

§ 5 Concluding Remarks

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Hamiltonian moments trigger mixed feelings. This is particularly true within the legal community, given that not all of us are convinced about the admissibility and reasonableness of EU debts. What we do know after this symposium are the cornerstones and paramount structures of a highly relevant area of European law. We witnessed how fruitful today's connection of political, economic and legal expertise was.

Yet, the momentousness of the NGEU program has remained somewhat open. I understand *Frans Vanistendael's* remark in the public chat as being entirely aware of the very special character of this moment. In turn, *Jakob von Weizsäcker* said it is not a big bang. From a constitutional theory perspective the fiscal union comes close to what does constitute a federal state. During the last months, we have exceeded all traditional debates on EU tax law, as far as these debates concerned not less, but not more than an approximation and harmonization of national tax laws, thus issues on the legislative design of national taxes. We have started to discuss a tax revenue entitlement of the EU itself as well as the authority of the EU to run into debts. The EU is far from being sovereign (i.e., the holder of a *Kompetenzkompetenz*). But it resembles a non-sovereign Federation to which its members have transferred comprehensive fiscal authority – viz. legislative powers, revenue entitlement, debt-taking authority, and budgetary (spending) powers.

From the legal perspective of EU law, the EU is a Union constituted by treaties, based on the principle of conferral (Art. 4 and 5 TFEU). Any analysis on the admissibility and range of these powers takes the wording and structure of the Treaties as a starting point. To this day, the TFEU mentions neither EU taxes nor EU debts. *Martin Nettesheim* and *Edoardo Traversa* have accepted this challenging starting point. They have pinpointed the two concepts – EU debts and EU taxes. In their hermeneutic laboratory, the two concepts and their legal framework have obtained some contours. In a political perspective, both might become quite probable in the not too far future. Both of them, EU taxes and EU debts, might constitute own resources of the Union, indirectly or even directly. As regards GNI-based contributions as traditional EU own resources, we are on the level of Art. 310 TFEU as it stands today. Art. 310 TFEU is disconnected on the

one hand from the common market rules of Art. 113 and 115 TFEU concerning the approximation of national tax laws, and from the rules on budgetary discipline of the Member States on the other hand – rules which *Jakob von Weizsäcker* called the rules on solid financing *in* the EU. These rules are laid down in the framework connected to the EMU, most notably Art. 122, 125 and 136 TFEU. All of this has been left aside to a large extent today, since we have focused on real EU funding as such in the context of Art. 310 TFEU.

Edoardo Traversa showed us in a very colorful matrix six candidates for a proper EU-own tax. Astonishingly, but convincingly to me, Edoardo put forward the use of VAT for strengthening EU own resources. By contrast, emission trading schemes and other types of non-tax levies seem to be only second-best candidates. Surprisingly, the Common Consolidated Corporate Tax Base (CCCTB) ranks last.

To some extent, *Edoardo Traversa*'s assessment has then been confronted with reality in the afternoon. It was *Marco Buti* who did not announce anything like a direct participation of the EU budget in which portion whatsoever in the VAT revenue. Rather, Marco confirmed that the Commission will come up with three proposals on taxes or levies by the first half of 2021. While some being old friends of EU tax law (e.g., the Financial Transaction Tax), we have until the very last moment also talked a lot about the Carbon Border Adjustment Mechanism, connected to the EU Green Deal and/or a special carbon tax. Especially *Clemens Fuest* has spotted this option under an ETS system within the EU. Secondly, we talked about a digital services tax. It was prominently *Franziska Brantner* who has put forward this idea. She has further elaborated on taxation of the digital economy, also with a very global perspective on tax justice and fairness under the G20/OECD Pillar 1 project.

In all, we have seen a symposium on solid EU finances that has focused on raising funds for the EU. At the same time, several speakers have stressed the other side of the coin. In a sense, there are actually two other sides of the coin.

First, the 'other side of the coin' of EU revenue is national revenue and/or national liability for EU debts. Are the Member States involved in EU funding, or are they just spectators off the playing field? Are they ultimately liable for EU debts? Regarding the tax side, are they in a better position to safeguard equal taxation of multinationals, also across the Atlantic, compared to the EU? Are all Member States willing to enforce equal taxation on global digital and/or financial services? It was again *Franziska Brantner* who, at least between the lines, has rightly pointed to the BEPS project of

G20 and OECD. This is a very interesting point from a consequentialist perspective.

Second, ‘the other side of the coin’ of raising revenue is spending the money and/or pursuing non-tax policy objectives. Our topic is indeed connected to European, maybe global solidarity. It goes far beyond health issues. More significant is the stop of climate change, a truly global common good. I am again referring to *Franziska Brantner* as well as to *Jakob von Weizsäcker* and *Clemens Fuest*. Much is open for political discussion. From a legal perspective, however, my impression is that all those spending issues are less delicate than the issues on the input side of the budget. Although one might add a lot on the discussion on ecological levies: Is it really wise to use one and the same Euro both for fighting climate change and for funding the EU budget? Is it possible at all? ‘Can you have the cake and eat it?’ *Clemens Fuest* is aware of all these dilemmas and any eco-tax or any ETS levy will not provide any revenue once the EU is emission-free in two or three decades. It would not be wise to disincentivize ecological behavior or climate policy on the EU level just because EU politicians or the public service have a strong and legitimate interest in EU funding. There has been a huge political, economic, public finance and legal discussion in the 1990s on these EU taxes and on tax expenditure in general.

The day was vibrant and inspiring. Many questions have come up today. In order to find answers, we have had a profound look into the rules of law and some rules of public finance in the course of this day. Let us keep in touch during these ‘Hamiltonian moments’ but hopefully also in more normal moments in the times to come.