The Fiscal Future of the European Union

Rejecting an EU Constitution and adopting the Lisbon Treaty marked the end of an era in which integration was achieved gradually but steadily. Since then, it may be reasonable to state that integration has primarily been achieved as a response to an array of crises compromising the stability of the Union. These range from the financial meltdown of 2008 to the ongoing challenges posed by migration, Brexit, trade wars, the erosion of the rule of law, the COVID-19 pandemic, and geopolitical tensions such as the conflict in Ukraine. They have all collectively propelled the Union towards a trajectory of deeper integration, albeit in a rather reactive manner.

In light of these dynamics, it should be completely unsurprising that the design of the EU's fiscal architecture has increasingly become the focus of academic and policy debate in recent years. The ability of both individual Member States and the Union as a whole to effectively respond to the aforementioned shocks is intricately linked to their financial capacities. As is widely known, the Union must withstand tensions between countries advocating for fiscal restraint and those supporting a wider use of macroeconomic tools to stimulate growth. Similarly, debates persist over the degree of 'unionization' of debt and resources with some Member States hesitant to embrace their mutualization and therefore achieving a 'Hamiltonian moment' in the Union.

Amid these different views, the European Union has increasingly turned to ad-hoc instruments to restore fiscal resilience. The Public Sector Purchase Programme (PSPP)[1] furthered by the European Central Bank stands as a prominent example with its massive liquidity support as does the groundbreaking EUR 750 billion Recovery and Resilience Facility (RRF)[2] which is a recovery fund within the Next Generation EU[3] programme established in the aftermath of the Covid-19 pandemic. The RRF, for the first time, authorizes the commission to raise revenue on capital markets, thus marking a significant departure from the previous budgetary framework.

These interventions underscore the Union's willingness to explore innovative approaches to fiscal policy in times of crisis due to the lack of consensus to adopt stable, long-term solutions that would require sufficiently robust political majorities needed for treaty amendments. From a political perspective, the EU may be applauded for its strategic versatility and its ability – in line with the saying 'Never waste a good crisis!' – to use moments of crisis to implement novel policies that would have failed under normal circumstances due to the fierce resistance of at least some Member States. However, the fact should not be overlooked that these innovative approaches come at the cost of generating tensions with the Union's legal framework. One symptom of these is the debate about their competential grounding and another is scepticism about their long-term effects on the perceived legitimacy of economic policy in the EU.

Proceeding forward, the European Union faces a dual imperative to bolster its fiscal resilience in the face of ongoing crises and forge a more equitable and sustainable fiscal framework that can withstand future shocks. This will require not only continued innovation in fiscal policy instruments but also a renewed commitment to solidarity and cooperation among Member States. Only through collective action can the Union hope to navigate the complex fiscal terrain that lies ahead and emerge stronger and more resilient than ever before. Yet, challenges persist on the road to fiscal integration. The divergent economic interests and political priorities of Member States prevent forging a consensus on fiscal matters.

The current status of fiscal federalism in the European Union and the queries about its future have a crucial impact on its financial means as expressed in the Own Resources Decision (ORD). The 2021 version has prompted a discussion about the financial architecture of the Union as it adopted a measure to nudge Member States into adopting specific policy goals for the first time, specifically a national contribution based on non-

Notes

1. Decision (EU) 2015/774 of the European Central Bank of 4 Mar. 2015 on a secondary markets public sector asset purchase programme (ECB/2015/10), OJ L 121, 14 May 2015, at 20, ELI, http://data.europa.eu/eli/dec/2015/774/oj.
2. Regulation (EU) 2021/241 establishing the Recovery and Resilience Facility, OJ L 057 18 Feb. 2021, at 17, ELI, http://data.europa.eu/eli/reg/2021/241/2024-03-01.
3. *See* https://commission.europa.eu/strategy-and-policy/eu-budget/eu-borrower-investor-relations/nextgenerationeu_en#documents.

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recycled plastic packaging waste. Since then, the commission has proposed adopting a number of new own resources to not only further policy goals but also to raise revenue through environmental levies and taxes on multinational enterprises operating in the Union and therefore linked to EU common goods.

These matters were discussed in a conference on the fiscal future of the European Union organized by the authors of this guest editorial at the Max Planck Institute for Tax Law and Public Finance in February 2024 that encouraged the contributions included in this Intertax special number.

Till Meickmann provides a comprehensive analysis of the European Union's Taxing Powers. He contextualizes the EU's powers with respect to taxation with a view to both the general competential framework that, alongside harmonization competences, also comprises substantive, crisis, and funding competences and to the revenue powers of the EU as stipulated in the Own Resources System. He diagnoses a gradual shift in the EU's general policy orientation from establishing a single market via harmonization towards securing financial means to achieve policy objectives. He argues that this shift comes with a risk that, in the future, Member States will be tempted to shift tax burdens to the EU level thereby circumventing political risks or constitutional restrictions on the domestic stage.

Aitor Navarro addresses the content and limits of the duty to protect the financial interests of the European Union concerning tax-based own resources, explicitly customs duties and VAT, which are key resources to finance the EU budget. He specifically examines the multi-level regulatory framework that requires EU Member States to make these resources available to the Union and to combat fraud and other illegal activities impacting their effective collection while complying with the protection of fundamental rights stemming from the EU Charter.

Stefanie Geringer discusses the challenges and potential impact of implementing an EU Own Resources System financed through tax-based contributions. She contends that such a system would help to mitigate the current mismatch of taxation, spending, and democratic representation for those EU citizens whose lives have a significant cross-border dimension. However, it would negatively impact democratic legitimacy at the same time vis-à-vis citizens whose citizenship, residence, and taxation primarily concur in one Member State.

Jakob Dürr proposes a general framework for reviewing the ORD by the European Court of Justice if questions on the legality or validity of this instrument arise. He regards the ORD as an instrument of secondary law and, as such, the ECJ has the jurisdiction to review it in an action for annulment as a question of validity in a preliminary reference procedure or incidentally due to a plea of illegality in a different proceeding. He then analyses the components of the legal basis for the ORD, Article 311 (3) TFEU, to determine the degree of review applicable to each one, thus offering a comprehensive analysis of the subject.

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