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# Exposé

Title of the Doctoral Thesis

„Solidarity and European Taxes“

submitted by

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## 1. Description of the thesis

### 1.1. Introduction

Following the recent crises the European Union is in need of increased financial remedies. Reacting to the Pandemic, the EU therefore installed a special budget known as “Next Generation EU”.<sup>1</sup> As a withdrawal, the EU could only adopt this financing tool because of borrowing 750 billion Euros at the financial markets.<sup>2</sup> The repayment of this debt is intended to be financed through new own resources.<sup>3</sup> One potential stream of new European revenue could be a tax-based own resource, facilitated by the European Union’s harmonization of national taxes under the competences of Articles 113 and 115 TFEU, and linking the generated revenue to a special source of own resource.

However, the present challenges highlight the importance of identifying further methods for the European Union to finance additional burdens as well as to manage and overcome certain crises. Beyond the known approach described above, and in line with the principle of solidarity upon which the European Union is founded, pursuing this principle could uncover new possibilities.

### 1.2. Research Subject

Solidarity is a fundamental principle of the European Union. In the way it is mentioned in Art 2 of the treaty of the European Union, the principle serves as a description of the community consisting of the European member states.<sup>4</sup> It describes the special bond between the people of the European Union represented by the Member States. Thus, solidarity is a guiding principle to which the member states committed themselves while building a common ground for cooperation.<sup>5</sup> This socio-political aspect of solidarity is the core concept of establishing the European community. Nonetheless, there is also a legal dimension of solidarity in the context of the European Union as it may constitute the legal basis for various legal actions of the European legislator.<sup>6</sup> However, the Union legislator is tied to the strict allocation of competences and different from a state, the European Union has no genuine power to tax. As a result, establishing new direct or indirect taxes at the European level is not provided as a

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<sup>1</sup> 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 [2020] OJ L433/23.

<sup>2</sup> 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 [2020] OJ L424/1.

<sup>3</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 16 December 2020 on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources [2020] OJ L433/28.

<sup>4</sup> Art 2 of the Treaty on European Union [2016].

<sup>5</sup> M Klamert, D Kochenov, ‘Article 2 TEU’ in M Kellerbauer, M Klamert and J Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford University Press 2019).

<sup>6</sup> See M Chamon, *The use of Article 122 TFEU. Institutional implications and impact on democratic accountability*

<[https://www.europarl.europa.eu/RegData/etudes/STUD/2023/753307/IPOL\\_STU\(2023\)753307\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/753307/IPOL_STU(2023)753307_EN.pdf)>.

power for the European legislator.<sup>7</sup> But today's challenges require a new and creative approach to cover additional financial expenses. Having that said, the solidarity principle may give the European legislator leeway when it comes to finding new European tax instruments. Against this background it is crucial to outline the dimensions of solidarity as it could serve as a starting point for implementing new possibilities in the field of European taxes. The objective research work should therefore examine the content of solidarity in a legal as well as a socio-political sense. Furthermore, the research will evaluate the common understanding of taxes and provide new perspectives on how taxation can be understood as a financing tool for common goods in a community based on solidarity. Due to the complexity of this research object, a cross-disciplinary approach is chosen, as it incorporates a sociopolitical, philosophical as well as a legal perspective.

The first part of the research focuses on the socio-political perspective on solidarity. The emphasis here lies on the process of integration in the European Union. Building a European community will be analyzed in terms of the common value that shapes the European identity. In this context, solidarity is the foundation for a solid and long-lasting community. Solidarity is defined as the relationship between individuals or groups of individuals characterized by a distinctive form of attachment and mutual obligation. Ideas of community, support and legitimacy lie on the grounds of this definition.<sup>8</sup> Given the European community, it is a special form of connection, namely the cooperation between the people of the European Union represented by the member states. This special cooperation should be outlined along the integrational process of the European Union also focusing on the impact of globalization and free movement on the community structure. In fact, the dynamics of globalization and integration, especially in the European Union, have led to a situation, where state borders hardly matter anymore for the purpose of identifying a community and belonging to the European community. Therefore, there is a call for a different approach on how the European Union is determined. This given, also the fiscal mechanisms in the European Union should adjust to the changed circumstances and the financing of the European Union should not only be centered around the interests of the member states but the interests of the people constituting a specific community. Especially if there is a need for common goods. And the recent crises have shown that Member States alone are not able to bear costs such as maintaining stable health care supply, which goes in hand with additional financial needs. Instead, the European Union had to step in and help some Member States. Time has shown that crises will always surround the world, including the European Union. And this is even more true today as we face the greatest challenge of our time, the climate crisis. As a matter of shared responsibility building

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<sup>7</sup> R Szudoczky, D Weber, 'Constitutional Foundations: EU Tax Competences; Treaty Basis for Tax Integration; Sources and Enactment of EU Tax Law' in B Terra and P Wattel (eds), *European Tax Law* (Wolters Kluwer Law & Business 2022) 11.

