REFORMING THE EU'S OWN RESOURCES AND CLIMATE TAX: A PATH TO FISCAL STABILITY AND ENVIRONMENTAL RESPONSIBILITY*

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Abstract: The European Union faces the challenge of ensuring its future budgetary stability, which relates to tendences to find new sources of budgetary revenues. From the perspective of EU objectives in sustainable development, it seems to be necessary to reflect an increasingly significant need to secure support and funding for environmental goals. In this regard, the EU continues to expand its commitments to fiscal and environmental responsibility. It is becoming significantly clearer that existing instruments such as the Emissions Trading Scheme (ETS) and the Carbon Border Adjustment Mechanism (CBAM) are limited and that they cannot contribute to genuine EU Own Resource significantly. This paper examines how the EU might, from the legal perspective, enact new Own Resources to support its efforts in addressing climate change and promoting ecological and fiscal sustainability, and secure new funding of the EU budget and make a pathway to completely new genuine Own Resources. Further, the paper focuses on the question, which new Own Resources are compatible with the EU legal framework, what legal mechanisms under the Treaties, and Own Resources Decision are relevant, or if in this sense the institute of enhanced cooperation can be used. The paper further analyses the several detailed research questions, including the potential scope of the Own Resources Decision in relation to the harmonization of member states' tax legislation, particularly whether it is bound by the principle of conferral. The project also explores the nature of parliamentary action required across the 27 EU Member States, and whether a climate tax could be introduced based on enhanced cooperation among a group of 9+ like-minded countries. A well-structured climate tax could strengthen the EU budget, ensuring long-term fiscal sustainability while supporting the Union's environmental objectives. However, successful implementation requires comprehensive coordination between member states.

Keywords: own resources; EU budget; fiscal innovation; climate taxation; environmental responsibility

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INTRODUCTION

We live in a dynamic era of changes, which is objectively reflected in the fiscal area as well, not only at the level of the member states of the European Union but also at the EU level. With the increasing challenges that the EU is facing, the intensity of seeking new ways to ensure adequate EU funding. One of these current challenges is climate change, whose manifestations are already becoming more evident. The focus of the EU is currently especially directed towards the goals of the European Union in the environmental area (Article 191 TFEU). However, this situation must be seen as an opportunity,[1] as it plays a significant motivational role that is a driving force for changes in the legislative area. Two major milestones can be identified in recent times that have driven the thinking on new Own Resources in the EU. The first was the need to create a recovery plan after overcoming the pandemic crisis, which the EU adopted in 2020 in the form of the Council Regulation (EU) 2020/2094.[2] Based on this Regulation, the EU established a 750 billion Euro Recovery Instrument to support the recovery after the COVID-19 crisis as part of a comprehensive set of measures aimed at supporting the EU's economic recovery. The European Union has decided, on the basis of the situation at the time of the pandemic, that it is necessary to ensure sufficient European Union financial capacity in the event of unforeseeable economic shocks.[3] The second milestone is the reflection of the European Green Deal and the commitments that the EU has made towards creating a sustainable growth strategy, an integral part of which are the "Fit for 55" programme[4] and the ultimate goal of achieving climate neutrality by 2050, which entails the need to take steps towards environmental sustainability and climate action. The green transition, including related goals such as biodiversity protection, initiates and sets in motion reforms and mobilizes capital in the EU for investments aimed at green technologies, renewable energy sources, sustainable mobility, and energy efficiency, so that the European Union can prepare and adapt to climate change.[5] To achieve this goal, it is necessary to take gradual steps which the Commission defined in Delegated Regulation (EU) 2021/2106.[6]

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1 Discussions on the question of "sustainability as an opportunity or necessity" appear not only in tax and budgetary law but are also emphasized in the area of financial markets – see, e.g., VYBÍRAL, R. ESG pravidla a jejich role v oblasti udržitelnosti finančních trhů [ESG Rules and Their Role in the Sustainability of Financial Markets]. *Acta Universitatis Carolinae Iuridica*. 2025, Vol. LXXI, No. 2, pp. 29–46.

2 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. *Official Journal of the European Union* [online]. L 433 I/23, 22. 12. 2020 [cit. 2025-06-07]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R2094.

3 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. *Official Journal of the European Union* [online]. L 424/1, 15. 12. 2020 [cit. 2025-06-07]. Available at: https://eur-lex.europa.eu/eli/dec/2020/2053/oj/eng.

4 Fit for 55. In: *European Council: Council of the European Union* [online]. 17. 3. 2025 [cit. 2025-06-07]. Available at: https://www.consilium.europa.eu/en/policies/fit-for-55/.

5 Green Transition. In: *European Commission* [online]. [cit. 2025-09-07]. Available at: https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/green.html.

6 Consolidated text: Commission Delegated Regulation (EU) 2021/2106 of 28 September 2021 on supplementing Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility by setting out the common indicators and the detailed elements

The aim of this paper is to identify and evaluate possible legal pathways to form and establish new Own Resources of EU budget, especially with a view to revenue in connection with environmental and climate policy. Ideally, such new Own Resources are able to contribute, in one way or another, to the EU meeting its climate protection objectives. To this end, the article will examine in particular if and how a climate tax might become a suitable, i.e., legally admissible element of EU Own Resources, and if so, whether its policy character as a major contribution to promoting environmental and climate sustainability can be reconciled with its fiscal character as a stable, predictable and significant Own Resource.

