THE JUSTIFICATION, DESIGN AND REVENUES OF A SINGLE MARKET LEVY

Ricardo García Antón and Arjan Lejour

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This policy brief aims to provide potential justification, design and estimated revenues for a Single Market Levy (SML). The Next Generation Economic Recovery Programme (NGEU) has temporarily increased the expenditure capacity of the EU. The NGEU funds of €750 billion at 2018 prices, which corresponds to €806.9 billion at current prices, would be distributed among the Member States (loans and direct grants) to kickstart their economies, which were harmed by the COVID-19 pandemic. The need to pay back such debt triggered the proposal of EU resources in the latest EU Own Resources Decision (ORD) and Interinstitutional Agreement (IA) for the period 2021-2027. The foreseen EU own resources are i) national contributions calculated on the weight of non-recycled plastic packaging waste; ii) a carbon border adjustment mechanism and EU Emissions Trading System; iii) a digital levy; iv) a financial transaction tax; v) a financial contribution linked to the corporate sector or to the new common corporate income tax base, Business in Europe: Framework for Income Taxation (BEFIT).[1] The current landscape offers '*the right momentum'* to foster a debate on the need for an autonomous SML for the EU.

An SML is not a novelty. Several authors have already supported the creation of an autonomous EU levy that would tax companies that directly benefit from the Single Market.[2] The first question that arises is what Single Market (Article 26 TFEU/Article 3(3) TEU) means, given that it is undefined in the Treaties.[3]

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[1] Council Decision (EU, Euratom) 2053/2020 of 14 Dec. 2020 on the system of own resources of the European Union, O.J. 2020, L 424/1; Interinstitutional Agreement between the European Parliament, the Council of the European Union, and the European Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources O.J. L.433I.

[2] The Monti Report 2016 already referred to a possible new own resource related to the Single Market. Vid. Monti, M. et al (2016), Future Financing of the EU – Final Report of the High-Level Group on Own Resources, available at
https://commission.europa.eu/system/files/2018-10/future-financing-hlgor-final-report_2016_en.pdf
In literature, Woźniakowski, T & Poiares Maduro, M. (2020). Why Fiscal Justice should be reinstalled through European taxes that the EU citizens will support, Policy Analysis School of Transnational Governance, issue 7; Kotsogiannis, C. (2016). European Union and Own Resources. In T. Büttner et al (eds), ***The Future of EU finances.*** Mohr Siebeck.

[3] Although in the past some authors were concerned with potential differences between the internal market, single market and common market (Vid. Gormley, L, (2002). Competition and Free Movement: is the Internal Market the same as a Common Market. *European Business Law Review*, 13 (6), 517-522), these terms are currently used interchangeably. See in this regard Mortelmans, K, (1998). The Common Market, The Internal Market and the Single Market, What's in a Market? ***Common Market Law Review***, 35, 101-136.

The Single Market does not boil down only to the elimination of the obstacles to the free movement of goods, workers, capital, services and establishment, but also broadly reflects the political, economic and social EU integration project.[4] Therein lie the ambiguities and lack of clear contours of the legal meaning of the Single Market.[5] The market narrative conflicts with enhancing social rights and the need to achieve substantive equality among European citizens. The jurisprudence of the Court of Justice of the European Union (CJEU) reproduces such tensions, for example (i) between the right of the enterprises to benefit from the EU freedom of movement and engage in social dumping versus the rights of trade unions and workers to take collective action to protect their rights;[6] (ii) the entitlement to social assistance benefits by economically inactive EU citizens residing in a Member State in which they are not a national.[7]

The conceptual difficulties outlined above in legally defining the Single Market should not jeopardise the enactment of an SML. The justification for an SML should be thus grounded, first, in economic data that quantify the trade benefits for multinationals operating in the Single Market, and second, in the potential achievement of EU own policies to provide EU public goods (infrastructure, services) to EU citizens. Accordingly, Section 1 of this policy brief outlines the potential justifications for levying an SML. In Section 2, the authors discuss the potential alternatives to design the SML. Finally, Section 3 is devoted to estimating the rough revenues that this levy could generate in the different alternatives proposed. Section 4 concludes.

