FIDE 2027

Questionnaire

Topic I – Financing the Priorities of the Union: Budget, Own Resources, Common Debt, Private Investing

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Introduction

The aim of this questionnaire is to stimulate reports from the countries represented in FIDE and from the European Union (EU) institutions on major constitutional and institutional issues relating - broadly speaking - to the financing of the EU. These reports will become the basis for the general report aimed at providing an in-depth and – to the extent applicable and feasible – comparative analysis of the main challenges that the EU and, linked thereto, its Member States face in financing the priorities of the EU.

The questionnaire is divided into five main parts, each addressing a specific aspect of the EU's finances by means of various questions. Part 1 and Part 2 deal with the revenue and expenditure side of the EU budget respectively, whereas Part 3 focuses on aspects pertaining to the democratic legitimacy and accountability of the EU budget. Part 4 addresses the Member States perspective, namely homing in on the impact on the national legal order of the processes on the revenue and expenditure side of the EU budget, as well as on the existence of any national legal (constitutional) limitations that may stand in the way of a further development of the EU budget. To be sure, the subdivision between the EU and national legal orders has been made for reasons of structure and accessibility of the questionnaire and thus is not meant to suggest that developments in the national legal order can be considered in isolation from developments at the Union level and vice versa.

The questions are formulated in broad terms. For this reason, each question is followed by a non-exclusive and non-binding list of considerations that rapporteurs may wish to include in their answers. Due to the broad nature of General Topic 1 and the scope of the questions, some overlap is unavoidable. It is naturally up to the rapporteurs to decide in the context of which question(s) they wish to address specific issues, if needed making use of cross-references. What is more, while Parts 1-3 specifically refer to the EU legal perspective, next to the institutional rapporteurs also the national rapporteurs are invited to answer the questions included in these Parts, whereby the focus should come to rest on those elements which appear most relevant in the context of the respective national academic legal debates and for the respective national legal system.

Finally, it is readily admitted that not all legal issues that can possibly be linked to the broad topic of EU financing are reflected in this questionnaire. What is more, given the high volatility of the general topic it is likely that developments after the distribution of this questionnaire raise new legal questions that have not been anticipated. It is for this reason that the questionnaire closes in Part 5 with a general open question.

Part 1: Financing the Priorities of the Union - EU Revenue

<u>Question 1</u>

What is the legal scope and rationale in Union law[1] for the establishment of (new) own resources[2] and how – if at all – does the current system of own resources has to be reformed?

<u>Rapporteurs are invited to inter alia consider:</u>

- Division of competences
- Scope of Art. 311 TFEU as a legal basis for *new* categories of own resources
- Availability of alternative legal bases for the establishment of own resources, e.g. Art. 113, 115, and 352 TFEU
- Shortcomings of the current system relating to own resources laid down in the Own Resources Decision, e.g. linked to
    - current categories of own resources
    - use of national contributions based on GNI as a residual, balancing category of own resources
    - current practice of national rebates
- Legal space for introducing differentiated GNI-based revenue, e.g. based on a national spending on EU priorities, such as defence
- Legal space to generate and earmark (new) own resources for specific EU policy priorities
- Legal evaluation of proposals for new own resources, e.g. European Commission proposal to add revenue from five new own resources (EU Emission Trading System, Carbon border adjustment mechanism, non-collected e-waste, tobacco excise duty own resource, and Corporate Resource for Europe)
- Administrative complexity related to any new system of own resources
- Legal and policy tradeoffs between creating *new* categories of own resources, other revenue, and EU borrowing (see also questions 3 and 4)
- Necessity of a greater revenue through own resources to
    - pursue economic and non-economic public goods at the Union level[3], e.g. relating to climate change, digitalization, security and defence
    - accommodate for future enlargement rounds
    - provide for a permanent and robust supranational shock absorption capacity for the EU or the euro area
- Need for and viability of Treaty amendments

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[1] The national dimension is addressed by question 11.

[2] In the meaning of Article 311 TFEU and Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union, ELI: http://data.europa.eu/eli/dec/2020/2053/oj.

