

The next Multiannual Financial Framework and the strategic challenges and risks to the European Union's fundamental objectives and values

Dencho GEORGIEV*

Abstract

The central challenge for the Union's future is the overcoming of economic, social and territorial inequalities among its Member States. With the next MFF, there is an opportunity to make the Union's system of 'own resources' less regressive and more equitable. Progressivity in the financing of EU policies with redistributive effects could be introduced by combining progressive coefficients, national co-financing, and other automatic progressive stabilizers. This would ensure that solidarity becomes a matter of the rule of law and not of governance through conditionalities and fines. Unless the EU undertakes an effective reform of the financing of its redistributive policies to ensure that progressivity and solidarity in the EU become a matter of the rule of law, the Union will bear less and less resemblance to a democracy and will increasingly look like an empire with an economically stronger and more rapidly developing 'core' and an economically weaker 'periphery' in the East and the South, lagging behind the 'core'.

Keywords: Multiannual Financial Framework, EU solidarity, rule of law, cohesion policy, progressivity

Introduction

The way forward for the European Union (EU), its resilience and its capacity to face strategic challenges and risks will depend to a decisive degree on its ability to preserve the objectives and values on which it is based.

Presenting its package of legislative proposals for the next EU long-term budget – the Multiannual Financial Framework (MFF) for 2021-2027, the European Commission pointed out that there is an opportunity to unite around a clear vision for the future of Europe, that choices on the MFF 'will shape the Union for decades to come', and that a more united, stronger and more democratic Europe needs a new, modern budget (European Commission, 2018a).

* Dencho GEORGIEV is guest professor at the Centre for Private & Economic Law, Vrije Universiteit Brussel, Vice-president of the Bulgarian Association of International Law, e-mail: Dencho.Georgiev@vub.be.



This paper will examine the Commission’s proposal for the MFF from the point of view of the Union’s fundamental objectives, such as economic, social and territorial cohesion between the Member States, and values, such as equality, democracy, the rule of law and solidarity, and will explore how to achieve a better future for Europe and how to transform the EU from an instrument of divergence into a ‘machine of cohesion’ and of convergence between its Member States by ensuring compliance with these legally binding fundamental objectives and values, which constitute the core of the social contract between the peoples of the EU, enshrined in the Treaties¹.

The central challenge for the Union’s future is the overcoming of economic, social and territorial inequalities among its Member States. After Brexit, with the next MFF, there is an opportunity to undertake a reform of the Union’s financial system by introducing progressivity to bring it into conformity with the fundamental objective of cohesion and with the underlying values of equality, solidarity, democracy and the rule of law. On the revenue side – the EU’s system of ‘own resources’ – progressivity could be introduced for the Member States’ contributions based on Gross National Income (GNI) with a coefficient which would reflect the percentage of deviation of the respective Member State from the EU average GNI per capita. On the side of expenditure, progressivity in the financing of EU policies with redistributive effects could be introduced by combining progressive coefficients, national co-financing, and other automatic progressive stabilizers. It will be argued in the paper that this would ensure that solidarity becomes a matter of the rule of law and not of governance through conditionalities and fines. Unless the EU undertakes an effective reform of the financing of its redistributive policies to ensure that progressivity and solidarity in the EU become a matter of the rule of law, the Union will bear less and less resemblance to a democracy and will increasingly look like an empire with an economically stronger and more rapidly developing ‘core’ and an economically weaker ‘periphery’ in the East and the South, lagging behind the ‘core’.

