Economics* (Oxford, 2025; online edn, Oxford Academic, 6 Jan. 2025).
309. Stevens, Stan. "Small Is Beautiful: An Analysis of the HOT Proposal." *EC Tax Review* 33, no. 6 (2024): 223-237.
310. Šimović, Jure, and Hrvoje Šimović. *Fiskalni sustav i fiskalna politika Europske Unije* (Zagreb: Pravni fakultet u Zagrebu, 2006).
311. Šimović, Hrvoje. "Fiscal System and Fiscal Relations in the European Union: Political Restraints and Alternative Approach to Public Finance." *EFZG working paper series*, no. 04 (2007): 1-11.
312. Šimurina, Nika et al., *Osnove porezne pismenosti* (Zagreb: Narodne novine, 2018).
313. Tang, Paul. *Legislative Train 02.2026: An Economy That Works for People Common Corporate Tax Base (CCTB*). European Parliament (2026).
314. Tesauro, Francesco. *Istituzioni di diritto tributario: 1. Parte generale*, 13th edn. (Milano: Wolters Kluwer Italia, 2017).
315. Tesauro, Francesco. *Compendio di Diritto Tributario*, 8th edn. (Padova: UTET Giuridica, 2020).
316. Terra, Ben M.J., and Peter J. Wattel, European Tax Law, 6th edn. (Deventer: Kluwer, 2012).
317. Tiley, John and Glen Loutzenhiser. *Revenue Law: Introduction to UK Tax Law; Income Tax; Capital Gains Tax; Inheritance Tax*, 7th ed. (Oxford: Hart Publishing, 2012).
318. Tipke, Klaus, and Joachim Lang. *Steuerrecht* (Köln: Verlag Dr. Otto Schmidt KG, 2015).
319. Tipke, Klaus, and Joachim Lang, et al. *Steuerrecht,* 25th edn. (Köln: Ottoschmidt, 2024).

320. Thurony, Victor, Kim Brooks, Borbala Kolozs. *Comparative Tax Law*, 2nd edn. (Alphen aan den Rijn: Kluwer Law International, 2016).
321. Tridimas, Takis. *The General Principles of EU Law*, 2nd ed. (Oxford: Oxford University Press, 2006).
322. Traversa, Edoardo. "Incentives and Territoriality within the European Union: Balancing the Internal Market with the Tax Sovereignty of Member States." *World Tax Journal* 6, no. 3 (2020): 315-340. https://doi.org/10.59403/mfddv0.
323. Traversa, Edoardo and Gianluigi Bizioli. "Solidarity in the European Union in the Time of COVID-19: Paving the Way for a Genuine EU Tax?" *Intertax* 48, no. 8/9 (2020): 743-753.
324. Traversa, Edoardo and Moritz Scherleitner, "Involving the Corporate Sector in EU Financing: A Two-Tier Model for a Corporate Income Tax-Based Own Resource." In: *European Law Review* 2, no.1 (2024): 99-125.
325. Traversa, Edoardo. "The role of tax-based own resources in the EU fiscal architecture." In *Public finance: Current challenges – new solutions*, edited by Danuta Kopycińska & J. Patocka (Wydawnictwo Uniwersytetu Łódzkiego, 2023).
326. Traversa, Edoardo, and Stefania Lotito Fedele. "La riforma delle risorse proprie e la possibile introduzione di un tributo europeo." In *Pago, dunque sono (cittadino europeo). Il futuro dell'Ue tra responsabilità fiscale, solidarietà e nuova cittadinanza europea*, edited by Mauro Campus et al. (Firenze: Firenze University Press, 2022).
327. Thöne, Michael, Helena Kreute. "European Public Goods their Contribution to a Strong Europe." *FiFo Institute for Public Economics Commissioned by and in collaboration with the Bertelsmann Stiftung* (2023).
328. Van Gestel, Rob, Hans-Wolfgang Micklitz, and Luis Miguel Poiares Maduro. "Methodology in the New Legal World." *EUI Working Papers LAW no. 2012/13* (2012).
329. Van der Vlugt, Sam. "The Principle of Legality of Taxation as a General Principle of EU Law: National and Supranational Differences of Interpretation and Potential Difficulties," *EC Tax Review* 32, no. 5 (2023): 214-228.
330. Van der Vlugt, Sam. *Rethinking Tax Sovereignty in the European Union: Towards Principled European Tax Integration.* (PhD diss., 2024).
331. Van der Vlugt, Sam. *Rethinking Tax Sovereignty in the European Union.* (Amsterdam: IBFD, 2025).
332. Van der Vlugt, Sam. "Can the EU Levy its Own Taxes?: a "Corporate Resource for Europe" (Re)enters a Legal Minefield" *Verfassungsblog* (2025).
333. Van Thiel, Servatius. "Commentary on Chapter 1: Trends in European Direct Taxation: Tax Harmonisation, State Aid and Case Law." In *European Tax Integration: Law, Policy and Politics*, edited by Pasquale Pistone (Amsterdam, IBFD, 2018).
334. Vanistendael, Frans. "Federalism and the Euro Crisis." *World Tax Journal* 3, no. 3 (2011): 400-453.
335. Vanistendael, Frans. "An EU Corporate Income Tax Filling the Hole in the EU Budget: An End to Tax Competition." *Bulletin for International Taxation*, 75 no.11/12 (2021) 749-761.
336. Vanistendael, Frans. "The Role of (Legal) Principles in EU Tax Law." In *Principles of Law: Function, Status and Impact in EU Tax Law*, edited by Cecile Brokelind. (Amsterdam: IBFD, 2014).
337. Vanistendael, Frans. "Legal Framework for Taxation", in Tax Law Design and Drafting, vol. 1, ch. 2., Victor Thurony (ed.) (International Monetary Fund, 1996).
338. Vanistendael, Frans. "*European Union."* in *Tax Aspects of Fiscal Federalism*, edited by Gianluigi Bizioli and Claudio Sacchetto (Amsterdam: IBFD, 2011).