[3] As to the notion of European public goods see e.g. Lourdes Acedo Montoya, 'Rethinking the EU Financial Architecture', *Intereconomics*, 2023, 58(6), 289-294, 291 et seq.; Charles Wyplosz, 'Which European Public Goods?', In-Depth Analysis, Economic Governance and EMU Scrutiny Unit (EGOV) Directorate-General for Internal Policies, PE 755.722 - March 2024.

Question 2

Disregarding EU borrowing[4], to what extent can 'other revenue'[5], i.e. revenue from EU normal activities, not constituting own resources, function as a source of additional revenue next to or as an alternative to (new) own resources and EU borrowing?

Rapporteurs are invited to inter alia consider:
- Relationship between own resources and 'other revenue' in primary Union law
- Legal scope to increase 'other revenue' as a source of EU funding, e.g. through increase of existing fees, fines, and penalties, as well as/or introducing new categories of 'other revenue'
- Legal options to reclassify 'other revenue' as own resources
- Distinction between assigned and non-assigned other revenue
- Compatibility of any proposals with EU budgetary principles
- Need for and viability of Treaty amendments

Question 3

What is the legal scope of Union law for temporary and structural EU borrowing[6] to finance EU priorities, to provide grants and/or loans to Member States, and to roll over existing EU debt?

Rapporteurs are invited to inter alia consider:
- Division of competences (for the national perspective see question 11)
- Available Union legal bases and decision-making procedures, e.g. Art 311 TFEU, Art. 122(1) and/or (2) TFEU, other policy legal bases within the meaning of Art. 310(3) TFEU
- Classification of EU borrowing as 'other revenue' or own resources
- Compatibility of (1) exceptional, temporary and one-off and (2) structural, permanent and frequent EU borrowing with
    - integrity of the EU own resource system (Art. 311, paragraph 1, TFEU)
    - EU budgetary principles (Art. 310 TFEU and Title II of the Financial Regulation[7], including any applicable derogations)
    - EU principle of solidarity (Art. 2 TEU)
    - prohibition in the Own Resources Decision (Art. 3a) to borrow on the markets for the financing of operational expenditure
    - Art. 125(1) TFEU
    - experience with the Security Action for Europe (SAFE) Regulation[8]

(Question 3 continued)

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[4] See question 3.
[5] Art 311, paragraph 2, TFEU; General Statement of Revenue by Budget Heading (Title 3-6) of the Union's Annual Budget for the Financial Year 2025, OJ L, 27.2.2025. This inter alia includes revenue received from the administrative operation of the institution, contributions and refunds in connection with Union agreements and programs, interest on late payments and fines, and EU borrowing and lending operations.
[6] Referring to a system that either empowers a Union institution, body, office, or agency, to borrow funds on capital markets on behalf of the Union, or otherwise a mechanism set up by Member States that is empowered to borrow funds on capital markets for the performance of its tasks.
[7] Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union, ELI: http://data.europa.eu/eli/reg/2024/2509/oj. Namely Art. 17 and Title X.
[8] Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument,
ELI: http://data.europa.eu/eli/reg/2025/1106/oj

- Possibility of earmarking of revenue from EU borrowing, e.g. 'greening bonds' or 'defence bonds'
- Conditions attached to EU borrowing and applicable financial liability regime, e.g. individual or joint and several liability
- Actual or desirable limitation for Member States' own right to borrow on capital markets
- Additional functions and objectives of EU borrowing, e.g. as a common safe asset and to enhance the role of the euro as a reserve currency
- Need for and viability of Treaty amendments

Question 4

What EU legal framework is required to leverage the EU budget through private investments?

Rapporteurs are invited to inter alia consider:

- State of the internal (financial) market, e.g. market and regulatory fragmentation, and of the Savings and Investment Union, e.g. increasing supervisory powers of the European Securities and Markets Authority
- Legal options for a further development of the European Banking Union
- Room in EU budget for blended finance and de-risking of investments, e.g. through the InvestEU Programme[9]
- Role of the European Investment Bank, e.g. current and future lending policy
- Legal position of start-ups and scale-ups, e.g. '28th regime'
- Necessary measures to safeguard that private investments serve EU public goods, e.g. conditionality, compliance monitoring, rules on risk and profit-sharing
- Need for and viability of Treaty amendments
- Way in which this question is addressed in the national legal system and by the national legal scholarship

[9] Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU), ELI: http://data.europa.eu/eli/reg/2021/523/oj

Part 2: Financing the Priorities of the Union - EU expenditure

Question 5

To what extent are the current budgeting practices, inter alia pertaining to off-budget instruments and externally assigned revenue, compatible with EU law, including namely the EU budgetary principles, and, if not, what (legal) reforms are required?