METHODOLOGY

In the research, we use a descriptive and analytical method to analyse the legal framework of EU Own Resources on the basis of its main pillars – primary EU law, especially the Treaty on the Functioning of the European Union (TFEU) and the Treaty on the European Union (TEU), the 2020 Own Resources Decision, and (other) secondary legislation. We will identify and apply the basic rules determined by the Articles of TFEU. They are the decisive basis for our analysis in how far the EU has the power to introduce new taxes as a potential element of its Own Resources. To this end, we will apply a synthetic method, consisting of deductive and inductive elements, aiming at identifying legal possibilities for introducing new Own Resources that might address the challenges of achieving EU climate and environmental goals. We explore whether a climate tax – from a purely legal point of view – might be considered as a feasible new Own Resource that can contribute to achieving these goals.

It is necessary to view this problem from a perspective reflecting the principles of European budgetary and tax law when considering the creation of new Own Resources for the EU budget. First, as part of the research into new Own Resources, the very concept of *Own Resources* of the EU budget needs to be defined and built on their legal basis, reflecting the characteristics of Own Resources within the EU budget. And also, through the lens of the objectives they pursue and, consequently, their position within primary EU law are defined. From this point of view, it is therefore necessary to analyse what legal criteria must be fulfilled to establish the new Own Resources and what are the available legal pathways within EU primary law? Further analysed is the legal framework determined by the principle of conferral, principle of subsidiarity, and proportionality, and the possibility of using the Articles 191 and 192 TFEU, or Article 352 TFEU, the flexibility clause, for the adoption of new Own Resources, in connection to the environmental objectives of the Treaties. For building a complex perspective the paper will analyse if the instrument of enhanced cooperation under Articles 20 TEU and 326–334 TFEU could be used as a legal mechanism for a subgroup of member states

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of the recovery and resilience scoreboard. In: *EUR-Lex: Access to European Union law* [online]. 1. 12. 2021 [cit. 2025-06-07]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02021R2106-20211201.

in the process of introducing the climate tax or similar fiscal instruments as an Own Resource of the EU budget.

DISCUSSION

1. OWN RESOURCES SYSTEM UNDER EU LAW

1.1 LEGAL BASIS IN THE TREATIES: ARTICLE 310 AND 311 TFEU

The financing of the European Union Budget is fully based on the fundamental principles of budgetary law. These principles are directly incorporated into primary law and acts as fundamental correctives within the entire system of revenues and expenditures of the EU budget. These principles must be respected in all considerations and steps aimed at creating and constructing new Own Resources. The basic legal framework of EU budgetary policy is the key rule, expressed in Article 310(1)[7] aimed at achieving a balance between revenues and expenditures of the EU budget and at the same time it is the fulfilment of the fundamental principle of budgetary law – the principle of budgetary balance, as a general principle of the creation of the budgetary law of the European Union.[8] The principles of budgetary law can be further categorized into principles applicable within the management and control of the budgetary process and principles applied either universally, or as part of the management of budgetary resources. The principles of European Union budgetary law reflect the fundamental values on which the European Union is built and thus play a key role in its financing, but ultimately for its existence and the achievement of its objectives. In addition to the principle of budgetary balance Article 310 TFEU contains several other fundamental principles of budgetary law, namely the principle of the annual establishment[9] and approval of the budget, with the power to establish the Union's annual budget falling under Article 314 of the European Parliament and the Council, and the emphasis in this Article on the principle of the timeliness of the EU budget, its limitation in time, its realism and truthfulness, its clarity, but also its completeness and uniformity.[10]

Also very important is Article 310(3), referring further to Article 322 (1)(a)(b), which establishes the power of the European Parliament and the Council to lay down, by means of regulations, in accordance with the ordinary legislative procedure and after consulting the Court of Auditors, the financial rules relating to the establishment and implementation of the budget and the accounting control of budgetary management. In this respect, it is also necessary to point out Article 323 TFEU, which requires the

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7 NIEDOBITEK, M. Article 310 TFEU at no. 1. In: STREINZ, R. (ed.). *EUV/AEUV: Vertrag über die Europäische Union und Vertrag über die Arbeitsweise der Europäischen Union*. 3. Aufl. Beck'sche Kurz--Kommentare. München: C. H. Beck, 2018.

8 Article 310(1) TFEU.

9 Read in connection with Articles 312(1)3 and (3)2, 314(1), 315, 316(1) and 318(1) TFEU. See NIEDOBITEK, M. Article 310 TFEU at no. 21 et seq. In: STREINZ, *c. d.*

10 Article 310(1) and (2) TFEU.

European Parliament, the Council, and the Commission to ensure that the EU has the financial means to fulfil its legal obligations towards third parties.[11]

When considering the creation of new EU Own Resources, it is therefore necessary to reflect on these EU budgetary principles. Yet, budgetary or, more broadly, the fiscal powers of the EU are limited. Unlike the member states, the EU has no fiscal sovereignty (*Kompetenz-Kompetenz*) but a pre-defined degree of fiscal autonomy or, more precisely, certain powers to legislate on the field of taxation where the internal market is at stake, and to yield corresponding tax revenue where the strict preconditions of Article 311 TFEU are met. While the relevance of legislative powers has increased significantly over the last couple of years,[12] there is little assignment of revenue to the EU budget. From a more political point of view, however, it might appear indispensable for the EU to explore and exploit new Own Resources, as this is the only way that the EU will be able to repay its debts, retain its financial standing and credit ratings, and act as a strong global player in many important areas.[13] Legally, the EU's fiscal, or at least budgetary, autonomy is based on Article 311 in conjunction with Article 310 TFEU. In terms of the set-up of the EU's financing system, the basic rule stemming from Article 311 TFEU is that the EU budget is fully financed from its Own Resources,[14] and through this system the EU secures the financial resources to achieve its objectives and policies. In this respect, the key legal regulation is the Decision on EU Own Resources. The second part of the sentence is stipulating that other revenue is not affected.[15]