1. The strategic challenges and the fundamental objectives and values of the European Union

The increase in *inequality* has been described as ‘one of the *central* problems, facing the advanced world today’ (Stiglitz, 2016, p. 260 – *emphasis mine*). It has been recognized as the major negative consequence of globalization (See also: Stiglitz, 2012; Piketty, 2014) and also of the

¹ Consolidated versions of the *Treaty on the European Union* (TEU) and the *Treaty on the Functioning of the European Union* (TFEU) in: OJ C 202, 07.06.2016.

economic crisis which recently hit the EU – a negative consequence which has not been overcome by economic growth after the crisis. Inequality is a central and therefore strategic challenge for the Union's future, relating to its fundamental values and aims (See also: Georgiev, 2017 and 2016, pp. 68-95). It concerns most directly the values of equality, solidarity and democracy in Article 2 TEU and the aims of economic, social and territorial cohesion among Member States in Article 3 TEU and Article 174 TFEU. According to Article 9 TEU equality is also the fundamental principle of democracy.

What was the EU's response to the economic crisis, what were the proposals for the Union's future and can these proposals ensure real convergence and effective cohesion among Member States?

Following the Greek debt crisis, the European Commission's vision on completing Europe's Economic and Monetary Union, as expressed in the Five Presidents' Report (European Commission, 2015), explicitly excludes 'permanent transfers between countries'. Such an attitude – in line with neo-liberal economic thinking which rejects redistribution for the overcoming of economic and social inequalities – is not compatible with the fundamental objective of cohesion between the Member States and constitutes a major risk for the future of the EU. The Treaty on the Functioning of the EU in its Article 175 does provide for the financing of economic, social and territorial cohesion through its Structural Funds, the European Investment Bank and its other existing financial instruments. Moreover, Article 175 TFEU explicitly requires that the internal market and all the policies and actions financed by the Union 'shall contribute' to the achievement of the objectives of economic, social and territorial cohesion.

Although the Commission's White Paper on the Future of Europe (European Commission, 2017) starts with the famous reference to solidarity in the Schuman Declaration², neither the White Paper nor its reflection papers propose concrete ideas on setting up effective mechanisms for real economic and social convergence and genuine solidarity among all Member States. The scenarios proposed envisage instead the possibility of a multispeed Europe with 'coalitions of the willing' consisting of certain Member States only – those that 'want more and do more'. Even at first glance it is quite obvious that such a scenario cannot guarantee the reduction and elimination of economic and social imbalances and inequalities among *all* Member States and cannot be the starting point of a targeted reform of EU's economic policies so as to bring these policies in compliance with the fundamental values of equality and solidarity and fulfil the Union's objectives of convergence and of economic, social and territorial cohesion.

² 'L'Europe ne se fera pas d'un coup, ni dans une construction d'ensemble: elle se fera par des réalisations concrètes, créant d'abord une solidarité de fait' (Déclaration Schuman, 9 mai 1950).

What was proposed for the euro area specifically was, *inter alia*, tax harmonization and new agreed social standards. But harmonization of corporate taxation cannot lead to reducing the economic inequalities between Member States because it would deprive the less advanced ones of the possibility to attract investment by offering tax incentives whereas imposing high social standards could lead to rising costs of production and a decrease in their competitiveness. The result would be lower growth in the Member States with a lower level of development and less real convergence and less cohesion in the euro area and in the EU as a whole. One could strongly doubt that aligning Member States' business taxation frameworks with the proposed Common Consolidated Corporate Tax Base, as envisaged by the reflection paper on the EMU, would 'help to drive convergence by facilitating cross-border trade and investment'. The proposal for a separate euro area budget with a stabilization function but without transfers in the form of automatic progressive stabilizers could have an even stronger negative effect on real economic convergence in the EU as a whole. Even its effect on convergence between euro area members only is doubtful, given the experience so far, with the euro serving as a factor of divergence rather than of convergence. Divergence and inequalities are generated, as a result of the EU's economic and monetary policies and the internal market, not only within the euro area but also between Member States in the whole of the EU. Therefore, measures of solidarity to reduce and eliminate economic and social disparities and inequalities need to be taken in the whole of the EU. This is true not only of economic or monetary policies but also of all other internal and external policies of the Union, especially the ones with significant distributive effects, including those funded entirely or partially from the EU budget. And, as Article 326 TFEU stipulates that enhanced cooperation 'shall not undermine the internal market or economic, social and territorial cohesion', the 'coalitions of the willing', as envisaged in the White Paper, may be in breach of EU primary law and the fundamental values of equality and solidarity.