Rapporteurs are invited to inter alia consider:

- EU budgetary principles: unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency, as stated in Art. 310 TFEU and Title II of the Financial Regulation, including any applicable derogations
- Legal status of and applicable EU budgetary principles and rules to:
    - off-budget financial instruments, e.g. European Peace Facility, Social Climate Fund, Innovation Fund, Modernisation Fund
    - externally and internally assigned revenue[10]
    - borrowing and lending
- Legal status of and applicable EU budgetary principles and rules to financial instruments established outside the Union legal framework by intergovernmental treaties and agreements, e.g. European Financial Stability Facility[11] and the European Stability Mechanism[12]
- Utilization of inter-institutional agreements, e.g. Inter-Institutional Agreement between the European Parliament, the EU Council and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources[13]
- Need for and viability of Treaty amendments or other legal changes to bring any budgetary practices in line with EU law

Question 6

Is the current EU spending regime as laid down in the Multiannual Financial Framework (MFF) still fit for purpose in being capable of accommodating the challenges that the EU faces and, if not, what (legal) reforms are required?

Rapporteurs are invited to inter alia consider:

- Complexity of current budgetary framework (e.g. nomenclature and number of budget headings) and legal evaluation of reform proposals (e.g. grouping of appropriations according to main EU policy objectives)
- Pooling or decoupling of budgets for different policy fields
- Variety of management modes of EU funding (direct, shared, indirect) and e.g. the role of regional and local authorities
- Degree of centralization or decentralization of decision on spending priorities, e.g. proposal for National and Regional Partnership Plans; shift to national Common Agricultural Policy (CAP) plans (away from income support through direct payments)
- Current and future spending modes, such as guarantees, grants, loans, as well as logics determining EU spending priorities

(Question 6 continued)

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[10] See also the Joint declaration of the European Parliament, the Council and the Commission on reassessing the external assigned revenue and borrowing and lending provisions in the Financial Regulation [2020] OJ C444 I/6.
[11] EFSF Framework Agreement (consolidated) available at https://www.esm.europa.eu/sites/default/files/20111019_efsf_framework_agreement_en.pdf
[12] T/ESM 2012-HR/en 1.
[13] OJ L433I, 28.

- Scope, overlaps, and parallelism in current spending programs and legal evaluation of reform proposals
- Balance between predictability, flexibility, and accountability in EU budgetary procedures (see also question 9)
- Balance between investment and crisis-management orientation of the future EU budget
- Alignment of EU budget with (other) EU governance structures, e.g. European Semester
- Need for and viability of Treaty amendments or other legal changes

Question 7

What are the medium- and long-term legal and policy implications of debt financing of EU expenditure and the resulting liabilities in the shape of interest payments and principal repayments?

Rapporteurs are invited to inter alia consider:
- Legal and policy implications of interest payments and principal repayments on NGEU grant-related EU borrowing in the 2028-2034 Multiannual Financial Framework and for future MFFs
- Legal options and limits for the roll-over of EU debt
- Implications of placing future debt servicing inside MFF or over and above the MFF ceilings
- Institutional arrangements for the management of EU debt, e.g. proposals for the establishment of a European Debt Agency
- Impact of debt borrowing on the independence of the European Central Bank and its primary monetary policy objective as laid down in primary Union law, e.g. monetary versus fiscal dominance

Question 8

Should all or some EU spending be structurally performance-based and if so, what must a conditional budgeting framework entail?