339. Versluis, Esther. *The European regulatory state at risk? The EU as a regulator of complex policy problems*. (Maastricht: Maastricht University, 2016).
340. Villar Ezcurra, Marta, and Marina Bisogno. "The New 'EU Plastic Contribution': Lights and Shadows under Scrutiny." *Kluwer International Tax Blog* (2022).
341. Vogel, Klaus. "The Justification for Taxation: A Forgotten Question." *American Journal of Jurisprudence* 33, no.1 (1988).
342. Vogel, Joachim. "Taxation and Public Opinion in Sweden: An Interpretation of Recent Survey Data." *National Tax Journal* 27 no. 4 (1974): 499- 513.
343. Žunić Kovačević, Nataša. "Posljedice i učinci pandemije bolesti COVID-19 na fiskalni sustav i oporezivanje." *Zbornik radova Pravnog fakulteta u Splitu* 58, no.2 (2021):483-499.
344. Žunić Kovačević, Nataša and Stjepan Gadžo. "Komunalna naknada u RH i njezino pozicioniranje u odnosu na teoretske i normativne koncepte financijskog prava." *Zbornik Pravnog fakulteta Sveučilišta u Rijeci* 35, no. 1 (2014): 245-270.
345. Žunić Kovačević, Nataša and Viktorija Pisačić. "Međuodnos vladavine prava i financijskih instrumenata Europske unije razvijenih tijekom pandemijskog razdoblja – nove prespektive." *Godišnjak Akademije pravnih znanosti Hrvatske* 15, no.1 (2024):177-195.
346. Wagner, Richard. "The Tax State as Source of Perpetual Crisis." In *The Oxford Handbook of Austrian Economics*, edited by Christopher J. Coyne and Peter Boettke (2015; online edn, Oxford Academic, 10 Dec. 2015).
347. Wattel, Peter J.,Otto Marres, Hein Vermeulen. *Terra/Wattel European Tax Law* (Aalphen aan den Rijn: Kluwer Law International, 2019).
348. Weber Dennis, and Jaap van de Streek, eds. *The EU Common Consolidated Corporate Tax Base: Critical Analysis.* (Alphen aan den Rijn: Kluwer Law International, 2016).
349. Williams, David. "Social security taxation." In *Tax Law Design and Drafting*, vol. 1, edited by Victor Thuronyi (International Monetary Fund: 1996).
350. Wilkinson, Margaret. "Paying for public spending: is there a role for earmarking?" *Fiscal Studies* 15, no. 4 (1994): 119-135.
351. Wyplosz, Charles. *Which European Public Goods?* (Brussels: European Parliament, Economic Governance and EMU Scrutiny Unit, 2024).

EU legislation

1. Consolidated version of the Treaty on European Union [2012] OJ C326/13.
2. Consolidated version of the Treaty on the Functioning of the European Union - PROTOCOLS - Protocol (No 2) on the application of the principles of subsidiarity and proportionality, OJ C 115, 9.5.2008.
3. Charter of Fundamental Rights of the European Union (2000/C 364/01).
4. Treaty Establishing the European Coal and Steel Community, France, Germany, Italy, Belgium, Netherlands, and Luxembourg, April 18, 1951, 261 U.N.T.S. 140.
5. Treaty establishing the European Atomic Energy Community, signed 25 March 1957 in Rome.
6. Treaty establishing the European Economic Community and related instruments, signed on 25 March 1957.
7. First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, OJ 71, 14.4.1967.

8. Regulation No 1009/67/EEC of the Council of 18 December 1967 on the common organisation of the market in sugar, Official Journal of the European Communities no. 308/1.
9. 70/243/ECSC, EEC, Euratom: Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources, Official Journal L 094, 28.04.1970.
10. Regulation (EEC) No 724/75 of the Council of 18 March 1975 establishing a European Regional Development Fund, OJ L 73, 21.3.1975.
11. 90/436/EEC: Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises - Final Act - Joint Declarations - Unilateral Declaracions, OJ C 160, pp. 11–22 (CS, ET, LV, LT, HU, MT, PL, SK, SL) OJ L 225, pp. 10–24 (ES, DA, DE, EL, EN, FR, IT, NL, PT).
12. Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund, OJ L 311, 14.11.2002.
13. Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (Text with EEA relevance).
14. Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, OJ L 157, 26.6.2003.
15. Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax, OJ L 347, 11.12.2006.
16. Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (Codified version), OJ L 310, 25.11.2009.
17. Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, OJ L 118, 12.5.2010.
18. Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, 20.12.2013.
19. Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013.
20. Council Directive (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.
21. Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193, 19.7.2016.
22. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020.

23. Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (SURE) following the COVID-19 outbreak, ST/7917/2020/INIT OJ L 159, 20.5.2020.
24. Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, OJ L 433I, 22.12.2020.
25. 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.
26. Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17).
27. 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.
28. Council Regulation (EU, Euratom) 2021/770 of 30 April 2021 on the calculation of the own resource based on plastic packaging waste that is not recycled, on the methods and procedure for making available that own resource, on the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income, ST/13142/2020/INIT, OJ L 165, 11.5.2021.
29. Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021.
30. Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices ST/12521/2022/INIT, OJ L 261I, 7.10.2022.
31. Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, ST/14247/2022/INIT OJ L 325, 20.12.2022.
32. Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022.
33. Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, PE/11/2023/REV/1, OJ L 130, 16.5.2023.
34. Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance) PE/7/2023/REV/1, OJ L 130, 16.5.2023.
35. Council Directive (EU) 2023/2226 of 17 October 2023 amending Directive 2011/16/EU on administrative cooperation in the field of taxation, OJ L, 2023/2226, 24.10.2023.
36. Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system, PE/9/2023/REV/1, OJ L 130, 16.5.2023.
37. Regulation (EU) 2023/957 of the European Parliament and of the Council of 10 May 2023 amending Regulation (EU) 2015/757 in order to provide for the inclusion of maritime transport activities in the EU Emissions Trading System and for the monitoring, reporting

and verification of emissions of additional greenhouse gases and emissions from additional ship types, PE/10/2023/REV/1, OJ L 130, 16.5.2023.
38. Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024.
39. Regulation (EU) 2024/795 of the European Parliament and of the Council of 29 February 2024 establishing the Strategic Technologies for Europe Platform (STEP), and amending Directive 2003/87/EC and Regulations (EU) 2021/1058, (EU) 2021/1056, (EU) 2021/1057, (EU) No 1303/2013, (EU) No 223/2014, (EU) 2021/1060, (EU) 2021/523, (EU) 2021/695, (EU) 2021/697 and (EU) 2021/241,PE/11/2024/REV/1.OJ L, 2024/795, 29.2.2024.

Documentation of the EU institutions

1. ECSC, The First General Report on the activities of the European Coal and Steel Community (1953). Available at: First General report on the activities of the Community - Publications Office of the EU.
2. Information service of the High Authority, *The facts: politics institutions economics, finance and labour* (September 1956). Available at: https://aei.pitt.edu/52347/1/A7227.pdf.
3. European Community Information Service Report: *The European Community (Coal & Steel, Common Market, Euratom) - The facts: Politics and economics, institutions, external relations*. Second edition, April 1960. [EU Commission - Working Document], 2nd Edition, April 1960, available at: http://aei.pitt.edu/52348/.
4. European Commission, *The "Green Paper" from the European Commission on the New* European Community Information Service Report: The European Community (Coal & Steel, Common Market, Euratom) - The facts: Politics and economics, institutions, external relations. Second edition, April 1960. [EU Commission - Working Document], 2nd Edition, April 1960, available at: http://aei.pitt.edu/52348/
5. Spokesman's Office of the ECSC High Authority and European Community Information Service; *The ECSC.* (1961) 14. Available at: https://aei.pitt.edu/44279/1/A7194.pdf.
6. Proposal of the Commission to the Council of 7 May 1962: Regulation concerning the institution of a system of levies and the progressive establishment of a common organisation of the markets for milk and dairy products.
7. Court of Auditors of the European Communities, *Auditor's Report for the year 1973* (Submitted in Luxembourg, 30 June 1974). Available at EUI European Union Historical Archives, at https://archives.eui.eu/en/files/documents/274561.pdf?d=inline.
8. European Parliament Working Documents Report drawn up on behalf of the Committee on Budgets on the report of the/ECSC Auditor for the financial year 1973, ECSC Financial Report for 1977.
9. Court of Auditors of the European Communities, *Annual report pursuant to Article 78f (5) of the ECSC Treaty*, Financial year 1979.
10. European Commission. The Future financing of the Community (Communication from the Commission to the Council and to the European Parliament). COM (83) 10 final (1983). Available at EUI: Historical Archives of the European Union https://publications.europa.eu/resource/cellar/11c93929-7887-4aa2-896d-35dcbd6981c2.0001.01/DOC_1.