Article 311(3) of the TFEU explicitly establishes the power of the Council, through a special legislative procedure in consultation with the European Parliament, to adopt a decision laying down provisions relating to the system of the Union's Own Resources. However, the basic condition laid down by the TFEU in such a case is the requirement of unanimity, which also applies to the Council's power to establish new categories of Own Resources, as well as to abolish them, and the TFEU makes the validity of such a decision subject to approval by the member states for such a procedure as a basic corrective.[16] As required by the TFEU, it is necessary to follow the relevant constitutional provisions of the member states for such approval by the member states. Only then will such a decision come into force. In summary, the TFEU directly establishes three basic conditions, namely that the new Own Resources comply with the will of the member states, the EU act unanimously in adopting them, and that the approval procedure complies with all constitutional procedures in the individual member states. At this point, it

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[11] Article 323 TFEU.

[12] Cf. the critical analyses by SCHORKOPF, F. Die Europäische Union auf dem Weg zur Fiskalunion. *Neue Juristische Wochenschrift*. 2020, Jhrg. 73, Heft 42, pp. 3085 et seq.; WALDHOFF, CH. Probleme des europäischen Finanzausgleichs im Lichte der Erweiterung der Europäischen Union. *Zeitschrift für Europarechtliche Studien*. 2000, Nr. 2, pp. 201 et seq.; WALDHOFF, CH. Eigene EU-Steuern als Problem des Verfassungs- und Europarechts. In: KONRAD, K. A. – LOHSE, T. (eds.). *Einnahmen- und Steuerpolitik in Europa: Herausforderungen und Chancen*. Lausanne: Peter Lang, 2009, pp. 47 et seq.

[13] Cf. the early analysis by LE CACHEUX, J. *Funding the EU Budget with a Genuine Own Resource: The Case for a European Tax*. Notre Europe, Studies & Research, Vol. 57. Paris: Notre Europe, 2007.

[14] See KUBE, H. EU-Steuern – Kompetenzrechtliche Lage und Entwicklungsperspektiven. In: KUBE, H. – REIMER, E. (eds.). *Geprägte Freiheit 2021/22: Impulse aus dem Institut für Finanz- und Steuerrecht*. Berlin: Lehmanns Media, 2022, pp. 51–58.

[15] Article 311(2) TFEU.

[16] Article 311(3) TFEU.

could be tricky, because there may be complications in the adoption in some member states, which may make the adoption of new Own Resources much more difficult. It is therefore necessary to further address the question of whether other provisions of the TFEU, such as the principle of conferral of powers and enhanced cooperation, can be applied in such case, or how the principles of subsidiarity and proportionality could be interpreted in this context.

1.2 THE ROLE OF THE OWN RESOURCES DECISION

Article 311 sub-paragraph 3 TFEU seems to integrate the Own Resources Decision into the ordinary system of secondary EU law under Article 288 sub-paragraph 4 TFEU, coupled with the ordinary monopoly of the EU Commission to propose a draft under Article 289(2) TFEU. Yet, both the requirement of approval and ratification by all member states and the specific character of the Own Resources Decision as a legal basis for secondary EU law (Article 311 sub-paragraph 4 TFEU) indicate that it might be seen as an atypical decision functioning as primary law.[17]

In more detail, the structure and further characteristics of the Own Resources Decision can be illustrated on the basis of its latest version, i.e., Council Decision (EU, Euratom) 2020/2053.[18] At the outset, it confirms the fact that the Union's Own Resources system must be designed in such a way as to ensure sufficient resources for orderly development and contribute as far as possible to the development of EU policies, which is complemented in paragraph 4 by the need for direction to promote greater coherence and a combination of the Own Resources system with both the objectives of EU policies, particularly in the field of the functioning of the single market and sustainable growth.[19] Thus in 2020, the European Union embarked on a path towards reforming the Own Resources system, with the first step being the introduction of a new Own Resource known as the "plastic tax", based on member states' contributions proportional to the quantities of plastic packaging waste. This was followed by a proposal for a carbon border adjustment mechanism (CBAM) and a digital levy in 2021.[20] The Own Resources Decision is such an important source of direction in the search for new Own Resources, while at the same time it has been determined that the adjustment of Own Resources should be guided by the general objectives of simplicity, transparency and fairness, while not neglecting fair burden sharing.[21]

In this regard, it is necessary to draw attention to the principle of universality, set out in Article 311(2) TFEU as well as Article 7 of the Own Resources Decision. According

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17 WALDHOFF, CH. Article 311 TFEU at no. 5. In: CALLIES, CH. – RUFFERT, M. (eds.). *EUV/AEUV Das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta: Kommentar*. 6. Aufl. München: C. H. Beck, 2022.

18 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.

