# *The role of crisis in state-building the European Union through finance and taxation: Will COVID and the Russian attack trigger further Union?* ***PRE-PRINT: Published in De Cogan, D. et al (Eds.), Tax Law in Times of Crisis and Recovery, Hart Publishing, 2022***

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ABSTRACT

The European Union tax and finance sovereign character has been frequently denied. However, the analysis has been frequently single-sided on economic stability or resorting to quantitative arguments. Thus, the evolution and qualitative side of the issue has been overlooked. Following the works on the Tax State, this paper aims at reviewing how the interaction of crisis/wars, tax and sovereignty has contributed to the sovereign status of the European Union. The chapter concludes that despite the competences and financial resources of the EU remains somehow limited, crisis have reinforced the sovereign financial status of the EU allocating increasing competences on taxation, financial supervision, financial stability and redistribution. This shows the sovereignty reinforcement-follows-crisis character of sovereign entities. In addition, it also shows that despite the small amount of the EU budget, its value is much more as targeted at projects where national budgets are constrained and its redistributive function across the EU as a sovereign function. It concludes that current crisis funding allocation may be also an indicative of further sovereign development of the Union.

## INTRODUCTION

Whether or not the EU is a State has been a major question in academic literature since almost the beginning of the European Economic Community (EEC)[1]. However, the works dealing with the finance status of the Union are mostly biased towards economic stability developments. They overlook its impact on state building and there are few comprehensive works.[2]

Developments in the EU in respect of taxation powers, financial stability and budgetary controls, especially those following the Great Recession, may have affected the Constitutional Core of the EU as well as that of its member states. Also the EU response to the COVID economic challenges seems to set the path towards a more relevant role of the Union in finance and tax law. Taking into account the role of taxation, state finance, war and crisis in shaping sovereignty and states, one wonders how the EU has been evolving and has been affected by crisis, and how current crisis may continue shaping it.

This chapter aims at analysing how the development of tax law and public finance law in the European Communities and the EU has impacted its constitutional status, particularly during crisis times.

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[1] R Koslowski, 'A Constructivist Approach to Understanding the European Union as a Federal Polity' (1999) 6 *Journal of European Public Policy* 561; J Caporaso, 'The European Union and Forms of State: Westphalian, Regulatory or Post-Modern?' (1996) 34 *Journal of Common Market Studies* 29; A Moravcsik, 'Federalism in the European Union: Rhetoric and Reality', *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union* (Oxford University Press 2001); G Majone, *Regulating Europe* (Routledge 1996).

[2] H Hofmann, *The Metamorphosis of the European Economic Constitution* (Edgar Elgar 2019).

In the first part, the paper analyses how finance impacts the concept of a state. In the second part, the chapter deals with the role of finance, budget and taxation in the original design and early times of the Community, as well as the attempts to expand its competences with little success. The third part asks whether the economic shock of the Great Recession forced the expansion of EU competences in finance, budgetary and tax law. Finally, the last part of the chapter analyses the role of the EU in tackling COVID challenges and the Russian attack on Ukraine, and asks whether the unprecedented amount of budgetary resources and tax legislative impetus has enlarged EU powers.

## THE FINANCE ELEMENTS OF A (FEDERAL) STATE

The intimate relationship between the state and taxation can be seen in their development between the eighteenth and early twentieth centuries. Among other issues, taxes, new concepts of ownership, democracy and state were feeding each other to build up contemporary nation states. On the one hand, the development of the nation-state, and the reaffirmation of national identities was done through war.[3] Taxes, in turn, played their role in financing war, reinforcing state power.[4] On the other hand, the development of the liberal and quasi-absolute concept of ownership was attached to the new concept of democracy.[5] Taxation again was essential to the new democratic state and in tension with the absolute concept of ownership.[6] And democracy was essential to taxation.[7]

The second half of the twentieth century saw well-established nation-states with increasing tax powers, enjoying the longest period of peace in Europe. The experience of the tax state in war showed smaller amounts of money could produce a welfare state in times of peace.[8] The development of the liberal State also provided universal education and healthcare, which in turn needed taxation to fund it.

The development of modern welfare-state taxation played a core role intimately linked to ownership, welfare services and the concept of nation itself. This is the reason why taxation appears inextricably united with the concept of state as we know it.

The result is that taxation is seen as one of the key elements of a sovereign state, to some even the key element.[9] Taxation is a state-building driver and at the same time an expression of state power.[10]

Less clear is the content of such power. Authors frequently include among sovereign state tax elements the right to establish taxes, collection, enforcement, hold the revenues and use them for public expenditure, with exclusion or pre-emption over other

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[3] E Kiser and A Linton, 'Determinants of the Growth of the State: War and Taxation in Early Modern France and England' (2001) 80 *Social Forces* 411, 411–412.
[4] Kiser and Linton, above n 3; SH Steinmo, *The Leap of Faith: The Fiscal Foundations of Successful Goverment in Europe and America* (Oxford University Press, 2018).
[5] TE Kaiser, *The French Idea of Freedom: The Old Regime and the Declaration of Rights of 1789* (Stanford University Press 1994).
[6] R Nozick, *Anarchy, State, and Utopia* (Basic Books 1974) 169; L Murphy and T Nagel, *Myth of Ownership* (Oxford University Press 2004) 44–45.
[7] P Boria, *Taxation in European Union* (Springer 2017) 190.
[8] A Briggs, 'The Welfare State in Historical Perspective' (1961) 2 *European Journal of Sociology* 221, 227.
[9] JA Schumpeter, 'The Crisis of the Tax State' in J Backhaus (ed) *Navies and State Formation: The Schumpeter Hypothesis Revisited and Reflected* (Lit Verlag 2012); A Christians, 'Sovereignty, Taxation and Social Contract' (2009) 18 *Minnesota Journal of International Law* 99, 104.
[10] D de Cogan, *Tax Law, State-Building and the Constitution* (Hart Publishing 2020) 1–30.

political entities.[11] Moreover, the ability to enforce them is for some the paramount of tax powers.[12] Such a view assumes that only a political entity that is able to enforce taxation can be considered a sovereign state, at least from a financial and tax perspective.

However, tax powers as related to sovereignty are not as solid and single-sided as most see them. There are several cases in which the tax power is not exclusive within a single subject or object.[13] This is common in international transactions, especially recently regarding the digital economy.[14] There are cases in which a State may not exercise its tax power to its full extent, or even not tax at all and fund its expenditures from other sources. Moreover, a state that relies exclusively on hard enforcement will have difficulties in becoming a state as we know it, as increasing tax compliance relies on trust and voluntary contribution.

Thus, to analyse how and if a political entity has the tax and finance characteristics of statehood cannot be done against a defined set of characteristics. Rather, we should analyse how a set of elements related to the economic functions of state contribute to the specific set of political tools the relevant political entity aims at performing, and whether the combination of these elements can be considered a sort of sovereign entity.

