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Editorial

Tax Sovereignty of EU Member States in View of the Global Financial and Economic Crisis

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The financial and economic crisis of 2008, which has badly hit the bank sector worldwide, has obliged national states to intervene on a large scale.[1] Central banks have reacted in two ways to ease monetary conditions: injecting liquidity in the market and lowering interest rates. The crisis also forced governments to rescue banks to avoid a collapse of the whole financial system. Member States of the European Union, for instance, committed (individually) to recapitalization of their financial institutions, guarantees on bank liabilities, relief of impaired assets, and liquidity and bank funding support for a total representing 43.6% of their combined Gross Domestic Product (GDP).[2] The third part of the policy response to the crisis was the fiscal stimulus packages. On 26 November 2008, the European Commission presented the European Economic Recovery Plan (EERP) for Growths and Jobs, which includes a mix of tax and expenditure measures to support the real economy and to restore confidence. The Plan proposes a timely, targeted, and temporary fiscal stimulus of around EUR 200 billion or 1.5% of EU GDP, within both national budgets (around EUR 170 billion, 1.2% of GDP) and EU and European Investment Bank budgets (around EUR 30 billion, 0.3% of GDP). In the context of the EERP, Member States have taken various measures, the total fiscal impulse of which is estimated at 1.8% of EU GDP.[3] Most of the measures have focused on a decrease in labour taxes, in particular, by lowering personal income tax rates or increasing tax brackets. Another part of tax measures has focused on decreasing corporate income taxes, alternatively lowering the rate of the base.[4] All things considered, the rather individualistic approach of the abovementioned Member States is quite remarkable in this respect.

Furthermore, when the financial crisis developed this year, as a consequence of the Greek budgetary problems, into a general crisis of confidence within the Euro area, it became obvious that a powerful European approach for the support of the Euro could not and cannot be taken for granted. It has become clear that there is a fatal flaw in the Euro construction. The Euro is a currency without the indispensable support of a centralized economic and fiscal policy. The package of EUR 750 billion, which has been put together to deter speculators for a short time, does not seem to remedy the inherent lack of a central mechanism of fiscal and budgetary decision in times of crisis. 'Europe has dealt with the immediate emergency, but we must also show we are serious about the more fundamental reforms needed. We must now get to the root of the problem,' J.E. Barroso stated at a press conference in Brussels on 12 May 2010.[5] The new proposals centre on three main initiatives. Firstly, the national budgets of Member States should be opened up to supervision, scrutiny, and pressure from all other EU nations operating under the central body (the so-called reinforcement of the Stability and Growth Pact (SGP)). Secondly, there should be increased monitoring of macroeconomic imbalances and 'competitiveness' between countries. 'We should detect these imbalances before they occur and will make recommendations so that Member States take the necessary actions to remedy them,' Barroso also stated. Finally, the instalment of a robust crisis management framework for the Euro area was suggested. On 12 May 2010, Mervyn King, the governor of the Bank of England, echoed these sentiments telling the media that 'within the Euro Area it's become very clear that there is a need for a fiscal union to make the Monetary Union work'.[6]

In the meantime, a Task Force under the leadership of H. Van Rompuy, permanent president of the European Council, has been commissioned together with the European Commission, the Member States, the European Central Bank (ECB) and the presidency, to propose, by the end of this year, measures to reinforce the framework of budgetary and economic supervision and to provide for a framework for crisis resolution. More specifically, this Task Force has four objectives: firstly, strengthening budgetary discipline through the SGP; secondly, reducing divergences in competitiveness between the Member States; thirdly,

1 T. Hemmelgarn & G. Nicodeme, *Taxation Papers. The 2008 Financial Crisis and Taxation Policy*, Working Paper 20, European Union, 2010, 45 pp., <http://ec.europa.eu/taxation_customs/resources/documents/taxation/gen_info/economic_analysis/tax_papers/taxation_paper_20_en.pdf>.

2 European Commission, *Public Finance in EMU 2009*, 44, <http://ec.europa.eu/economy_finance/publications/publication15390_en.pdf>.

3 Hemmelgarn & Nicodeme, *supra* n. 1, 18–19; European Commission, *The EU Response to Support the Real Economy During the Economic Crisis: An Overview of Member States Recovery Measures*. European Economy, Occasional Paper 51, July 2009, Brussels, 91 pp., <http://ec.europa.eu/economy_finance/publications>.

4 Hemmelgarn & Nicodeme, *supra* n. 1, 19.

5 J.E. Barroso press conference, 12 May 2010, Brussels, <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/234&format=HTML&aged=0&language=EN&guiLanguage=en>.

