

# Kluwer International Tax Blog

## The New 'EU Plastic Contribution': Lights and Shadows under Scrutiny

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From 1 January 2021, a new EU own resource based on non-recycled plastic packaging has been introduced by a new Own Resources Decision adopted by Council Decision 2053/2020. It is a national contribution from Member States proportional to the quantity of 'plastic packaging waste' that is not recycled.[1] This new measure gives rise to many questions from a political, financial and legal point of view.

In this blog, we first explain the nature and rationale of this measure. To that aim, we refer to the legal framework surrounding its adoption. The financial and environmental crisis caused by the pandemic is forcing the European Union (EU) to rethink its own resources system and find new sources of funding. This new 'contribution' is the first step of this reform process. Second, we will analyse some legal challenges surrounding the adoption of this new EU plastic contribution.

### A non-fiscal contribution

The new EU own resource is a contribution without fiscal nature[2]. This is not surprising given the difficulties related to the adoption of new tax measures at the EU level. This new measure reinforces the incentive for Member State to take action to reduce plastic waste as it will reduce their contributions to the EU budget[3]. It is worth noting that, in order to comply with the new Own Resources Decision, Member States are not required to introduce a tax. Yet, some Member States, including Italy and Spain have decided to consider the introduction of a tax on 'single-use plastic' to tackle plastic pollution and raise revenues.

### Rationale

On May 2020, the EU launched *NextGeneration EU (NGEU)*, the most ambitious stimulus package ever introduced in Europe. This explains that the EU is looking for additional sources of revenue for the European budget. On top of that, the European Council of 17 to 21 July 2020 had recognised the need to reform the system of EU own resources by strengthening the link between the European budget and the effective implementation of European-wide policy objectives. Since environmental concerns are at the centre of the European political agenda[4], the introduction of a new 'EU plastic contribution' does not come as a surprise. The EU is also considering two other proposals for the generation of additional EU own resources, namely the revised EU Emission Trade System (ETS) and the carbon border adjustment mechanism (CBAM))

You might wonder why the first new EU own resource is precisely about plastics. In our opinion, this can be explained by the fact that plastic regulation is highly developed at EU level, whereas other topics like ETS or CBAM are still under reform and might still be lacking a broad consensus[5]. Circular economy is now on top of the EU political agenda to promote actions to change production and consumption behaviours. In this context, the fight against plastic pollution is at the core of this EU circular economy strategy[6].

The rationale behind this new EU own resource based on non-recycled plastic packaging highlights that it is halfway between a financial and regulatory instrument[7]. On the one hand, this contribution aims at providing resources to the European budget. On the other hand, unlike other own resources like VAT or GNI-based contributions, the ‘plastic contribution’ is also characterized by a regulatory objective. Indeed, it was designed in compliance with the ‘polluter pays principle’ (PPP): the contribution is proportionate to the amount of non-recycled plastic, which is aimed at reducing plastic pollution by stimulating the reduction of single-use plastic products, promoting recycling and implementing the circular economy in an effective way.

Yet, it remains unclear whether this ‘EU plastic contribution’ is an environmental twist to an instrument otherwise designed to achieve a budgetary purpose or *vice versa*. Whilst the environmental and budgetary purposes might appear mutually supportive at first sight, we argue in the next section that they are not fully reconcilable in a long-term perspective[8].

### Legal challenges

In a 2017 Reflection Paper, the European Commission underlined the need to consider the following criteria and values for the introduction of new EU own resources: transparency, simplicity and stability, consistency with the Union policy objectives, impact on competitiveness and sustainable growth, equitable breakdown among Member States. In the following, we assess whether the new ‘plastic contribution’ complies with these requirements.

As we have already explained, the new plastic contribution is consistent with the European political objectives. Moreover, it seems to be in line with the transparency requirement as it will be calculated based on Eurostat data.

The new contribution also seems to be sufficiently “simple”: it will be calculated on the basis of a formula already fixed by the Council Decision 2053/2020 committing Member States to contribute €0.80 per kilogramme of their plastics packaging waste that is not recycled. This method appears straightforward and it will not require big efforts from Member States, as they have already been obliged to provide data about plastic waste packaging generated and recycled according to the packaging and packaging waste Directive 94/62/ECC and its Implementing Decision 2019/665.

Questions, however, arise with regard to the stability of the measure. If ecologically effective, the amount of plastic waste will decrease and, hence, its revenue will not be stable in the long term[9]. This raises concerns: can the new contribution be a sustainable form of resources for EU budget in the long run? It is more likely that it will be useful to raise revenues during a short timeframe in order to repay the debts deriving from the financial and environmental crisis caused by the pandemic. Nevertheless, if we broaden the time line, this measure does not appear suitable for achieving the double objective of effectively stimulating plastic recycling and generating stable resources.