The main flaw of the scenarios of the White Paper and the reflection papers of the Commission was that they ignored the centrality of inequality and divergence as fundamental problems of the EU and that, by diverting attention to the external challenges facing the Union, they disregarded the potential role that strategies for the effective reduction and elimination of inequalities between Member States can play for the solution of these problems and challenges.

This flaw also persists in the package of legislative proposals of the Commission for the new MFF. The Commission's proposal on the system of 'own resources' (European Commission, 2018b) does not aim at reducing the regressive (Monti *et al.*, 2016, p. 8) and unequitable character of the Union's revenues system. Rather than proposing to eliminate the regressive elements of the 'own resources' system (such as the reductions or ceilings of the GNI- and VAT-based contributions by

Member States) and to abolish the VAT-based contribution by Member States, it intends to reinstate the reductions (due to expire in 2020) for some Member States with a high GNI per capita and introduce a revised version of the VAT-based contribution. In addition, the Commission proposes new categories of own resources with the intention of reducing the share of GNI-based contributions by Member States, which are admittedly (Monti *et al.*, 2016, pp. 7, 12, 37) the most equitable own resource of the EU revenues system. Thus the proposals would make the system of EU revenues more regressive and less fair.

On the expenditure side, regarding the financing of the various sectoral policies, such as the common agricultural policy, regional policy, etc., it seems that the Commission, here too, has not been guided by the objectives of cohesion, by the fundamental values of equality and solidarity and by the Treaty requirement of Article 175 TFEU that all policies and actions 'shall contribute' to the achievement of cohesion, but by an attempt to ensure '*juste retour*' and to avoid 'permanent fiscal transfers'.³ These are considerations which are not based on the EU Treaties, i.e. on the existing 'social contract' between the peoples of the EU, which are not compatible with the Union's fundamental objectives and values and which constitute a major risk and threat for the future of this social contract.

2. The next MFF and the rule of law

The package of legislative proposals for the next MFF of the European Commission includes a proposal for a regulation 'on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States' (European Commission, 2018c).

The Treaties on the European Union give no substantive definition of the concept of the 'rule of law'⁴. So, it might be appropriate to use the definition of 'rule of law' in the regulation proposed by the Commission for the next MFF. According to its Article 2(a), for the purposes of the proposal rule of law 'refers to the Union value enshrined in Article 2 of the Treaty on European Union which includes the principles of legality, implying a transparent, accountable, democratic and pluralistic

³ It is rather disappointing that some of the visions for the future of the EU presented on the occasion of the elections for the European Parliament in 2019, including some supported by prominent contemporary intellectuals who declare themselves 'pro-European', in reality fail to comply with the values and objectives of the EU. Thomas Piketty, for example, who in his outstanding work on capitalism in the 21st century (Piketty, 2014) has shown the role that 'modern redistribution' can play for the reduction of economic and social inequalities, proposes a new Treaty (of the Eurogroup and 'those who want to advance') with progressive taxation but without any 'financial transfers', i.e. without redistribution and cohesion among Member States and without the prospect for real equality among *all* citizens and *all* peoples of the EU.

⁴ Article 2 TEU (in other languages: 'Rechtsstaatlichkeit', 'l'État de droit', 'pravova darzhava').

process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection by independent courts, including of fundamental rights; separation of powers and equality before the law’.

Certainly, the central idea of the rule of law is about subordinating power to rules and principles, about placing power – executive, administrative, but also legislative or any other – not simply under another superior power but under ‘higher’ rules and principles. In a democracy such ‘higher’ law would have to be made democratically, i.e. it needs to comply with the will of those whom it affects (government by the people) and be in the interest of all (government for the people)⁵, ensuring their equality. If power is subordinated not to superior rules, principles or values, but just to another discretionary superior power, we can hardly speak of rule of law, and if this superior power does not express the will and the interests of the people(s), then such a structure cannot be described as a democracy – it would be more appropriately described as an empire⁶, with a central power dominating politically and economically over a lagging periphery.

