EU Perceptions on Financial Instruments and Crisis Management

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Understanding the EU's Self-conception Through its Financial Integration

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Abstract

Can *European integration* be understood by looking at how the European Union (EU) is financed? This paper takes a three-step approach to address this question. First, the link between financing and self-conception is presented as an expression of different understandings of integration – a more static one versus a more dynamic one. Second, the historical development and the current state of financing of the EU are outlined, noting recurring calls to link EU policies to financing methods. This is illustrated by the switch from contributions to own resources in the 1970s, which coincided with deeper market integration. In the 1980s, the introduction of own resources based on gross national income brought the financing method back closer to the original contributions. The 2020 Own Resources Decision introduced a change of financing, with the issuance of earmarked bonds and own resources based on plastic waste. Third, the paper discusses possible legal limits to these developments, focusing on Article 311 of the Treaty on the Functioning of the European Union (TFEU), which allows for a broad interpretation in principle. Introducing new own resources, including borrowing and taxation, however, requires the approval of all Member States. Additionally, the German Federal Constitutional Court (FCC) has set limits regarding the interpretation of Art. 311 TFEU. Historical developments in EU financing, especially the evolution of own resources, show that there is an ongoing demand for reform driven by diverging interests. Due to sparse ECJ case law on questions of EU financing, the role of law remains

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limited, with national courts such as the German Federal Constitutional Court playing a key role. The concept of integration through funding, linked to the emergence of NextGenerationEU, offers a new perspective on EU integration by increasing the EU's financial influence over Member States. Unlike the concept of integration through law, however, it is not yet a fully developed theory. In light of the prevailing crises, integration through funding could emerge as a complementary approach to integration through law.

Introduction

Since the beginnings of European integration in the 1950s, there have not only been different European Treaties and European Communities. The EU's financing arrangements have also been subject to change.[1] This raises the question of how financial integration is linked to the EU's self-conception and how this relates to the legal framework of European integration.

To understand the connection between the EU's self-conception and its financial integration, this text is divided into three sections. The first step is to analyse the different understandings of European integration in the context of its financial structure. To this end, two different approaches found in the literature are compared in the following: One side suggests a rather static understanding, according to which a certain established state of affairs is an expression of integration. Others place more emphasis on the processual nature of European integration. As a result, the former stance is less open to fundamental change than the latter, which emphasises a dynamic approach.

In order to better understand the two perspectives on European integration, in the second step an overview of EU financing and its historical development is provided. In the 1950s, various models were discussed and implemented, including a tax-based financing model in the European Coal and Steel Community (ECSC). However, the European Economic Community (EEC) initially followed the classic model of international organisations, i.e. contribution-based financing. This paper explains why the own resources model, which remains extant to this day, prevailed in the early 1970s, and how it is linked to the democratic legitimacy of the

1 Here and in the following, I use the term 'EU' for reasons of readability. It also refers to the EU's predecessors, the European Communities, and their financial organisation.

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Community level. The paper provides an overview of the developments that EU financing has undergone in recent years, offering insights into ongoing discussions concerning potential reforms.

The third step will focus on the legal limits of such developments. On the one hand, the constitutional law of the Member States will be addressed. The case law of the Federal Constitutional Court (FCC) on European integration will be presented, especially the line of case law on budgetary powers that began with the decision on the Treaty of Lisbon. By analysing the 2022 decision on the NextGenerationEU economic recovery fund, it will be possible to examine the extent to which German constitutional law sets limits on further debt-making at EU level. On the other hand, European primary law will be analysed in more detail. A prime example of the debate on the future financing of the EU is the discussion evolving around the so-called plastic own resources, which are often referred to as 'non-genuine EU taxes'. Their implementation raises the question of the extent to which the principles of democracy and institutional balance enshrined in the European Treaties set limits on such financing options.

1. The Link Between Financing and Self-Conception as an Expression of Different Understandings of Integration

The design of the EU's financial constitution is often described as a 'mirror' of *European integration*. This metaphor builds on the accounts of financial and constitutional history, that suggest comparable images, such as a parallelism between the form of government and the type of taxation.[2] In describing the interrelationship between *European integration* and its financial constitution, two major trends can be observed in the literature: One side suggests a rather static understanding, according to which a certain established state of affairs is an expression of integration (1.1). Others, however, place more emphasis on the processual nature of *European integration* (1.2). As a result, the former stance is less open to fundamental change than the latter, which advocates for a dynamic approach that is more open to changes in the own resources system.

2 For an example see A. Schwennicke, *»Ohne Steuer kein Staat«. Zur Entwicklung und politischen Funktion des Steuerrechts in den Territorien des Heiligen Römischen Reichs (1500-1800)* (Vittorio Klostermann, 1996).

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1.1 Static Understanding

The image of the financial constitution as a mirror of integration often seems to be associated with the idea that a certain state of affairs should be preserved: In this view, the financial regulations reflect the integration achieved in the EU as a given and well-established state of affairs.[3] Accordingly, the financial constitution is said to fulfil "a serving role"[4]. The "asymmetry in the EU financial sector" is seen as an indicator of the degree of integration so far achieved.[5] The current own resources system is considered an "adequate reflection" of *fiscal integration*.[6] As reference to the established state of affairs suggests, this state is to be maintained. Authors representing this understanding are often sceptical about future reforms of the own resources system through EU taxes. This is linked to other prominent assessments of *European integration*: Emphasising the EU's status as an association of sovereign states (Staatenverbund) usually leads to the argument that taxes at EU level contradict this concept. Taxes are thus seen as an expression of sovereign statehood.

According to this line of argument, the EU's status as a legal community (Rechtsgemeinschaft) points in only "one direction": Competences should only be transferred once a sufficient basis of legitimacy has been created.