19 See BOHÁČ, R. – KERNDLOVÁ, P. Jak ESG pravidla a udržitelnost formují veřejné finance a daně? [How Do ESG Rules and Sustainability Shaped Public Budgets and Taxes?]. *Acta Universitatis Carolinae Iuridica*. 2025, Vol. LXXI, No. 3, pp. 11–24.

20 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, Opening statement, pars. 4–9.

21 Ibid., Opening statement, pars. 1–9.

to these rules, the revenues referred to in the Own Resources Decision shall be used without distinction to finance all expenditures of the Union which form part of its annual budget.[22]

When introducing new Own Resources, it is also necessary to examine the revenue potential of the new potential Own Resources in question and how they will translate into long-term sustainability and their ability to contribute to budgetary resilience. In this respect, it is necessary to find new universal Own Resources that have a high revenue potential, are linked to the objectives and policies of the European Union, and contribute to and do not distort the functioning of the internal market, but on the other hand, these new Own Resources must not overburden EU citizens or member states and must respect the principles of tax and budgetary law. However, the limit to the introduction of Own Resources having such characteristics may be the legal framework within which the introduction of such Own Resources must legally operate. The Multiannual Financial Framework (MFF) is an important instrument that goes hand in hand with the introduction of new Own Resources.

2. ENVIROMENT-RELATED OWN RESOURCES AND A CLIMATE TAX

2.1 DEFINITION AND REQUIREMENTS UNDER EU LAW: WHAT QUALIFIES AS A GENUINE OWN RESOURCE

The development of Own Resources is limited by the general, fiscal and tax sovereignty of the member states. When we think about the nature of Own Resources, we cannot create a clear perspective generally on all Own Resources, but we must perform a strict categorization according to individual criteria. Real Own Resources are only those ones which cumulatively exhibit the essential characteristics of a legal basis and direct EU entitlement to the financial contribution without the need for annual approval in the national parliaments of the EU Member State, based on EU law, and related to a common EU policy and to the achievement of the Union's objectives, e.g., the customs union and the internal market as a whole. They are autonomous and independent of the decisions of the individual EU Member States. They generate predictable and stable revenue and allow a smooth collection of Own Resources. They are independent on national budgets, and they are fully in line with the principle of budget neutrality and are set based on equity between EU Member States, taking into account the aspect of proportionality to GDP, consumption, etc. Traditional Own Resources such as customs duties can be included in this group of Own Resources, as they meet the criteria and can be identified as having a strong direct link to EU customs policy.

It should be noted that the EU is not limited to Traditional Own Resources but has the authority to introduce new Own Resources without a change of Articles 311 et seq. TFEU. Yet, it should be noted that Article 311 TFEU does not constitute a sufficient legal basis for any new Own Resources. In addition to national (constitutional) limits reflected by the principle of conferral, where new Own Resources are connected with

[22] Ibid., Article 2 and Article 7.

behaviour-steering rules including tax expenditure rules, the EU has the power to introduce those taxes or duties only where it holds both the fiscal powers (under Article 311 TFEU, read in connection with the new Own Resources Decision) and – cumulatively – the substance-matter powers (e.g., under Articles 113, 114/115 or 191/192).[23]

2.2 CLIMATE-RELATED LEVIES AND TAXES: LEGAL QUALIFICATION – TAX, FEE, OR PARAFISCAL MEASURE

When considering the introduction of a climate tax as an Own Resource of the EU budget, it is useful to first define in what ways Own Resources coincide with taxes and more precisely, whether Own Resources can consist of genuine European taxes.

Two basic conditions can be identified to answer the question of whether Own Resources can consist of genuinely European taxes in a broader sense of this term, i.e., including levies that do not only generate fiscal revenue but at the same time, aim at achieving non-fiscal goals. To elaborate on these two basic conditions in detail, it is indispensable to identify the formal and material features of Own Resources. These conditions can be identified in terms of the formal features of a tax which are borne by Own Resources and which, from a legal point of view, derive from Article 311 TFEU, which allows the introduction of Own Resources by unanimous decision of the Council and after approval by the European Parliament and the Council.

The first condition is legality[24] and, more precisely, secondary legislation next to the Own Resources Decision that constitutes the features of the new tax in full detail and in line with the EU Charter of Fundamental Rights, meeting all requirements of legal certainty. The second formal feature functions as a delimitation of genuine EU taxes to traditional Own Resources (including VAT Own Resources or customs) in that the creditor of a genuine EU tax is the EU as such while tax-related traditional Own Resources (like VAT Own Resources and customs) are routed via the national budgets. This does not necessarily imply that no national legislation is needed in the context of the EU tax. Given the general duty of member states to execute EU law (most notably, where it is directly applicable, e.g., where the EU has issued a Tax Regulation), member states might need rules to assign administrative responsibility to specific public authorities or agencies as well as rules to concretize administrative procedures including remedies and judicial protection.

In terms of the material features of the tax, the EU might seek orientation in the common core of the notion of tax across the member states.[25] In spite of certain semantic deviations in detail, this joint understanding of *tax* includes that the levy functions as a revenue generator, irrespective of whether or not other objectives are pursued as well. Moreover, a *tax* is a levy without any concrete quid-pro-quo, i.e., there is no direct consideration by either the EU as such or any of its member states or public authorities.

