EUROTAX AND THE FISCAL SOVEREIGNTY OF THE MEMBER STATES

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I. Introduction

On September 7, 2010, José Manuel Durão Barroso, President of the European Commission, delivered his first State of the Union Address in Strasbourg. As emphasized in the Preamble to the Treaty of Rome of 1957, one of the goals of the European Union (EU) has been to create an ever-closer union among the peoples of Europe. Since the Treaty of Rome, and especially after the Treaty of Lisbon, the EU has become a real legislator, thus making an annual address by its president appropriate.

Since matters relating to financing go to the very heart of the common undertaking, the revenues of the EU played a central role in Barroso’s Address. The present system has two major drawbacks. First, it leads to the infamous juste retour thinking by the Member States: emphasis is placed on net contributors and net recipients, and Member States do not look at the added value of expenditures for Europe as a whole. The EU, therefore, seeks a greater degree of autonomy vis-à-vis the states. Second, the EU has evolved from a mere union of states to a union of states and citizens, and a direct bond between citizens and the Union is the next logical step. A Eurotax, paid to the EU by its citizens, would solve both problems.

A Eurotax is a bold idea, but a problematic one. It brings to the forefront the tension between those who want the EU to become the United States of Europe and those who want to maintain the status quo. The Eurotax highlights the debate regarding the fiscal sovereignty of the Member States. How can the EU cope with this problem? Perhaps a less bold but equally effective compromise exists: to tax the profits of the European Central Bank (ECB).

II. The EU’s Own Resources

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3 Following the Lisbon Treaty, the EU has dual political legitimacy. The European Council represents the Member States while the European Parliament represents the citizens. See Consolidated Version of the Treaty on European Union, art. 10(2), Mar. 30, 2010, 2010 O.J. (C 83) 13.
Last year a leaked draft report sparked a false start of the discussion on EU budget reform. This autumn, as Barosso mentioned in his address, following a period of consultation with citizens, scientists, and politicians, the Commission has presented a new approach to the Union’s own resources. Presently, 85% of the revenue is funded by Member States, which provide a percentage of their Gross National Income (GNI). Though all revenues, by definition, are called own resources, not all of the EU’s own resources are created equal. In fact only custom duties and agricultural levies, which together amount to only 15% of the EU’s revenue, are actually owned by the EU. Thus, the juste retour thinking makes its mark on GNI-based revenues.

A long-held goal for the EU is to maintain a genuine system of own resources. As Article 201 of the Treaty of Rome states, “the Commission shall examine the conditions under which the financial contributions of Member States provided for in Art. 200 could be replaced by the Community’s own resources, in particular by revenue accruing from the common customs tariff.” Furthermore, as Article 311 of the Treaty of Lisbon states, “[w]ithout prejudice to other revenue, the budget shall be financed wholly from own resources.” Nowhere does the Treaty define, however, what is meant by the EU’s own resources. It merely states how the decision-making process regarding those resources is to proceed: the Council, in unanimity, the European Parliament, and the Parliaments of the Member States must come to an agreement. The European Commission states that own resources are “revenue flowing automatically to the European Union budget, pursuant to the treaties and implementing legislation, without the need for any subsequent decision by national authorities.” How this definition relates to the “cornerstone” principle for any future system of the EU’s own resources, with respect to the fiscal sovereignty of Member States, however, remains unclear.

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7 Consolidated version of the Treaty on the Functioning of the European Union, art. 311, Mar. 30, 2010, 2010 O.J. (C 83) 47.
8 Id.
11 The European Parliament has also stated that “one of the key points of a new system is that fiscal sovereignty will remain with the Member States alone who might, however, authorize the Union for a limited period to be revoked at any time to directly benefit from a certain share of a tax.” Id.
The Treaty of Rome’s choice to classify custom duties, and subsequently agricultural levies, as the EU’s own resources was a logical one. Both revenues, which are now called traditional “own resources,” are directly correlated to EU policy. They directly relate to the EU’s goals of becoming self-supporting with regard to food, as well as to creating a common market with a unified border. Hence, any new EU resource also should be inherently linked to a fully developed central European policy, that is, those activities that could not feasibly exist outside the EU context.

III. Eurotaxes and the Quality of the Regulatory Process

At present, the EU is considering direct taxes on consumption, transport, communications, and financial services. The ideas vary from the most likely candidate—paying a part of the VAT directly to the EU—to the most exotic candidate—a tax of 0.00001 of a cent on every e-mail.

One problem with the proposed taxes concerns the quality of the legislative process; there is also the matter of legality. Did all parties participate in the process and can their respective expectations be fulfilled? More specifically, the problem is the “shopping list” of criteria the Eurotax would have to fulfill. Both the Commission and the European Parliament have mentioned visibility, simplicity, financial autonomy, efficiency, sufficiency, cost-effectiveness, stability of revenue, equity, and added value for Europe as potential criteria. The tax actually chosen will, no doubt, be an ad hoc political choice based on odd compromises. In order to facilitate a rational discussion that will fulfill the quality demands of both national and international law, the EU must arrive at a manageable list of criteria.

IV. Fiscal Sovereignty

13 See European Commission, supra note 4.
17 See Agustin José Menéndez, Taxing Europe: Two Cases for a European Power to Tax, 10 COLUM. J. EUR. L. 297 (2003) (legal, normative, and prudential criteria require a partial transfer of the right to taxation to the EU).
The reasoning behind the EU’s own traditional resources belonging to the EU is convincing: they are the direct result of the existence of the EU and its policies. The European taxes proposed by the EU, however, are not the direct result of EU policies, unless one artificially strains the argument. Member States interpret these new resources as a loss of fiscal sovereignty. Hence, the EU emphasizes that full fiscal sovereignty will remain with the Member States. From an economic perspective, however, “the eternal socialization of an asset’s return is the same as the socialization of the asset itself.”20 Mutatis mutandis, the same goes for the temporary pooling of taxation revenue, which also entails a loss of fiscal sovereignty for Member States.

V. Seigniorage as a New “Own Resource” of the EU

Seigniorage is the monetary income that the ECB receives upon its issuance of Euro banknotes. 21 To tax ECB profits and to reduce the GNI contributions of Member States of the eurozone accordingly would be a logical extension of the theory behind the taxation of the EU’s traditional “own resources.”22 Seigniorage directly results from the existence of the Euro, since it is a product of EU institutions—it does not intrude on the fiscal sovereignty of Member States.

The ECB does not provide the specific amount of the seigniorage, as does the Canadian Central Bank, for example: on the most commonly used denomination, a twenty dollar note, the Bank of Canada clears an annual net revenue of 95 cents. 23 For the EU, the yearly monetary gain on the creation of the Euro, which is now paid out annually to the National Central Banks, has been estimated to account for a third of the EU budget of 140 billion Euro. 24

VI. Conclusion

The ability of the EU forerunner, the European Coal and Steel Community (ECSC), to collect its own taxes with its own tax administrators is still an unattainable ideal for the EU. Seigniorage might not be the indisputable “own resource” the EU seeks, since it does not create a bond between citizens and the Union, but it will enable the growth of EU autonomy, as well as assuring that the fiscal sovereignty of Member States remains unimpaired. Member States would have to contribute far less to the EU based on their GNI. It is to be expected that the juste retour discussions will be less fierce; there is a possibility of EU policies that would contribute a real added value to Europe as a whole.

22 Only 16 of the 27 Member States currently use the Euro.