11. Commission of the European Communities. *Making a success of the Single Act: a new frontier for Europe*, COM (87) 100 final. Brussels: 15.2.1987.
12. Directorate-General for Budget (European Commission) (1992) European Communities Financial Report 1991. Available at: Financial report 1991 - Publications Office of the EU.
13. Directorate-General for Parliamentary Research Services (European Parliament) The own resources of the European Union: Analysis and possible developments. (1997): 2. Available at: https://op.europa.eu/en/publication-detail/-/publication/ffbc99ab-d5c7-4c26-9710-57be034b4718/language-en.
14. European Commission, Agenda 2000 - Volume I - Communication: for a stronger and wider union. DOC/97/6 Strasbourg, 15 July 1997, available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/doc_97_6/DOC_97_6_EN.pdf.
15. European Commission. Company Taxation in the Internal Market, COM (2001) 582 final (2001).
16. European Parliament, European Parliament resolution on the situation concerning the European Union's own resources in 2001 (2001/2019(INI) Official Journal of the European Communities C65E/281 (2001).
17. European Commission, Commission report of 14 July 2004, "The financing of the European Union - Report on the operation of the own resources system" COM (2004) 505 (2004).
18. European Parliament resolution of 22 September 2010 on the proposal for a Council regulation laying down the multiannual financial framework for the years 2007-2013 (COM(2010)0072 – 2010/0048(APP)).
19. Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB) COM(2011) 121 final 2011/0058 (CNS).
20. Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC, SEC (2011) 1102, SEC (2011) 1103, Brussels, 28.9.2011 COM (2011) 594 final 2011/0261 (CNS).
21. Proposal for a Council Regulation on the methods and procedure for making available the own resource based on the financial transaction tax, COM/2011/0738 final - 2011/0334 (CNS).
22. European Commission. Financing the EU budget: report on the operation of the own resources system (2011).
23. European Commission. *European Union Public Finance*, 5th edn. (Luxembourg: Publications Office of the European Union, 2014).
24. European Parliament, Bringing transparency, coordination and convergence to corporate tax policies -European Parliament resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union (2015/2010(INL)) (2017/C 399/09).
25. European Court of Auditors. Special report no. 19/2017: Import procedures: shortcomings in the legal framework and an ineffective implementation impact the financial interests of the EU (2017). Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), COM/2016/0683 final; 2016/0336/CNS (2016).
26. Proposal for a Council directive laying down rules against tax avoidance practices that directly affect the functioning of the internal market, COM/2016/026 final - 2016/011 (CNS), COM (2016) 26 final.
27. European Commission, Directorate-General for Budget. Future financing of the EU – Final report and recommendations of the High-Level Group on Own Resources (EU

Publications Office, 2017). European Parliament, Multiannual Financial Framework 2021-2027: Commission Proposal - Initial comparison with the current MFF (2018).
28. European Commission. Proposal for a Council Decision on the system of Own Resources of the European Union 2.5.2018 COM (2018) 325 final 2018/0135(CNS).
29. Proposal for a Council Directive laying down rules relating to the corporate taxation of a significant digital presence, Brussels, 21.3.2018 COM (2018) 147 final 2018/0072 (CNS).
30. European Commission. Communication from the Commission to the European Parliament and the European Council towards a more efficient and democratic decision-making in EU tax policy. COM (2019) 8 final. 15.1.2019.
31. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: the European Green Deal, COM (2019) 640 final Brussels, 11.12.2019 COM(2019) 640 final.
32. Proposal for a Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility, COM/2020/408 final.
33. European Commission, Amended proposal for a Council Decision on the system of Own Resources of the European Union, COM (2020) 445 final 2018/0135(CNS), 28.5.2020.
34. Proposal for a Council Regulation establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 pandemic, COM/2020/441 final, Brussels, 28.5.2020.)
35. European Council. Opinion of the Legal Service 9062/20, Brussels, 3 July 2020.
36. European Commission. Communication from the Commission to the Council on the Activation of the General Escape Clause of the Stability and Growth Pact, COM (2020) 123 final.
37. Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757, COM/2021/551 final.
38. European Commission, Communication from the Commission to the European Parliament and the Council "Business Taxation For The 21st Century", Brussels, 18.5.2021 COM(2021) 251 final.
39. Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union, Brussels, 22.12.2021 COM(2021) 823 final, 2021/0433(CNS).
40. European Commission, Commission Staff Working Document: Impact Assessment Report Accompanying the documents Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) and Proposal for a Council Directive on Transfer Pricing COM (2023) 532 final – SWD (2023) 309 final (2022).
41. European Parliament, Removal of taxation-based obstacles and distortions in the Single Market in order to encourage cross-border investment. Executive Summary Requested by the FISC Subcommittee (2022).
42. European Court of Auditors, Review No 01/2022: Energy taxation, carbon pricing and energy subsidies (2022). European Commission. Commission Implementing Decision (EU) 2023/1487 of 11 July 2023 on the request for registration, pursuant to Regulation (EU) 2019/788 of the European Parliament and of the Council, of the European citizens' initiative entitled 'Taxing great wealth to finance the ecological and social transition'