1. The justifications for an SML

1.1. The benefits of the internal market

When the Single Market was established in 1993[8], thirty years ago, an ex-ante analysis concluded that it could raise overall GDP by 4¼-6½% in the long run.[9] Twenty-five years later, there was renewed interest in the benefits of the Single Market for the various Member States. Researchers used gravity trade models to quantify the trade effects of European integration and calculate counter-factual scenarios which represent the costs of non-Europe.[10] Mayer et al. (2018) conclude a welfare loss of about 5.5% and Felbermayr et al. (2018), conclude that GDP per capita would be 4% lower without the Single Market. In 't Veld (2019)[11] uses a structural macroeconomic model, Quest, to calculate the effects of a non-Europe

[4] See in this regard, Weiler, J.H.H. (1991). The Transformation of Europe. ***Yale Law Journal***, 100 (8), 2403-2483; Schön, W. (2015). Neutrality and territoriality: Competing or converging concepts in European tax law? ***Bulletin for International Taxation***, 69(4/5), 271–293.

[5] Weatherill, S. (2017). ***The Internal Market as a Legal Concept***. Oxford University Press; García Antón, R. (2018). The Limits on Tax Sovereignty Imposed by the Interpretation of Supranational Law. In Pistone, P. (ed), ***European Tax Integration: Law, Policy and Politics***, IBFD.

[6] CJEU, 18 Dec. 2007, Case C-341/05, *Laval un Partneri*; CJEU, 11 Dec. 2007, C-438/05, *The International Transport Workers' Federation and The Finnish Seamen's Union*).

[7] CJEU, 11 November 2014, Case C-333/13, ***Dano;*** CJEU, 10 March 2022, Case C-247/20, ***VI***

[8] According to Article 7A EC Treaty, the internal market was to be established before the end of 1992.

[9] Emerson, M., Aujean, M., Catinat, M., Goybet, P., & Jacquemin, A. (1988). *The economics of 1992: The E.C. commission's assessment of the economic effects of completing the internal market*. Oxford University Press.

[10] Felbermayr, G., Groschl, J., & Heiland, I. (2018). Undoing Europe in a new quantitative trade model, Ifo Working Papers 250-2018, January 2018, and Mayer, T., Vicard, V., & Zignago, S. (2018). The cost on non-Europe, revisited. Banque de France Working Paper No.673.

[11] In 't Veld, J., (2019). The economic benefits of the EU Single Market in goods and services, ***Journal of Policy Modeling***, 41, 803-818.

scenario. He concludes that GDP would be 9% lower on average in the EU but with strong differences between Member States. The main channels for these growth effects are the elimination of trade tariffs and reduction in non-tariff barriers, which increased trade and, in turn, output and domestic demand. Second, the opening-up of domestic economies has also increased competition, reduced mark-ups and increased specialisation of firms.[12]

The removal of obstacles has led to a significant increase in trade within the EU. While exports of goods to other EU countries were nearly €0.7 trillion in 1993, they rose to more than €3.4 trillion in 2021.[13] This quadrupling is not fully due to the Single Market, but to a large extent it is, as suggested by recent research that attributes 50% to 80% of the increase in intra-EU goods trade to the Single Market.[14]

1.2. The benefits for multinational firms

The gains of the Single Market are thus considerable. This raises the question of who are the main beneficiaries? The differences are considerable, both between Member States and between households and firms. The gains are typically larger for more open economies – Member States with higher trade to GDP ratios, such as Ireland, Belgium and the Netherlands. The economic benefits for larger countries such as France and Germany are somewhat lower, measured as a percentage of GDP.[15]

The big rise in intra-EU trade suggests that the Single Market provides more opportunities for multinational firms and less for smaller and medium-sized firms, which export and import less on average. Literature overviews have shown that mainly larger firms export their goods and services to other countries and that the largest firms have establishments in other countries, attesting to their capacity to invest cross-border.[16] Studying French manufacturing firms, authors Eaton, Kortum and Kramarz (2011) show that larger and more productive firms export to more countries. Castellani, Serti and Tomasi (2010) provide evidence that this is also true for the number of import source countries for Italian manufacturing firms. Of course, the Single Market has also increased internationalisation opportunities for smaller firms, which would not be possible without it; but for most of these firms, their own country, region or local area is still the main market for their products and services.