The fact that most legal, economic and political scholars put the spotlight on hard power or enforcement characteristics may explain why the European Union has not been considered a state from a tax perspective, taking into account the lack of hard tax competences.[15] To my view, the assessment has to be done on the power/competence and the income-expenditure function, jointly with the aim of the political entity.

In terms of the hard power abilities of a sovereign state, the ability of the bodies of the political entity to define the amount of resources of the total the economy for the public sector to perform its activity is one of the elements most scholars relate to sovereign characteristics of a state in relation to finance.[16] Also the ability to collect and enforce the revenues through own bodies.[17] The amount of resources allocated to welfare state expenditure is also seen as a sign of tax sovereignty.[18]

In economic or functional terms, it is widely accepted that redistribution, macroeconomic stabilisation, and regulatory functions are the main goals of the financial and economic constitution of a state.[19] Though these functions can be done through several different tools, the use of taxation and the budget to attain them is one of the most relevant.

## FINANCE, BUDGET AND TAXATION IN THE BIRTH AND EVOLUTION OF THE EUROPEAN COMMUNITIES (1951-2007)

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[11] ibid 25; Moravcsik, above n 1, 170; Boria, above n 7, 190.
[12] D Strasser, *The Finances of Europe*, 7th ed (European Commission, 1992) 91–92.
[13] Christians, above n 9, 107.
[14] ibid.
[15] See Majone, above n 1, 54; Moravcsik, above, n 1, 169; F Laursen, 'The EU and Federalism: Constitutional Equilibrium or Continued Federalization?' in *The EU and Federalism : Polities and Policies Compared* (Ashgate 2011) 267; N Groenendijk, 'Federalism, Fiscal Autonomy and Democratic Legitimacy in Europe: Towards Tax Sharing Arrangements' [2011] *L'Europe en formation* 5; Boria, above n 7, 192. Moravcsik, above n 1.
[16] Boria, above n 7, 190.
[17] Arnold in Christians, above n 9, n 25.
[18] Moravcsik, above n 1.
[19] Majone, above n 1, 54.

*The evolution of the budget and the finance of the communities and its contribution to shaping the constitutional role of the Union*

**The role of member states and other institutions on the EEC/EC/EU budget**

Finance and the budget was not a key issue at the birth of the European Communities and was probably merely seen as an instrumental issue to achieve a political integration through a Common Market. This apparent secondary role was not because the European Communities founding fathers were not aware of its significance. Contrarily, the important role of state finance as an element of sovereignty probably put it outside the spotlight of the political integration as putting it in the first row of integration would have encouraged member states to reject the project.[20] Following the Schuman idea of soft economic integration that would drag political integration,[21] European Communities finance would follow the Common Market.

Paradoxically, the European Coal and Steel Community (ECSC) enjoyed a high level of financial independence at its early stages. The High Authority of the ECSC was able to establish its own scheme of resources and to determine the expenditure within the limits of the treaty. Only on administrative expenditure and outside the limits of the treaty or in certain cases could the Committee of four presidents overrule the High Authority decisions. More surprisingly, the High Authority was able to contract loans to give loans, with almost no limit from member states. However, the broad financial independence of the ECSC contrasts with its limited focus on the coal and steel market, and consequently, in the amount of the budget.

As compared to the ECSC, the European Community and the European Community of the Atomic Energy enjoyed little to no financial independence from member states at the beginning. The budget was decided by the Council, which left the size and content of its action directly dependent on the trade-off negotiation with member states. The Assembly as a body independent from member states had no direct decision-making power.

However, the Treaties of Rome foresaw the establishment of a Community System of own resources in parallel to the development of a proper European Parliament (EP) directly elected by citizens, which took place in 1970. The Treaty of Luxembourg gave the EP actual decision-making power on the budget by giving the ability to override Council decisions as regards expenditure derived from obligations contained in the treaty. Moreover, the budget was to be proclaimed by the President of the EP, increasing its political status as a symbol related to the Parliament.

In 1975, the Parliament increased again its powers, being able to decide on non-compulsory expenditure subject to certain conditions. In addition the European Court of Auditors was created. In 1979 Europe held the first direct elections to the EP. This, jointly with the increasing competences of the Parliament on the budget, the new own resources structure, gave the ECs budget more legitimacy and increased ideas of EU sovereignty.

[20] P Wattel and B Terra, *European Tax Law*, 6th ed (Kluwer 2012) 4.
[21] R Schuman, 'Declaration of 9th May 1950 Delivered by Robert Schuman' [2011] *European Issue* 1.

In the 1980s, subsequent conflicts on the budget between the Parliament and the Council prompted the establishment of a new system of competences.[22] Following the agreements around the Single European Act, the European Council subjected the European Communities budgets to a multiannual expense ceiling system that continues nowadays, subject again to the approval of the Council by unanimity, and to national Parliaments, constraining the ability of the Community bodies to decide on finance and economic-political capacities over long periods. On the other hand, it increased the size of the budget.[23]

The result of the modifications of the financial and budget competences of the 80s was that the European Communities lost part of the institutional budgetary independence gained in the 70s as the total expenditure was again directly subject to the will of member states in the Council, which left the decision of the total expenditure as a mere trade-off.[24] At first instance, the setting of a ceiling subject to great extent to the Council may be seen as a loss to ECs budgetary sovereignty in terms of an ability to set the budget amount different from member states' will.[25] But, once the ceiling has been settled, the system defined in the Treaty of Brussels established a system of check and balances between the institutions of the Union that enables them to depart from the trade-off negotiations of member states and have a different result. To put the ceiling in a different and previous negotiation limits the influence of member states outside the negotiation table of each year budget.

## The amount of the budget

The EU budget has increased from less than 5 billion in 1967 to an annual average in payments of 91.64 billion in 2006. Some authors have argued that the evolution of the 'tax state' in the twentieth century, in connection with social welfare, made a tax total of 25-50% GDP a measure of the power of a state as such.[26] The size of the European budget around 1% of GNP leaves it far from an amount to show sufficiency and ability to sustain services as characteristic of states. Moreover, some authors have pointed the amount is 'irrelevant' from a macroeconomic point of view.[27]

## The right to revenue and collection powers

The levies established by the ECSC directly accrued to and were collected by the Authority, providing a hard indicative of being a sovereign supranational organization, even more taking into account the high level of independence given to the High Authority.