(notified under document C(2023) 4751) (Only the French text is authentic) C/2023/4751, OJ L 182, 19.7.2023.
43. European Commission. Staff working document Accompanying the document Amended Proposal for a Council Decision amending Decision (EU, Euratom) 2020/2053 on the system of own resources of the European Union, COM (2023) 331 final (2023).
44. European Parliament resolution of 10 May 2023 on own resources: a new start for EU finances, a new start for Europe (2022/2172(INI)) (2023).
45. European Commission, Proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), COM (2023) 532 final, (2023).
46. European Court of Auditors, Special report 05/2023: the EU's financial landscape - a patchwork construction requiring further simplification and accountability (2023): 11. Available at: https://www.eca.europa.eu/en/publications/SR23_05.
47. Proposal for a Council Directive establishing a Head Office Tax system for micro, small and medium-sized enterprises, and amending Directive 2011/16/EU, COM(2023) 528 final 2023/0320(CNS).
48. European Court of Auditors. Special report: The EU's financial landscape: A patchwork construction requiring further simplification and accountability (2023). Available at: https://www.eca.europa.eu/Lists/ECADocuments/SR23_05/SR_EU-financial-landscape_EN.pdf.
49. European Court of Auditors. Special report 16/2024: EU revenue based on non-recycled plastic packaging waste – A challenging start hindered by data that is not sufficiently comparable or reliable (2024). Available at: https://www.eca.europa.eu/ECAPublications/SR-2024-16/SR-2024-16_EN.pdf.
50. European Court of Auditors. News: Challenging start for the EU's revenue based on non-recycled plastic packaging waste. (2024). Available at: https://www.eca.europa.eu/en/news/NEWS-SR-2024-16.
51. European Commission, Report from the Commission to the European Parliament and the Council on the functioning of the European carbon market in 2023. Brussels, 19.11.2024 COM (2024) 538 final.
52. European Commission's Directorate-General for Budget, EU budget policy brief: Lessons for a future-proof EU budget (2024).
53. European Commission. Proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco-related products (recast) Brussels, 16.7.2025, COM (2025) 580 final 2025/580 (CNS) (2025).
54. European Commission. Commission Staff Working Document Executive Summary of the Impact Assessment Report Accompanying the document Proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco-related products (recast) COM (2025) 580 final (2025).
55. European Commission. Proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco-related products (recast) (2025).
56. European Commission. Report from the Commission to the European Parliament and the Council Long-term forecast of future inflows and outflows of the EU budget (2026-2034). COM (2025) 573 final (2025).
57. European Parliament, Draft Report 2023/0321(CNS) on the proposal for a Council directive on Business in Europe: Framework for Income Taxation (BEFIT) COM(2023)0532 – C9-0341/2023 – 2023/0321CNS. Committee on Economic and Monetary Affairs Rapporteur: Evelyn Regner (2025).
58. Proposal for a Council Decision on the system of own resources of the European Union and repealing Decision (EU, Euratom) 2020/2053, COM (2025) 574 final, 2025/0574(CNS), Brussels, 16.7.2025.

59. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A Competitiveness Compass for the EU, COM (2025)30 final.
60. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission work programme 2026 Europe's Independence Moment COM/2025/870 final (2025).
61. Proposal for an Interinstitutional Agreement between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, COM (2025) 572 final, 16.7.2025.
62. European Commission, Commission Staff Working Document Accompanying the Document Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A dynamic EU budget for the priorities of the future: the Multiannual Financial Framework 2028-2034, COM (2025) 570 final – SWD (2025) 571 final, (2025).
63. European Court of Auditors. Opinion 04/2026 (pursuant to Article 287(4) TFEU) concerning the proposal for a Decision on the system of own resources of the European Union COM (2025) 574 final (2026).

Case law

CJEU

1. CJEU, judgment of the Court of 12 November 1969, *Stauder*, Case 29/69, ECLI:EU:C:1969:57.
2. CJEU, judgment of the Court of 17 December 1970, Case 11/70 *Internationale Handelsgesellschaft*, ECLI:EU:C:1970:114.
3. CJEU, judgment of the Court of 21 December 2021, *Randstad Italia SpA v Umana SpA and Others*, Case C-497/20, ECLI:EU:C:2021:1037.
4. CJEU, judgment of the Court of 27 February 2017, Associação *Sindical dos Juízes Portugueses*, Case C-64/16, ECLI:EU:C:2018:117.
5. CJEU, judgment of the Court of 13 March 2007, *Unibet (London) Ltd*, Case C-432/05, ECLI:EU:C:2007:163.
6. CJEU, judgment of the Court of 8 May 2019, *Związek Gmin Zagłębia Miedziowego w Polkowicach*, Case C‑566/17, ECLI:EU:C:2019:390.
7. CJEU, judgment of 16 June 2015, C-62/14, *Gauweiler*, ECLI:EU:C:2015:400.
8. CJEU, judgment of 11 December 2018, Weiss, C 493/17, ECLI:EU:C:2018:1000.
9. CJEU, judgment of the Court of 29 June 1978, *Benzine en Petroleum Handelsmaatschappij BV and others v Commission of the European Communities*, C-77/1977, ECLI:EU:C:1978:141
10. CJEU, judgment of 4 March 2010, Case C-38/06, *EC v Portugal*, ECLI:EU:C:2010:108.
11. CJEU, judgment of the Court (Full Court) of 16 February 2022, C-156/21, *Hungary v European Parliament and Council of the European Union*, ECLI:EU:C:2022:97
12. CJEU, judgment of the Court (Full Court) of 16 February 2022, *Republic of Poland v European Parliament and Council of the European Union.* C-157/21, ECLI:EU:C:2022:98.
13. CJEU, judgment of 21 April 2026, *Commission v Hungary*, C-769/22, ECLI:EU:C:2026:326.

14. CJEU, judgment of 15 July 1964, *Flaminio Costa v E.N.E.L.*, Case 6/64, ECLI:EU:C:1964:66.
15. CJEU, Judgment of 5 February 1963, *van Gend en Loos*, C-26/62, ECLI:EU:C:1963.
16. CJEU, Judgment of the Court of 18 October 2007, *Commission of the European Communities v Kingdom of Denmark*, C-19/05.

Member States' national courts

1. *Bundesverfassungsgerich*t (BVerfG), order of 10 November 1998 – 1 BvL 10/98, BVerfGE 99.
2. *Ustavni sud Republike Hrvatske*, judgment of 21 February 2017. U-III/5419/2013.
3. *Ustavni sud Republike Hrvatske*, decision of 17 November 2009, no. U-IP/3820/2009.
4. *Ustavni sud Republike Hrvatske*, judgment of 21 April 2015., no. U-VIIR -1158/2015 and U-VIIR -1159/2015.
5. *Corte Costituzionale Italiana*, Sentenza del 23.12.2019, no. 288/2019, ECLI:IT:COST:2019:288.
6. *Corte Costituzionale Italiana*, Sentenza del 26.03.2024 no. 49/2024, ECLI:IT:COST:2024:49
7. *Corte Costituzionale Italiana*, Decisione del 16.07.2009. no. 238/2009, ECLI:IT:COST:2009:238.
8. *Corte Costituzionale Italiana*, Decisione del 17.10.2011, Sentenza 280/2011 (ECLI:IT:COST:2011:280).
9. *Ustavno Sodišče Republike Slovenije*, judgment of 21 March 2014, U-I-313/13-86.
10. *Ustavno Sodišče Republike Slovenije*, judgment of 20. April 2007, U-I-260/04.