3 For examples, albeit in relation to different objects, see K. Bergfeld, *Lenkungsabgaben im Europäischen Finanzrecht* (Nomos, 2008), 112; R. Caesar, 'Haushalts- und Finanzwirtschaft', in R. Hrbek (ed), *Die Reform der Europäischen Union. Positionen und Perspektiven anläßlich der Regierungskonferenz* (Nomos, 1997), 281, 283; B. Meermagen, *Beitrags- und Eigenmittelsystem. Die Finanzierung inter- und supranationaler Organisationen, insbesondere der Europäischen Gemeinschaften* (Beck, 2002), 174; D. Biehl, 'Zur Rolle der öffentlichen Finanzen in der Europäischen Integration' (1978) 1 *integration*, 35, 37-38.

4 C. Ohler, *Die fiskalische Integration in der Europäischen Gemeinschaft* (Nomos, 1997), 30: "dienende Rolle" (original German version).

5 C. Waldhoff, 'Überforderung nationaler Parlamente durch die Globalisierung? Grenzen am Beispiel der Budgetverantwortung' in C. Franzius, F. C. Mayer and J. Neyer (eds), *Modelle des Parlamentarismus im 21. Jahrhundert* (Nomos, 2015), 109, 128: "Asymmetrie in der EU-Finanzwirtschaft" (original German version); see also C. Waldhoff, 'Stärkung der Einnahmenautonomie als Zukunft der EU-Finanzen?' (2017) 70 *ifo Schnelldienst* 12, 14; see also C. Waldhoff, 'Steuerhoheit für die Europäische Union? ' (2012) Zentrum für Europäisches Wirtschaftsrecht, Vorträge und Berichte Nr. 195, 13.

6 H. Kube, 'EU-Steuern: Zuständigkeit zur Regelung und Erhebung sowie Ausgestaltungsmöglichkeiten' in M. Lang (ed), *Europäisches Steuerrecht, 42. Jahrestagung der Deutschen Steuerjuristischen Gesellschaft e.V.* (Otto Schmidt, 2018) 69, 99: "Stand der fiskalischen Integration […] durch das Eigenmittelsystem nach Art. 311 AEUV angemessen widergespiegelt" (original German version).

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The lack of legitimacy is essentially linked to its alleged absence in the existing legal framework, which, according to this view, is not sufficient to legitimise certain developments. At the same time, the interpretation of the legal framework is based on a particular understanding of integration. If a sufficient basis of legitimacy is not seen as possible in the foreseeable future, the way in which the EU is financed is essentially tied to the status quo.[7]

1.2 Dynamic Understanding

Other authors emphasise the dynamic nature of the relationship between *European integration* and its financial constitution. The expansion of the European Parliament's budgetary powers from the 1960s to the 1980s is often compared to the historical struggle for budgetary powers in favour of parliamentarisation and democratisation.[8] This development seems to follow a historically familiar pattern. The direction of strengthening the parliament is clearly set and applied to *European integration* itself. Some even suggest that the history of *European integration* is synthesised in the historical course of the creation and extension of budgetary powers.[9]

The importance of the EU budget for the integration process is also stressed in more recent contributions. Compromises in budgetary law are seen as crucial for integration.[10] Budgetary breakthroughs are said to have

7 C. Waldhoff, 'Stärkung der Einnahmenautonomie als Zukunft der EU-Finanzen?' (2017) 70 *ifo Schnelldienst* 12, 14: "[A]ls Rechtsgemeinschaft […] nur eine Richtung" (original German version); see also Bundesministerium der Finanzen (ed), *Gutachten des Wissenschaftlichen Beirats beim Bundesministerium der Finanzen, Reform der EU-Finanzierung: Subsidiarität und Transparenz stärken* (Bundesministerium der Finanzen, 2016), 17.

8 G. Zellentin, *Budgetpolitik und Integration* (Europa Union Verlag, 1965), 23; I. E. Druker, *Financing the European Communities* (Springer Netherlands, 1975), 25.

9 F. Fugmann, *Der Gesamthaushalt der EG* (Libertas Verlag, 1992), 366, with reference to D. Strasser, *Die Finanzen Europas. Das Haushalts- und Finanzrecht der Europäischen Gemeinschaften* (Publications Office, 1991); see similarly also P. M. Schmidhuber, 'Die Notwendigkeit einer neuen Finanzverfassung der EG' (1991) *Europarecht,* 329, 335; I. E. Druker, 'Strengthening Democracy in the EEC. Autonomous instrument of common policy?' (1964) 2 *Common Market Law Review,* 168, 170.

10 B. Laffan, *The Finances of the European Union* (Palgrave Macmillan, 1997); B. Laffan, 'The big budgetary bargains. From negotiation to authority' (2000) 7 *Journal of European Public Policy*, 725.

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contributed to overcoming serious crises at various stages.[11] EU funding is analysed as a "motor of *political integration*", pointing to parallel developments in the nation states.[12] The importance of funding for the deepening of integration has become even clearer since the expansion of cohesion policy.[13] One can observe parallels between the development of the Community's structural policy and its progressive integration and spatial expansion.[14] According to this interpretation, the development of cohesion and structural policies is crucial for the future direction of integration. Looking at the NGEU legal acts, which are largely based on the cohesion legal basis, the strengthening of cohesion policy seems to be the current focus. This also explains the talk of *integration through funding*.[15] Budgetary policy and integration policy are thus directly linked.[16] If the emphasis is placed on the dynamics of this process, there seems to be considerably more flexibility

11 For examples from the 1960s to the 1990s, see N. P. Ludlow, 'Budgeting for Success. How a Series of Budgetary Breakthroughs Underpinned the EC/EU's 1980s Boom' in R. Weber (ed), *The Financial Constitution of European Integration. Follow the Money?* (Bloomsbury Publishing, 2023), 191; F. Schorkopf, 'The Integration Surplus of the EU's Budgetary Law – or "no representation without taxation"?' in R. Weber (ed), *The Financial Constitution of European Integration. Follow the Money?* (Bloomsbury Publishing, 2023), 205.

12 A. Boissenin, *Le financement de l'Union européenne: moteur d'une intégration politique? Contribution à l'étude du système budgétaire européen* (LGDJ, 2019), 3: "le moteur de son intégration politique" (original French version).

13 For an example, see R. Bieber, 'Die Ausgaben der Europäischen Gemeinschaften' (1982) *Europarecht,* 115, 122; R. Bieber in H. von der Groeben, J. Schwarze and A. Hatje (eds), *Europäisches Unionsrecht* (Nomos, 2015), Art. 311 AEUV, marginal no. 6.