Several studies[17] show that EU membership increases the inflow of foreign direct investments (FDI) on average by about 50%. These investments are made by firms that expand their business into other countries, the so-called multinationals. While we observe that European multinational firms have expanded to other European countries, the investment inflow from non-European countries has also increased by 60%. FDI is often motivated by firms willing to expand their markets, or to use more efficient or cheaper

[12] In recent decades a whole literature has developed to estimate the benefits of the Single Market or various parts of it. We refer to literature overviews such as In ‘t Veld (2019) and S. Micossi (2023). The European Internal Market Thirty Years On. *Economic Policy Forum 24*, September: 5-8.

[13] See https://www.europarl.europa.eu/news/en/headlines/economy/20230112STO66302/30-years-of-eu-single-market-benefits-and-challenges-infographics#:~:text=While%20exports%20of%20goods%20to,as%20the%20US%20and%20China.

[14] Freeman, D., G. Meijerink, R. Teulings, (2022). Trade benefits of the EU and the Internal Market, CPB Communication.

[15] Freeman, D., G. Meijerink, R. Teulings, (2022). Trade benefits of the EU and the Internal Market, CPB Communication.

[16] Notice that this literature focuses on the relation between the size and productivity of firms and trade in general and does not distinguish intra and extra-EU trade.

[17] See for an overview, Bruno R.L., N.F. Campos, S. Estrin (2021). The Effect on Foreign Direct Investment of Membership in the European Union. *Journal of Common Market Studies* 59(4). 802-821 and J. Siedschlag. (2023). The Effects of the European Single Market on Attractiveness to Foreign Direct Investment. *Economic Policy Forum 24*, September: 28-31.

production factors in other countries.[18]

Recent studies using firm-level data show that a small number of firms, which are the largest and the most productive firms, export their products and services.[19] The heterogeneity between firms is, however, huge. In many, mostly smaller, Member States, the top five exporting firms are responsible for at least 50% of all exports and for the top ten performing firms this represents at least 60% and could even reach 80% of all exports. One major reason is that these firms are also the most productive and can overcome the extra costs of exporting.

For small and medium-sized enterprises (SMEs), start-ups and young entrepreneurs, cross-border market access is much more challenging. These firms face many obstacles such as access to finance, access to foreign markets and other languages, knowledge of new markets and regulations, including company, labour and tax law.

1.3. Funding European public goods with the revenue of an SML

To finance the NGEU, the ORD and IA provided a roadmap identifying several resources. Rather than proposing taxes levied upon individuals/enterprises, the own resources listed for the EU multi-annual Financial Framework (2021-2027) are configured as contributions from Member States.[20]

Taxes, which are means for public services, public investments, income redistribution and reduction of inequalities, must match expenditures.[21] Unlike Member States, the EU has not traditionally provided public goods directly to European citizens – a concept which is very broad and covers infrastructure spending and services, policies boosting research and development, security etc.[22] Revenue is currently raised at the level of the Member States, who are the ones taking direct action and executing policies that have a direct impact on citizens. As such, the EU budget's dependency on the Member States' GNI-based contributions is justified under the scope of the principle of subsidiarity.[23] Since GNI-based contributions fund approximately 70% of the EU budget, the Member States largely keep control over the Union's budget.[24] The dependency on Member States' contributions provokes important budgetary imbalances since some Member States contribute more to the EU budget than they receive back (net contributors), while some receive more than they contribute (net recipients). If the Union achieves

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[18] We focus here on the motives for 'real' foreign investments in other countries. Passthrough investments because of other reasons are ignored.

[19] ECB (2017). Firm heterogeneity and competitiveness in the European Union, ECB Economic Bulletin, Issue 2 / 2017.

[20] On a detailed analysis of the list of own resources, see García Anton, R. (2023). Building up the EU Revenue Side: But What Is a Tax in EU Law? ***Politics and governance*** 11 (4). Available at: https://doi.org/10.17645/pag.v11i4.7176 (accessed 9 November 2023).

[21] Kleinbard E. (2016). ***We are better than this: how government should spend our money***. Oxford University Press; Piketty, T., (2014). ***Capital in the twenty-first Century***. The Belknap Press of Harvard University Press; Apeldoorn, L. van & Christians. (2021). ***A Tax Cooperation in an Unjust World***. Oxford University Press.

