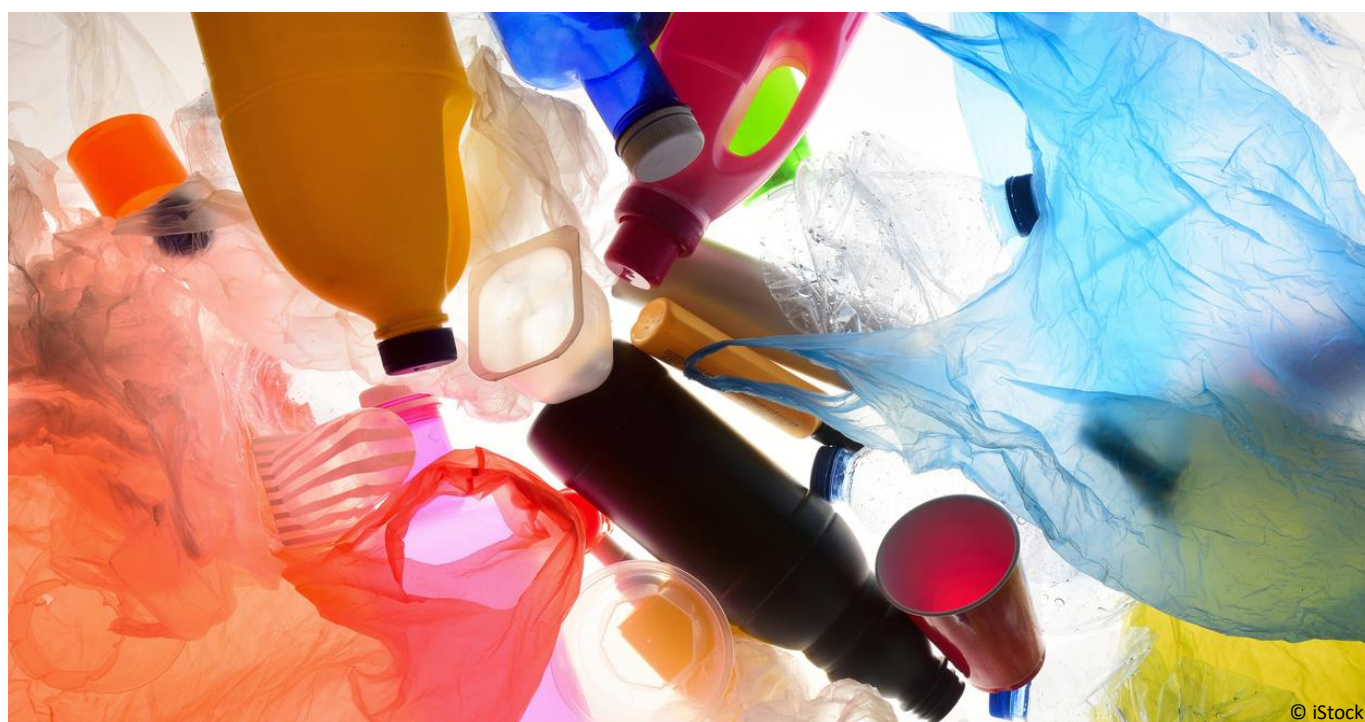


## The “EU Plastic Tax”

### Greenwashing New Revenue for the EU Budget

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Starting in 2021, the Member States will have to pay a “national plastic contribution” (NPC) into the European Union budget, commonly called the “EU plastic tax”.

#### Key Propositions

- ▶ The national plastic contribution is neither an “EU tax” nor does it oblige the Member States to levy a national tax on plastic waste.
- ▶ Contrary to what the European Commission and the Council claim, the national plastic contribution will not have an inherent double dividend of a fiscal *and* an environmental benefit. Its alleged environmental purpose is mainly an attempt to greenwash an unpopular fiscal measure.
- ▶ The main purpose of the national plastic contribution is not to reduce plastic waste but to raise additional revenue for the EU budget. We project overall revenue of 6.2 billion Euros per year which is less than the Commission’s estimate of 7 billion Euros per year.
- ▶ If the national plastic contribution were able to reduce non-recycled plastic packaging waste effectively, its revenue would rapidly decrease, thereby compromising its ability to serve as a sustainable source of income for the EU’s finances.