<sup>8</sup> K Bayertz, 'Begriff und Problem der Solidarität' in K Bayertz (ed) *Solidarität* (Suhrkamp 1998) 11.

the cornerstone of the concept of solidarity, one should question the understanding and different dimensions of this principle in the European Union when facing the fiscal challenges ahead. For this reason, an analysis of the historical forms of solidarity as a guiding principle during the different periods and depths of integration in the European Union will be carried out.

While examining the socio-political dimension of solidarity in the European Union, considering different relationships between actors concerned should provide indications about the quality of solidarity. Therefore, the following layers will be delineated in the context of solidarity: At first the relationship between the Member States of the European Union. Possible ruptures and shifts concerning the understanding of solidarity due to the Member States' accession are discussed. Furthermore, the connection between the European Union as a supranational organization and the member states will be examined in the light of possible interdependencies. As the European community is built of European citizens the relation of Member states and the citizens as well as the relation between European Union and European citizens will be analyzed. Taking solidarity into account, the aim is to identify potential effects on EU citizenship and the derivation of any obligations of EU citizens.

As mentioned above, solidarity could play an important role in managing the (financial) burdens of a crisis. Consequently, one part of the research focuses on the impact of certain externalities on the quality of solidarity. It especially investigates whether various understandings of solidarity exist depending on the scope or the trigger of the crisis. Following the results of the research above, the first part of the thesis ends with a conclusion on the scope of solidarity in socio-political means as well as a part of the European legal framework.

Then, based on the conclusions about the quality of solidarity and the structure of the European community, the European Union as a supranational organization and, in particular, its financing structure is studied. This will build the second part of the thesis. Therefore, the European Union as an organization with no power to tax must be examined regarding its mechanism to finance European actions. The existing mechanism is the so-called "Own Resources system", where member states are obliged to contribute to the general budget of the European Union via different categories of own resources.<sup>9</sup> For the purpose of the research, this mechanism is examined in detail also regarding the process of implementation. However, the emphasis of this part of the thesis lies on examining the European Union as a fiscal union and especially aligning with the process of integration regarding the

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<sup>9</sup> B Killmann, 'Article 311 TFEU' in M Kellerbauer, M Klamert and J Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford University Press 2019).

European community mentioned above, this part focuses on the fiscal integration in the European Union and therefore studying the interplay between fiscal integration and solidarity.

Based on the conclusions of the research about the understanding of solidarity and the evaluation of the European Union in terms of fiscal law, possible legal options for the European Union in the field of taxes on the basis of the concept of solidarity will be outlined in the third and last part of the dissertation.

In a first step, basic considerations about the understanding of taxes in the European Union are made also concerning state functions such as financing public goods. The first approach focuses on the concept of solidarity as a cornerstone for tax harmonization. Given the European Union's competence to harmonize national tax systems,<sup>10</sup> the European Union possesses the ability to link the revenue generated by the member states to the European budget through the introduction of a new source of revenue.<sup>11</sup> Should this path be chosen, the purpose of financing the European Union's general budget through measurements aligned to solidarity should be reflected. In this context, the question arises as to whether these instruments reflect the characteristics of solidarity, i.e. a collective commitment to a specific goal, since the revenue is not earmarked for a specific purpose. The most fundamental question in this context, however, will be whether this financing scheme is suitable for meeting the increased financial requirements in certain situations and in view of the community's solidarity.

Another possibility in the field of European taxes with solidarity as their legal basis could be the introduction of taxes as a regulation of the European Union. For the purpose of this research, the European Regulation on an emergency intervention to address high energy prices is used as an example. In this case, the European Union required Member States to introduce a solidarity contribution levied on the excess profits of companies in the energy sector. The revenue generated must then be used to provide financial support to households that are severely affected by extremely high energy prices.<sup>12</sup> The legislation is based in particular on Article 122(1) TFEU, which gives the European Union the power to adopt measures in the event of a shortfall in the supply of certain goods, in particular in the energy sector, as an expression of solidarity.<sup>13</sup> Considering this possibility, it is necessary to examine the reference point of these measures. In fact, the Member States are the reference point in this area, as they generate and benefit from the revenue and at the same time must use the money for a specific purpose determined by the European Union.

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<sup>10</sup> Art 113 and Art 115 of the Treaty on the Functioning of the European Union [2016].

<sup>11</sup> C Heber, 'Europarechtliche Grenzen für den Wiederaufbaufonds' (2021) EuR 416.

<sup>12</sup> Council Regulation (EU) 2022/1854 of 6 October 2022 on emergency intervention to address high energy prices [2022] OJ L261/1.

<sup>13</sup> Art 122(1) of the Treaty on the Functioning of the European Union [2016].

The third possibility can be found in creating European funds that are used for a specific solitary purpose. For example, in terms of bearing the increased financial burden of the climate crisis. Therefore, the community could be obliged to pay a certain amount of money into a European fund. The generated revenue must then be used for the determined purpose. To find the legal basis of such fund in solidarity is not completely inconceivable as a special fund has been introduced in the banking sector, called the “Single Resolution Fund”.<sup>14</sup> Examining this approach requires careful consideration of the quality of solidarity in certain areas, such as the environment, as well as a discussion of the possibilities of linking the revenue generated to the defined single objective for which the concerned community is willing to contribute.