[22] On a definition of public goods, see Samuelson, P. (1954) The Pure Theory of Public Expenditure. ***The Review of Economics and Statistics*** 36(4). 387-389; See also references to public goods in the EU context in Jakkkola, J. (2023). From the Governance of National Tax Systems to Governing Through European Taxation: A Justification for the EU's Power to levy taxes. In J. Lindholm et al (eds), ***The Power to Tax in Europe***. Hart. 59-82.

[23] On the principle of subsidiarity in the EU budget, see Lipatov, V. & Weichenrieder A. (2016). The Subsidiarity Principle as a Guideline for Financing the European Budget. In T. Büttner et al (eds), ***The Future of EU finances***. Mohr Siebeck.

[24] Data available at https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2014-2020/revenue/own-resources/national-contributions_en.

more autonomous resources to finance the EU budget, that could reduce the tensions between net contributors/net recipients.

In the near future, the EU must reduce the dependency on the Member States' contributions if it wants to ensure budgetary autonomy to finance EU own policies and pursue clear EU-wide objectives.[25] The new own resource calculated on the weight of non-recycled plastic packaging waste in the ORD inaugurates a new type of resource, linking EU revenue to a clear Union policy such as the protection of the environment and the mitigation of global climate change (Article 4(2) and 192 TFEU).[26] However, the "plastic" own resource is beset by criticism.[27] First, it is designed as a contribution from Member States rather than a proper EU tax. Second, as an environmental tax, it does not aim primarily to collect revenue but to eliminate the use of non-recycled plastic.

The new basket of own resources aims to support expenditure in this financial framework (2021-2027). It should be noted, however, that the NGEU is a temporary EU expenditure aiming to grant resilience to the economies of the Member States harmed by the Covid-19 pandemic and thus clearly reinforces Member States' economies. We are not yet in a scenario where the EU provides for autonomous public goods directly to European citizens. For the upcoming financial frameworks, the authors would like to stress the necessary link between EU genuine own resources and delivery of EU public goods. In a nutshell, the justification for autonomous EU taxes, as the SML discussed in this policy brief, should be linked to pursuing autonomous EU policies that provide public goods for European citizens.[28]

2. The design of an SML

2.1. Scope of the SML

In the authors' view, the scope of the SML should be consistent with previous EU legislation, namely the mandatory automatic exchange of country-by-country reports in the Administrative Cooperation Directive[29] and the Pillar Two Directive on a minimum level of effective taxation.[30] The SML should target multinational groups operating in the EU Member States and thus benefiting from the internal market with revenues of at least €750 million in at least two of the four fiscal years immediately preceding the

[25] A. Martín Jiménez, (2022), Los recursos propios y los tributos en el presupuesto de la UE en la recuperación Post-Covid: ¿todavía lejos de una auténtica Unión Europea' ***Nueva Fiscalidad*** n. 2, 21-62; Monti Report (2016) supra note 2.

[26] On this idea of resources linked to EU policies, see Neumeier, C. (2023). Political Own Resources: Towards a legal framework. ***Common Market Law Review***, 60, 319-344.

[27] See A. Martín Jiménez, supra note 22, p. 39; Sciancalepore, C. (2023). The reform of EU own resources under the Next Generation EU program: A suitable moment for the introduction of a European tax? In J. Lindholm & A. Hultqvist (Eds.), ***The power to tax in Europe.*** Hart. 123-144.

[28] As reflected in the Monti Report, the reform of the revenue side should be undertaken together with a reform of the expenditure side to address the EU public goods. ***Vid,*** Monti Report, supra note 2, p. 10.

[29] Consolidated text: Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC. OJ L 064 11.3.2011. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011L0016-20230101.

[30] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union. OJ L 328, 22.12.2022. https://eur-lex.europa.eu/eli/dir/2022/2523/oj.

fiscal year. The recent Proposal on BEFIT follows the same in-scope threshold.[31] In addition, as stated in Section 1, since large multinational firms benefit the most from the internal market, it makes sense that they are the ones in-scope of the SML.