14 B. Schöndorf-Haubold, *Die Strukturfonds der Europäischen Gemeinschaft. Rechtsformen und Verfahren europäischer Verbundverwaltung* (Beck, 2005), 46. See also M. Shackleton, *Financing the European Community* (Cengage Learning EMEA, 1990), 64 and L. van Middelaar, *Vom Kontinent zur Union* (Suhrkamp, 2016), 426.

15 B. De Witte, 'Integration through Funding. The Union's Finances as Policy Instrument' in R. Weber (ed), *The Financial Constitution of European Integration. Follow the Money?* (Bloomsbury Publishing, 2023), 221. Not with this terminology, but emphasising the meaning A. De Feo, 'EU Budget Politics. Looking Forward' in S. Becker, M. W. Bauer and A. De Feo, *The New Politics of the European Union Budget* (Nomos, 2017), 281; P. Dermine, 'The EU's Response to the COVID-19 Crisis and the Trajectory of Fiscal Integration in Europe – Between Continuity and Rupture' (2021) 47 *Legal Issues of Economic Integration*, 337; M. W. Müller, '§ 6 Europäische Finanzsouveränität' in T. P. Holterhus and F. Weber (eds), *Handbuch Europäische Souveränität* (Mohr Siebeck, 2024), 221, 239: "'Steuerung durch Finanzen' auf europäischer Ebene".

16 S. Becker, M. W. Bauer and A. De Feo, 'The New Politics of the European Union Budget: Background, Key Findings, and Outlook' in S. Becker, M. W. Bauer and A. De Feo, *The New Politics of the European Union Budget* (Nomos, 2017), 15, 15-16; D. R.

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for the future. According to this understanding, legitimacy is linked to the ability to evolve and to respond to crises through political decisions. This seems to correspond to a more teleological understanding of law.

2. The Historical Development and the Current State of Financing of the European Union

To better understand the two perspectives on *European integration*, this section provides an overview of the financing of the EU and its historical development. While various models were discussed and implemented in the 1950s, including a tax-based financing model in the ECSC, the EEC initially followed the classic model of international organisations, i.e. contribution-based financing. This section explains why the own resources model, which still exists today, prevailed in the early 1970s and how it is linked to the democratic legitimacy of the Community level. The section is structured as follows: Since own resources only replaced the previous system of contributions in the 1970s, the history of own resources and the background to the change in the system are examined first (2.1). Over time, the Gross National Income (GNI)-based own resources have gained importance and therefore will be discussed in the second section (2.2).

2.1 Transitioning From Financial Contributions to Own Resources to Deepen Integration?

The Treaties of Rome left open the question of how the Communities were to be financed.[17] Neither the EEC Treaty nor the Treaty establishing the European Atomic Energy Community (EAEC) contained any definitive regulations. While the optional possibility of tax-financing provided for in the EAEC Treaty was never realised, the transitional period laid down in the EEC Treaty provided for the gradual transition of financing from contributions to own resources once a common market had been established. This shows the crucial importance of this issue and the link between the deepening of (economic) integration and the way in which the Community

Theato and R. Graf, *Das Europäische Parlament und der Haushalt der Europäischen Gemeinschaft* (Nomos, 1994), 12.

17 See financial provisions in Art. 199–209 EEC Treaty and Art. 171–183 EAEC Treaty.

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was financed. The fact that the EEC stuck to the contribution system, at least initially, also suggests that the supranationalisation of financing by means of a sectoral tax, which had been introduced in the ECSC at the beginning of the 1950s, could no longer find a majority.[18]

Since the mid-1960s, in the context of the 'empty chair crisis', there had been discussions on the development of the Community's financing system. As early as July 1969, the Commission had put forward a proposal to replace financial contributions with own resources and to increase the budgetary powers of the European Parliament.[19] In December 1969, the heads of state and government met in The Hague to mark the end of the twelve-year transitional period.[20] The conflicts that had existed since the 'empty chair crisis' were overcome and the final transition from the contributions system to the own resources system was decided.[21]

The first Own Resources Decision in 1970 stipulated that the Communities' budget should be financed entirely by own resources as of 1 January 1975.[22] Customs duties, which were standardised until 1975, were primarily suitable for this purpose. Agricultural levies were added to this.[23] As both own resources originated in Community policies, the customs union and

18 On the financing of the ECSC and on the possibility of the introduction of a sectoral tax in the EAEC, which has never been realised, see § 10 I.1. and II.2 in R. Weber, *Budgetrecht und repräsentative Demokratie im Mehrebenensystem* (Mohr Siebeck, 2025).

19 Communication from the Commission to the Council on the replacement of financial contributions from member states by own resources and increased budgetary powers of the European Parliament. COM(69) 700, 16 July 1969.

20 To the summit as a whole see F. Schorkopf, *Die unentschiedene Macht* (Vandenhoeck and Ruprecht, 2023), 126; L. van Middelaar, *Vom Kontinent zur Union* (Suhrkamp, 2016), 272.

21 'Communiqué of the meeting of Heads of State or Government of the Member States at The Hague' (2 December 1969) *Centre Virtue de la Connaissance sur L'Europe*.

22 Art. 4 para. 1 subpara. 1 Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources, Official Journal of the European Communities, No. L 94/19.

23 Art. 2 Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources, Official Journal of the European Communitie, No. L 94/19. For the development and reform of the own resources system with this resolution, see G. Olmi, 'Les Ressources Propres aux Communautés Européennes' (1971) *Cahiers de droit européen*, 379. On the development of agricultural policy in the transition period see P. Karpenstein, *Die Finanzierung der Agrarpolitik der Europäischen Gemeinschaften* (Universität des Saarlandes, 1985), 6; K. K. Patel, *Europäisierung wider Willen. Die Bundesrepublik Deutschland in der Agrarintegration der EWG 1955-1973* (Oldenbourg Wissenschaftsverlag, 2009), 397.