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## 1 Introduction

As part of a fundamental reform of the EU financing system after 2020, the European Union is about to introduce a new fiscal instrument (“own resource”), commonly referred to as the “EU plastic tax”. Already in January 2018 – long before the COVID-19 crisis caused the EU’s financial needs to rise dramatically – the then EU Budget Commissioner Günther Oettinger launched a first trial balloon in this respect by proposing a “plastic tax”. This aimed to close, at least partially, the future “Brexit gap” in the EU budget caused by the United Kingdom’s missing contribution of over 13 billion Euros per year.<sup>1</sup> Shortly after Oettinger’s initiative, in its communication on a European Strategy for Plastics in a Circular Economy, the European Commission announced its intention to examine “measures of a fiscal nature at the EU level” for the reduction of plastic waste. Accordingly, the “modalities of such a fee” would need to be decided based on “the assessment of its contribution towards” reducing plastic waste on the one hand and its potential as “to generate revenues for the EU budget” on the other.<sup>2</sup> On this occasion, the then First Vice President of the Commission Frans Timmermans remarked that if such a “plastic tax” did actually reduce plastic waste successfully, its revenue “would decrease rapidly”, calling into question “whether this is a sustainable form of income also for the EU’s finances”.<sup>3</sup> In turn, doubts were also raised – e.g., by the German Chancellor Angela Merkel and by the German Environment Minister Svenja Schulze<sup>4</sup> – about the potential of a “plastic tax” to effectively reduce plastic waste. Despite such scepticism, the Commission’s proposal of May 2018 for a reform of the EU financing system involved the introduction of a “national plastic contribution” (NPC)<sup>5</sup> by EU Member States to the EU budget “calculated on the amount of non-recycled plastic packaging waste”.<sup>6</sup> In July 2020, the European Council reached an agreement on the introduction of this new own resource of the EU.<sup>7</sup> The new Council Decision on the EU Own Resources System entered into force on 1 January 2021.<sup>8</sup>

Both the Commission and the Council expressly claim that the NPC would not only serve the fiscal purpose of generating revenue but also support the environmental objective of reducing the amount of non-recycled plastic waste. Accordingly, both the Commission and the Council highlight that since the new own resource is directly proportional to the quantity of non-recycled plastic packaging waste in each Member State, it will also provide “an incentive for the Member States to reduce these waste streams”<sup>9</sup> and to “foster recycling and boost the circular economy”.<sup>10</sup>

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<sup>1</sup> Politico of 10 April 2020, [Plastic tax proposal faces resistance](#).

<sup>2</sup> European Commission (2018), Communication COM(2018) 28 of 16 January 2018, A European Strategy for Plastics in a Circular Economy, p. 11.

<sup>3</sup> The Guardian of 16 January 2018, [EU declares war on plastic waste](#).

<sup>4</sup> ZEIT ONLINE of 11 May 2018, [Umweltministerin Schulze lehnt Plastiksteuer ab](#); FAZ of 6 June 2018, [Merkel verteidigt ihre EU-Pläne](#); Rat für Nachhaltige Entwicklung of 29 May 2019, [Mit der Plastiksteuer zur Plastikwende?](#)

<sup>5</sup> Although the new own resource is still widely called “EU plastic tax”, for reasons of legal precision (see section 2), the term “national plastic contribution” (NPC) will be used herein.

<sup>6</sup> European Commission (2018), Proposal COM(2018) 325 of 2 May 2018, Council Decision on the System of Own Resources of the European Union, pp. 4, 6 and 8.

<sup>7</sup> Council of the European Union (2020), Proposal ST 10025 2020 INIT of the Presidency of 29 July 2020 for a Council Decision on the system of Own Resources of the European Union.

<sup>8</sup> Council of the European Union (2020), 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 [Council Decision 2020/2053 on the EU Own Resources System].

<sup>9</sup> 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, p. 27.

<sup>10</sup> Council of the European Union (2020), Proposal ST 10025 2020 INIT of the Presidency of 29 July 2020 for a Council Decision on the system of Own Resources of the European Union, p. 4, recital 7.

This cepInput questions that claim. It will first outline the ongoing procedure for the introduction of the NPC at EU level (Section 2) and its main features (Section 3). On that basis, we examine the potential of the new fiscal instrument for generating revenue for the EU budget (Section 4). Finally, we pursue the key question of whether the NPC is also – as claimed by the EU institutions – an environmental instrument for the reduction of non-recycled plastic packaging waste, or merely an attempt to green-wash the raising of additional revenues for the EU Budget (Section 5): Is there really an inherent double dividend of a dual fiscal *and* environmental benefit?

## 2 Introduction of the National Plastic Contribution

According to primary EU law [Art. 311 TFEU], the EU budget must in principle<sup>11</sup> be financed “wholly from own resources”. Following a special legislative procedure, the Council of the Member States must unanimously adopt a decision on the “system of own resources” of the EU.<sup>12</sup> In this context, the Council can establish new categories of “own resources”. While the European Parliament merely needs to be consulted, a decision on own resources can only enter into force after it has been ratified by all Member States usually requiring consent of the national parliaments.