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[23] WALDHOFF, CH. Article 311 TFEU at no. 11. In: CALLIES – RUFFERT, *c. d.*

[24] See REICHERT, G. – SCHWIND, S. – DE PETRIS, A. – JOUSSEAUME, M. The "EU Plastic Tax": Greenwashing New Revenue for the EU Budget. *CepInput*. 2021, No. 3, pp. 1–12.

[25] Cf. PEETERS, B. et al. (eds.). *The Concept of Tax* [online]. EATLP International Tax Series, Vol. 3. Amsterdam: IBFD, 2005 [cit. 2025-06-07]. Available at: https://www.ibfd.org/product/296/download/pdf.

It feeds the general EU budget, accumulated for the purpose of fulfilling EU functions. Furthermore, it is necessary to point out the binding and enforceable character that is enforceable through sanction mechanisms. The importance of Own Resources also lies in a certain continuity of funding, whereby Own Resources are represented by regular amounts, ensuring the continuity of EU funding.

2.3 EU ENVIRONMENTAL OBJECTIVES AND THE CLIMATE TAX (ARTICLES 191 AND 192 TFEU)

The Own Resources Decision lays down rules on the allocation of Own Resources to the Union in order to ensure the financing of the annual Budget of the Union.[26] It follows from the above that the current legal framework provided by EU primary law is based on the fact that if the introduction of new EU Own Resources is motivated and driven by an objective, be it the environment or the functioning of the internal market, the introduction of new Own Resources can be allowed. However, if the only motive for the introduction of a new Own Resource is the introduction of new financial resources without covering certain EU objectives, a situation may arise where there would be a lack of sufficient competence to introduce such a new Own Resource.[27] It is the substantive objective and the link with EU policies that can be identified as a key point, the achievement of which gives the EU a strong legitimacy in the case at hand for the new Own Resource being introduced.[28] Thus, if we consider the wording of Articles 191 and 192 TFEU from this perspective in relation to new Own Resources related to the EU's environmental objectives, it must be noted that, although Article 192 is not directly applicable, the substantive scope is determined by the fact that environmental protection measures must be aimed at achieving the Union's objectives under Article 191 TFEU, so it is always necessary to emphasise the nature of the measure as an instrument falling within the environmental framework, which the climate tax undoubtedly fulfils. In terms of the territorial scope of that competence, it can then be extended and applied to all environmental phenomena which have more than a negligible impact on the territory of the European Union.[29]

If we analyse the possibilities of application of the EU environmental policy as a legal basement for fiscal policy, it is necessary to proceed from Article 191 TFEU, on the basis of which the main objectives of EU policy include combating climate change, protecting health and, when considering the financial burden of activities in the EU that threaten health and the environment, it is necessary to emphasize the *"polluter pays"* principle.[30] These objectives clearly give the EU sufficient legitimacy for fiscal

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26 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, Article 1.

27 See Bundesministerium der Finanzen. *Reform der EU-Finanzierung: Subsidiarität und Transparenz stärken* [online]. Berlin: Bundesministerium der Finanzen Referat für Öffentlichkeitsarbeit Wilhelmstr, April 2016, pp. 14–15 [cit. 2025-06-09]. Available at: https://www.bundesfinanzministerium.de/Content/DE/Downloads/Ministerium/Wissenschaftlicher-Beirat/Gutachten/2016-12-02-wissenschaftlicher-beirat-eu-finanzierung.pdf?__blob=publicationFile&v=9.

28 KUBE, *c. d.*, p. 57.

29 Cf. KAHL, W. Article 192 TFEU at no. 90 et seq. In: STREINZ, *c. d.*

30 See REICHERT – SCHWIND – DE PETRIS – JOUSSEAUME, *c. d.*, p. 10.

intervention and the application of fiscal instruments for the introduction of an environmental tax, or some form of fee, within the framework of the incentive function of this fiscal instrument and the possibility of achieving a change in the behaviour of polluters and at the same time a certain degree of return on financing within the framework of the transition to a green economy in the EU.[31]

Article 192(2)(a) TFEU creates a unique legal basis for tax measures pursuing the objectives of EU environmental policy, but empowering the Union to adopt measures of a fiscal nature again by a rigid process, namely by unanimous decision of the Council on a proposal from the Commission and after consulting the European Parliament, again applies to the use of states that relate to the normal legislative procedure in the field of EU tax and legal provisions.[32]

2.4 "YOU CAN'T HAVE THE CAKE AND EAT IT"

It is true that the combination of the two elements of a climate tax, viz. its character as a revenue-oriented tax in the narrow sense of the term (supra 2.2) on the one hand and its character as a tool to achieve substantive environmental policy objectives under the *polluter pays* principle (supra 2.3) on the other, creates a sophisticated tension. Referring to each single Euro, it is evident that taxpayers are either burdened with the duty to pay (to the detriment of the environment) or successfully incentivized to protect the environment (to the detriment of tax revenue). Correspondingly, when enacting a climate tax, the EU and its member states are at risk of establishing a severe conflict of interests – to waive budgetary resources in the interest of the environment, or to sacrifice the environment in the interest of an increase in tax revenue.

Yet, what seems to be contradictory or paradox on the micro level is counterbalanced on the macro level. Considering variant behaviour of potential taxpayers, one and the same climate tax will indeed generate revenue and contribute to the protection of the environment, yet in a double-compromised manner. From a qualitative viewpoint, this seeming paradox is indeed familiar to taxes of each and every kind, as taxpayers are always incentivized to avoid such tax where they can. No tax is entirely neutral. On the quantitative side, the antagonism of increase in revenue vs. increase in achieving policy objectives is significant where behavioural elasticity is high, i.e., where (potential) taxpayers can easily avoid taxable activities and, or replace them by non-taxable surrogates.