On selecting the entities forming part of the group to be subject to the SML, there is a clear mismatch between BEFIT and the Pillar 2 Directive. The BEFIT group would include all relevant EU companies and Permanent Establishments (PEs) of a group (BEFIT group members), where the ultimate parent entity holds, directly or indirectly, at least 75% of the ownership rights or of the respective rights giving entitlement to profit (article 5 BEFIT Proposal). The Pillar 2 Directive refers to group entities related through ownership or control as defined by the acceptable financial accounting standard for the preparation of consolidated financial statements by the ultimate parent entity (usually > 50%). Since Pillar 2 Directive has already been approved, we suggest that the in-scope rules for groups should follow the Pillar 2 Directive.

Since the BEFIT proposal also applies to groups headquartered in third countries under certain quantitative thresholds, policymakers should assess whether to integrate non-EU groups into the scope of the SML, which operate and benefit from the internal market above a certain threshold of turnover. Broadening the scope of the SML to non-EU groups that operate in the Single Market would prevent potential discrimination claims filed by EU multinationals, such as a loss of competitiveness vis-a-vis non-EU groups. Both EU multinationals and non-EU groups would be thus subject to the same levy. Although there would be no grounds for discrimination, which would foster fairness, EU trade partners, like the United States, could disagree with the levy.

2.3. The SML as a surcharge on an EU harmonised taxable base

We support the view that the SML should be designed as a surcharge on the EU-harmonised taxable base. In other words, the Union would levy a surcharge in areas where the Union has already exercised the competence to harmonise the taxable base. Until now, the Union has harmonised the VAT taxable base through the VAT Directive.[32] As already occurred in the VAT field, the recent 2023 BEFIT proposal aims to harmonise the corporate tax base of groups with a taxable presence in the EU if they have an annual revenue of more than €750 million. BEFIT ensures that all firms that are members of the same group calculate their tax base in accordance with a common set of tax adjustments to their financial statements. Once the tax bases of all members of the group are aggregated into one single tax base, each member of the BEFIT group will have a percentage of the aggregated tax base calculated based on the average of the taxable results in the previous three fiscal years. Although the Pillar 2 Directive guarantees that the effective tax rate of an MNE in each jurisdiction cannot be below 15%, the Member States are competent to determine the corporate tax rate and collect the tax. It is uncertain whether the BEFIT proposal will be successful, bearing in mind that the predecessors, the proposal for Common Consolidated Corporate Tax Base (CCCTB) in 2011 and the two-step approach CCCTB proposal in 2016 were not adopted due to the lack of unanimous support at the Council of the EU.[33]

Since there is a high degree of harmonisation of the taxable base, either in VAT or under the corporate taxation model laid down in BEFIT if it is eventually endorsed, the SML can be levied either on turnover

[31] See the Proposal in:
https://taxation-customs.ec.europa.eu/system/files/202309/COM_2023_532_1_EN_ACT_part1_v6.pdf

[32] VAT is a turnover tax. Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. (2006). Official Journal of the European Union, L 347. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32006L0112.

[33] On the 2011 proposal, see https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52011PC0121 ; On the 2016 two-step proposals, see https://taxation-customs.ec.europa.eu/common-consolidated-corporate-tax-base-ccctb_en

or on profits. [34] In the former case, the surcharge could be linked to the turnover of VAT intra-community transactions of goods and services. Such a taxable base reaffirms the internal market dimension of an SML based on turnover. In the latter case, an SML configured as a surcharge on profits could be determined by the BEFIT taxable base.

A third alternative of an SML would consist of a lump sum based on turnover. We do not favour this alternative based on two arguments. First, lump sums are likely designed as contributions of the Member States rather than taxes levied directly on individuals or firms. Lump sums are fixed amounts based on the number of firms in a Member State with a turnover above €750 million. Accordingly, unlike a surcharge on turnover or profit, a lump sum would not allow the EU to achieve a desirable level of fiscal autonomy. A lump sum would perpetuate the deficiencies of the current revenue-sharing mechanisms in the EU budget.[35] In the EU, revenue-sharing mechanisms already occur concerning the current VAT own resource and the recent 2023 Commission's proposal of a new temporary statistical own resource based on company profits to be replaced by BEFIT.[36] Second, as Section 3 shows, the heterogeneity of the firms in the EU (i.e. few firms hardly pass the global turnover threshold and few exceed €10 billion) is not a suitable proxy to tax the benefits of firms from the internal market. A proportional surcharge, based on either turnover (i.e. VAT intra-community transactions of goods and services) or profit, is better aligned with taxing the actual benefits of firms made thanks to the Single Market rather than a lump sum. A lump sum would impact firms very differently depending on their relative size.