In May 2018, in a first proposal for a new Council Decision on the EU own resources system,<sup>13</sup> the Commission emphasised not only the need for additional sources of EU funding due to “the array of new political priorities with budgetary consequences and the United Kingdom’s withdrawal from the EU”. It also proposed to link the own resources system more closely to EU environmental policy on the reduction of plastic waste and the promotion of plastic recycling within a circular economy.<sup>14</sup> To this end, the Commission proposed the introduction of “a national contribution based on the amount of non-recycled plastic packaging waste” in each Member State.<sup>15</sup> Accordingly, this own resource is intended to raise additional revenue for the EU budget and also “create an incentive for Member States to reduce packaging waste and stimulate Europe’s transition towards a circular economy”.<sup>16</sup> The Commission stressed that in itself the NPC does “not create any new tax for EU citizens” since the “EU does not have the power to levy taxes.”<sup>17</sup> And indeed, primary EU law on taxes – whether on the harmonisation of national indirect taxation [Art. 110–113 TFEU] or on the approximation of national tax laws [Art. 114–118 TFEU] – does not confer a competence to levy taxes upon the EU. Consequently, the Commission highlighted from the beginning that the introduction of the NPC “fully respects national fiscal sovereignty.”<sup>18</sup>

<sup>11</sup> For the discussion whether EU borrowing is compatible with EU law see Hoffmann, A. / Harta, L. / Anzini, M. (2020), Das Aufbauinstrument “Next Generation EU”, [cepAdhoc](#) of 28 July 2020.

<sup>12</sup> For the provisions previously in force see Council Decision (2014/335/EU, Euratom) of 26 May 2014 on the system of Own Resources of the European Union.

<sup>13</sup> European Commission (2018), Proposal COM(2018) 325 of 2 May 2018 for a Council Decision on the system of Own Resources of the European Union, pp. 2 et seq.

<sup>14</sup> See generally Voßwinkel, J. S. / Reichert, G. / Schwind, S. / Jousseume, M. (2020), Kreislauforientierte Kunststoffwirtschaft für Non-Food-Verpackungen, Anforderungen an die Umsetzung des EU-Aktionsplans Kreislaufwirtschaft, [cepStudie](#); Reichert, G. / Schwind, S. (2020), Action Plan for The Circular Economy, [cepPolicyBrief 05/2020](#).

<sup>15</sup> European Commission (2018), Proposal COM(2018) 325 of 2 May 2018 for a Council Decision on the system of Own Resources of the European Union, p. 17, Art. 2(1)(e).

<sup>16</sup> *Ibid.*, p. 4 and p. 15, recital 9.

<sup>17</sup> *Ibid.*, p. 3.

<sup>18</sup> *Ibid.*

The Commission’s concept for an NPC was also part of a draft by the Council for the new Council Decision on the EU own resources system in February 2020.<sup>19</sup> In July 2020, the European Council reached an agreement on reforming the own resources system “over the coming years”, starting as “a first step” on 1 January 2021 with “a new own resource based on non-recycled plastic waste”.<sup>20</sup> Subsequently, the Council Presidency outlined the details of such an NPC in a draft for the Council Decision<sup>21</sup>, which was basically approved by the European Parliament in September 2020<sup>22</sup> and formally adopted by the Council in December 2020. It came into force on 1 January 2021.<sup>23</sup>

### 3 Main Features of the National Plastic Contribution

The newly adopted Council Decision on the EU own resources system foresees the introduction of a new category of own resources based on an NPC of each Member State calculated on the basis of the weight of non-recycled plastic packaging waste.<sup>24</sup> In principle, each Member State has to pay 0.80 Euro per kilogram (“call rate”) of plastic packaging waste generated in its territory that is not recycled.<sup>25</sup> What constitutes “plastic”, “packaging waste” and “recycling” in this context is defined by EU environmental law.<sup>26</sup> The data for recycled plastic packaging waste is published with a time-lag, since the Member States have 18 months to report the data for the year in question to the Commission.<sup>27</sup> The payments are therefore based on the recycling rates from three years earlier. E.g., in 2021 the payments will refer to the recycling rates in 2018.<sup>28</sup>

In order to ease the financial burden on poorer Member States, an “adjustment mechanism” with an “annual lump sum reduction” will be applied to contributions of Member States with a gross national income (GNI) per capita in 2017 below the EU average.<sup>29</sup> The reduction will correspond to 3.8 kg multiplied by the population of the Member States concerned in 2017 multiplied by 0.80 Euro per kilogram. Consequently, seventeen Member States will be entitled to an “annual lump sum reduction” of their NPC (see Annex).