6 Bank of England, Quarterly Inflation report, 12 May 2010, 23, <www.bankofengland.co.uk/publications/inflationreport/conf120510.pdf>.

ensuring an effective financial crisis mechanism; and finally, improving economic governance and coordination.[7]

To which results the activities of the Task Force will actually lead is not known at the moment of writing the present editorial. The Member States obviously have the intention to put the financial crisis to use for a further deepening of the European integration within the Euro-land. Historical examples of such an evolution exist, such as the United States in the eighteenth and nineteenth centuries. The federal states were also confronted then with many serious financial crises sometimes evolving into a national bankruptcy, but that has obviously not broken up the dollar. The credit crises were also in the United States an important intermediary step on their way to the fiscal and monetary union.[8]

The question arises whether a deepening of the monetary Union within the Euro-land– especially in times of crisis – should not require a limitation of the national sovereignty in fiscal matters, and if it is the case, in which manner it should be given shape. Some scholars are of the opinion that the defence of the common currency can only be effective when, within Euro-land, a supranational authority is established capable of taking the necessary fiscal and budgetary decisions on national budgets and enforcing them on national governments, in times of crisis.[9] F. Vanistendael supports the handover by national governments – at least in times of crisis – of a substantial part of their national sovereignty, by transferring the power to make vital national fiscal and budgetary decisions to a central authority[10] competent to make such decisions for any Member State of Euro-land. He qualifies this institutional approach as *temporary federalism in times of crisis*.[11] When a Member State does not follow the Euro-land directives for very close economic coordination, the aforementioned central authority should have the power to intervene and to take over from the national governments the power to dictate which taxes should be raised and which expenses should be cut in the same way the IMF intervenes when a country is threatened with national bankruptcy. In this concept, the temporary transfer of taxing and spending power to a central Euro-land authority is seen as a minimal sanction for the Member State not following the recommendations of policy coordination.

In the light of the fundamental and, in most Member States, constitutionally anchored principle of *no taxation without representation*, clearly the abovementioned interesting line of thought gives rise to questions regarding the political and the democratic accountability of the aforementioned European central authority. To counter this objection, F. Vanistendael suggests the creation of a new arrangement either by using the existing procedure of enhanced cooperation (Article 20 TEU) or by setting up a new treaty between the Euro Member States, which entails three major elements: (1) a transfer of taxing and spending decisions in times of crisis to a Euro-land institution; (2) the precise definition of the powers and the determination of the operating rules of this institution; and (3) a reorganization of the European Parliament to enable it to exercise effective and democratic political control over this institution.

Considering the principles of subsidiarity and proportionality (Article 5 TEU and PROTOCOL (No. 2) on the application of those principles), the institutional approach discussed above does in our opinion not seem necessary to enforce – in times of crisis and with a view to the preservation of stability –the required (fiscal) measures to the Member States of Euro-land. A less radical but therefore no less efficient alternative can, in our view, bring about similar results, but with more respect for the fiscal sovereignty of the Member States. One could indeed consider that Member States whose currency is the Euro would be obliged, with the observance of their national legislation procedures, to preventatively endorse a crisis package of fiscal measures, the date of commencement whereof would be postponed under the suspensive condition of non-observance of the conditions established by the reinforced SGP. It is a matter of course that this crisis package of preventative fiscal measures would periodically be subject to an update and consultation with the European authorities. This procedure provides the advantage that, in case of an exceptional crisis situation, the reorganization of the public finances of the Member States of Euro-land, which find themselves in a difficult position and, because of this, constitute a threat for the Euro, does not need to happen exclusively with enforced economy measures. The financial situation of such countries can also (rapidly) be rectified, in case of the implementation of the crisis package (for a part) with adjusted tax measures.

As in this line of thought, the actual choice of fiscal measures, which constitute the preventative crisis package, is left to the Member State itself, there is no problem of democratic deficit. Furthermore, there is less danger that the proposed measures would not fit in well within the national fiscal system of the Member State concerned. Finally, in our opinion, this procedure can be realized by using the existing procedure of enhanced cooperation.

7 Remarks by Herman Van Rompuy, President of the European Council, following the second meeting of the task force on economic governance, Brussels, 7 Jun. 2010, <www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/114979.pdf>.

8 R. Harrod, *The Dollar*. Sir George Watson Lectures (London: Macmillan & Co. Ltd, 1953), 156 pp.; P.L. Rousseau, *A Common Currency: Early U.S. Monetary Policy and the Transition to the Dollar*, Working Paper 10702, Working Paper Series, National Bureau of Economic Research Inc., Cambridge, Massachussets, August 2004, 36 pp.

9 F. Vanistendael, 'The Crisis: A Window of Necessity for EU Taxation', Prof. Dr Manfred Mössner Lecture, 29 May 2010, European Association of Tax Law Professors, Leuven (to be published), 13 pp., <www.eatlp.org/uploads/public/MoessnerLecture2010.doc>.

10 According to Vanistendael, the question in what institutions of the EU or Euro-land this central authority should be vested is a matter of choice. Nevertheless, the same author prefers the setting up of a new institution in the Euro-group.

11 Vanistendael, *supra* n. 10, 5.