Article 2 TEU stipulates that ‘[t]he Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights’ and that ‘[t]hese values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’. It seems obvious that these values are meant to serve as higher ‘constitutional’ law with which the acts of the legislative and executive powers of the EU, including the financing of its policies, are to comply.

To be able to say, however, that compliance with these values in the EU is ensured as a matter of the rule of law, it would be necessary to place them explicitly at the top of the hierarchy of EU law and to provide for a legal mechanism to protect them, so that the acts of EU institutions can be

⁵ Following Abraham Lincoln's famous expression in his Gettysburg address (‘government of the people, by the people, for the people’). See: Scharpf, F. (1999, p.6 ff.).

⁶ Coughlan (2015) describes the EU as an imperial arrangement ‘where different countries are ruled by a centralized bureaucracy in a far-away imperial capital’ (p.6), which ‘is far from the “partnership of equals” its official statements claim it to be. In power-political terms the EU is an entity that is divided into three groups of States. The big States, primarily Germany and France, take the strategic policy decisions, interacting with Britain, Italy, Spain and Poland. Then come the smaller creditor countries of the Eurozone – Austria, Finland and Benelux. They tend to support Germany as the biggest creditor country. Then come the debtor countries of the EU periphery as well as the former communist countries. Their relation with Brussels and Berlin is virtually a neo-colonial one’ (p.13). He adds that ‘there is no sense among voters of a common or collective European “We”, comparable to an American “We” or to any national State “We”, which would make citizens in the richer Eurozone countries willing to pay higher taxes to finance resource transfers to poorer countries in the name of a cross-EU or pan-Eurozone solidarity’ (p.45).

In his turn, Streeck (2013, p.202) describes the EU as an expanding market-economic ‘Imperium’. For a different approach, see: Zielonka J. (2006, 2014), who claims that – after the French and Dutch referenda marked the death of the idea of a European state – the EU ‘is on its way to becoming a kind of neo-medieval empire with a polycentric system of government, multiple and overlapping jurisdictions, striking cultural and economic heterogeneity, fuzzy borders, and divided sovereignty’ (2006, p.v). He sees the future of European integration as such an empire, ‘with less or no EU’ (2014, p. x).

reviewed for compliance with EU values, e.g. under Article 263 TFEU. Such a legal mechanism has not been provided for in the Treaties. One possibility of overcoming the lack of status of the values in the hierarchy of EU law, without changing the Treaties, would be if the Court of Justice of the EU were to proclaim the values enumerated in Article 2 TEU to be part of the general principles of law of the EU, alongside with fundamental rights, 'as they result from the constitutional traditions common to the Member States' (Article 6.3 TEU). When assuming that the values enumerated in Article 2 TEU are part of the general principles of EU law, it would also be logical to assume that the aims and objectives stated in Article 3 TEU and elsewhere in the Treaties, insofar as they are based on and pursue these values⁷, are also placed at the top of the hierarchy of EU law, together with its values.

What is provided for in the Treaties as protection of the values of the EU is the procedure in Article 7 TEU for cases of 'clear risk of a serious breach' and of a 'serious and persistent breach by a Member State of the values referred to in Article 2'. However, this mechanism, whose nature is political rather than legal, has itself major deficits with respect to the rule of law and democratic legitimacy.

One such deficit is that, although it appears to be about breaches of the values in the EU, the procedure actually concerns only breaches by the Member States. It does not concern the EU itself which, compared to Member States, has major inbuilt deficits of democratic legitimacy and of the rule of law⁸. This hypocrisy is aggravated by the fact that the EU is the very reason for major deficits of democratic legitimacy and of the rule of law in the domestic political systems because it enables the executive bodies of the Member States, acting collectively, to circumvent the democratic control exercised by their national parliaments domestically (Georgiev, 1987, pp. 169–182). Another deficit of the rule of law underlying the procedure of Article 7 is that it is political bodies – the Council and the European Council ('on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament') – and not an independent judicial body (e.g. the Court of Justice of the EU) that determine the existence or risk of breaches of the values. And a third deficit of the rule of law of the procedure of Article 7 is that it is not clear on what basis the meaning of the values is to be interpreted. There are no definitions of the values in the Treaties, thus there is a risk that determinations on breaches could be arbitrary or politically biased.