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the common agricultural policy, they were referred to as "traditional own resources"[24] and are still referred to as such today. The dependence on Community policies led to a particular feature: Although the level of customs duties and agricultural levies was determined by the Own Resources Decision, the level of revenue was largely dependent on factors that did not allow for budgetary control.[25] Moreover, they were not sufficient to cover all Community expenditure. Financial contributions continued to be used even after the introduction of own resources.[26]

To cover the financial needs, Value Added Tax (VAT)-based own resources were to be added. They had already been discussed as an example of own resources during the negotiations of the Treaties of Rome and were adopted in the first Own Resources Decision of 1970. They were intended to enable the Community to finance itself entirely from its own resources from 1975 onwards. This date was chosen because the harmonisation of VAT in the Member States was supposed to have progressed further by then. However, the timetable for harmonisation was delayed and VAT-based own resources were not levied until 1979. The harmonisation of the VAT system is also the reason why VAT was considered an appropriate own resource: VAT was partially harmonised and was considered to be representative of the common economic values in the Community, which should allow an equal distribution of the burdens imposed on it.[27] Until the introduction of the GNI-based own resources, the VAT-based own resources served as residual financing.

All this shows that the transition from the contributory to the own resources system initially linked the Communities' financing more closely to its policies. This can be seen as a deepening of integration. At the same time, the deepened integration is limited to those policy areas where compromises could be reached, notably customs and VAT. Financial autonomy

24 See Working Document No. 1 on the European Communities Own Resources, History of the European Community's revenue (Alain Lamassoure), 27 January 2005, also referred to as "principal resource". See also § 9 I.1. in R. Weber, see n. 18.

25 R. Bieber in H. von der Groeben, J. Schwarze and A. Hatje (eds), *Europäisches Unionsrecht* (Nomos, 2015), Art. 314 AEUV, marginal no. 23; M. Niedobitek in R. Streinz (ed), EUV/AEUV (C.H. Beck, 2018), Art. 311 AEUV, marginal no. 23.

26 For details see B. Meermagen, *Beitrags- und Eigenmittelsystem. Die Finanzierung inter- und supranationaler Organisationen, insbesondere der Europäischen Gemeinschaften* (C. H. Beck, 2002), 135, 143.

27 B. Meermagen, see n. 26, 153; for the calculation method of VAT-based own resources today, see § 9 I.1. in R. Weber, see n. 18.

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did not emerge due to the close link to substantive policies, which did not allow for autonomous budgetary control.

2.2 Introduction of GNI-based Own Resources as a Step Backwards in Terms of Integration?

Following the first Own Resources Decision and the gradual implementation of the own resources it provided for, the Community ran into financial difficulties over the course of the 1980s. In 1984, 1985 and 1988, the Community had to rely on advances from the Member States to cover its excessive debts. Although the acute crises could be overcome by means of grants from Member States, it became clear that a long-term solution was needed for the functioning of the Community and its finances.

During the 1980s, it became increasingly clear that the arrangements for financing the Community, established by the first Own Resources Decision in 1970, needed to be reformed. While the discussions in the 1970s focused on the reform of the expenditure side of the budget, in particular its parliamentarisation, once the ceiling of 1% of VAT-based own resources was reached and the Community's own resources were no longer sufficient to finance it, the focus shifted to the revenue side.[28]

At the end of the 1980s, the Delors I package of 1988 helped overcome budgetary conflicts. The introduction of the Financial Perspectives and budgetary discipline allowed long-term planning and stabilisation on the expenditure side. On the revenue side, the Own Resources Decision of 24 June 1988 introduced the possibility of including revenue resulting from the application of the total Gross National Product (GNP) of all the Member States in the EU budget as own resources.[29] The GNP- (later GNI-) based own resources, which henceforth took over the role of residual financing, together with the increased budgetary discipline, led to a stabilisation of finances. At the same time, they are, in a sense, a step backwards in terms of integration, as they end up being close to the original financial contributions. Since then, Own Resources Decisions and Financial Perspectives

28 J.-P. Jacqué, 'Compétences et pouvoirs en matière de ressources propres' in G. Isaac (ed), *Les Ressources Financières de la Communauté Européenne* (Economica, 1986), 95, 96.

29 Art. 2 para. 1 d) Council Decision No. 88/376/EEC, Council Decision of 24 June 1988 on the system of the Communities' own resources, Official Journal of the European Union, 15.7.1988, No. L 185/24.

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are negotiated together and are coordinated in terms of both timing and content.

2.3 Stagnation of Reform Discussions Ever Since?

The development of the own resources categories required political compromises. These were formed over several years and usually in response to major crises, as illustrated by the introduction of the GNP-based own resources at the end of the 1980s. Political scientists point out that the own resources system and the multiannual financial frameworks follow path dependencies.[30] They emphasise that decision-making has been characterised by stability since the Delors I package of 1988.[31] This made it difficult to deviate from this compromise once it had been reached, despite continued calls for reform. The Treaty of Lisbon has not changed this either, although revised Art. 311 TFEU explicitly mentions the possibility of introducing new own resources, which some saw as a mandate for reform enshrined in primary law. As a result, there has been no reform on the revenue side of the EU budget until the introduction of the plastic own resources in 2020, which will be discussed below.[32]

Regarding other resources, the only change since the 1980s has been the ratio between the various own resources. The now dominant GNI-based own resources promote the 'net contributor' logic. The regressive effect of VAT-based own resources has also increased with the enlargement rounds, particularly through GNI-weak Member States, which has been accom-

30 For fundamental analyses, see A. Wenz-Temming, *Die Einnahmen der Europäischen Union. Zwischen supranationaler Autonomie und intergouvernementaler Kontrolle* (Wiesbaden, 2017); L. Selle, *What Parliamentary Budget-Authority in the EU? The European Parliament and the German Bundestag in the Negotiations of the Multi-Annual Financial Framework 2014–2020* <https://opus4.kobv.de/opus4-euv/frontdoor/deliver/index/docId/273/file/Selle_Linn_Dissertation_17-10-22_final.pdf> accessed 20 March 2025.