The examination of all options also includes relevant considerations on interferences with the competence framework of the European Union. Furthermore, the concept of solidarity and its understanding in the European Union, based on the social science research of the first part of the thesis, will be considered for each option.

The aim of this thesis is to foster a deeper understanding of solidarity in the European Union as a possible legal basis for European taxes. In pursuit of this goal, a critical assessment of the concept of solidarity across the European community will be encouraged. In addition, viable legal options in the sense of solidarity for the European Union that incorporate a financial component will be explored. By examining the interplay between solidarity, regulatory frameworks and fiscal policy, this thesis aims to provide insights into how solidarity-based financial instruments can support the European Union's financial stability as well as the Union's broader objectives.

## **2. State of Research**

As far as the socio-political science is concerned, different fundamental works depict the various dimension of solidarity and hence numerous theories and concepts exist regarding solidarity. The relation between solidarity and the European Union is mostly examined by means of the European integration process as well as several challenges the European Union had to handle. This research results in providing a comprehensive understanding of the concept of solidarity in the European Union. It therefore also contributes to the discourse on the further integration process of the European Union. However, the socio-political research does not link its concept of solidarity to the legal dimension of solidarity in the context of European Union taxes. In fact, there is independent literature about solidarity in the legal research field as it is a part of the European legal order. The research focuses

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<sup>14</sup> Regulation (EU) 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) 1093/2010 [2014] OJ L225/1.

mainly on the legal integration of the solidarity principle. Despite the multi-layered considerations in every research field, there is no in-depth linkage of the socio-political and legal dimension of solidarity. Particularly as regards to the idea of solidarity as a legal basis for actions in the field of taxes at the European level. A cross-disciplinary approach can therefore foster a deeper understanding of solidarity and its dynamics in the European context. It can thus be seen as making a valuable contribution, not only in terms of its specific design as a basis for new European taxes, but also in encouraging the discourse on the future way forward for the European Union.

### **3. Research Objectives**

The main research objective is to consider the idea of solidarity as a possible origin for a European Union competence in the field of taxes. The focus of the research work is therefore grounded at the European level. The objective doctoral thesis aims to lighten the idea of solidarity in the European context. For this purpose, the different layers and dimensions of solidarity are considered from a socio-political perspective and interpreted in the context of changing externalities as well as the many actors involved in the European Union. Against the background of the possible reference to solidarity by the European legislator for actions in the area of taxes, the legal characteristics of this principle are also clarified. In this process, legislative leeway, possible applications, and inherent limitations should be determined. The interplay between the quality of solidarity and the legal possibilities should provide insight into whether solidarity can be utilized as a legal basis for tax measures considered by the European legislator. In particular, the following research questions arise:

- What does the idea of solidarity mean in the European Union and which developments can be deduced during the integration process?
- What kind of communities can be developed on the basis of solidarity and what kind of rights and obligations can arise from this?
- Does the meaning of solidarity change if different European actors are involved?
- Do changing externalities affect the understanding of solidarity?
- What is the legal scope of solidarity?
- How is the European Union's financial mechanism structured? Is it suitable for bearing increased financial burdens of certain crisis?
- Does and if so, how does solidarity impact financing the European Union budget? Does the financing system reflect the solitary structure of the European community?

- What are the legal possibilities of the European Union in the field of new European taxes based on solidarity?
  - Can the solidarity be used as legal basis of competence for the introduction of new harmonized European taxes? If so, how does this affect the rest of the European Union's competence structure?
  - Is there a legal possibility for the European legislator to introduce a special fund based on solidarity and using the generated revenues for a specific solitary purpose?
  - Can the European Union oblige member states to introduce national taxes based on solidarity?
  
- Which of the legal options is the best fit for which occasion?

#### **4. Methodology**

The principle of solidarity as a possible foundation for taxes at the European level will be examined through both, a sociopolitical as well as a legal perspective. As far as the legal perspective is concerned, the focus is on analyzing the relevant literature and case law. This is based on the recognized principles of legal methodology and hermeneutics. Following an interdisciplinary approach using socio-scientific methods like the conceptual history, discourse analysis, hermeneutics and the methodology of the Cambridge School is necessary.

#### **5. Resources**

The dissertation project will primarily utilize the existing resources of the University of Vienna. The research is mainly carried out in libraries and databases, which means that no specific resources are required.

#### **6. Timetable**

One of the three compulsory seminars has been successfully completed during a Socratic seminar in the winter term of 2023/2024. The participation in the lecture "VO zur rechtswissenschaftlichen Methodenlehre" as well as the public presentation of the dissertation project during a subject-specific seminar were also successfully accomplished in the summer term of 2024. As the submission of the thesis is planned for the summer term of 2026, the Defensio will take place in winter 2026.



## **7. Preliminary Table of Contents**

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2. Possible legal competences
3. Case study: Single Resolution Fund – Reg (EU) 2014/806

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