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<sup>19</sup> Council of the European Union (2020), Draft conclusions of 14 February 2020 for the special meeting of the European Council, p. 53, point 139.

<sup>20</sup> European Council (2020), Conclusions of 21 July 2020 on the recovery plan and multiannual financial framework for 2021–2027, point A29.

<sup>21</sup> Council of the European Union (2020), Proposal ST\_10025\_2020 INIT of the Presidency of 29 July 2020 for a Council Decision on the system of Own Resources of the European Union.

<sup>22</sup> European Parliament (2020), legislative resolution P9\_TA-PROV(2020)0220 of 16 September 2020 on the draft Council decision on the system of own resources of the European Union; European Commission (2020), Follow up SP(2020)455 of 15 October 2020 to the European Parliament legislative resolution on the draft Council decision on the system of own resources of the European Union.

<sup>23</sup> Council Decision 2020/2053 on the EU Own Resources System, Art. 12.

<sup>24</sup> *Ibid.*, recital 7.

<sup>25</sup> *Ibid.*, Art. 2(1)(c).

<sup>26</sup> Regulation (EC) No 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) [REACH Regulation], Art. 3 point 5; Directive 94/62/EC of 20 December 1994 on packaging and packaging waste [Packaging Waste Directive 94/62/EC], Art. 3 point 1 and point 2; Commission Implementing Decision (EU) 2019/665 of 17 April 2019 establishing the formats relating to the database system; Directive 2008/98/EC of 19 November 2008 on waste [Waste Framework Directive 2008/98/EC], Art. 3 points 1 and 17.

<sup>27</sup> Packaging Waste Directive 94/62/EC, Art. 12(3a).

<sup>28</sup> Bundesregierung (2020), Antwort der auf die Kleine Anfrage der FDP-Fraktion, Drucksache 19/22068, Die „Plastiksteuer“ als zweckungebundene EU-Einnahmequelle, p. 3.

<sup>29</sup> Council Decision 2020/2053 on the EU Own Resources System, recital 7 and Art. 2(2).

## 4 Fiscal Objective: Raising New Revenue for the EU Budget

In order to examine the potential of the new NPC as a fiscal instrument for generating revenue for the EU budget, this section will scrutinise the relevant parameters for its calculation. On that basis, we will project the amount each Member State will potentially have to pay. We will then take closer look at the respective data of those Member States with potentially the highest NPCs – France, Germany and Italy.

### 4.1 Data on Non-recycled Plastic Packaging Waste

For the calculation of the amount that a Member State has to pay as its NPC to the EU budget each year, the following parameters need to be determined: the weight of plastic packaging waste generated in the respective Member State (4.1.1) and its recycling rate for plastic packaging waste (4.1.2).

#### 4.1.1 Generation of Plastic Packaging Waste

In 2018, approximately 29 million metric tons of plastic waste were generated in the EU.<sup>30</sup> The packaging sector is the single biggest source of plastic waste, contributing 17.2 million metric tons. This corresponds to 33.45 kg of plastic packaging waste per capita.<sup>31</sup> Since 2008, the consumption of plastic packaging has fluctuated slightly, as the consumption of plastic packaging per capita and the gross domestic product (GDP) per capita are strongly correlated.<sup>32</sup> While the EU-wide consumption of plastic packaging decreased between 2008 and 2012, it has increased again since 2013.<sup>33</sup>

In 2018 the consumption of plastic packaging waste per capita in the Member States ranged from 15.73 kg in Croatia to 54.24 kg in Ireland.<sup>34</sup> In France, the total amount of plastic packaging waste has increased by 50% since 1997 and packaging waste per capita amounts to 35.19 kg. In Italy, the total amount of plastic waste has increased by more than one quarter since 1997, and at 37.93 kg the per capita packaging waste is higher than in France. In Germany, the total amount of plastic packaging waste has doubled since 1995.<sup>35</sup> The plastic packaging waste per capita is higher than in France and Italy and amounts to 39.03 kg.<sup>36</sup>

#### 4.1.2 Recycling Rates for Plastic Packaging Waste

Pursuant to EU environmental law, Member States must achieve certain minimum recycling targets (“recycling rates”) for specific materials contained in packaging waste, including plastics.<sup>37</sup> Since the end of 2008, this recycling rate for plastic has been 22.5%.<sup>38</sup> By the end of 2025, each Member State must achieve a recycling rate for plastic of at least 50% and by the end of 2030 of at least 55%.<sup>39</sup> In this

<sup>30</sup> PlasticsEurope (2019), [Plastics – the Facts 2019](#) (EU-27 and United Kingdom).