Member States' legislation

Germany

1. Basic Law for the Federal Republic of Germany (*Grundgesetz*), Translated by Prof. Christian Tomuschat, Prof. David P. Currie, Prof. Donald P. Kommers and Raymond Kerr, in cooperation with the Language Service of the German Bundestag.
2. *Abgabenordnung in der Fassung der Bekanntmachung* vom 1. Oktober 2002, Federal Law Gazette (BGBl. I S. 3866; 2003 I S. 61). die zuletzt durch Artikel 14 des Gesetzes vom 27. März 2024, Federal Law Gazette (BGBl. 2024 I Nr.)
3. *Kraftfahrzeugsteuergesetz 2002* (KraftStG 2002). Available at: https://www.gesetze-im-internet.de/kraftstg/KraftStG_2002.pdf.
4. *Solidaritätszuschlaggesetz* vom 24. Juni 1991 Federal Law Gazette (BGBl. I S. 1318), *das durch Artikel 19 des Gesetzes vom 25. Februar* 1992 (BGBl. I S. 297).
5. *Gesetz zur Einführung eines EU-Energiekrisenbeitrags nach der Verordnung (EU) 2022/1854 (EU-Energiekrisenbeitragsgesetz - EU-EnergieKBG).* Federal Law Gazette (BGBl. I 2022, S. 2294, 2325)
6. *Einwegkunststofffondsgesetz – EWKFondsG,* Federal Law Gazette (BGBl) 2023 I Nr. 124 vom 15.05.2023.

Italy

1. The Constitution of the Republic of Italy (Costituzione della Repubblica Italiana), Testo vigente aggiornato alla legge costituzionale 26 settembre 2023, n. 1
2. Legge, no 342, 21 novembre 2000.

3. Legge no. 296, 27 dicembre 2006.
4. Legge, no 147, 27 dicembre 2013.
5. Legge no. 197, 29 dicembre 2022.
6. Legge no. 160, 27 dicembre 2019.

Slovenia

1. Ustav Republike Slovenije (URS) Uradni list RS, št. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90,97,99, 75/16 – UZ70a in 92/21 – UZ62a.
2. Zakon o davčnem postopku, Official Gazzette (*Uradni list RS*), no. 13/11 – uradno prečiščeno besedilo, 32/12, 94/12, 101/13 – ZDavNepr, 111/13, 22/14 – odl. US, 25/14 – ZFU, 40/14 – ZIN-B, 90/14, 91/15, 63/16, 69/17, 13/18 – ZJF-H, 36/19, 66/19, 145/20 – odl. US, 203/20 – ZIUPOPDVE, 39/22 – ZFU-A, 52/22 – odl. US, 87/22 – odl. US, 163/22, 109/23 – odl. US, 131/23 – ZORZFS, 100/24, 40/25 – ZINR in 100/25.
3. Zakon o spodbujanju razvoja turizma (ZSRT-1) Official Gazette (*Uradni list RS*) no 13/18, 100/25
4. Zakon o nujnem posredovanju za obravnavo visokih cen energije (ZNPOVCE) Official Gazette (Uradni list RS) no. 158/22.

Croatia

1. The Constitution of the Republic of Croatia (*Ustav Republike Hrvatske*), Official Gazette (*Narodne novine*) no. 56/1990, 135/1997, 113/2000, 124/2000, 28/2001, 41/2001,55/2001, 76/2010, 85/2010, 5/2014.
2. Zakon o posebnom porezu na plaće, mirovine i druge primitke, Official Gazzette (*Narodne novine*) no. 94/2009, 56/2010.
3. General Tax Act (Opći porezni zakon), Official Gazette (*Narodne novine*) no. 115/2016, 106/2018, 121/2019, 32/2020, 42/2020, 114/2022.
4. The Budget Act (*Zakon o proračunu*), Official Gazette (*Narodne novine*) no. 144/2021.
5. Roads Act (*Zakon o cestama*), Official Gazette (*Narodne novine*) no. 84/2011, 18/2013, 22/2013, 54/2013, 148/2013, 92/2014, 110/2019, 144/2021, 114/2022, 114/2022, 4/2023, 133/2023, 156/2025.
6. Railways Act (*Zakon o željeznici*), Official Gazette (*Narodne novine*) no. 32/2019, 20/2021, 114/2022.
7. Act on Extra Profit Tax (*Zakon o dodatnom porezu na dobit*), Official Gazzette (*Narodne novine*) no. 151/2022, 9/2023.

Online resources

1. Angerer, Jost and Vasiliki Papouliakou, *European Parliament Fact Sheets: Direct taxation: personal and company taxation* (European Parliament, 2025):1-2. Available at: https://www.europarl.europa.eu/erpl-app-public/factsheets/pdf/en/FTU_2.6.10.pdf.
2. Bachtler, John, Carlos Mendez, Fiona Wishlade. "Reforming the MFF and Cohesion Policy 2021-27: pragmatic drift or paradigmatic shift?" *European Policy Research Paper No. 107* (2019).https://strathprints.strath.ac.uk/69563/1/Bachtler_etal_EPRC_2019_Reforming_the_MFF_and_cohesion_policy_2021_27_pragmatic_drift_or_paradigmatic_shift.pdf.

3. Maria Ana Barata, *Completing a half full or a half empty Banking Union: the introduction of the common backstop*. (2022). Available at: https://fbf.eui.eu/completing-a-half-full-or-a-half-empty-banking-union-the-introduction-of-the-common-backstop/.
4. Bettoni,Matteo. "La rilevanza della destinazione finanziaria nel contributo di solidarietà a carico degli operatori del settore energetico istituito con legge di bilancio 2023" *Fiscalità dell'energia* (2023) La rilevanza della destinazione finanziaria nel contributo di solidarietà a carico degli operatori del settore energetico istituito con legge di bilancio 2023 - Fiscalità dell'Energia.
5. Buti, Marco, Alessandro Coloccia and Marcello Messori. "European public goods. VoxEU column" (2025). Available at: https://cepr.org/voxeu/columns/european-public-goods.
6. Calmette, Marie-Françoise. "*Carbon tax at the borders, a step forward, but at what price?*" (2023). Available at: https://www.tse-fr.eu/debate-border-carbon-tax.
7. Enache, Cristina, Corporate Income Tax Rates in Europe (2025). Available at: https://taxfoundation.org/data/all/eu/corporate-income-tax-rates-europe/
8. Enders, Björn and Alexander Backe. "Introduction of the Single-Use Plastics Fund Act (EWKFondsG): New obligations for companies placing single-use plastic products on the German market." (2023). Available at: https://www.dlapiper.com/en/insights/publications/2023/05/introduction-of-the-single-use-plastics-fund-act-ewkfondsg.
9. CJEU. *EUnited in diversity: between common constitutional traditions and national identities - Conference Proceedings*, International Conference Riga, Latvia – 2-3 September 2021. (2021) Available at: https://curia.europa.eu/site/upload/docs/application/pdf/2026-02/eunited_in_diversity_2021.pdf.
10. CJEU. *Research note: Scope of the principle of the legality of taxation, particularly in relation to VAT*. Available at: https://curia.europa.eu/site/upload/docs/application/pdf/2024-04/ndr_scope_of_the_principle_of_the_legality_of_taxation_particularly_in_relation_to_value_added_tax_en.pdf.
11. CJEU. *Press Release No 59/26,* Luxembourg, 21 April 2026. Available at: https://curia.europa.eu/site/upload/docs/application/pdf/2026-04/cp260059en.pdf.
12. Clearblue. *CBAM Market Insight: Forecast CBAM Costs & Compliance for EU Import*. https://www.clearbluemarkets.com/news/cbam-market-insight-forecast-cbam-costs-compliance-for-eu-imports.
13. Croatian Encyclopaedia. Jugoslavija. Available at: https://enciklopedija.hr/clanak/jugoslavija.
14. Directorate-General for Budget (European Commission) (1992) European Communities Financial Report 1991. This report clearly elaborates the amount of funds that were provided for each of these funds from the EU budget. Available at: Financial report 1991 - Publications Office of the EU.
15. Draghi, Mario. "A competitiveness strategy for Europe" (2024). Available at: https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en.
16. Escolano, Julio. "Distribution of fiscal responsibilities in federations," in *Designing a European Fiscal Union*: *Lessons from the Experiences of Fiscal Federations*, ed. Carlo Cottarelli and Martine Guerguil (Routledge, 2014). Available at: https://www.elibrary.imf.org/display/book/9781138783225/ch001.xml.
17. EEC Report on Tax Harmonisation: the Report of the Fiscal and Financial Committee (so-called Neumark report,1962). Available at: https://koflerge.org/wp-content/uploads/2019/01/neumark.pdf.