## Some concluding remarks

We will have to wait a few years to understand how the new ‘plastic contribution’ will work in practice, evaluate its effectiveness in terms of impact on competitiveness and sustainable growth and assess whether it is in line with an equitable breakdown between Member States[10]. Despite its weaknesses, we welcome the introduction of a new EU own resource, the first introduced since 1988. Yet, we would like to make three last comments.

First, it is undoubtedly true that environmental protection is one of the main objectives of the European political agenda. It is also definitely true that the aim of the plastic contribution is in line with the European priorities (circular economy and climate strategies). Nevertheless, it is important to keep in mind that this does not automatically guarantee that it will be effective at protecting the environment. Ex-post assessment of the measure will be key.

Second, it is right to ride the ‘green wave’ but not to the detriment of the environment itself. The risk is to ‘green wash’ the EU budget simply because a new ‘green’ contribution is now more acceptable even if it is not clearly effective in reducing plastic pollution.

Third, the European own resource system should be further enhanced in light of the primary interests of the EU, the current context of the economic recovery and the challenges of the [Fit for 55%](#) package.

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[1] According to Article 2 (2) of the Council Decision 2053/2020 ‘plastic packaging waste’ means products made of polymers to which additives or other substances may have been added whose aim is to contain, protect, handle, deliver or present other products including single-use.

[2] Council Decision (EU) 2020/2053 of 14 December 2020 on the system of own resources of the EU and repealing Decision (EU) 2014/335, par. 7.

[3] The first incentive for Member State to address the EU plastic challenges relies on different obligations contained in the Directive (EU) 2019/904 of 5 June 2019 on the reduction of the impact of certain plastic products on the environment <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0904&from=IT>

[4] European Commission, *The European Green Deal*, COM (2019) 640 final <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0640&from=EN>

[5] J. ENGLISH, *A Carbon Border Adjustment Mechanism for the EU ETS*, Kluwer International Tax Blog, <http://kluwertaxblog.com/2020/10/30/a-carbon-border-adjustment-mechanism-for-the-eu-ets/>, 30 October 2020; T. FALCÃO, *The EU Green Deal and the Proposed Carbon Adjustment Mechanism*, *Ibidem*, <http://kluwertaxblog.com/2020/08/18/the-eu-green-deal-and-the-proposed-carbon-adjustment-mec>

hanism/, 18 August 2020.

[6] European Commission, *A new Circular Economy Action Plan – For a cleaner and more competitive Europe*, COM (2020) 98 final <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0098&from=IT>

[7] On the role of regulation in taxes and tax policies see A. P. DOURADO, A. PIRLOT, *Taxes and Regulation*, vol. 48, Issue 4, 2020, p. 356-359.

[8] For another example of a measure with purposes that appear mutually supportive at first sight, see A. PIRLOT, *Carbon Border Adjustment Measures: A Straightforward Multi-Purpose Climate Change Instrument?*, *Journal of Environmental Law*, 2021, p. 1 available on <https://academic.oup.com/jel/advance-article/doi/10.1093/jel/eqab028/6423116>

[9] Note that European Commission predicts that revenues will remain relatively stable during the 2021-2027 period European Commission (2018), Staff Working Document SWD(2018) 172 of 2 May 2018, Financing the EU budget: report on the operation of the own resources system, paragraph 2.3.3 available on <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52018SC0172&from=EN>

[10] The importance of designing better concomitant control mechanisms through coordination of different institutional efforts is addressed in M. VILLAR EZCURRA, M. AMPARO GRAU RUIZ, *Assessing public aid for true green digital recovery: a matter of good tax governance in the European Union*, in J. MILNE, M. S. ANDERSEN, H. ASHIABOR (eds.), *Environmental Taxation in the Pandemic Era, Critical Issues in Environmental Taxation* vol. XXIII – (CIET vol. XXIII), Edward Elgar Publishing, 2021, p. 198-213.

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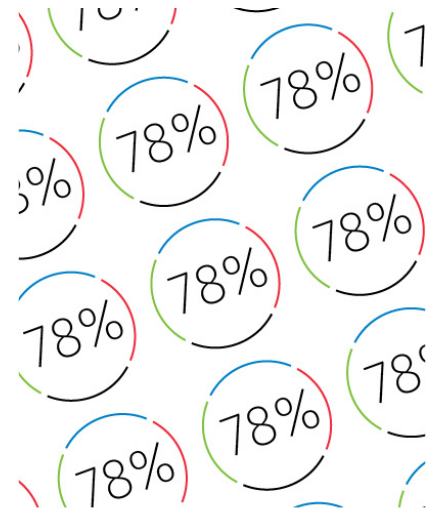
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