<sup>31</sup> Eurostat (2020), [Packaging waste by waste management operations and waste flow](#) (EU-27 and United Kingdom).

<sup>32</sup> Voßwinkel, J. S. / Reichert, G. / Schwind, S. / Jousseau, M. (2020), Kreislauforientierte Kunststoffwirtschaft für Non-Food-Verpackungen, Anforderungen an die Umsetzung des EU-Aktionsplans Kreislaufwirtschaft, [cepStudie](#), p. 10.

<sup>33</sup> Eurostat (2020), [Packaging waste by waste management operations and waste flow](#).

<sup>34</sup> Ibid.

<sup>35</sup> Umweltbundesamt (2019), [Aufkommen und Verwertung von Verpackungsabfällen in Deutschland im Jahr 2017](#), Texte 139/2019, p. 33.

<sup>36</sup> Eurostat (2020), [Packaging waste by waste management operations and waste flow](#).

<sup>37</sup> Packaging Waste Directive 94/62/EC, Art. 6. Other materials are: glass, paper and cardboard, metals, and wood.

<sup>38</sup> Ibid., Art. 6(1)(e).

<sup>39</sup> Ibid., Art. 6(1)(i).

context, the Member States are obliged to report the relevant data to the Commission.<sup>40</sup> However, deficiencies in the quality of EU waste statistics mainly caused by “wide discrepancies and margins of error in Member States’ data reporting” pose a serious challenge in this respect.<sup>41</sup>

Under EU environmental law, recycling means “any recovery operation by which waste materials are reprocessed into products, materials or substances whether for the original or other purposes”.<sup>42</sup> Recycling is an essential element of the “circular economy” pursued by the EU.<sup>43</sup> It aims to retain resources and return materials to the economic cycle during the entire life cycle of products. Accordingly, raw materials and products should be used as long, as often and as efficiently as possible. Primary raw materials – such as oil as primary raw material for the production of “virgin plastic” – are replaced by secondary raw materials recycled from waste – such as recycled plastics particles (“recyclates”) – for the production of new products.

#### 4.1.2.1 Calculation Method

Recycling rates for the plastic packaging waste of Member States are calculated as a percentage of all plastic packaging placed on the market per year. Since the respective data is published with a two-year time-lag, the recycling rates published, e.g., in 2020 actually refer to 2018.

Recycling rates for the years up to 2019 – those of 2019 will be published in 2021 – might be inaccurate for two reasons.<sup>44</sup> Firstly, Member States had been given discretion by EU environmental law to measure the amount of recycled plastic at different points in the value chain after plastic packaging has turned into waste: collection, sorting or recycling.<sup>45</sup> Secondly, studies show that the amount of plastic packaging put on the market was actually higher than reported by Member States.<sup>46</sup> This inaccurate estimation can be attributed to the incomplete inclusion of packaging from online sales and from small manufacturers and of reusable packaging which is put on the market for the first time.<sup>47</sup> An underestimation of the actual amount of plastic packaging waste results in a roughly proportional overestimation of the actual recycling rate.<sup>48</sup>

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<sup>40</sup> Ibid., Art. 12. The data is published and regularly updated on the website of the EU Statistical Office (Eurostat): [Packaging waste by waste management operations and waste flow](#).

<sup>41</sup> European Court of Auditors (2020), [EU action to tackle the issue of plastic waste](#), p. 33, recital 44; Eunomia (2017), [Study on Waste Statistics – A Comprehensive Review of Gaps and Weaknesses and Key Priority Areas for Improvement in the EU Waste Statistics](#).

<sup>42</sup> Waste Framework Directive 2008/98/EC, Art. 3 point 17.

<sup>43</sup> See generally Decision No 1386/2013/EU of 20 November 2013 on a General Union Environment Action Programme to 2020 “Living well, within the limits of our planet”, p. 183; European Commission (2015), Communication(2015) 614 of 2 December 2012, Closing the loop – An EU action plan for the Circular Economy, see [cepPolicyBrief 06/2016](#); Voßwinkel, J. S. / Reichert, G. / Schwind, S. / Jousseume, M. (2020), Kreislauforientierte Kunststoffwirtschaft für Non-Food-Verpackungen, Anforderungen an die Umsetzung des EU-Aktionsplans Kreislaufwirtschaft, [cepStudie](#), p. 5.

<sup>44</sup> European Court of Auditors (2020), [EU action to tackle the issue of plastic waste](#), recital 44.

<sup>45</sup> Ibid.