While this peculiarity might induce a legal duty of the EU to monitor actual behaviour and, if necessary, re-adjust the rules of such climate tax to ensure that both aims are sufficiently met, it is not in itself inadmissible. Where EU legislatures fulfil their monitoring duties and maintain a stable balance between both elements, no behaviour-oriented tax will lose its character as a tax and/or an element of Genuine Own Resources, and vice versa: it will not lose its justification under Articles 191 and 192 TFEU either.

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[31] KAHL, W. Article 192 TFEU at no. 91. In: STREINZ, *c. d.*

[32] KRÄMER, L. – WINTER, G. § 27 – Umweltrecht at no. 5 et seq., 11 et seq. In: SCHULZE, R. – JANSSEN, A. – KADELBACH, S. (eds.). *Europarecht: Handbuch für die deutsche Rechtspraxis*. 4. Aufl. Baden-Baden: Nomos, 2020.

3. CORE PRINCIPLES, FLEXIBILITY CLAUSE AND ENHANCED COOPERATION IN EU LAW

3.1 COMPATIBILITY WITH EU LEGAL PRINCIPLES: PRINCIPLES OF CONFERRAL, SUBSIDIARITY, AND PROPORTIONALITY

In dealing with the question of the introduction of new Own Resources, it is necessary to take into account the constitutional role of the principle of conferred powers, which derives from the dictum of Article 5 Treaty on European Union, which is of fundamental importance in the context of the adoption of new EU Own Resources and which constitutes a fundamental rule for the EU's action, limiting its action only to the sphere and within the limits of the powers conferred on it by the member states in the Treaties. For the rest, the powers not conferred on the Union by the Treaties remain entirely within the jurisdiction of the member states. In the light of this principle, the EU is empowered to adopt new Own Resources only if it has been explicitly empowered to do so in the Treaties. In this context, it is necessary to consider the wording of Article 311 TFEU, which allows the Council to make a decision on the Own Resources system unanimously, but always as a basic corrective only within the limits set by the Treaties. The role of the European Parliament is consultative. The fiscal sovereignty of the member states is thus not compromised, as any decision on a new Own Resource is subject to approval and ratification by all 27 member states in accordance with their individual constitutional procedure, as it is far from being an exercise of delegated powers and not a sovereign right of the EU.[33]

The principle of conferral can be considered as a protector of the fiscal (including budgetary) sovereignty of EU Member States, which are very sensitive to relevant interventions in their fiscal and tax spheres. The EU cannot independently decide on tax bases, rates or tax collection unless it has the express legal title to make such a decision.[34] The principle of conferral thus fundamentally restricts the EU from introducing new Own Resources and limits them to cases where there is an explicit authorisation to do so in the Treaties. Any new Own Resource can therefore only be adopted with the consent of all member states, while respecting their sovereignty as enshrined in the principle of conferral under their constitutional provisions as well as Article 5(1) and (2) TEU. Unlike the member states, the EU does not have paramount fiscal powers. It is authorised to act only within the scope defined for it in the Treaties. Given that Articles 192 and 192 form part of shared competences under Articles 4(2)(3) and 2(2) TFEU, EU lawmakers are further bound by the subsidiarity principle. Article 5(3) TEU prevents the EU from exercising its power to act in the environmental field unless, and only to the extent that, the EU objectives set out in Articles 192 and 191 TFEU cannot be sufficiently achieved at the member state level. In the light of the internal market in general and both the fundamental freedoms and the prohibition of (negative) state aid under Article 107 TFEU in particular, it needs to be established that these EU objectives can be better achieved

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[33] REMIEN, O. § 14 – Rechtsangleichung im Binnenmarkt at no. 7 et seq. In: SCHULZE – JANSSEN – KADELBACH, *c. d.*

[34] VALTA, S. *Grundfreiheiten im Kompetenzkonflikt*. Berlin: Duncker & Humblot, 2013, pp. 136 et seq.

at the EU level. Actual or merely potential distortions of the internal market stemming from (again, potentially) unequal environmental regulation can support the conclusion that the conditions for EU action are met in such a case. In addition, there is a significant cross-border nature within the environmental objectives aimed at climate protection and the related climate taxes within the EU as a whole.[35]

The second fundamental limitation on the exercise of the EU's power to introduce a new Own Resource is the principle of proportionality, which limits the content and form of Union action through the corrective of *necessity* to achieve the objectives of the Treaties, which aims to ensure that EU action is not disproportionate and remains within the limits of what is necessary, while guaranteeing a balance between objectives and means. The first contribution of this principle is therefore the need for the Union, when introducing a new Own Resource, to demonstrate that the proposed new Own Resource meets the objectives of the EU set out in the Treaties.[36] The proportionality principle under Article 5(4) TEU thus sets out three basic criteria for EU action: appropriateness, necessity, and proportionality.[37]

In this case, the objective may be in the form of the EU's climate protection objectives, but there are certainly benefits to be found for the EU's internal market or fiscal autonomy, and cumulatively the condition of no less burdensome alternative leading to the same objective must be met. In this context, the Protocol on the application of the principles of subsidiarity and proportionality, which imposes a proportionality requirement on legislative proposals, is also relevant, with Article 5 of the Protocol explicitly requiring that a justification relating to the principles of subsidiarity and proportionality be provided with the draft of legislative act.[38]