18. European Citizens Initiative "Tax the Rich" official website, available at: https://www.tax-the-rich.eu/ .
19. Euronews. *EU bungled plastic tax, auditors say* (2024). Available at: https://www.euronews.com/my-europe/2024/09/16/eu-bungled-plastic-waste-tax-auditors-say.
20. European Investment Bank. *Fact sheet: The Pan-European Guarantee Fund in response to COVID-19* (2020). Available at: https://www.eib.org/files/press/covid19-paneuropean-guarantee-fund-factsheet-en.pdf.
21. European Communities Joint Information Service. *Newsletter on the Common Agricultural Policy no 10, July 1968.* Available at: https://aei.pitt.edu/6522/1/6522.pdf.
22. European Commission. *Press release: European corporate tax base: making business easier and cheaper* (2011). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_11_319.
23. European Commission. *Press release: Financial Transaction Tax under Enhanced Cooperation: Commission sets out the details* (2013). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_13_115.
24. European Commission. "*EU ETS Handbook"* (2015). Available at: https://climate.ec.europa.eu/document/download/8cabb4e7-19d7-45bd-8044-c0dcc1a64243_en?filename=ets_handbook_en.pdf.
25. European Commission. *A modern budget for a Union that protects, empowers and defends: Questions and Answers* (factsheet, 2018). Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/memo_18_3621/MEMO_18_3621_EN.pdf.
26. European Commission. *Recovery plan for Europe* (2020). Available at: https://commission.europa.eu/strategy-and-policy/recovery-plan-europe_en#main-elements-of-the-package.
27. European Commission. *The EU Budget Powering the Recovery Plan for Europe* (2020). Available at: https://op.europa.eu/en/publication-detail/-/publication/e0956910-a0c9-11ea-9d2d-01aa75ed71a1.
28. European Commission. *Questions and Answers: Commission Proposes Activating Fiscal Framework's General Escape Clause to Respond to Coronavirus Pandemic* (2020). https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_500.
29. European Commission. *Factsheet: The European Public Prosecutor's Office Protecting taxpayers against fraud and corruption*. (2021). Available at: https://commission.europa.eu/document/download/2eca387c-2d96-4ebc-8e4b-266d5009b6f3_en?filename=dg_justice_eppo_factsheet_en.pdf.
30. European Commission. *Press Release: The Commission Proposes the Next Generation of EU Own Resources*, Brussels, December 22, 2021, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_21_7025/IP_21_7025_EN.pdf.
31. European Commission. *Press release: EU budget: Commission publishes guidance on the conditionality mechanism*. (2022). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1468.
32. European Commission. *Press release: European Green Deal: Putting an end to wasteful packaging, boosting reuse and recycling*, Brussels, 30 November 2022. Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_22_7155/IP_22_7155_EN.pdf.

33. European Commission. *Press release: Fiscal policy guidance for 2024: Promoting debt sustainability and sustainable and inclusive growth*. (2023). Available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1410.
34. European Commission. *Press release: Questions and Answers on BEFIT and transfer pricing. (2023).* https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_4407.
35. European Commission. *Questions and Answers: An adjusted package for the next generation of own resources* (2023). Available at: https://ec.europa.eu/commission/presscorner/api/files/document/print/en/qanda_23_3329/QANDA_23_3329_EN.pdf
36. European Commission. *Commission earmarks €4.6 billion to boost net-zero technologies*. (2024). Available at: https://blue-economy-observatory.ec.europa.eu/news/commission-earmarks-eu46-billion-boost-net-zero-technologies-2024-12-05_en#:~:text=Commission%20earmarks%20%E2%82%AC4.6%20billion%20to%20boost%20net%2Dzero%20technologies%20%2D%20European%20Commission.
37. European Commission. *Innovation Fund – Performance* (2024). Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/programme-performance-statements/innovation-fund-performance_en#rationale-and-design-of-the-programme.
38. European Commission. *Guidance document on CBAM implementation for importers of goods into the EU* (2024). Available at: https://taxation-customs.ec.europa.eu/document/download/bc15e68d-566d-4419-88ec-b8f5c6823eb2_en?filename=TAXUD-2023-01189-01-00-EN-ORI-00.pdf.
39. European Commission. *Carbon Border Adjustment Mechanism* (2024). https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en.
40. European Commission: Directorate-General for Budget. *Europe's budget: own resources.* Publications Office of the European Union. https://data.europa.eu/doi/10.2761/3737467 (2025).
41. European Commission. *Value added tax-based own resource*, available at: https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2014-2020/revenue/own-resources/value-added-tax_en.
42. European Commission. *Press release: The 2028-2034 EU budget for a stronger Europe* (2025). Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/eu-budget-2028-2034_en.
43. European Commission. *Annual Report on Taxation 2025* (2025). Available at: https://taxation-customs.ec.europa.eu/document/download/e6cad28a-cdd1-4abe-b88a-15d5b398c15f_en.
44. European Commission. *How is the EU Budget prepared*? (2025). Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/how-it-works/annual-lifecycle/preparation_en.
45. European Commission. *Europe's budget Own resources* (2025). Available at: https://commission.europa.eu/document/download/80b07565-b336-41ae-9baf-a5401e7b528b_en?filename=MFF_New%20own%20resources_16.07-16h38.pdf.
46. European Commission. *Modernisation Fund.* Available at: https://climate.ec.europa.eu/eu-action/eu-funding-climate-action/modernisation-fund_en.
47. European Commission. *EU Emission trading system*. Available at: https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/scope-eu-emissions-trading-system_en.