However, the EEC was born with no resources accruing directly to the new political organization. At the beginning, the Community was funded exclusively with transfers from member states. Early in 1970 the EEC established the custom tariff on

[22] G Benedetto, *The History of EU Budget* (Policy Department for Budgetary Affairs, - Directorate General for Internal Policies of the Union 2019) PE 636.475 6.
[23] ibid.
[24] Groenendijk, above n 15, 11; C Fuest and J Pisani-Ferry, 'Financing the European Union: New Context, New Responses' [2020] *Policy Contribution* 1, 4.
[25] The previous ability of the Parliament to break the interinstitutional agreement as a bargaining power, was eliminated in the TFEU. See Groenendijk, above n 15, 10.
[26] Moravcsik, above n 1, 169.
[27] M Buti and M Nava, *Towards a European Budgetary System* (European University Institute 2003) 1.

imports, agricultural and sugar levies, and a percentage of VAT as own resources. In this first period, such duties rose from 50% of the total resources of the Community in 1970 to almost 100% in 1987. In 1988, a so-called fourth resource supplementary contribution, based on a percentage of GNP/GNI, was introduced. In 1985, the VAT contribution was introduced and first increased up to the early nineties, and then decreased from then on to 2007.

Customs duties, agricultural and sugar levies are where the Community is closer to a state tax power. In all of those cases, the Community established the duties, accrues the revenue directly to the Community, and enjoys the revenue. However, though they are called 'own resources', collection remains in bodies of the member states. Moreover, the establishment of customs duties is one of the few competences of the Community that is exercised by the Council alone. This leaves competence in the hands of member states and outside other institutional checks and balances of the Union. Moreover, member states account for the custom duties in their budgets and account for the payment to the Union as a transfer, though this can be seen as a mere accounting issue.[28] On the enjoyment of the revenue, the increase in collection costs to 25% has eroded even more the indirect 'collection powers' and enjoyment ability of the Community.

As regards VAT, the definition of the part of its collection accruing to the Community as own resource belongs to the Council and member states. In addition, collection is fully in hands of the member states and the Community has very little room in that regard, leaving the VAT resource close to a transfer.[29]

Last, as regards the fourth resource or GNI-based own resource, the Community has no decision on how amounts are obtained and its accrual is based on a decision by the Council. Hence, this resource cannot be said to vest any taxation powers in the institutions of the Community. Consequently, some authors do not speak about 'collection' regarding these resources but 'putting at disposal' of the Union.[30]

In sum, the accrual, collection and enjoyment of Community tax resources depends heavily on transfers by member states. Even in the case of so-called traditional own resources, the ones considered closer to European taxes, the level of independence of EU institutions from the collection and revenue establishing powers of member states is very low. Moreover, the structure of funding has eroded the resources that have a stronger independence from member state tax powers, and increased the role of resources dependent on member states. Namely, the increasing role of the GNI contribution in the budget 'encourages thinking about the EU budget in terms of net balances' which is quite the opposite of a single sovereign state.[31]

## The expenditures in the budget

In the early history of the European Community, between 60 and 80% of the budget accounted for the ECSC and European Development Fund. However, after the Common Agricultural Policy emerged as an area of expenditure in 1962, the European Agricultural

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[28] See P Butzen, 'Notable Trends in the EU Budget' (2006) Economic Review 50, 50; G Cipriani, *Financing the EU Budget: Moving Forward or Backwards* (Centre for European Policy Studies 2014), 8–9.
[29] W Coussens, 'Financing the EU Budget: Time for Reform' (2004) 57 *Studia Diplomatica* 73, 76; Cipriani, above n 28, 9.
[30] Cipriani, above n 28, 9.
[31] Fuest and Pisani-Ferry, above n 24, 4; Cipriani, above n 28, 9–10.

Fund progressively increased its share of the ECs budget to reach an average level between 70 and 80% of European Communities expenditure in the period between 1968 and 1980. Within the rest of the budget, more than 10% on average accounted for the ECSC and the EDF, and the rest was allocated to research, external action, administration and structural funds.

After the enlargement of the European Community in the 1980s, structural funds gained an increased share of the European Budget. The increase in structural funds was mirrored by a decrease in the share of the agricultural funds.

The budget structure of the European Union shows it has little to no direct expenditure, but relies largely on transfers to member states and their regions.[32] Direct transfers or expenditure directly related to citizens are limited.[33] The largest part of the transfers relates to infrastructures and investment. However, agricultural, research, cohesion and development funds are still redistributive policies, which are directly related to state characteristics.[34] Though such redistributive function is limited by the size of the European Budget,[35] its value is very large as it takes income from high-earning countries to invest in low earning countries, with an enormous PPA impact. The stability and inflexibility of national budgets, combined with the relative flexibility of European funds may allocate the additional funds to new investments that will result in higher marginal results in state objectives. As suggested by literature, European funds may leverage additional public and private investment.[36] EU funds may be more effective and/or efficient for certain policies, achieving results that domestically may only be achieved with higher amounts.

On the other hand, the fact that the largest portion of the budget is allocated to agricultural and cohesion policies shows the value of the EU budget in terms of redistribution. The EU budget is one of the very few public instruments of cross-border redistribution in Europe, increasing its qualitative value. The extraction of resources from wealthy member states to fund cohesion programs in less wealthy member states increases the EU budget value PPA.

## *Taxation powers in the European Communities*

### Exclusive competence in custom duties and abolition of duties between member states

First, on the Common External Tariff and in custom duties between member states competence was exclusively given to the European Community. As early as 1968 the Council adopted Council Regulation (EEC) No 950/68 of 28 June 1968 on the Common Customs Tariff.

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[32] Moravcsik, above n 1, 170.
[33] Majone, n 1, 66.
[34] ibid 54.
[35] ibid 77.
[36] P Wostner and S Slander, 'The Effectiveness of EU Cohesion Policy Revisited : Are EU Funds Really Additional?' (2009) European Policy Research Paper 69, 20 < https://www.researchgate.net/publication/228427571_The_effectiveness_of_EU_cohesion_policy_revisited_are_EU_funds_really_additional> accessed 10 August 2022.

The main issue as regards competence in the Common External tariff and decisions on custom duties and measures between member states is that its approval and modification is done by the Council by unanimity, and the Parliament only holds consultative status. At first sight, the allocation of powers on Customs Tariff and duties on the Council seems to leave such powers in hands of member states. This means that such decisions may be subject to a trade-off negotiation rather than the sort check-and-balances decision that might be expected of a sovereign state.

Nevertheless, the role of the European Court of Justice also reinforces the sovereign status of the EU in these matters. Since very early, the ECJ recognized the ability of the Court to scrutinize the decisions on the Council and member states on measures regarding the Common Tariff and duties between member states.[37] The result is even when member states reach an agreement on changes to the Custom Tariff and related measures, it is subject to ECJ scrutiny under EU Law and principles, which makes the Custom Tariff and duties subject to EU check-and-balances decision-making rules and to some extent independent from the will of member states.

**Shared competences with pre-emption in indirect taxation**

In the Treaty of Rome, there was no direct conferral of taxation powers to the European institutions outside the scope of the Common Tariff. However, the treaty prohibited any type of measures distorting the internal market (including tax measures) and enabled the Council to adopt legislative measures to approximate legislation, subject to unanimity, to prevent such distortions.