These deficits of '*Rechtsstaatlichkeit*' of the procedure are partially offset by the fact that it is very difficult to implement, as it requires a majority of four fifths in the Council and unanimity in the European Council. However, it still serves as a rather powerful instrument of political pressure by the Commission and groups of influential Member States on other Member States.

⁷ According to Article 3.1 TEU '[t]he Union's aim is to promote its values and the well-being of its peoples'.

⁸ Such as deficits of accountability and representation (Weiler, 2014; Georgiev, 2016, p.68-95).

The regulation proposed by the European Commission (2018c) for the next MFF envisages introducing a procedure whereby the Commission would be able, if ‘it has reasonable grounds to believe’ that there are ‘generalised deficiencies as regards the rule of law’ in a Member State, to adopt measures, including suspension of payments to Members States, reduction of funding, prohibition to conclude new commitments. These measures ‘shall be deemed to have been adopted by the Council unless it decides, by qualified majority, to reject [them] within one month of [their] adoption by the Commission’. The proposal, which is obviously meant to overcome the ‘inefficiency’ of the mechanism for protecting the values of the EU in Article 7 TEU, in fact aggravates the deficiencies of the procedure in terms of the rule of law (Georgiev, 2019) – the value which it claims to protect.

A major deficiency with respect to the rule of law which would result from the Commission proposal is that the Commission, an executive body of the EU, not accountable democratically to any national body, and with a deficit of democratic legitimacy in the EU, would be given the power to pass judgements, without being a court, about any ‘widespread or recurrent practice or omission, or measure’ of any national public authority, even of democratically elected national legislations. Thus, the Commission would be in a position to exert political pressure and interfere in national legislation and decision making, i.e. in the domestic democratic political process, on matters beyond EU competencies.

If adopted, this proposal would enhance the already immense discretionary power of direct governance of the Commission. As it is not about placing power under superior rules, principles or values, it can hardly be claimed that it is about protecting the rule of law of the EU itself. It is about placing the power of Member States under the power of the Commission and enhancing this power to new proportions and thus, rather than protecting the rule of law of the EU, the proposal would result in its erosion. If the proposal is adopted, the EU would be taking a step further away from democracy and a step closer to becoming an ‘empire’.

3. The proposed new MFF and democratic legitimacy

Will the next MFF contribute to achieve ‘a more democratic Europe’, as promised? Will it, in particular, help to overcome the democratic deficits of the EU? Trying to answer this question, we can turn to the distinction between the two aspects of the democratic legitimacy of the EU: ‘input

legitimacy' (government by the people), on the one hand, and 'output legitimacy' (government for the people), on the other hand.⁹

The deficit of 'input' legitimacy of the EU can be seen in the insufficiency of the two 'primordial features of any functioning democracy [...] – the grand principles of accountability and representation' (Weiler, 2012, p.140). In the next MFF, an increase of the already 'immense power of direct governance' of the Commission (Weiler, 2014, p.26), the executive body of the EU, with its deficits of accountability and representativeness, especially in the field of finances, would result in erosion of the rule of law of the EU and would also further undermine the democratic 'input' legitimacy of the EU and make the Union not more, but less democratic.

From the point of view of democratic 'output' legitimacy, the question is whether the next MFF will be in the interest of all, whether it will promote the well-being of all its peoples, as required by Article 3.1 TEU, and all citizens in the Union and whether it will achieve more equality (which, apart from being one of the values of the EU, is also its fundamental democratic principle, as proclaimed in Article 9 TEU) and whether, accordingly, it will contribute to the achievement of the objectives of economic, social and territorial cohesion and solidarity among Member States (Article 3 TEU) and help to reduce the 'disparities between the levels of development of the various regions' as required by Article 174 TFEU.