<sup>46</sup> European Commission (2018), Report COM(2018) 656 of 24 September 2018 on the implementation of EU waste legislation, including the early warning report for Member States at risk of missing the 2020 preparation for re-use/recycling target on municipal waste, p. 7.

<sup>47</sup> European Court of Auditors (2020), [EU action to tackle the issue of plastic waste](#), recital 44.

<sup>48</sup> Eunomia (2017), [Study on Waste Statistics – A Comprehensive Review of Gaps and Weaknesses and Key Priority Areas for Improvement in the EU Waste Statistics](#), p. 114.

To improve the data, the Packaging Waste Directive of 1994 [94/62/EC] was amended in 2018 to harmonise the calculation method for recycled plastic packaging waste<sup>49</sup>, and EU-wide requirements for the calculation, monitoring and reporting of data had to be implemented by the Member States by 5 July 2020.<sup>50</sup> In general, the weight of packaging waste deemed to be recycled is measured at the point where packaging waste – after having been collected, sorted, shredded and cleaned – enters the actual recycling operation (“input”).<sup>51</sup> The implementation of the harmonised calculation method is expected to lead to a decrease in the EU-wide recycling rate by 10 percentage points.<sup>52</sup> The new requirements came into force in 2020. As recycling rates are published with a two-year time-lag, the first reports based on the new calculation method will be published in 2022.<sup>53</sup>

#### 4.1.2.2 Recycling Rates of EU Member States

In 2018, at EU-level 41.5% of all plastic packaging waste was recycled. The rest was incinerated or disposed of in landfills due to a combination of the high cost of collecting waste, inadequate sorting systems, high investment costs for high-quality recycling and the low price of oil as primary raw material for “virgin plastic” produced without recycled material (“recyclates”).<sup>54</sup> Between 2008 and 2017, the average EU recycling rates for plastic packaging waste rose by 12%. Since the amount of packaging waste increased at the same time, the EU-wide amount of non-recycled plastic packaging waste has remained at the same level since 2012 (approximately 9.5 million metric tons).<sup>55</sup>

Of all the Member States, France had one of the lowest recycling rate in 2018 (26.9%), with only a minor increase of 0.4 percentage points from 2017 to 2018.<sup>56</sup> Italy’s recycling rate of 43.8% is higher than the EU average and increased two percentage points from 2017 to 2018.<sup>57</sup> Germany had a recycling rate of 47.1% in 2018, while its recycling rate decreased from 2017 to 2018 by almost three percentage points.<sup>58</sup> No data is yet available under the new calculation method.<sup>59</sup>

## 4.2 Projection of Revenue from the National Plastic Contributions

The NPCs in 2021 will be based on the weight of non-recycled plastic packaging waste generated in 2018.<sup>60</sup> While the relevant data is not yet fully available, the NPC of each Member State and the total revenue for the EU budget can be projected based on the newest data as of 2018 (see Annex). We project a total revenue of 6.2 billion Euros annually, which is less than the Commission’s estimate of approximately 7 billion Euros per year, amounting to 4% of the revenue from all own resources.<sup>61</sup> However, it is in line with projections that the highest amounts will have to be paid either by Germany

<sup>49</sup> Directive (EU) 2018/852 of 30 May 2018 amending Directive 94/62/EC on packaging and packaging waste.

<sup>50</sup> European Court of Auditors (2020), [EU action to tackle the issue of plastic waste](#), recitals 47 and 48.

<sup>51</sup> Packaging Waste Directive 94/62/EC, Art. 6a(1) and (2); Directive (EU) 2018/852, recital 15.

<sup>52</sup> Plastics Europe (2019), [The Circular Economy for Plastics. A European Overview](#), p. 18.

<sup>53</sup> European Court of Auditors (2020), [EU action to tackle the issue of plastic waste](#), recital 47.

<sup>54</sup> Eurostat (2020), [Packaging waste by waste management operations and waste flow](#).

<sup>55</sup> European Court of Auditors (2020), [EU action to tackle the issue of plastic waste](#), recitals 46.

<sup>56</sup> Eurostat (2020), [Packaging waste by waste management operations and waste flow](#). Data is still missing from Greece, Malta, Netherlands and Slovenia.

<sup>57</sup> Ibid.

<sup>58</sup> Umweltbundesamt (2020), *Aufkommen und Verwertung von Verpackungsabfällen in Deutschland im Jahr 2018*, p. 103.

<sup>59</sup> Antwort der Bundesregierung auf die Kleine Anfrage d der Fraktion BÜNDNIS 90/DIE GRÜNEN Drucksache 19/22730, *Umsetzung des EU-Plastikbeitrags in Deutschland*, p. 6.