However, even before its birth the Community was aware of the significance of indirect taxes to the realisation of the common market, and article 99 of the EEC Treaty mandated the EC to analyse and propose the harmonisation of turnover taxes, excise duties and other forms of indirect taxation, including countervailing measures. Very soon in 1967 turnover taxes were harmonised under a European VAT. This was followed in the 70s by Directives on the raising of capital and tobacco and in 1992 by Directives on excise duties on mineral oils, alcohol and tobacco.

The exercise of such competence by EU institutions since 1992 has largely turned indirect tax matters into an EU exclusive competence, at least to the extent of abolishing limits to the internal market.[38] But the treaties require unanimity in the Council and the Parliament continues to have a limited consultative status. The unanimity requirement limits the chances of modification as any member state may veto any change.

Vetoes makes difficult any direct attempt by member states to modify general rules or policies in such matters, or even abolish them, with the effect that such rules have crystallised in EU Law. Though formally dependent directly on the aggregated will of member states in the Council, the practice is that changes do not (only) follow political decisions fostered by member states, making it a EU competence in practice.

Negative harmonisation by the CJEU has also strengthened EU competences in VAT even more than in relation to the Custom Tariff and custom duties. The ECJ/CJEU

[37] Eg Case 7/68 *Commission of the European Communities v Italian Republic* [1968] ECR 562.
[38] R De la Feria, 'Towards an [Unlawful] Modernized EU VAT Rate Policy' (2017) *EC Tax Review* 89; M Aujean, 'Tax Policy in the EU: Between Harmonisation and Coordination?' (2010) 16 *Transfer* 11; Wattel and Terra, above n 20, 9.

has been active in interpreting harmonised rules on indirect taxes in the light of secondary law, as well as non-harmonised areas under primary law, to an even greater extent than in the custom duties field.[39]

**The slow progressive expansion of EU competences in direct tax matters: anti-sovereignty?**

The Treaties on the European Communities did not have specific rules on harmonisation of direct tax matters, as there were and are on indirect tax matters.[40] However, as early as in 1962 in 1970, the Neumark and Van den Temple reports called for harmonisation of tax matters, including direct taxes.[41] Nonetheless, the allocation of almost complete harmonisation competence on custom duties to the Union, and broad competences in indirect taxes, made member states highly reluctant to also allocate competence in direct tax matters.[42]

Tax measures were also within the scope of elimination of market distortions, prohibition of anti-competitive measures, and free movement competences of the Union. Though it took almost 21 years to pass them due to the reluctance of member states, the Parent-Subsidiary Directive and the Merger Directive were approved under these headings in 1990. There were no other positive harmonisation acts in EU Law until 2003, when the Interest and Royalties Directive was passed. Though several other proposals were issued in the 60 years between the birth of the Communities and the Treaty of Lisbon, only the three mentioned Directives succeeded, showing the slow pace of EU law competences in direct tax matters and the reluctance of States to give up sovereignty in this field.[43]

This does not mean the EU did not advance at all in competences in direct tax matters. In an early relevant case in 1986, *Avoir Fiscal*, the ECJ ruled that the fact that the laws of member states have not been harmonised cannot justify the difference of treatment between residents and non-residents.[44] From then on, the Court ruled in several aspects of tax matters as far as they were considered compatible with EU rules on freedoms or state aid rules.[45]

However, EU limits to taxation in direct tax matters were largely confined to cross-border cases or cases affecting the internal market, which may lead us to consider member states' ability on domestic tax matters up to the Treaty of Lisbon as almost unlimited. However, the increasing interrelation in the internal market makes it

[39] P Genschel and M Jachtenfuchs, 'How the European Union Constrains the State: Multilevel Governance of Taxation' (2011) 50 *European Journal of Political Research* 293, 301.
[40] Aujean, above n 38, 13.
[41] F Neumark, 'Report of the Fiscal and Financial Committee (Neumark Report)' in H. Thurston, *The EEC Reports on Tax Harmonisation* (IBFD 1963); AJ van den Tempel, 'Corporation Tax and Individual Income Tax in the European Communities' (Commission of the European Communities 1970) Approximation of Legsilation Series 15.
[42] Wattel and Terra, above n 20, 4.
[43] See C HJI Panayi, *European Union Corporate Tax Law* (Cambridge University Press 2013) 4–30; M Gammie, 'Corporate Tax Harmonisation - Stage I: The Struggle for Progress', *Research handbook on European Union taxation law* (Edward Elgar 3); Wattel and Terra, above n 20, 198 ff.
[44] Case 270/83 *Commission of the European Communities v French Republic* [1986] 1 ECR 273.
[45] See a summary in Panayi, above n 43, 123 ff; Wattel and Terra, above n 20, 881–1060.

progressively more and more inconceivable that domestic tax law decisions have no wider impact; hence, EU Law has been expanding to cover more and more aspects of tax law.

As regards the specific competence of positive harmonisation of taxes through competences to approximate and harmonise the internal market, former article 95 of the Treaty also required unanimity.[46] As direct tax matters have been subject to little harmonisation, the unanimity requirement largely leaves the subject to the will of member states at the Council. To be able to reach harmonisation in such matters, a strong political pressure, joint willingness or a large trade-off game has to take place, which leaves the field largely in the hands of member states.

The harmonisation of direct tax matters has been largely done through negative harmonisation where the ECJ interprets the limits of member state sovereignty in direct tax matters. This implies that the EU institutions have very little positive strong sovereign power on direct tax matters, but they have an important influence in a negative sense.[47] Moreover, contrary to what has been said by some scholars, in the medium term negative harmonisation leads to positive harmonisation power, because it can progressively bring the member states to a point where positive harmonisation is necessary.[48] And once harmonised, the unanimity lockdown makes it a strong EU competence.

**The administrative regulation of taxes in the EU**

On the administrative regulation side, the EU competences were limited until the great recession. On indirect taxation, the removal of internal borders was a major issue. Also Custom Union and VAT administrative cooperation development took place to some extent, but not as fast as the development of the substantive regulation in such matters. In 1977, mutual assistance in direct tax matters was approved. In 2003, the Savings Directive also introduced cooperation among member states on exchange of information for direct tax matters, with limited results. Also, an agreement on cooperation in transfer pricing has been introduced.

## *Budgetary control in the European Communities*

The EEC design was aimed at a progressive political integration through economic integration. However, a common market with different monetary and fiscal policies was severely distorted.