31 J. Lindner, *Conflict and Change in EU Budgetary Politics* (Taylor and Francis, 2006); R. Kaiser, H. Prange-Gstöhl, *The European Union Budget in Times of Crises* (Nomos, 2019), 27; on the possibilities for reform within processes dominated by path dependency see R. Ackrill and A. Kay, 'Historical-institutionalist perspectives on the development of the EU budget system' (2006) 13 *Journal of European Public Policy*, 113.

32 See section 3.2.2.

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panied by changes in the rebate system.[33] The different rebates and the resulting complexity of the own resources system have led to an ongoing criticism of the system.

3. Current Developments and their Legal Assessment

This section provides an overview of the developments in EU financing in recent years and assesses them from a legal point of view. It examines the possibility of introducing debt (3.1) and taxes (3.2) at EU level, two phenomena that are particularly relevant today.

3.1 EU Debts

3.1.1 General Legal Framework

The question of whether, for what purposes and how much debt the EU may incur is crucial and merits further examination. Borrowing has been a feature of the European Communities since their inception. Under the ECSC and EAEC Treaties, the respective Communities had access to loans for certain activities.[34] However, the EEC Treaty did not contain any provision on borrowing activities.[35] Nonetheless, the EEC began to borrow occasionally in the 1970s. In 1975, it used bonds for the first time to finance oil price-related payment deficits of the Member States.[36] Bonds were also issued under the New Community Instrument (NCI) to promote invest-

33 Art. 2 (1) (b) of the 2020 Own Resources Decision stipulates that the VAT base to be taken into account for this purpose shall not exceed 50% of GNI for each Member State. For more details on the currently applicable law, see § 9 I.1. in R. Weber, see n. 18.

34 Art. 49, 51 para. 1 ECSC Treaty; Art. 172 para. 4 EAEC Treaty; see R. Scheibe, *Die Anleihekompetenzen der Gemeinschaftsorgane nach dem EWG-Vertrag. Zu den Möglichkeiten und Grenzen der Kreditfinanzierung der EWG sowie zur Finanzverfassung der EWG, zugleich ein Beitrag zur -Allgemeinen Ermächtigungsklausel- des Art. 235 EWGV* (Nomos, 1988), 25; see § 10 III.2 in R. Weber, see n. 18.

35 However, according to Art. 309 (1) sentence 1 half-sentence 2 TFEU, the European Investment Bank may "have recourse to the capital market".

36 Regulation (EEC) No 398/75 of the Council of 17 February 1975 implementation Regulation (EEC) No 307/75 concerning community loans, Official Journal of the European Communities, No. L 46/3.

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ment in the wake of the economic crisis of the 1970s.[37] Balance-of-payments bonds can also be found later.[38] In the 2010s, selective measures were added which, unlike the previous ones, were not based on Art. 352 TFEU but on Art. 122 para. 2 TFEU.[39] These borrowing activities were not recorded in the budget as own resources but as 'other revenue' within the meaning of Art. 311 para. 2 TFEU.

Put simply, borrowing has been a common practice in supranational law for some time. However, the legal basis and the further conditions for EU borrowing are controversial. While there is no explicit prohibition on debt, this does not mean, conversely, that general EU budget financing through debt is permissible. To answer the question of the EU's debt financing competence, Art. 311 TFEU in particular must be analysed more closely, and the provisions contained therein must be placed in the overall structure of primary law. The wording of Art. 311 para. 3 TFEU, which mentions 'new categories of own resources' but does not define them in more detail, argues in favour of the permissibility of raising debt for general budget financing in accordance with the procedure laid down in Art. 311 TFEU.[40] Nevertheless, the question of debt competence is also linked to the question of the autonomy of EU financing. The lack of financial autonomy at the EU level results from the provision according to which own resources are to be determined in an Own Resources Decision and to be ratified by the Member States (Art. 311 para. 3 TFEU); this Decision must also set a ceiling on expenditure. According to the Treaties, the EU therefore does not have unlimited general fiscal competence.

This means that the Treaties do not contain a prohibition on incurring debt, but they do stipulate that the EU has limited financial autonomy.

37 See detailed overview in R. Scheibe, see n. 34, 41-171. See also K. von Lewinski, 'Verschuldungskompetenz der Europäischen Union' (2012) *Zeitschrift für Gesetzgebung*, 164, 167-168.

38 See for example Council Regulation (EC) No. 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments, Official Journal of the European Communities, No. L 53/1. Overview at S. Magiera in E. Grabitz, M. Hilf and M. Nettesheim (eds), *Das Recht der Europäischen Union* (C. H. Beck, 2023), Art. 311 AEUV, marginal no. 43.

39 Council Regulations (EU) No. 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism; Council Regulation (EU) 2020/672 of 19 May 2020 on the establishment of a European instrument or temporary support to mitigate unemployment risks in an emergency (SURE) following the Covid-19 outbreak; on NGEU, see § 10 III.3. in R. Weber, see n. 18.

40 R. Bieber in H. von der Groeben, J. Schwarze and A. Hatje (eds), *Europäisches Unionsrecht* (Nomos, 2015), Art. 311 AEUV, marginal no. 43.

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Apart from that, however, the provisions of primary law, in particular Art. 311 TFEU, are ambiguous and unclear. Previous European Treaties and their financial provisions provided models for a more precise regulation regarding debt-making. However, the Treaties of Rome only laid down the vague terms that have remained almost unchanged in primary law ever since. Apart from the limitations mentioned above, the question of debt competence thus illustrates the ambivalence of the financial provisions in primary law.

3.1.2 NextGenerationEU

The NextGenerationEU recovery and resilience fund enabled the EU to take on debt on a large scale. As the scope of the fund and its overall legal structure are innovative in many respects, it has led to a re-examination of the question of debt competence at EU level. With the decision of the German FCC on NextGenerationEU, there is now also a supreme court case law on the issue.[41] The Court of Justice of the EU (ECJ) is unlikely to rule on the case in the future.