<sup>60</sup> Bundesregierung (2020), Antwort auf die Kleine Anfrage der FDP-Fraktion, Drucksache 19/22068, *Die „Plastiksteuer“ als zweckungebundene EU-Einnahmequelle*, p. 3.

<sup>61</sup> European Commission (2018), Proposal COM(2018) 325 of 2 May 2018 for a Council Decision on the system of own resources of the European Union, pp. 8 et seq.



(1.32 billion Euros) or France (between 1.27 billion and 1.37 billion Euros) followed by Italy (between 836 million and 846 million Euros).<sup>62</sup>

With regard to future developments, the Commission is expecting plastic waste in the EU to increase annually by 300,000 metric tons, while recycling rates should also increase up to 50% in 2025 and up to 55% in 2030.<sup>63</sup> The Commission is therefore expecting that the overall revenue from the NPC will remain stable until 2026 and slightly decrease only thereafter.<sup>64</sup>

## 5 Environmental Objective: Reducing Non-recycled Plastic Packaging Waste

Given the distinct character of the NPC as a fiscal instrument of the EU, the question arises whether it is also automatically an effective environmental instrument for the reduction of non-recycled plastic packaging waste. After all, both the Commission and the Council expressly claim that since the new own resource is directly proportional to the quantity of non-recycled plastic packaging waste in each Member State, it will also provide “an incentive for the Member States to reduce these waste streams through efforts to increase recycling and/or to reduce plastic packaging volume”<sup>65</sup> and “to reduce the consumption of single-use plastics, foster recycling and boost the circular economy”.<sup>66</sup> However, given the main objective of the NPC is to raise additional revenue for the EU budget, one is tempted to ask whether these claims are simply an attempt to greenwash an unpopular fiscal measure.

The Council Decision on the own resources system merely establishes a method for the calculation of the amount each Member State has to pay as its NPC to the EU budget. However, this additional revenue is in no way designated to be spent predominantly or even solely on measures for the reduction of non-recycled plastic packaging, e.g., by improving the respective recycling infrastructure.<sup>67</sup> In plain terms, this means that it is entirely up to the Member States to decide for themselves how they raise the respective revenue. They are – “in line with the principle of subsidiarity” [Art. 5(3) TEU] – expressly “free to take the most suitable measures.”<sup>68</sup> Therefore, Member States may well pay their plastic contribution – as the Austrian government has already announced<sup>69</sup> – simply out of their general national budget.<sup>70</sup> Most importantly, the introduction of the NPC is not linked to a legal obligation of Member States to introduce any additional measures targeted at the reduction of non-recycled plastic packaging waste. It does not in itself therefore have any automatic environmental effect.

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<sup>62</sup> Politico of 25 February 2020, [France, Germany set to pay the most under EU plastics tax](#); *Emballage Magazine* of 21 June 2020, [Les déchets d’emballage en plastique non recyclés taxés par l’Europe](#).

<sup>63</sup> 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, pp. 27 et seq.

<sup>64</sup> *Ibid.*, p. 35.

<sup>65</sup> 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, p. 27.

<sup>66</sup> Council of the European Union (2020), Proposal ST 10025 2020 INIT of the Presidency of 29 July 2020 for a Council Decision on the system of Own Resources of the European Union, p. 4, recital 7.

<sup>67</sup> Deutscher Bundestag (2020), Antwort der Bundesregierung auf die Kleine Anfrage der Fraktion BÜNDNIS 90/DIE GRÜNEN, Drucksache 19/23141, Umsetzung des EU-Plastikbeitrags in Deutschland, p. 12.

<sup>68</sup> Council of the European Union (2020), Proposal ST 10025 2020 INIT of the Presidency of 29 July 2020 for a Council Decision on the system of Own Resources of the European Union, p. 4, recital 7.

<sup>69</sup> *Der Standard* of 31 July 2020, Finanzministerium will EU-Plastikabgabe aus Budget zahlen.

<sup>70</sup> Council of the European Union (2020) Proposal ST 10025 2020 INIT of the Presidency of 29 July 2020 for a Council Decision on the system of Own Resources of the European Union, p. 4, section 7.