To increase the budgetary/fiscal autonomy of the Union, we recommend taking advantage of the efforts in harmonising the taxable base, both in corporate taxation and VAT, to levy a surcharge either on turnover or profit. Since the proposed surcharge would be levied on top of national taxes, the tax burden of the multinationals scoped in would increase. To avoid creating an excessive burden to EU MNEs, we recommend levying a low SML, for example a rate below 3%.[37]

In addition, the SML will either require the development of a tax administration at the EU level to enforce the levy or rely on EU national tax authorities who might request to keep a share of revenues for the administration of the levy. Many of the problems that the first tax created by the European Coal and Steel Community in 1950 on companies had were precisely related to the enforcement of the tax. [38] Although, as an interim solution, the EU national tax authorities could collect the SML, the ideal scenario in the long term will require an EU tax administration to monitor compliance with the tax. An EU

[34] Some authors have supported this position. See A. Martín Jiménez, (2022), supra note 22, p. 57; In the past, the idea of a surcharge on a harmonised taxable base was discussed. The Commission already proposed in 2010 and 2018 the so-called EUCIT (European Union Company Income Tax) a reduced call rate on the CCCTB and recently, a tax rate to be levied on the BEFIT taxable base https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0700:FIN:EN:PDF. In 2023, the Commission has proposed a tax to be levied on the BEFIT taxable base. See Com (2023) 331 final Commission Staff Working Document. https://commission.europa.eu/system/files/2023-06/SWD_2023_331_1_EN_autre_document_travail_service_part1_v4.pdf

[35] On the differences between surcharges and revenue sharing mechanisms in fiscal federalism, see Ambrosiano M. F. & Bordignon, M. (2006), Normative versus Positive Theories of Revenue Assignments in Federations, in E. Ahmad & G. Brosio (ed.), ***Handbook of Fiscal Federalism***, Edward Elgar Publishing, p. 324.

[36] Such statistical resource is a national contribution calculated as 0.5% of the notional EU company profit base, an indicator calculated by Eurostat based on the national account statistics. See European Commission. (2023, June 20). EU budget: Commission puts forward an adjusted package for the next generation of own resources [Press Release]. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3328.

[37] 3% is the rate of the EU proposal of the EU Digital Service. See the proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services- COM (2018) 148 final. Available at: https://taxation-customs.ec.europa.eu/system/files/2018-03/proposal_common_system_digital_services_tax_21032018_en.pdf (accessed 9 November 2023).

[38] J. Lorraine Breuer, (2023). Revisiting Early Fiscal Centralisation in the European Coal and Steel Community considering the EU's Transfer Budget. ***Politics and Governance,*** 11 (4).

autonomous fiscal power should always rely on an autonomous tax administration.

2.4. The SML and the ability to pay: profit *versus* turnover

The literature has traditionally stressed that taxes on profit (net income) comply with the ability to pay principle, which is recognised in the majority of Constitutions of the Member States.[39] Indirect taxes such as turnover taxes or VAT, which normally fall on the consumer's shoulders, are traditionally regarded as regressive and thus in breach of the ability to pay principle.

In the previous section, we defended an (i) SML as a surcharge based on corporate profit (EU fixed rate on BEFIT), or (ii) an SML as a surcharge based on turnover. While an SML designed as a surcharge on net profit (BEFIT taxable base) is in line with the ability to pay principle, one may wonder whether an SML based on turnover also respects this principle.