In 1992, the Treaty of Maastricht established a public debt ceiling of 60% of GDP, and a maximum of 3% deficit in the European Union as a counterpart to the development of the European Monetary Union in order to maintain stable fiscal positions towards the currency and economic stability.[49]

States lost to some extent their ability to govern their finance and debt in favour of the Union, though the enforcement of such rules was largely in the hands of member

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[46] Wattel and Terra, above n 20, 22.
[47] Boria, above n 7, 189–206.
[48] Gammie, above n 43; L Cerioni, 'Corporate Tax Harmonisation - Stage II: Coordination to Fight Avoidance and Harmful Tax Competition', *Research handbook on European Union taxation law* (Edward Elgar, 2020).
[49] See A Verdun, *Ruling Europe: The Politics of the Stability and Growth Pact* (Cambridge University Press, 2010).

states in the Council. The Commission had limited powers on such issues even after Maastricht, limited to name and shame, and even at the most severe cases, just indirect coercive measures but no direct enforcement competences.

In relation to debt, since the very beginning the Treaties prohibited EU institutions and member states from incurring debts or liabilities for another MS, effectively barring mutualisation of debt, and as a preventive measure placed pressure on each State to manage and be responsible for its own debt in order to enforce debt limits. With strong currency powers allocated to the Union, soft powers allocated to the Union on budget stability, and with no powers on common debt, several economists and some EU institutions feared the EU would have had no tools in case of severe economic recession.[50]

In 1997 and within the Treaty of Amsterdam scheme, the Growth and Stability Pact (GSP) supplemented the EU rules with medium term objectives for MS stability, and not just annual objectives, and strengthened EU enforcement procedures and abilities in the event of breach of stability rules, including mandatory sanctions. In 2005, amendments to the GSP somehow relaxed the conditions and broadened the exceptions in case of severe economic downturn and extended deadlines. Conversely, they introduced stronger requirements by requesting a minimum annual improvement of 0.5% GDP.

Within this period, it can hardly be said the European Union had a strong finance sovereign competence on the finance of the public sector of the Union. The rules were based on name and shame, indirect enforcement sanctions, and were subject to the Council exclusively, making it subject to the aggregate political will of the member states.

## HOW THE GREAT RECESSION FOSTERED EU POWERS IN FINANCE AND TAXATION

### *The Treaty of Lisbon changes in the Budgetary rules*

Though not properly triggered by the Great Recession, changes to budgetary rules took place at the same time. The Treaty of Lisbon consolidated the multiannual expense planning, now officially included in the Treaty, excluded the ability of the institutions to withdraw the mechanism, and relabelled it as the Multiannual Financial Frameworks. It also provided for a new give and take exchange on the finance and budgeting abilities of the then new Union.

On the one hand, the Treaty provided the community institutions with more independence from member state decision making bodies, by removing the subjection of the MFF to national parliaments.[51] In addition, it subjected disagreements on budgetary matters to a joint committee of the Council and the Parliament. On the other hand, it eliminated the ability of the EC, Council and EP to cancel the multiannual planning and return to annual budgeting, restricting the capacity of the Union to act more dynamically

[50] A Verdun, ‘A Historical Institutionalist Explanation of the EU’s Responses to the Euro Area Financial Crisis’ (2015) 22 *Journal of European Public Policy* 219, 222.
[51] Benedetto, above n 22, 10.

on its finance and economical-political action, and limiting the bargaining power of the Parliament in terms of threatening to terminate the agreement.[52]

In sum, it might be seen the Treaty of Lisbon formally put the European Union closer to a sovereign entity on the budgetary side. However, some may argue that the actual procedure of approval and/or implementation still submits European institutions to the willingness of member states. The negotiation of the recent MAFF 2021-2027 may be seen as indicative of such submission through the European Council.[53] In my view, the increasing complexity of the procedures establishes a new set of rules were neither the member states, EC nor EP holds the absolute power of decision. In the end, the budget procedure is developing into a check and balances system that is precisely the core of an independent sovereign body. Moreover, as suggested by Benedetto, the loss of agenda setting power by the Parliament has been compensated by gaining veto power.[54]

## *The European powers on member states' budgeting and finance*

### The new ability to rescue member states in financial distress

When the Great Recession kicked the European economy in 2008, the events of which several academics and experts were afraid took place.[55] A sharp pressure on the debt of some member states put the stability of the Euro at risk. The European Union was prohibited to bailout any country with its funds or by borrowing funds in the market.

At first instance, the bailout of Greece was done through a pool of coordinated bilateral loans with the EC acting as coordinator, but where the funds were not formally given by the EU.[56] Later, the Union used Article 122 for financial assistance of member states under severe difficulties caused by natural disasters to establish the European Financial Stability Mechanism, with a view to preserve the financial stability of member states, which was clearly against the purpose of the Treaties.

However, this was just a temporary measure, limited by the own resources ceiling, and unable to attend the increasing difficulties some member states were facing.[57] Thus, an institution at the borders of the EU institutional frame was created. The European Financial Stability Facility (EFSF) was put in place in 2010 as a temporary mechanism to bailout euro area member states that were unable to fund their finance at reasonable rates.[58] Later, the need of a permanent mechanism boosted the creation of the European Stability Mechanism.[59]

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[52] Ibid, 10. MW Bauer, JD Graham and S Becker, 'The EU Budget System after Lisbon: How the European Parliament Lost Power and How It May Compensate (Somewhat) for It' (2015) 13 *Journal for Comparative Government and European Policy* 479, 485; cf G Benedetto, 'The EU Budget after Lisbon: Rigidity and Reduced Spending?' (2013) 33 *Journal of Public Policy* 345.

[53] R Drachenberg and M Vrijhoeven, 'The Role of the European Council in Negotiating the 2021-27 MFF' (European Parliament 2021) PE 662.611.

[54] Benedetto, above n 22, 350.

[55] Verdun, above n 50, 222.

[56] Ibid, 225; M Ruffert, 'The European Debt Crisis and European Union Law' (2011) 48 *Common Market Law Review* 1777, 1778–1779.

[57] Ibid, 1779.

[58] Ibid, 1780; Verdun, above n 50, 226.

[59] Ruffert, above n 56, 1782.

The main issue regarding the facilities established during the Great Recession to bailout countries facing financial problems was its coherence with the rule prohibiting liability or assumption of the EU or other member states on the debt of other member states laid down in article 125 of the TFEU. Though controversial in the beginning, it has been settled and now widely supported the EFSF and the ESM are fully compatible with the Treaty for two reasons. First, a restrictive reading of Article 125 provides for a prohibition of guarantee of debt of other member states, but not of providing loans or credits.[60] Second, a swift modification of Article 136 introduced a new paragraph allowing EMU member states to establish mechanisms of assistance.[61]

In addition to bailout mechanisms, the European Central Bank enabled quantitative easing mechanisms. Breaking some dogmas, the ECB helped as a European institution to consolidate financial stability as a core constitutional principle of the EU.

The result of the establishment of the EFSF, the ESM and the modification of article 136 was that the EU constitutional framework gained a new competence: the euro area stability through loans and other financial mechanisms. Before 2011, EU stability rules, including debt limitation rules and prohibition of bailouts, were aimed at maintaining price stability within the EU. After 2011 modification of article 136, the financial stability of the euro area as a whole was an EU matter. Though a last resort mechanism a new EU competence was laid down in the treaties.