When the question of debt competence was raised in the context of NextGenerationEU, this also posed fundamental questions as to the interpretation of Art. 311 TFEU. Concerns included the nature of the own resources system, the relationship between own resources and other revenue, and the legal nature of the Own Resources Decision and its compliance with primary law.[42] There are passages in the FCC's ruling on NextGenerationEU that address all three questions. They reflect the Constitutional Court's understanding of the possibility of EU borrowing under both European and national constitutional law. The Court declared constitutional the procedure of the Own Resources Decision 2020 for the determination of other resources, financed by loans, which are earmarked for specific purposes. With regard to the EU's debt competence, the Court expressed no significant reservations either against the inclusion of other revenue in the Own Resources Decision or against borrowing for other revenue.[43] However, the Court's decision clarified the limits of the EU debt compe-

41 BVerfG, Judgement of the Second Senate of 6 December 2022 – 2 BvR 547/21.
42 For these points, see § 9 II.3. in R. Weber, see n. 18.
43 BVerfG, Judgement of the Second Senate, see n. 41. See in closer detail § 9 II.3. and § 10 III.3 in R. Weber, see n. 18.

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tence: it must be limited in time and amount and the other revenue may not obviously exceed own resources.[44]

The FCC refers to the lack of competence for general credit-financed budget financing as a central issue of debt competence.[45] According to the Constitutional Court's understanding, only revenues that are "in the execution of the *European integration* agenda"[46] may be financed by borrowing. In the Court's view, NextGenerationEU fulfilled this condition as it included borrowing limits. It thus appears to be a prime example of the level of EU debt that is legally permissible under constitutional law. This also means that the decision shows the limits set by national constitutional law on the possible further development of the EU's financial resources. According to the FCC, the "system of own resources aims to strengthen the European Union's political leeway". However, according to the decision, the EU's "political leeway" ends where the Member States set the ceilings in the Own Resources Decision.[47]

If the EU itself has competence to borrow, it will have financial obligations in the future, as the loans will have to be repaid. The previous own resources system did not push much of the financing burden into the future. The link between the GNI-based resources in the Own Resources Decision and the multiannual financial frameworks prevented financing gaps from arising in the first place. The debt must now be refinanced via corresponding allocations in the Own Resources Decisions. For the FCC, it is crucial that the loans to be repaid are fixed in advance at a certain level, which is in line with the logic of 'political leeway' within fixed ceilings.

44 BVerfG, Judgement of the Second Senate, see n. 41, marginal no. 189-202.

45 BVerfG, Judgement of the Second Senate, see n. 41, marginal no. 159.

46 BVerfG, Judgement of the Second Senate, see n. 41, marginal no. 159: "im Rahmen des Integrationsprogramms" (original German version).

47 BVerfG, Judgement of the Second Senate, see n. 41, marginal no. 195; see also ibid: "Debt financing of EU operations undermines the financing through own resources intended by the Treaty and could even create a dependency of the European Union on funding provided by the Member States contrary to the aim and intention of the system of own resources."; see similarly M. Nettesheim, '"Next Generation EU". Die Transformation der EU-Finanzverfassung' (2020) 145 *Archiv des öffentlichen Rechts*, 381, 394.

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3.2 EU Taxes

3.2.1 General Legal Framework

On the question of the EU's tax competence, a distinction must first be made, as there is no fixed concept of EU taxes.[48] A distinction is often made between so-called 'genuine' and 'non-genuine' EU taxes.[49] 'Genuine' or 'own' EU taxes are generally understood to be taxes for which the EU has both the power to adopt legislation and the power to raise revenue.[50] Based on the principle of conferral and the provision in Art. 311 para. 1 TFEU, genuine EU taxes cannot be introduced without a ceiling. However, it is conceivable to amend primary law in certain areas and to allow the introduction of genuine EU taxes.[51]

Another question is the extent to which Member States can agree to a genuine EU tax based on national constitutional requirements. According to the FCC's case-law, Art. 311 para. 1 TFEU does not provide for an "exclusive competence" (literally: "Kompetenz-Kompetenz") for the financing of the EU. In the Maastricht judgement, the FCC ruled that the TEU (Art. F para. 3 TEU) does not empower the EU to "acquire by itself the financial or other means it believes it requires". Rather, the relevant provision of the TEU "merely states the political intention that the Member States forming the Union wish to provide it, within the scope of the required procedures,

48 For a systematisation of the uses, see P. Kreibohm, *Der Begriff der Steuer im Europäischen Gemeinschaftsrecht* (Karl Heymanns Verlag, 2004); H. Kube, 'EU-Steuern: Zuständigkeit zur Regelung und Erhebung sowie Ausgestaltungsmöglichkeiten' in M. Lang (ed), *Europäisches Steuerrecht, 42. Jahrestagung der Deutschen Steuerjuristischen Gesellschaft e.V.* (Otto Schmidt, 2018), 69, 70-74.

49 On both categories, see § 10 IV.2. and 3. in R. Weber, see n. 18.

50 The term "genuine" is used by T. V. Meickmann, 'Das Steuererfindungsrecht der Europäischen Union' (2023) *JuristenZeitung*, 748; the term "own" by C. Waldhoff, 'Stärkung der Einnahmenautonomie als Zukunft der EU-Finanzen?' (2017) 70 *ifo Schnelldienst* 12; see also H. Kube, 'EU-Steuern. Kompetenzrechtliche Lage und Entwicklungsperspektiven' (2022) 18 *Heidelberger Beiträge zum Finanz- und Steuerrecht*, 51, 52; J. Hey, 'Das Einnahmesystem der Europäischen Union. Neue Steuern als neue Eigenmittel? Zugleich zum Zustimmungsgesetz zum Eigenmittelbeschluss 2020/2053' (2021) *Europäische Zeitschrift für Wirtschaftsrecht*, 277, 280; A. Buser, 'Die Finanzierung der EU. Möglichkeiten und Grenzen einer EU-Steuer nach Europarecht und Grundgesetz' (2014) *Zeitschrift für europarechtliche Studien*, 91, 93-95.

51 For an example see W. Schön, 'Steuergewalt und Demokratieprinzip in der Europäischen Union' in J. Hey and W. Schön (eds), *Europäisches Steuerverfassungsrecht. Symposion aus Anlass der Verabschiedung von Professor Dr. h.c. Rudolf Mellinghoff als Präsident des Bundesfinanzhofs* (Springer, 2023), 47, 74-79.