3.2 APPLICATION OF THE FLEXIBILITY CLAUSE (ARTICLE 352 TFEU) TO OWN RESOURCES REFORM

As part of the process of examining the possible concept of reforming the European Union Budget's own resources, Article 352 TFEU (often referred to as the Flexibility Clause) cannot be ignored, because this article could contain one of the possible avenues. This article is also very interesting from the point of view of connection with achieving the environmental goals of the Union for several reasons. The essence of this article is, when it becomes apparent that, for the purposes of achieving one of the objectives set out in the Treaties, it is necessary to carry out an activity within the framework of the policies defined by the Treaties, but at the same time they do not provide sufficient powers to do so, the concept of a flexibility clause may be applied

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35 KAHL, W. Article 191 TFEU at no. 105. In: STREINZ, *c. d.*

36 STREINZ, R. Article 5 TEU at no. 43 et seq. In: STREINZ, *c. d.*

37 KAHL, W. Article 191 TFEU at no. 106 et seq. In: STREINZ, *c. d.*

38 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. Document 12008E/PRO/02. *Official Journal of European Union* [online]. 115, 9. 5. 2008, pp. 0206–0209 [cit. 2025-06-07]. Available at: www: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12008E%2FPRO%2F02&utm.

subject to certain conditions. However, these conditions are relatively strict, under the provisions of Article 352(1) of the Treaty.[39]

TFEU thus requires a procedure whereby the Council, acting unanimously on a proposal from the Commission, after obtaining the consent of the European Parliament, appropriate provisions. There is thus a need for synergy at a fairly rigid level. If these provisions are adopted by the so-called Special Legislative Procedure of the Council, the Treaty requires unanimity to be reached, on a proposal from the Commission and after obtaining the consent of the European Parliament.[40] The second important condition is linked to the control of the principle of subsidiarity under Article 5(3) of the Treaty on European Union, as the Treaty requires the Commission to make a notice to national parliaments on proposals based on this Article.[41] The explicit limitation is the prohibition that flexibility clauses serve to achieve common foreign and security policy objectives, in Article 352(4) TFEU. The strong prohibition provided for in Article 352(3) on the harmonization of the laws of the member states in cases where the Treaties exclude such harmonization is also an important limit.[42] At this point it is necessary to consider whether the climate tax and its introduction would constitute such prohibited harmonization. On the one hand, while we would meet the requirement to achieve the environmental objectives of the Treaties, it is this rule that can be seen as a kind of *valve*. On the other hand, if we are going to talk about the own resources of the European Union budget, this is not a category of tax harmonization that this provision is aiming at in the truest sense of the word. An important point is also the requirement of *necessity* and its definition. We believe that this necessity and its perception can change over time. Therefore, even in the context of a climate tax, what may not be seen as necessary today may change under the change of the objective conditions. The application of Article 352 should therefore remain an open question.

3.3 ENHANCED COOPERATION UNDER EU LAW (ARTICLE 20 TEU AND 326–334 TFEU)

The enhanced cooperation mechanism is one of the institutes belonging to the so-called differentiated integration mechanisms that could play an important role in the introduction of a climate tax, although it must be seen as a last possibility. As for its form, it follows from Article 20 TEU[43] in conjunction with Articles 326–334 TFEU, authorizing member states to use the EU institutions to adopt in the area of non-exclusive EU competences, while its application requires overcoming the legislative obstacle in the form of obtaining permission to engage in enhanced cooperation and within several gradual steps. The first of these is the need to create a group of least nine member states that decide to apply this institute and submit a proposal to the Commission. The second step follows the Commission, which then submits a proposal to the Council to authorize

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39 Article 352(1) TFEU.
40 Ibid.
41 Article 352(2) TFEU.
42 Article 352(3) and (4) TFEU.
43 PECHSTEIN, M. Article 20 TEU at no. 10 et seq. In: STREINZ, *c. d.*

enhanced cooperation. The third stage is the need to obtain the consent of the European Parliament for such a procedure. The important fact is that the enhanced objectives cannot be achieved sufficiently by the EU as a whole.[44]

A necessary condition for the application of the institute of enhanced cooperation is that it is directed towards supporting the objectives of the Union. Specifically in the case of environmental objectives, this condition could be met. The group of member states that created the enhanced cooperation is entitled to vote on the measures that are monitored as an application of enhanced cooperation. When adopting new Own Resources, however, it is necessary to point out that at present this institute would be applied to the introduction of a climate tax, since it would not apply to all member states, it would be possible to achieve only a partial benefit. On the other hand, it would be possible to test whether the climate tax has the potential to become a fully-fledged Own Resource in the future. In accordance with Article 328 TFEU, enhanced cooperation is open to all EU Member States at any time, which gives hope for the involvement of other states in the future.[45]