Nevertheless, one might argue that the national plastic contribution at least provides an *indirect* incentive for Member States to take action to reduce non-recycled plastic packaging waste in order to reduce their NPCs. This indirect economic incentive, however, is at best merely complementary to the *direct* legal incentives already set up under EU environmental law. Accordingly, Member States are legally obliged to “take the necessary measures” to reach binding recycling targets, i.e. quotas for certain materials, including plastic, contained in packaging waste on their territories.<sup>71</sup> In order to meet their recycling quota for plastic packaging waste, the Member States can take a variety of actions, some of which are legally prescribed by EU environmental law. For example, Member States must ensure that plastic packaging is placed on the market only if it is manufactured in such a way as to enable the recycling of a certain percentage by weight of the plastic material used (“recyclability”).<sup>72</sup> Furthermore, Member States may apply measures to ensure that – in line with the polluter-pays-principle – producers of products including plastic packaging bear the cost of the respective waste management (“extended producer responsibility”).<sup>73</sup> Finally, the Member States themselves are free to levy a real plastic tax, e.g., on the production or use of plastic packaging. Such a fiscal measure would also have the advantage for Member States of generating revenue for their national budgets.

## 6 Conclusion

Contrary to what the Commission and the Council claim, the NPC will not have an inherent double dividend of a fiscal *and* an environmental benefit. The reduction of non-recycled plastic packaging waste is already prescribed by EU environmental law. The NPC will at best play a minor role in further inducing this reduction. Given the growing financial needs of the EU particularly due to Brexit and the COVID-19 crisis, its main purpose as an own resource of the EU is clearly to raise additional revenue for the EU budget. In this respect, the claim that the NPC has a dual fiscal *and* environmental purpose represents an inherent contradiction. This was correctly identified as early as 2018 by Frans Timmermans himself, who is today responsible for implementing the “European Green Deal”: If the NPC actually reduced plastic waste effectively, its revenue would rapidly decrease, thereby compromising its ability to serve as a sustainable source of income for the EU’s finances for a substantial period of time. Therefore, the alleged environmental purpose of the NPC is mainly an attempt to greenwash an unpopular fiscal measure, however necessary it may be to meet the EU’s financial needs.

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<sup>71</sup> Packaging Waste Directive 94/62/EC, Art. 6(1).

<sup>72</sup> *Ibid.*, Art. 9 in conjunction with Annex II No. 3(a).

<sup>73</sup> Waste Framework Directive 2008/98/EC, Art. 8(1).

## Annex: Projected NPC Revenue for the EU Budget (2021)

The revenue potentially generated by the NPC in 2021 can be projected based on the weight of non-recycled plastic packaging waste in 2018 in each Member State (for Greece, Malta, The Netherlands and Slovenia based on the newest data available as of 2017\*). Given the stable amount of non-recycled plastic packaging waste since 2007, the Commission is expecting stable revenue until 2026.<sup>74</sup>

Member State	Non-recycled Plastic Packaging Waste (in metric tons)	Initial Payments based on Call Rate (0.80 Euro/kg)	Lump Sum Reduction	Final Payments (after Reduction)
Austria	205,765	164,612,000	–	164,612,000
Belgium	199,945	159,956,000	–	159,956,000
Bulgaria	53,641	42,912,800	22,000,000	20,912,800
Croatia	40,332	32,265,600	13,000,000	19,265,600
Cyprus	7,933	6,346,400	3,000,000	3,346,400
Czechia	115,033	92,026,400	32,187,600	59,838,800
Denmark	165,713	132,570,400	–	132,570,400
Estonia	34,491	27,592,800	4,000,000	23,592,800
Finland	93,244	74,595,200	–	74,595,200
France	1,723,640	1,378,912,000	–	1,378,912,000
Germany	1,712,000	1,369,600,000	–	1,369,600,000
Greece*	110,340	88,272,000	33,000,000	55,272,000
Hungary	238,566	190,852,800	30,000,000	160,852,800
Ireland	182,116	145,692,800	–	145,692,800
Italy	1,287,456	1,029,964,800	184,048,000	845,916,800
Latvia	28,001	22,400,800	6,000,000	16,400,800
Lithuania	23,292	18,633,600	9,000,000	9,633,600
Luxembourg	17,523	14,018,400	–	14,018,400
Malta*	10,739	8,591,200	1,415,900	7,175,300
Netherlands*	254,000	203,200,000	–	203,200,000
Poland	633,094	506,475,200	117,000,000	389,475,200
Portugal	274,140	219,312,000	31,322,000	187,990,000
Romania	223,106	178,484,800	60,000,000	118,484,800
Slovakia	64,102	51,281,600	17,000,000	34,281,600
Slovenia*	19,889	15,911,200	6,279,700	9,631,500
Spain	815,961	652,768,800	142,000,000	510,768,800
Sweden	122,876	98,300,800	–	98,300,800
<b>EU-27</b>	<b>8,656,938</b>			<b>6,214,297,200</b>

Source: Own projection based on Eurostat (2020), [Packaging waste by waste management operations and waste flow](#); Council Decision 2020/2053 on the EU Own Resources System, Art. 2.

<sup>74</sup> 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, p. 39.

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