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with the means necessary to attain its objectives and carry through its policies".[52] According to the Lisbon judgement, the German Bundestag's budgetary powers may not be transferred "if the type and level of public spending were, to a significant extent, determined at the supranational level".[53] This means that 'significant' decisions on revenue cannot be transferred to the EU. According to the Lisbon judgement, the introduction of a genuine EU tax without the Own Resources Decision limiting it to a certain amount, would therefore violate the Basic Law.

While national constitutional law provides arguments against the introduction of 'genuine' EU taxes, another group of taxes needs to be analysed. Taxes that do not or do not primarily serve financing purposes but have harmonisation and steering objectives are referred to as 'non-genuine' taxes. For these EU taxes, the competence to legislate lies wholly or partly with the Member States; the competence to raise revenue does not lie, or does not lie directly, with the EU.[54] This makes 'non-genuine' EU taxes a broader category, and their specific characteristics more varied.[55] An example of a 'non-genuine' EU tax with an impact on the own resources system is the VAT-based own resources. EU law stipulates minimum harmonisation for VAT.[56] Harmonisation competences in tax law arise in particular from Art. 113 to 115 TFEU. However, harmonisation alone is not sufficient for in-

52 BVerfGE 89, 155 [194-195]. English translation according to <https://iow.eui.eu/wp-content/uploads/sites/18/2013/04/06-Von-Bogdandy-German-Federal-Constitutional-Court.pdf> accessed 20 March 2025.

53 BVerfGE 123, 267 [361]; on both decisions see § 5 VII.1. and 2. in R. Weber, see n. 18.

54 T. V. Meickmann, see n. 50, 748, 748-749.

55 According to the ECJ, levies can in principle be introduced on the basis of material competences and the mere fact that they also generate revenue does not mean that the procedure under Art. 311 (3) TFEU would have to be followed, see ECJ, Judgement, EU:C:1989:303, marginal no. 11, to the former provision of Art. 201 EEC Treaty. For the introduction of levies on the basis of harmonisation competences, see M. Lienemeyer, *Die Finanzverfassung der Europäischen Union. Ein Rechtsvergleich mit bundesstaatlichen Finanzverfassungen* (Nomos, 2002), 126-166; C. Ohler, *Die fiskalische Integration in der Europäischen Gemeinschaft* (Nomos, 1997), 173-243; T. V. Meickmann, see n. 50, 748, 749-750; for the introduction of levies on material competences C. Müller, *Parafiskalische Abgaben im Unionsrecht. Konkretisiert an den Plänen der Europäischen Kommission zur Schaffung einer vergemeinschafteten Einlagensicherung aus dem Jahre 2015* (Duncker and Humblot, 2020); K. Bergfeld, *Lenkungsabgaben im Europäischen Finanzrecht* (Nomos, 2008); F. S. M. Heselhaus, *Abgabenhoheit der Europäischen Gemeinschaft in der Umweltpolitik* (Duncker and Humblot, 2001).

56 Council Directive 2006/112/EC of 18 November 2006 on the common system of value added tax, Official Journal of the European Union No. L 347/1.

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clusion in the EU budget as an own resource. Rather, the calculation of the amount of the VAT-based own resources results from the Own Resources Decision and is in principle independent of the specific requirements of minimum harmonisation.[57]

Another example is the plastic own resources introduced with the 2020 Own Resources Decision.[58] Again, the Own Resources Decision defines the basis of assessment. However, unlike the VAT-based own resources, there is no substantive legislation on environmental policy for the harmonisation or introduction of levies on plastics. The Member States are therefore not obliged to introduce such a levy in their national law. Considering them as own resources merely increases the incentive to reduce the corresponding plastic waste through the introduction of a levy in Member State law.[59] This example shows that non-genuine taxes can also take the form of 'fictitious' taxation.[60]

In conclusion, non-genuine EU taxes are used to finance the EU budget through the Own Resources Decision. However, they also pursue policy objectives. In accordance with the principle of conferral, the substantive policy objective requires the existence of a substantive competence in the EU Treaties.

3.2.2 Plastic Own Resources

As a rare novelty in EU financing, plastic own resources deserve to be examined in more detail. In the case of the plastic own resources, the Own Resources Decision not only contains the specific basis for assessment, but also substantive rules, however without building on existing EU legal provisions. The plastic own resources provide an incentive to reduce non-recycled plastic packaging waste. This means that the Own Resources Decision contains substantive rules to encourage Member State legislation to reduce plastic waste. The question arises as to whether this breaches primary law. This is problematic because the procedures for adopting an Own Resources Decision and substantive legislation are different. According to Art. 311

57 See § 9 I.1. in R. Weber, see n. 18.

58 Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, Official Journal of the European Union, No. L 424/1.

59 See § 10 IV.3. in R. Weber, see n. 18.

60 H. Kube, see n. 50, 51, 54; W. Schön speaks of an "as-if tax amount" (original German version: "Als-Ob-Steuerbetrag"), see W. Schön, see n. 51, 47, 59.

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para. 3 TFEU, the European Parliament is only consulted in the procedure for the Own Resources Decision, whereas it can, in principle, co-decide in the ordinary legislative procedure. If the Own Resources Decision also pre-decides on substantive matters, the substantive decision is therefore not taken in accordance with the procedure provided for substantive competences, but is overridden by the Own Resources Decision. Opinions are divided as to whether this is problematic.