## The allocation of a true power to enforce stability rules to the EU

As the reverse of the new stability competences of the Union, the so-called six pack was approved in 2011. The six pack introduced preventive measures and severe financial sanctions on euro area member states that do not comply with the recommendations on excessive deficit. What is more interesting, it allocated new competences to the EC including monitoring, warning and the proposal of measures to the Council. Moreover, the inaction of the Council could lead to the adoption of the proposal of the EC unless rejected by the majority of the Council.

It also strengthened the 60% debt-to-GDP ratio by permitting the excessive deficit procedure to be opened on the sole basis of the debt criterion, and by requiring a reduction of a twentieth part of the difference between the debt ratio and the 60% per year, otherwise subjecting the member state to the excessive deficit procedure.

In 2013 the so-called two-pack enhanced surveillance in the euro area, and a common budgetary timeline and budgetary monitoring measures of member states incurring in excessive deficit.

These changes have without any doubt modified the financial constitution of the European Union, enlarging EU financial competences. First, the bailout prohibition ended up being modulated by changes in the Treaty and by new institutions, allowing secondary

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[60] Judgment of the Court of Justice of 27 November 2012. Thomas Pringle, Case C-370/12. G Bianco, 'The New Financial Stability Mechanisms and Their Poor Consistency with EU Law' (European University Institute 2012) RSCAS 2012/44 12–14. Against, Ruffert, above n 56, 1785–1787.

[61] Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the TFEU with regard to a stability mechanism for MS whose currency is the euro. In theory this is just a confirmation. 'The Court of Justice Approves the Creation of the European Stability Mechanism Outside the EU Legal Order: Pringle' (2013) 50 *Common Market Law Review* 805, 843.

bailouts while prohibiting direct assumption of debt. Second, this new approach introduced the concept of financial stability as an objective of the Union, enlarging prior mere price stability. Third, member states are now subject to a permanent and strong surveillance of their finance by a European set of check-and-balances of the EC, the Council and the Parliament, and not just the Council. And fourth and last, these concepts may have modified to some extent the economic and social principles enshrined in article 3.3 of the Treaty of the European Union, supplementing a mere market Constitution with a social and finance constitution that to some extent has developed finance solidarity.[62]

### *Consolidating (direct) taxation into EU competences*

From the beginning of the European Communities until 2008, only 17 instruments were passed on the topic of direct taxation. Since 2008, in a period of 10 years, at least 10 directives in direct tax matters have been enacted. There is a similar pattern in the jurisprudence of the Court of Justice of the EU. On this basis, there is no doubt the EU has increased the exercise of its competences in direct tax matters after the Great Recession.[63]

As said, EU harmonisation in direct tax matters took place mainly through the prohibition of discrimination, the development of freedoms, and prohibition of State Aid. The role of jurisprudence in harmonisation has been of utmost importance with two effects. On the one hand, through negative harmonisation, has been setting the areas limited to the direct tax sovereignty of member states. On the other, by limiting the scope of action of member states and putting the spotlight on the Internal Market, it has brought member states to the Council table to develop positive harmonisation on the field to clarify the scope of action in direct tax matters and prevent distortions. Not surprisingly, most harmonisation directives have followed the jurisprudence of the Court in the matter.

Probably the field in which the Court has developed more its jurisprudence on direct tax matters is the prevention of abuse. This is particularly of importance because of the special role and diversity of anti-avoidance rules and principles within tax law systems. Owing to CJEU jurisprudence on anti-avoidance rules there might be a significant convergence among member states on the treatment of avoidance, reinforced by rules enacted through directives.[64] In other words, EU law has engaged with a core element of all member states' tax systems and incorporated it within the EU tax constitution.

Not limited to defining the negative limits on member states' prevention of tax avoidance, the jurisprudence of the Court triggered harmonisation of certain rules. Following the financial pressure on domestic budgets during the Great Recession, the spotlight moved to international tax avoidance, which can only be properly tackled through international coordination. On this premise, the European Union implemented a significant development of secondary legislation on this matter and it also influenced international developments at the OECD and the G20.

[62] Ruffert, above n 56, 1792.
[63] Cerioni, above n 48.
[64] See J Freedman, 'General Anti-Avoidance Rules (GAARs) – A Key Element of Tax Systems in the Post-BEPS Tax World? The UK GAAR' [2016] *Legal Research Papers* 22.

The Court of Justice also has continued ruling on several subjects, especially tax avoidance, with rules and principles that have been followed by several member states, and most recently have been harmonised through directives.[65]

In the case of State Aid, even though the assessment of tax under state aid rules has been done since the beginning of the Communities, it gained an enormous significance after 2013. As mentioned previously, case-law has introduced a set of rules concerning tax incentives at the heart of the EU tax constitution, undermining the sovereignty of member states.[66]

Regarding the European Charter of Fundamental Rights, the Court has assessed the compatibility of the actions of tax authorities in relation to taxpayers. In this regard, one of the main issues is the expanding exchange of information procedures in relation to rights to privacy and effective judicial remedy. The result is that the EU tax constitution recognises a set of taxpayers' rights that is progressively being defined.

On positive harmonisation, after the Treaty of Lisbon anti-avoidance directives, a recast of the parent subsidiary directive, and a merger directive were passed. But perhaps the area where largest harmonisation has been developed in this period is exchange of information and mutual assistance. Such directives have an extraordinary impact on domestic tax systems. The use of common information and rules of assessment in certain areas leads to a soft convergence of tax law stronger than immediate appearances may suggest.[67] In addition to already passed directives, a directive on minimum tax is likely to be passed soon.[68] Its importance is paramount, as it will bring an important element of sovereignty, on corporate tax rates, into EU competence.

The active role of the European Union in the BEPS Action Plan led to the inclusion of several of the proposals previously contained in EU drafts in the final reports of the Plan, making the EU External Action in tax matters a vital area and impacting not only member states but also third countries. The active role of the EU in leading the implementation of such rules among member states, mainly through the Anti-Tax Avoidance Package, as well as the commitment of EU countries with the plan, has also impacted their domestic tax law and policy.

Although the abovementioned competences in tax matters are not EU own competences, the Union has operated under the subsidiarity principle, and by doing so, it has gained competence by exercise. The result is a significant enlargement of the European finance and tax constitution.

## WILL A NEW CRISIS TRIGGER FURTHER UNION: COVID AND RUSSIAN ATTACK ON UKRAINE

[65] See, as an example, exit taxes in Aujean, above n 38.

[66] E Fort, 'EU State Aid and Tax: An Evolutionary Approach' (2017) 57 *European Taxation*.

[67] PA Hernández González-Barreda, 'The Economic Allocation of Income and the Disregarding of Narrowly Held Entities Following the OECD/G20 Base Erosion and Profit Shifting Project: Coordination of the Work on Exchange of Information and Income Allocation Rules' (2022) 76 *Bulletin for International Taxation*.