48. European Commission. *Social Climate Fund*. Available at: https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/social-climate-fund_en#implementation-of-the-social-climate-fund.
49. European Commission. *European Union Solidarity Fund – Performance*. Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/programme-performance-statements/european-union-solidarity-fund-performance_en
50. European Commission. *ETS2: buildings, road transport and additional sectors*, available at: https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/ets2-buildings-road-transport-and-additional-sectors_en.
51. European Commission. *How does the EU ETS work.* Available at: https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets/about-eu-ets_en.
52. European Commission. *Benefits of the EU budget: How the programmes and initiatives of the 2014-2020 long-term budget had an impact on European citizens' lives in different policy areas*. Available at: https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2014-2020/benefits-eu-budget_en.
53. European Commission, *EU funding programmes*. Available at: https://commission.europa.eu/funding-and-tenders/find-funding/eu-funding-programmes_en#heading-6-neighbourhood--the-world.
54. European Commission. *ETS2 Buildings, road transport and additional sectors*. Available at: https://climate.ec.europa.eu/eu-action/carbon-markets/ets2-buildings-road-transport-and-additional-sectors_en.
55. European Council. *The Single Market* (2025). Available at: https://www.consilium.europa.eu/en/topics/single-market.
56. Eurostat.*Total annual goods exports by European Union member states to other countries within the EU from 1999 to 2024* (in trillions of Euros) [Graph]. (June 13, 2025). In Statista. Retrieved March 01, 2026, from https://www.statista.com/statistics/1375209/eu-internal-trade-intra-eu-exports-member-state/.
57. European Central Bank. *Green investment needs in the EU and their funding* (2025). Available at:https://www.ecb.europa.eu/press/economic-bulletin/articles/2025/html/ecb.ebart202501_03~90ade39a4a.en.html.
58. European Parliament. *Briefing: The UK 'rebate' on the EU budget: An explanation of the abatement and other correction mechanisms*. (2016). Available at: https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2016)577973.
59. European Parliament. *The principle of subsidiarity* (2017). Available at: https://www.europarl.europa.eu/RegData/etudes/fiches_techniques/2013/010202/04AFT(2013)010202_EN.pdf.
60. European Parliament. *A Fiscal Capacity for the Eurozone: Constitutional Perspectives* (2019). https://www.europarl.europa.eu/RegData/etudes/IDAN/2019/608862/IPOL_IDA(2019)608862_EN.pdf.
61. European Parliament. *2021-2027 Multiannual Financial Framework and New Own Resources - Analysis of the Commission's proposal* (2019). Available at: http://www.epgencms.europarl.europa.eu/cmsdata/upload/db93fa39-84ce-44fe-b4fa-4c6824185e13/2021-2027_Multiannual_financial_framework_and_new_own_resources_-_Analysis_of_the_Commission%27s_proposal_.pdf
62. European Parliament. "*Briefing: Next Generation EU Where are assigned revenue? Which impact in 2021?*" (2020). Available at:

https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/656549/IPOL_BRI(2020)656549_EN.pdf.
63. European Parliament. *Briefing requested by the BUDG committee: Strategies to overcome the 'juste retour' perspective on the EU budget* (2020). Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/648186/IPOL_BRI(2020)648186_EN.pdf.
64. European Parliament. *Assigned revenue in the Recovery Plan - The frog that wishes to be a prince* (2020). https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/654526/IPOL_BRI(2020)654526_EN.pdf.
65. European Parliament. *System of own resources of the European Union* (2021). https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751480/EPRS_BRI(2023)751480_EN.pdf.
66. European Parliament, *Briefing - Own resources of the European Union: Reforming the EU's financing system* (2021): 3. Available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/630265/EPRS_BRI(2018)630265_EN.pdf.
67. European Parliament, *Parliamentary question - E-003104/2025: New EU tax on uncollected e-waste* (2025). Available at: https://www.europarl.europa.eu/doceo/document/E-10-2025-003104_EN.html.
68. European Parliament. *Fact Sheets on the EU: EU Expenditures* (2025). Available at: https://www.europarl.europa.eu/factsheets/en/sheet/28/the-eu-s-expenditure.
69. European Parliament. *EU budget explained: size, sources and beneficiaries*. Available at: https://eubudget.europarl.europa.eu/en/how-it-works/.
70. European Parliament. *Fact sheet: the Solidarity Fund*. Available at: https://www.europarl.europa.eu/factsheets/en/sheet/97/the-solidarity-fund.
71. European Anti-Fraud Office. *Welcome to OLAF* (2025). Available at: https://anti-fraud.ec.europa.eu/index_en.
72. European Council. *EU long-term budget 2021-2027* (2024). Available at: https://www.consilium.europa.eu/en/policies/eu-long-term-budget-2021-2027/#areas.
73. EUBudget, *EU Budget Explained: How €185 Billion Gets Collected and Spent* (2026). Available at: https://www.eubudget.com/blog/eu-budget-explained-how-money-collected-spent.
74. FAO. *Sugar regime of the European Union*. Available at: https://www.fao.org/4/x4988e/x4988e06.pdf.
75. French-German Initiative for the European Recovery from the Coronavirus Crisis (2020) Available at: https://www.elysee.fr/en/emmanuel-macron/2020/05/18/french-german-initiative-for-the-european-recovery-from-the-coronavirus-crisis.
76. Governo Italiano. Presidenza del Consiglio dei Ministri. *Che cos'è l'otto per mille a diretta gestione statale* Available at: https://www.governo.it/it/dipartimenti/dip-il-coordinamento-amministrativo/dica-att-8x1000-cosae/18318 .
77. Hrvatske autoceste. *About us*. (2026). https://www.hac.hr/en/about-us.
78. IBFD, *Tax Insights: BEPS* (2025). Available at: https://us.ibfd.org/knowledge-hub/tax-insights/base-erosion-and-profit-shiftingbeps#:~:text=Base%20erosion%20and%20profit%20shifting%20(BEPS)%20refers,deductible%20payments%20such%20as%20interest%20or%20royalties
79. Italian Constitutional Court. The Court in the Constitution (2025). Available at: https://www.cortecostituzionale.it/contenuti/istituzioni/lacorte-EN.
80. Italian Constitutional Court. *Legal summary Order No 21/2025 ECLI:IT:COST:2025:21* (2025). Available at: legal-summary-21-of-2025-6878c78aaa7eb.pdf.