On the one hand, it can be argued that the lack of co-decision by the European Parliament is irrelevant. As all Member States have to agree to the Own Resources Decision, there is no deficit in democratic legitimacy. According to this view, taxes that do not merely pursue financing purposes (such as the plastic own resources) can be introduced under Art. 311 TFEU.[61] This view emphasises the need for Member State approval and their role as 'masters of the treaties'.[62]

On the other hand, however, there is a risk of undermining the differentiated order of competences in the Treaties, which could lead to an "unlimited field of fiscal nudges".[63] According to this view, the EU may only include substantive regulations in its Own Resources Decisions in cases where it also has substantive competence. And even then, the requirements of the Member States approval and of the unanimity in the Council cannot justify any content in the Own Resources Decision procedure. Rather, the Own Resources Decision has to respect previous political decisions of the Council and the European Parliament.[64] The obligation arises from the principle of institutional balance. According to the case law of the ECJ, the "observance of the institutional balance" requires that "each of the institutions must exercise its powers with due regard for the powers of the other institutions"; this requires that "it should be possible to penalize any breach of that rule which may occur".[65] The principle of institutional balance requires the institutions to exercise their competences in such a way that there are no "structural shifts in the political roles among the institutions of the Union".[66]

61 T. V. Meickmann, see n. 50, 748, 749, 754.
62 T. V. Meickmann, see n. 50, 748, 754.
63 C. Neumeier, 'Political Own Resources. Towards a Legal Framework' (2023) 60 *Common Market Law Review,* 319, 337.
64 C. Neumeier, see n. 63, 319, 339; T. V. Meickmann, see 50, 748, 754.
65 See ECJ, Judgement, EU:C:1990:217, marginal no. 22.
66 C. Neumeier, see n. 63, 340.

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If the principle of institutional balance at the EU level is taken seriously, non-genuine taxes such as the plastic own resources can only be used to finance the EU under certain conditions. Moreover, they must remain within certain limits due to the requirements of national constitutional law, as described in the context of genuine taxes.

Looking at the development of own resources in a broader historical context, it can be seen that the idea of supporting EU policies through own resources, first raised in the Treaties of Rome and partly implemented in the 1970s, has been revived. This strategy has been pursued by the Commission in particular. The introduction of plastic own resources with the Own Resources Decision 2020 may indicate that this strategy of supporting EU policies is being implemented. At the same time, the implementation is inconsistent: An excessively regressive effect on national contributions due to an excessive burden resulting from the new own resources led to the introduction of flat-rate reductions in the contributions of Member States with a GNI per capita below the EU average.[67] This brings the plastic own resources closer to the GNI-based own resources and weakens the intended effect of supporting environmental policy. The GNI-based own resources in turn are close to the original financial contributions. This shows a discrepancy between the supranational aspirations and the actual implementation, which resembles the financing mode of an international organisation.

Conclusion and Outlook: 'Integration Through Funding' and/or 'Integration Through Law'?

As indicated above, the concept of *integration through funding* has recently come to the fore.[68] This concluding section explores the relationship between this emerging concept and the one of *integration through law*. It should be stressed at the outset that, unlike *integration through law*, *integration through funding* is not a fully-fledged and widely discussed

67 Art. 2 para 2 Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom, Official Journal of the European Union, No. L 424/1.

68 See section 1.2.

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theory of European integration.[69] Whether it will ever become a theory remains to be seen. Talk in the literature of *integration through funding* is closely linked to the emergence of NextGenerationEU: If the financial resources available at EU level grow, the argument goes, the EU will be able to exert a stronger influence on Member States' policies 'through funding'. In addition to NextGenerationEU, instruments at EU level that could support such a thesis include the rule of law mechanism, which makes the disbursement of EU funds dependent on the fulfilment of certain criteria. Many of the developments described in this text appear to be only indirectly related to *integration through funding*. The development of own resources, for example in relation to non-genuine taxes, is distinct from a 'money for reform' policy. Therefore, the point of view taken in this text could rather be described under an even broader approach of *integration through financing*.

By linking the history of integration and the financing of the EU, a first step towards examining the thesis of *integration through financing* was taken. Summarising the results, it has become clear that the transitional period of the EEC shows how closely the issue of financing was linked to market integration. The transition from a contributory to an own resources system was envisaged from the outset as a way of bringing the financing method closer to the Community's policies. This idea also underlies the constant and current calls for reform of the own resources system. In the 1970s, it quickly became apparent that the 'traditional' own resources originally envisaged were inadequate. Even the VAT-based own resources were not sufficient to cope with the financial crises caused by the enlargement rounds and the high expenditure on agricultural and regional policies in the 1980s. The solution to this problem was found in the introduction of the GNP/GNI-based own resources, which, however, moved away from the original idea of own resources linked to Community policies.

As the importance of GNI-based own resources has grown over time, so has the demand for own resources linked to EU policies. However, due to the diverging interests of different institutional actors and Member States, no major reform has yet taken place. Nevertheless, the introduction of plastic own resources with the Own Resources Decision 2020 is an example of the potential of the EU Treaties, more precisely Art. 311 TFEU. It is a provision that, due to its vagueness and openness, could provide a

69 On the conception of 'integration through law' see the articles in this volume by Domenica Dreyer-Plum.

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legal basis for future reforms with regards to the revenue side of the EU budget. As NextGenerationEU and its future refinancing have increased the pressure on the own resources system, a discussion on its reform seems even more urgent. Moreover, the first large-scale borrowing at European level also introduces a new financing model that is independent of specific policies.

This leads to the final question of the role of law in the development of the EU's financing, which lies at the heart of integration. The approach of *integration through law*, characterised in particular by the far-reaching case law of the ECJ, can only be applied to the question of financing to a limited extent: This is because the case law of the ECJ in this area is extremely sparse, which is also due to the fact that legal issues such as those relating to NextGenerationEU are not even brought before the ECJ. This also means that the case law of a single national constitutional court – the German FCC – is very influential in the development of the law on the financing of integration. It remains to be seen what consequences the FCC's decision on NextGenerationEU will have in practice for the further development of EU financing. It is clear, however, that the possibilities of legal interpretation are also linked to the general understanding of *European integration*. For the academic discussion of the law and its limits, this means that it must reflect its understanding of *European integration*.

Finally, in the area of EU financing – whether through debt or taxes – further developments seem not unlikely in times of polycrisis, even if the general consensus on the finality of an 'ever closer union' seems to be eroding. In particular, the future financing of European defence and security is highly controversial in the current political debate. Depending on how the situation develops, there could be a new dynamic in the law on the financing of integration. From this perspective, the concept of *integration through financing* does not seem too far-fetched and could complement the one of *integration through law*.

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