Rapporteurs are invited to inter alia consider:
- Legal options to link the EU budget to EU fundamental values[14]
    - EU budget giving effect to the principle of solidarity
    - Mutual trust between the Member States in the responsible use of the common resources
    - Link between mutual trust and the recognition by all Member States of the common values contained in Article 2 TEU
- Legal options to link EU expenditure to joint EU priorities and the pursued of European public goods
- Legal options to link EU expenditure to national reform and investment projects, e.g. as applied for the Recovery and Resilient Fund
- Legal arrangements ensuring effective enforcement and sanctioning mechanisms
    - Experience with the Conditionality Regulation[15]
    - Experience with spending conditionality with performance-based budgeting in the context of the Recovery and Resilience Facility and other EU funding instruments
    - Desirability and legal options for automatic decommitments in case of infringements
- Need for and viability of Treaty amendments or other legal changes

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[14] See e.g. Court of Justice of the European Union: case C-156/21, *Hungary v Parliament and Council*, ECLI:EU:C:2022:97, para 125-129; Case C-157/21, *Poland v Parliament and Council*, ECLI:EU:C:2022:98, para 143-147.

[15] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, ELI: http://data.europa.eu/eli/reg/2020/2092/2020-12-22

Part 3: Financing the Priorities of the Union – democratic legitimacy and accountability

Question 9

How are the democratic legitimacy and accountability of the EU own resources, 'other revenue', EU borrowing, as well as the establishment and implementation of the EU budget ensured in the current system, and what legal reforms, if any, are called for?

Rapporteurs are invited to inter alia consider:

- Role of and balance between main EU institutional actors, including the European Council, Council, European Commission, European Parliament, European Court of Justice, European Court of Auditors, and European Fiscal Board, including any recent shifts
- Trend in adopting financial instruments outside the EU budget
- Democratic legitimacy of the current 7-year MFF cycle
- Scope of the European Parliament's ex-ante and ex-post budgetary scrutiny powers inter alia relating to
    - the definition of own resources and the own resource decision
    - 'other revenue'
    - decisions on EU borrowing and borrowing ceilings
    - adoption of the annual and multiannual budgets
    - the implementation of the EU budget and the discharge of the Commission in respect of the EU budget, as well as non-traditionally financed instruments, off-budget instruments and performance-based hybrid instruments[16]
    - the individual discharging of EU institutions, bodies and agencies
    - the Conditionality Regulation
    - 'cash for reforms model namely in the context of the Recovery and Resilience Facility
    - legally binding acts with budgetary implications[17]
    - Experience with the Security Action for Europe (SAFE) Regulation[18]
- Utilizations of inter-institutional agreements and joint declarations[19]
- Approach in the Financial Regulation to externally assigned revenue and borrowing and lending, namely regarding the role of the European Parliament
    - Joint declaration of the European Parliament, the Council and the Commission on reassessing the external assigned revenue and borrowing and lending provisions in the Financial Regulation[20]
    - Legal evaluation of reform proposals, e.g. to adopt annual commitments and payments for certain categories of externally assigned revenue with the ordinary legislative procedure
- Role of Civil Society and other stakeholders
- Inter alia based on the above considerations, required legal reforms to increase the legitimacy and accountability of the processes determining EU revenue and spending, including EU borrowing

  (Question 9 continued)

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[16] Art. 319 TFEU, Art. 266 et seq. Financial Regulation, Rules 100-102 of the Rules of Procedure of the European Parliament, 10th parliamentary term, July 2024.

[17] See Rule 58 of the Rules of Procedure of the European Parliament, 10th parliamentary term, July 2024.

[18] Council Regulation (EU) 2025/1106 of 27 May 2025 establishing the Security Action for Europe (SAFE) through the Reinforcement of the European Defence Industry Instrument,
ELI: http://data.europa.eu/eli/reg/2025/1106/oj

[19] Inter-Institutional Agreement between the European Parliament, the EU Council and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, OJ L433I, 28; Joint declaration of the European Parliament, the Council and the Commission on budgetary scrutiny, 2020/C 444 I/05; Joint declaration of the European Parliament, the Council and the Commission on reassessing the external assigned revenue and borrowing and lending provisions in the Financial Regulation, 2020/C 444 I/06.

[20] See also Joint declaration of the European Parliament, the Council and the Commission on reassessing the external assigned revenue and borrowing and lending provisions in the Financial Regulation (2020/C 444 I/06).

- Process of determining EU priorities and European Public Goods, e.g. through the European Council EU Strategic Agenda and the European Union Priorities[21]
- Role of the EU budget in area of redistribution policy (output and social legitimacy)
- Need for and viability of Treaty amendments or other legal changes

Question 10

Are the EU institutional and procedural arrangements pertaining to the combating of fraud and the protection of the EU's financial interests in relation to EU and national institutions future-proof and what legal reforms, if any, are called for?