81. Klatt, Jan Peter, and Thorsten Beckers. "Funding of Federal Trunk Roads in Germany: an Institutional Analysis of Current Deficits and Future Perspectives" (2012). Available at: www.uni-weimar.de/fileadmin/user/fak/bauing/professuren_institute/Infrastrukturwirtschaft_und-management/Forschung/Publikationen/2012/klatt_beckers_2012-funding_of_federal_trunk_roads_in_germany.pdf.
82. Kotanidis, Siliva. „*Passerelle clauses in the EU Treaties: Opportunities for more flexible supranational decision-making"* (European Parliamentary Research Service, 2019). Available at: https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659420/EPRS_STU(2020)659420_EN.pdf.
83. Maufort. Laurence. "The development of the Communities' and the Union's own resources," CVCE.EU by UNI.LU (2016). Available at: https://www.cvce.eu/en/obj/the_development_of_the_communities_and_the_union_s_own_resources-en-cc05b5ce-8f83-4443-8328-9922fc7bc07a.html.
84. Marcu, Andrei et al., "State of the EU ETS Report" (2025): 21. Available at: https://ercst.org/2025-state-of-the-eu-ets-report/.
85. Merriam-Webster.com Dictionary. s.v. "pork barrel," (2025). Available at: https://www.merriam-webster.com/dictionary/pork%20barrel.
86. Merriam-Webster.com Dictionary, s.v. "subsidiarity," accessed June 12, 2025, https://www.merriam-webster.com/dictionary/subsidiarity.
87. Merriam-Webster.com Dictionary, s.v. "buyback," accessed June 21, 2025, https://www.merriam-webster.com/dictionary/buyback
88. Merriam-Webster.com Dictionary, s.v. "Power." Accessed: 2 June 2025. https://www.merriam-webster.com/dictionary/power.
89. Ministrstvo za finance. *Ekonomska klasifikacija (skupine kontov, podskupine kontov, konti, podkonti)* (2025). https://www.gov.si/assets/ministrstva/MF/Proracun-direktorat/Drzavni-proracun/Priprava-proracuna/ekonomska_klasifikacija_julij25.pdf.
90. Muller,Francois, "F.E.O.G.A. The Agricultural Guidance and Guarantee Fund of the E.E.C." (Department of Agricultural Economics Archive 272872, University of Newcastle upon Tyne, 1970): 7. Available at: https://ideas.repec.org/p/ags/ukncar/272872.html#download.
91. OECD. *Government at a Glance 2025* (Paris: OECD Publishing, 2025). Available at: https://doi.org/10.1787/0efd0bcd-en.
92. OECD, *Revenue Statistics 2023: Tax Revenue Buoyancy in OECD Countries* (Paris: OECD Publishing, 2023). https://doi.org/10.1787/9d0453d5-en-.
93. OECD, BEPS undermines the fairness and integrity of tax systems (2025). Available at: https://www.oecd.org/en/topics/base-erosion-and-profit-shifting-beps.html.
94. OECD *Action Plan on Base Erosion and Profit Shifting*. OECD Publishing (2013). Available at: http://dx.doi.org/10.1787/9789264202719-en.
95. OECD, *Policy brief: What to expect from the EU Carbon Border Adjustment Mechanism?* (2025). Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/03/what-to-expect-from-the-eu-carbon-border-adjustment-mechanism_a21e9b51/719d2ff9-en.pdf.
96. OECD, *Journal on Budgeting. Special Issue: The Legal Framework for Budget Systems: an International Comparison* 4, no.3 (Paris: OECD Publishing, 2004). Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2005/07/oecd-journal-on-budgeting-volume-4-issue-3_g1gh404a/budget-v4-3-en.pdf.
97. Oxford English Dictionary, "earmarked (adj.)," July 2023, https://doi.org/10.1093/OED/2110309470.

98. Pappalardo, Fabio. *The Treaty of Maastricht,* CVCE. (European Navigator, 2003): 2. Available at: https://www.cvce.eu/en/education/unit-content/-/unit/d5906df5-4f83-4603-85f7-0cabc24b9fe1/e038b310-f139-407f-9bfb-a1b2e901fb56/Resources#623fb976-c100-466b-85ac-2e0104f625c7_en&overlay.
99. Pascal Saint-Amans, "Broader border taxes: a new option for European Union budget resources," *Bruegel Policy Brief 06/2024* (2024). Available at https://www.bruegel.org/policy-brief/broader-border-taxes-new-option-european-union-budget-resources.
100. Peet, John and Kitty Ussher. "The EU budget: an agenda for reform?" (1999). https://www.cer.eu/sites/default/files/publications/attachments/pdf/2011/cerwp1-2811.pdf.
101. Philippe Andrade, P. et al., "The ECB's asset purchase programme: an early assessment," *European Central Bank Working Paper Series no. 1956/2016* (2016): Available at: https://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp1956.en.pdf.
102. "*potestà tributaria" in Enciclopedia Giuridica:* http://www.enciclopedia-juridica.com/it/d/potest%C3%A0-tributaria/potest%C3%A0-tributaria.htm.
103. Radaeli, Claudio M. "*Harmful Tax Competition in the EU: Policy Narratives and Advocacy Coalitions*" Columbia International Affairs Online (1999). Available at: https://ciaotest.cc.columbia.edu/isa/rac01/.
104. "Robert Schuman: Declaration of 9 May 1950," May 9, 1950, accessed June 5, 2025. Available at: https://www.robert-schuman.eu/en/declaration-of-9-may-1950.
105. Saez, Emmanuel, Gabriel Zucman, Camille Landais, "A progressive European wealth tax to fund the European COVID response" VoxEU (2020). Available at: https://cepr.org/voxeu/columns/progressive-european-wealth-tax-fund-european-covid-response.
106. Single Resolution Board. *What is Single Resolution Fund (online),* available at: https://www.srb.europa.eu/en/single-resolution-fund.
107. Single Resolution Board. *The Single Resolution Fund* (2021). Available at: https://www.srb.europa.eu/system/files/media/document/2021-01-01%20The%20Single%20Resolution%20Fund.pdf.
108. The Government of Canada, Provincial and territorial corporation tax (2025). Available at: Provincial and territorial corporation tax - Canada.ca .
109. Thöne, Michael. "European Public Goods and the 2028-2034 Multiannual Financial Framework: Financing the EU in a decade of reform" *Briefing requested by the BUDG Committee, European Parliament* (2024): 2. Available at: https://www.europarl.europa.eu/cmsdata/290728/3.%20Thone%20-%20final.pdf.
110. Villani, Maurizio. "Il concetto di tributo: ai fini dell'individuazione della giurisdizione delle Commissioni Tributarie." (2008). Available at: https://studiotributariovillani.it/public/ins_novita/docnovita/concetto-tributo-individuazione-giurisdizione-Commissioni-Tributarie_12-12-08.pdf
111. Xygka, Angelika. "Tax Simplification 101: HOT is Moving Forward" (2024). Available at: https://www.ibfd.org/sites/default/files/2024-04/final-etf-2-hot.pdf.