In recent years, the introduction of digital services taxes (DST) has sparked a certain degree of controversy on the nature of these taxes. DSTs are turnover taxes targeting the revenue stemming from the supply of certain digital services (i.e. digital advertising, intermediation services through Multisided Platforms and transmission of user data). The 2018 proposal for an EU DST did not gain the support of all Member States and failed to be enacted.[40] The 11 July 2023 Statement of the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy (OECD/G20 BEPS Inclusive Framework) compels the participating countries to remove the existing DSTs in exchange for the profit allocation under Pillar One. In the literature, many authors have stressed that DSTs are taxes on income targeting companies that avoid income taxation at source due to the limitations of the permanent establishment concept and therefore should fall within the scope of income within double tax treaties.[41] Stevenato correctly affirms that: "*The answer depends on whose capacity is liable to tax, namely whether taxes on turnover have to be considered consumption levies – indirect taxes designed to fall upon consumers' shoulders – or rather direct taxes on the undertaking's own fiscal capacity*".[42]

The authors believe that an SML configured as a surcharge on a harmonised taxable base (i.e. intra-EU acquisitions of goods, intra-EU services) follows the same logic: it taxes the undertaking's fiscal capacity. This turnover tax cannot be equated to VAT, which falls upon consumers. In the authors' view, such turnover tax complies with the ability to pay principle, even if, admittedly, the proxy with regard to the ability to pay is much less evident than the one focusing net income taxes (i.e. multinationals in scope may have a lot of cash flow, which incurs losses).

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[39] There is abundant literature on how the ability to pay principle shapes the income tax system. Scholars have been debating whether progressive tax rates ***versus*** flat tax rates comply better with the ability to pay principle. See for instance, F.J.G.M. Vanistendael, (2010), Is Fiscal Justice Progressing?, ***Bull. Intl. Taxn***. 64(10); W.J. Blum and H. Kalven Jr., (1952), The Uneasy case for Progressive Income Taxation, University of Chicago Law Review, 19 p. 417.

[40] See the EU Interim solution in the form of a Proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services, COM(2018) 148 final.

[41] A. Martín Jiménez, (2018), Controversial Issues About the Concept of Tax in Income and Capital Tax Treaties in the Post-BEPS World," in B. Arnold (ed.), Tax Treaties After the BEPS Project: A Tribute to J. Sasseville, Toronto: Canadian Tax Foundation, Some commentators also agree that digital taxes as the Indian Equalization Levy or the UK Diverted Profit tax are direct tax on income. See in this regard, R. Ismer & C. Jescheck, (2017)' The Substantive Scope of Tax Treaties in a Post-BEPS World: Article 2 OECD MC (Taxes Covered) and the Rise of New Taxes', ***Intertax***, 45(5),. 382-392.

[42] D. Stevenato, (2019), Are turnover-based Taxes a Suitable Way to Target Business Profit?, ***European Taxation,*** 538-546.

3. The possible revenues of an SML

From the arguments raised earlier, it seems reasonable to tax firms that benefit most from the Single Market. It is difficult to tax the sole increase in turnover or profits due to the Single Market because the Single Market effects on these variables cannot be isolated from other developments.[43] Therefore, we choose to assess the taxation of the level of these economic variables in the EU. We consider two revenue options. The first one – which would be of a similar magnitude as the upper bound of the revenue estimates on the Pillar 1 for the Union – is to deliver €4 billion as own resources, pending the finalisation of the agreement between the members of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting.[44] The second option is that this levy will have to contribute with €10 billion to the €50 billion of the NGEU, which seems a reasonable amount as one of the six taxes that should deliver tax revenues to support the NGEU and fund future EU policies.

We focus on all firms that are in scope of Country by Country reporting (CbCR) obligations in the European Union; these are firms with a global turnover of at least €750 million and are active in the Single Market. As discussed before, these are on average the largest firms in the Single Market, and we want to be consistent with the scope of the Administrative Cooperation and Pillar 2 Directives. We use the aggregated data presented by the OECD for the latest available year, 2018. Although this is the best data source, the data is not complete, suggesting that the totals on the firm variables are too low and the corresponding SML revenues might exceed the expected revenue.

There are nearly 30,000 CbCR firms (i.e. firms with a yearly turnover above €750 million) in the Member States, about 0.1% of all firms in the EU (including millions of self-employed people).[45]

- The turnover of the CbCR firms is about a third to 40% of the turnover of all firms in the Single Market. Large firms in scope of an SML employ 23.6 million people. The data of all variables is for the year 2018.

As such, the firms in scope represent a substantial share of the overall European economy and reflect the significant heterogeneity between large firms and small firms in terms of size.