[68] Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union COM (2021) 823 final

## Health Measures

Following the sudden COVID outbreak, the EU took measures under existent instruments. But very soon, the Union took decisions that enlarged its abilities and competences in order to tackle the crisis.

A new Health Program (EU4Health) was adopted reserving 2.4 billion euros for the health programme, including common procurement and grants, with a possible increase of up to 2.9 billion. It also furthered joint procurement regulation, enabling the EC to act as wholesaler by buying, stocking and reselling or donating supplies and services for member states or partner organisations as opposed to the previous JPA where its powers were subjected to a Steering Committee. Moreover, under the new procedure, the EC does not only act on behalf of the member states but can only do it on its own behalf in a JPP competence.[69]

The procurement of vaccines, however, despite being arranged under the legal framework of Council Regulation (EU) 2016/369, has been organised as an Advance Purchase Agreement with vaccine manufacturers, and not as an actual Joint Procurement. This is probably the consequence of member states wishing to retain decision power on the tender as well as benefiting of the advantages of a joint action. Regarding materials for COVID treatments, several tenders on ventilators, needles, and medical treatments have been organised by the EC.

Joint procurement is not new as the European Union has already tendered medical supplies, or influenza vaccines. Still, the COVID 19 threat has strengthened EU abilities and competences in procurement, enlarging its effective competences, mainly through new abilities on own purchase as wholeseller. Moreover, the increase of the EU4Health program budget from around 450 million to 5.4 billion is a major sign of the increased power of the European Union in health matters, a competence that is strongly linked to Welfare States. Though, the amount is very limited and largely allocated to mere promotion of health.

## Finance support: rescEU, SURE, CRII, EUSF, EGF

Since the beginning of the crisis, the EU adapted existing mechanisms and adopted new ones to cover the wide range of needs triggered by the unprecedented crisis, including cohesion policy, the EU Solidarity Fund, the Coronavirus Response Investment Initiative, the Emergency Support Instrument, the rescEU budget and the European Guarantee Fund. The Council also enacted a new mechanism to support unemployment risks of the COVID emergency under Art 122, even though social security is a national competence. The SURE mechanisms enabled financial assistance up to 100 billion euros in the form of loans, backed by solidarity bonds.

All such measures were immediate responses to the crisis and made significant amounts available to citizens, enterprises and member states.

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[69] See art. 9.1.c) Regulation (EU) 2021/522

All these measures put the EU at the very spotlight of the management of the public finance crisis of the COVID-19 with an unprecedented amount of budget. In this regard, it consolidated its constitutional powers as regards supporting member states' finance in difficulties, that decades ago were unconceivable.

## *The 2021-2027 MFF, REACT and Next Generation: enlarging the budget and new resources*

### Doubling the own resources ceiling

The heavy decrease in EU GDP fostered the adoption of an expansive EU financing plan through the multiannual financial framework for 2021-2027. This is probably the largest and most important multiannual budget of the European Communities history, which aimed to guide the recovery from the deepest European recession since WWI, allocating 2.018 trillion to the 2021-2027 MFF, amounting up to 2% of the EU GNI annually.[70]

An important point as regards the MFF 2021-2027 is that it doubles the EU own resources' ceiling to 2% of EU GNI.[71] Though most of the increase accounts for temporary expense on loans repayments, the increase in the budget is significant. It represents a complete change from the pre-existing trend and on some metrics exceeds the size of the Marshall Plan.

### New own resources

On the revenue side, the MFF provides a new national contribution based on non-recycled packaging waste, in addition to traditional own resource. This new contribution is again a transfer based on the non-recycled plastic packaging waste, but is not a true European tax. Some countries have introduced a tax on plastic packages to fund it, but there is no direct link, accrual, collection or revenue enjoyment by the Union.

The MFF agreement also proposes the establishment of new resources from the Emissions Trade System, Carbon Border Adjustment and Digital Levy/Pillar 1 by 2023. In addition, financial transaction taxes and financial contributions are sought for 2026.

All such proposals are based on a participation in the share of the revenue collected by member states on such instruments, making it in the end a transfer. They will also have only a limited impact on the estimated revenue of the EU. The Financial Transaction Tax and the corporate sector contribution, less defined yet, may lead to a small increase in the budget in the long term. Compared to previous mentioned items, these contributions seem permanent as those are seen as limited to Next Generation finance. But again, the budget will still be far from the commonly argued budget of a sovereign state.

However, the more harmonisation that takes place in tax matters, the more EU competences in tax matters will crystalise, which in turn will be consolidated in the hands of EU institutions by the unanimity rule.

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[70] 'The EU's 2021-2027 Long-Term Budget and NextGenerationEU' (Directorate General for Budget (European Commission) 2021) 24.

[71] ibid 24.

*The EU reaction to the Russian attack on Ukraine*

Among the political decisions taking to counteract the brutal Russian attack on Ukraine, the EU allocated loans to Ukraine, allocated funds to buy weapons to deliver to Ukraine, to deliver humanitarian materials to Ukraine, to fund support to the Ukrainian Government, and to support member states' asylum of Ukrainians. Regarding the amounts, the EU has allocated more than €19 billion.[72]

These measures represent an actual change in EU state status, as it is using its funds to behave as a true state in the international arena, not only using a single voice but a single budget and common agreed expenditure. The use of public finance power and a single voice of the EU in the Russian attack on Ukraine could therefore be a major milestone in the advancement of EU state-building.

## THE EU AS A FINANCIAL STATE: CURRENT PROPOSALS AND FINAL REMARKS

The birth of the modern state was shaped as a four-sided concept relying on identity, taxes, ownership and liberal democracy. In such development, crisis and war played a major role.

Leaving aside detailed discussion of the nature of a state, and new pluralism trends, the state status of the EU has always been challenged as regards its tax and finance powers. However, such assumptions are based on limited finance models and on a single-sided tax power concept.

Before the Great Recession, it is doubtful that the EU was a sovereign entity taking into account competences on the budget and taxation, the size and quality of the budget, revenue collection and finance control.

Regarding the budget, competence can be regarded as the EU's as opposed to the mere aggregation of member states wills. Regarding competences in taxation, before the Treaty of Lisbon, the Union only had strong competences on indirect taxes and custom duties. The Union had very few competences as regards direct taxation despite several attempts. As direct taxation is a key element in a tax state as related to individuals, modern taxation and redistribution function, the lack of competence on such matters was a key issue in defining the lack of tax state abilities. However, though subject to unanimity in the Council, the lock-in effect of this, combined with the activism of the Court of Justice allocated a significant tax power to the Union, especially in anti-avoidance matters, at the very core of a tax system.