4. INTEGRATION INTO MEMBER STATES' TAX SYSTEMS UNDER EU LAW

4.1 CLIMATE TAX CONNECTED TO VAT AND CONSUMPTION OF PRODUCTS REPRESENTING A CLIMATE BURDEN

In most cases, climate taxes are addressed as a special and separate type of tax, usually a newly designed indirect tax. Yet, a relatively mild form of climate--beneficial taxation could be its integration into the existing EU VAT system. Considering the high political, administrative and compliance costs for the introduction of entirely new taxes, an integrative add-on to VAT might prove to be more lenient. It is true that unanimity in the ECOFIN Council remains indispensable (Article 113 TFEU). Nevertheless, integration of climate-friendly elements into the EU VAT Systems Directive would not only be a symbol for the EU respecting the fiscal sovereignty of the member states. Above all, it would offer the opportunity to tax both goods and services according to their negative impact on the global climate. Moreover, inserting climate-related elements into existing VAT rules will effectuate such climate taxation by using well-introduced tax mechanisms (input tax, output tax, third-country delineation, administrative and auditing procedures), most notably mechanisms to avoid disadvantageous distortions in the internal market.[46] And last but not least, it might generate extra tax revenue for both the member states and the EU, based on the VAT Own Resources. These considerations might indeed suggest to adopt climate-related elements in EU VAT

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[44] KENDRICK, M. Next Generation EU: Will the Debt be Repaid by EU Own Resources or Member State Taxpaxers? *European Law Review* [online]. 2023, Vol. 48, No. 1, pp. 31–32 [cit. 2025-06-11]. Available at: https://openaccess.city.ac.uk/id/eprint/30203.

[45] KENDRICK, *c. d.*, pp. 31–32.

[46] KAMANN, H.-G. Article 110 TFEU at no. 1 et seq. In: STREINZ, *c. d.*

law. This can be done by putting a higher burden (most notably, higher minimum tax rates)[47] to the consumption of goods whose production has a high carbon footprint and contributes excessively to global warming.

Yet, this approach can hardly use concrete flexible instruments that link the individual burden of tax to the individual carbon footprint of a specific item (product or service). It can only follow a rule-of-thumb approach based on a list of products and tariffs, while individual advantages (e.g., carbon-neutral production methods) cannot be rewarded. Moreover, such lists are subject to political and lobby pressure, they require continuous review and amendment. Taking all this into consideration, incorporating a climate tax into the VAT system (e.g., the applicable tax rates) is not recommended.

4.2 LEGAL POSSIBILITY OF TAX HARMONISATION: USE OF ARTICLE 113 TFEU, LIMITS TO APPROXIMATION OF INDIRECT TAXES

But also beyond a *climatization* of EU VAT law, given the strict exclusivity between specific tax-related titles of EU competence on the one hand and environmental rules like Articles 191 and 192 TFEU on the other, Article 113 TFEU obtains a key role when it comes to approximation of indirect taxes in the tax law of the member states. It is true that there is no paramount legal basis for a separate comprehensive EU tax policy. Rather, Article 113 TFEU as well as Articles 114, read in connection with 115 TFEU only complement non-tax rules protecting the internal market and competition.[48] It follows that these rules can only bear legislative approximation but no assignment of related tax revenue to the EU budget. It is clear from the outset that revenue assignment needs to be based on Article 311 TFEU and pertinent secondary EU legislation (cf. Article 311 sub-paragraph 4 TFEU). Nevertheless, such revenue assignment to the EU does not form an obstacle to use Article 113 TFEU or Articles 114 and 115 TFEU for all other features of this EU tax, i.e., its legislative design in the fisk-taxpayer relationship.

At the same time, however, all conditionalities and limitations enshrined in these Articles need to be observed.[49] Most notably, the Commission holds the sole right to initiate secondary legislation while the ECOFIN Council functions as the decisive legislative body. In the absence of the use of the Passarelle clause [Article 48(7) TEU] by the European Council, the Council needs to adopt the Commission's proposal unanimously.

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47 Articles 96 et seq. of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (VAT Systems Directive), OJ 2006 L 347/1.

48 Ibid.

49 KENDRICK, *c. d.*, p. 30.

CONCLUSION

SYNTHESIS OF LEGAL FINDINGS: FEASIBLE LEGAL INSTRUMENTS AND PROCEDURAL PATHS FOR INTRODUCING NEW OWN RESOURCES

The EU has assumed increased responsibility for the economic well-being of its member states. It might assume further responsibilities with regard to Europe's position as a global actor of democracy and the rule of law, defence, security and economic strength. On the fiscal side, this increase in responsibilities has been debt-funded. While capital markets have not questioned the creditworthiness of the EU as such, they have enabled unprecedented debt commitment in course of Next Generation EU programmes. It is important to realise that at the moment of such a fundamental change of position,[50] the historical legal framework cannot be maintained and the time is approaching when the EU will have to rethink its current set-up. The EU has commitments for the future, but it has to ensure that its legal order remains suitable for a completely different situation than those found previously in the internal market. EU debts without EU taxes create a non-sustainable situation. The EU is gradually coming to realise that the centre of gravity for the future repayment of the EU's Next Generation debt will rest on taxes.

As far as environmental taxes including a climate tax is concerned, EU law is aware of the *you cannot have the cake and eat it* paradox. Yet, it is able to overcome this seeming paradox where EU legislatures, once such tax has been enacted, monitor the *law in action* and maintain the balance between revenue-seeking and environmental success.

While we have not presented proposals for the concrete design of a climate tax in this paper, it is evident that further efforts are needed to support considerable EU activity in this area.[51] It follows from what has been said above that procedural (monitoring) elements are indispensable when the Council introduces a climate tax.

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[50] See KUBE, H. – REIMER, E. *Solid Financing of the EU*. Berlin: Lehmanns Media, 2021, p. 15.
[51] KENDRICK, *c. d.*