Lump sum fee: If the EU levied a lump sum fee on all CbCR firms by presence in different Member States, whether these firms have a large or small turnover, it would amount to about €136,000 to generate €4 billion, and 2.5 times as large if the levy should raise €10 billion. The advantage of this levy is that it is relatively easy to implement. However, the heterogeneity between the CbCR firms is very large, and not only by their presence in the number of Member States. There are firms that hardly pass the global turnover threshold of €750 million and have a limited turnover in the Single Market, but there are also firms with a turnover exceeding €10 billion of which a large part is generated in the EU. We also know from the academic literature that the largest firms are also the largest exporting firms which benefit probably most from the Single Market. For that reason, a lump sum fee does not seem to be the best option for the levy.

The proportional surcharge levies with respect to turnover and gross profits acknowledge to a better extent that larger firms benefit most from the Single Market. We estimate that a **levy on the turnover** of large firms in the Member States would have to be of 0.11% if the EU wants to raise about €10 billion for tax revenues, and correspondingly less, of course, if the target revenue is reduced. The Single Market **levy on profits** would amount to about 0.9% to generate revenues of €10 billion which seems to be a limited levy compared to the level of corporate tax rates in the Member States.

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[43] Turnover includes all sales and revenues of the firm, including the revenues of selling property, machines etc. Value added is turnover minus the input costs, such as intermediate products, raw materials etc.

[44] See European Commission (2021). The Commission proposes the next generation of EU own resources, press release, 22 December 2021, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_7025.

[45] Because the CbCR firms are counted by Member State, firms with PEs in several Member States are counted multiple firms in the statistics. The unique number of CbCR firms in the EU is thus much lower.

In our analysis we use the data available and reported by the OECD, for most economic sectors and Member States. However, we underestimate the size of the profits, and other economic variables because the data is not complete. Compared to macroeconomic data, our aggregated data represents, probably, only 50 percent of the total. This implies that in practice the levies to be established could be somewhat lower than the ones indicated above and still meet the revenue targets.[46]

TABLE REVENUES OF SINGLE MARKET LEVY

Tax revenues (billion €)	4	10
Lump sum charge on turnover (thousand €)	136	339
Proportional surcharge on turnover (%)	0.04%	0.11%
Proportional surcharge on profit (%)	0.35%	0.86%

Source: Aggregated CbCR data of the OECD for the year 2018 and own calculations. For number of firms, we use the number of CbCR firms, for turnover we use the data for unrelated party revenues and for profit the profits (loss) before income tax. Latest year available is 2018.

4. Conclusions

Our study concludes that a proportional surcharge on the BEFIT taxable base is the most suitable solution for an SML. As stated, this is the main goal of the Commission in replacing the temporary statistical own resource with an own resource based on company profits as defined by the BEFIT proposal. As an alternative, the EU could also introduce a levy on turnover, although this fits less to the ability to pay principle. On turnover, the levy would only be up to 0.1% to generate €10 billion. On profits it is higher, but still less than 1% of the gross profits, which is quite small compared to statutory corporate income tax rates of about 20%. Given the significant gains multinationals enjoy for the fact of operating in the Single Market, this levy would tax only a small fraction of these benefits.

	Scope	Advantages	Disadvantages
Proportional Surcharge on a turnover	Groups benefiting from the internal market with revenues of at least €750 million	- High degree of fiscal autonomy	- weaker proxy to measure the ability to pay in comparison with a surcharge on profit
Proportional Surcharge on BEFIT taxable base	Groups benefiting from the internal market with revenues of at least €750 million	- High degree of fiscal autonomy - compliance with the ability to pay	- Uncertainties regarding the success of BEFIT
Lump sum fee on turnover	Groups benefiting from the internal market with revenues of at least €750 million	- Easy to implement	- Low degree of fiscal autonomy (revenue-sharing) - heterogeneity of firms in the EU

[46] As an alternative data source we also used the structural Business Indicators of Eurostat. These include most economic sectors, but not agriculture, fisheries and forestry, financial sector and government sectors. This database does not classify CbCR firms but large firms with more the 250 employees and a turnover of €40 million in the EU. This classification does not match the CbCR data exactly, but with 42,000 large firms and a turnover of €11 trillion the SML levies have the same order of magnitude.