Regarding the size of the budget, the small size of the budget of the Union does not approach the level most scholars consider for a sovereign entity of 25-50% of the economy output. However, this view does not take into account the qualitative side of the budget. The EU budgets plays a significant role in macroeconomic stability, redistribution and economic conversion, even more in some cases than national budgets, such as in

[72] EU solidarity with Ukraine, EC, 2022 < https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-solidarity-ukraine/eu-assistance-ukraine_en> accessed 10th August 2022..

macroeconomic changes.[73] From this point of view, the EU budget plays a significant role in key constitutional matters.

Finally, the heavy and increasing reliance on transfers does not resemble hard state powers. However, confederal states may allocate tax powers to the member states and from an international point of view that does not question their sovereign status.

The role of crisis in shaping the EU also shows indicia of a political entity. In the first stages of the development of the Union, the main driver was to avoid wars such as those of the nineteenth and twentieth centuries.

It could be also argued the Bretton-Woods collapse and the First Oil Crisis of the 1970s contributed to the 70s and 80s developments of the European Union. Though the first years of the 70s have been seen as an impasse in the development of European institutions, the late 70s and 80s saw an enormous development of the Community including new own resources design, the furthering and completion of the VAT directives, new indirect taxes directives, the enlargement of the Union, the introduction of cohesion policies, the Single European Act, and several others.[74] These developments cannot be attributed solely to crisis, but this was one of the key factor as European countries become aware that not being a key player left them in hands of other larger countries.[75] Moreover, some authors suggest that crises boosted European identity.[76]

In the 1990s, the road to EMU pushed the Union forward even more. The Growth and Stability Pact and the budgetary control was enacted, and fiscal convergence was speed up. It cannot be said that the EMU and the GSP were just driven by crisis, as several previous proposals took place in the 60s, but it is likely that what previously failed succeeded and speed up in the 90s because of the new global economic scenario.

Before the Great Recession, the EU had several characteristics of a sovereign entity from a financial point of view, though such analysis cannot be done from a monolithical point of view, as has been done frequently in literature, but from a functional pluralist one.

The Great Recession allowed the EU to take actions and develop competences that member states would have not allowed at other times.

The new ESM provided the EU institutions, namely the EMU, with a key core competence such as market stability that qualifies as a key sovereign characteristic. Moreover, the procedures for such mechanism were reinforced in the hands of EU institutions and subjected to check and balances, separating the competence from the direct will of member states. As macroeconomic stabilisation is less effective at lower levels, this could probably lead to further union.[77]

As regards direct taxation, the period between 2007 and 2020 saw an unprecedented development in the harmonisation of direct taxation. As direct taxation is so intimately related to sovereignty as personal taxation and because of its redistributive role, the increase in the EU powers on the matter reinforced the tax and finance sovereign

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[73] Benz argues the size hardly reflects the relative powers of EU and national levels A Benz, 'The EU's Competences: The "Vertical" Perspective on the Multilevel System' (2010) 5 Living Reviews in European Governance 1, 17.

[74] H Marhold, 'How to Tell the History of European Integration in the 1970s A Survey of the Literature and Some Proposals' (2009) 3–4 L'Europe en Formation 13.

[75] A Gfeller, *Building a European Identity: France, the United States and the Oil Shock, 1973-1974* (Berghahn Books 2012) 1–18.

[76] See ibid 10,13.and pieces quoted on its fn. 84.

[77] Groenendijk above n 15, 14.

characteristics of the Union. In addition, tax harmonisation in direct tax matters has taken place in a core area of taxation (anti-avoidance). Again, the crisis and the high pressure on public budgets put the spotlight on revenue, and the EU took advantage of the political momentum to tackle tax avoidance. What is even more important, the EU played an enormous role in shaping the BEPS project, consolidating the external action role of the EU in the tax area. The fact that international tax avoidance can only be tackled through international instruments also ensures future developments in EU. Anti-avoidance rules having been harmonised, a core element of domestic tax system is now driven by European institutions, and has entered EU constitutional matters.

Conversely to all such developments, the budget and associated competences did not show advancements in this period. The budget remained limited to 1% of the GNI and the Treaty of Lisbon limited the competences of the EP.[78] However, some authors argue the new set of competences gives slightly more bargaining power to the EP as its agreement is more difficult to achieve.[79]

On the redistribution function, the enormous pressure on the member states' budgets increased the value of the European Funds. If before 2007 European Funds had a larger value than its numbers show because of its leveraging capacity, its multiplier effect, its redistributive function across the Union, and member states own budgets limits, the crisis made European Funds even more important than before.

In sum, the Great Recession strongly developed EU tax and finance competences, and made the Union closer to what we might regard as a state.

From its evolution, the European Communities have been enlarging their tax and finance sovereignty, sometimes slowly, but continuously. Though the amount of the budget has been limited for a long time, or even decreased, the value and impact of the budget has increased in importance and relative value. Moreover, its redistribution value is of utmost importance for European economies. The lack of collection and enforcement powers, in turn, though reduce its sovereignty status, does not necessarily eliminate it, as if its persuasive power is enough to make it through its lower levels, it may still be an indicative of a power. The doubtful power on collection and enforcement may be compensated by the constant enlargement of tax regulatory powers. Even though subject to the unanimity of the Council, negative harmonisation and the lock-in effect of positive harmonisation has speed up the allocation of tax powers to the communities, especially after the Great Recession.

The evolution of the EU in finance and taxation also shows crisis has an important role in shaping it. Most tax and finance developments have been done during or after crises. It is likely that the enormous amount of resources allocated to economic rebalance after the COVID crisis is a sign of a new move and will trigger further developments. Proposals on new resources to fund such expenditure such as the financial transaction tax, the emission trading system, the corporate contribution or the French and Italian proposal on own resources indicates this. The proposals on Coronabonds may also consolidate new finance powers.

The role of the EU in the Russian attack on Ukraine could also help to consolidate the finance and tax sovereignty of the Union. The enormous amount of resources to help the Ukrainians will trigger new funding needs. Moreover, the fact that such funds are

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[78] Bauer, Graham and Becker above n 52.

[79] Benedetto above n 22, 348–349.

being used on military expenditure, a function related to the concept of state, will contribute to the idea. And if the war turns into a severe and deep economic crisis, the need of further integration will likely boost more finance integration as the other option would be a split, which it is doubtful could be done without devastating consequences at current point of harmonisation.

Moreover, the increase in the European budget could trigger further political integration if the economy is stabilised in some years, as the Union could have shown it is able to raise a certain level of resources without compromising other funding or the economy. In that regard, as happened with the birth of the welfare state, the extra funds once crisis has been passed could fund a (limited) Welfare Europe.

However, more integration will face a major challenge, as the lock-in effect of unanimity in most of finance and tax matters may lead negotiations to a dead end and a threat to European integration. This, jointly with the EU's limited legitimacy in finance and tax matters due to the reduced role of the Parliament, could likely raise further debate and development on the role of representation in the Union in tax and finance matters.