Rapporteurs are invited to inter alia consider:
- Scope of Art. 317 TFEU
- EU budgetary principle of sound financial management (Art. 6 and Chapter 7 of the Financial Regulation)
- Conditionality Regulation
- Role of Union institutions and bodies, such as the Court of Auditors, the European Anti-Fraud Office (OLAF)[22], the European Public Prosecutor's Office (EPPO)[23], and their relationship with national counterparts
- Reasons and consequences for EU finances of Member States not participating in EPPO
- Transparency and reporting standards in and across EU spending programs
- European Commission Anti-Fraud Strategy (CAFS)
- Need for and viability of Treaty amendments or other legal changes

[21] https://www.consilium.europa.eu/en/european-council/strategic-agenda-2024-2029/

[22] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (as amended), ELI: http://data.europa.eu/eli/reg/2013/883/oj

[23] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (as amended),
ELI: http://data.europa.eu/eli/reg/2017/1939/2021-01-10; Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, ELI: http://data.europa.eu/eli/dir/2017/1371/oj

Part 4: Financing the Priorities of the Union - Member States Perspectives

Question 11

What national constitutional limits – if any – apply to the creation of additional EU revenue through new own resources, 'other revenue', and EU borrowing in your Member State?

Rapporteurs are invited to inter alia consider:

- Limits set by national constitutional law, inter alia relating to principles such as constitutional self-determination and popular sovereignty, or other constitutionally guaranteed (budgetary) powers and responsibilities of national parliaments
- Limits set by ultra vires and constitutional identity reviews by national (constitutional) courts
- Debt brakes provided for in national (constitutional) law
- Compliance with the European economic governance framework and the Stability and Growth Pact[24]
- Financial liability regime for EU borrowing, e.g. individual or joint and several liability

Question 12

What is the impact of the various European funding instruments on the national economic policy space, the national budgetary rules, and the applicable budgetary process in your Member State?

Rapporteurs are invited to inter alia consider:

- Impact of a performance-based (conditionality) EU budgeting framework on national (socio-) economic policy choices and decision-making
- Experience gained within the framework of
    - the European Semester (before and after the 2024 reform of the economic governance framework)
    - the implementation of the Recovery and Resilience Facility, e.g. in the context of the National Recovery and Resilience Plans
- Budgetary responsibilities of federal, state, and regional parliaments

Question 13

How are decisions made with regard to the allocation of EU funds in your Member State and what legal frameworks govern these processes?

Rapporteurs are invited to inter alia consider:

- Legal framework governing the implementation of EU funding programmes
- Rules ensuring compliance with EU funding requirements
- Institutional arrangements
- Current shortcomings
- Need for and viability of legal reforms at the national and/or EU level

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[24] Arts. 121 and 126 TFEU in conjunction with Regulation (EU) 2024/1263 of the European Parliament and of the Council of 29 April 2024 on the effective coordination of economic policies and on multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97, ELI: http://data.europa.eu/eli/reg/2024/1263/oj and Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (as amended), ELI: http://data.europa.eu/eli/reg/1997/1467/2024-04-30.

Question 14

What is the involvement of democratically legitimatized institutions, civil society, and other stakeholders, at the national level in the formation, implementation, and review of national plans implementing EU funding programmes?

Rapporteurs are invited to inter alia consider:

- Role assigned by primary Union law to national parliaments
- Role assigned by national law to federal, state, and regional parliaments, independent fiscal institutions, social partners, and other stakeholders in the decision-making processes and in holding relevant decision-makers to account for their action
- (Potential) role of interparliamentary cooperation between national parliaments of different Member States and between national parliaments and the European Parliament
- Experience gained within the framework of
    - the European Semester
    - the implementation of the Recovery and Resilience Facility
- Need for and viability of legal reforms at the national and/or EU level

Part 5: Open question (optional)

Question 15

What are other main legal concerns at the EU or national level regarding constitutional and institutional aspects linked to EU revenues, EU expenditures, and the Member States perspective that deserve consideration?

Rapporteurs are invited to consider

- Any issues that in their opinion are not covered by the previous questions and that deserve attention in the context of the General Topic 1

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