It is important to bear in mind that the promotion of economic, social and territorial cohesion and solidarity among Member States in Article 3 TEU is an aim of the Union itself, as a whole, not merely of its cohesion policy but of all its 'policies and actions'. This is explicitly stated in Article 175 TFEU which stipulates that 'the formulation and implementation of the Union's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 174 and shall contribute to their achievement'. Thus from Article 175 TFEU it follows that, in order to reduce the disparities between the levels of development of the various regions, funding to Member States with a low GNI per capita, and to beneficiaries from such Member States, in *all* policy areas and actions should be higher than that for Member States with a high GNI per capita. If we want to have more democracy and more '*Rechtsstaatlichkeit*', it should also be clear and transparent on what basis this funding would be determined (following what rules or principles) and *how much* higher or lower respectively it would be.

⁹ According to Scharpf's widely accepted formulation, democratic 'input legitimacy' refers to the will of the people and to 'government by the people' whereas democratic 'output legitimacy' refers to the conformity of the outcome with the interests of the people and to 'government for the people'. (Scharpf, 1999, p. 6 ff).

If Member States want to bring more rule of law in the Union's finances, they would have to introduce more rules and principles into its budget and its policies and leave fewer possibilities for arbitrary political decisions by the executive bodies and fewer possibilities for *ad hoc* decision making and for political pressure and bargaining. If they want to make the EU more democratic, they would need to reform the finances of the EU, especially the financing of the various policies of the EU, so as to bring them also in conformity with the value of equality as a fundamental principle of democracy and with legally binding objectives, such as economic, social and territorial cohesion and solidarity between the Member States.

4. Progressivity as a way forward to promote the fundamental values and objectives of the EU

A reform of the finances of the EU ought to ensure that those who benefit more from the Internal Market and its policies also contribute more financially and that more cohesion assistance is directed to those who need it more. Redistribution at the level of the EU and through the EU budget is the key to tackling economic inequalities between Member States and achieving a level playing field for all. Central to reducing inequalities in the EU and making it more democratic by means of more solidarity and more rule of law would be to transform the EU's own budgetary system, which is now regressive (Monti *et al.*, 2016, p.8), into a *progressive* one. As Galbraith (1996, p. 65) points out, 'For a good society, a more equitable distribution of income must be a fundamental tenet of modern public policy and to this end progressive taxation is central'.

Introducing progressive taxation in the EU by obliging Member States to harmonize their national tax laws is, as noted above, not desirable at this stage as it would be counter-productive. It would have negative consequences for the competitiveness of the economically less advanced Member States and would not lead to more investment, economic growth and accelerated economic, territorial and social cohesion but, on the contrary, to further legal consolidation of the economic inequalities between and within Member States. As long as the EU is composed of separate economies that are in competition with each other and there is no common EU social system based on genuine solidarity and as long as each Member State is responsible for its own taxation and budget, the introduction or not of progressive national taxation, as well as national internal distribution and redistribution and social policies, should remain the competence of each Member State. Unless the EU builds a common social system based on solidarity and funded at the EU level, it will not have sufficient democratic legitimacy to impose social standards on Member States and to intervene in domestic redistribution matters, including in taxation and in social legislation.

The overcoming of inequalities between Member States will result in reducing the economic and social inequalities within Member States, not *vice versa*, and will lead to sustained economic growth through the increase of demand and consumption and thus boost the wellbeing of the citizens of the Union as a whole.

The EU can bring more justice to its redistributive system, its policies and its budget not by harmonizing Member States' tax laws but by introducing progressivity in the Union's own finances. For a reform of the EU's own revenues and of the EU distributive policies to be effective, it needs to be comprehensive so as to fulfil the condition of Article 175 TFEU which requires the internal market and *all* of the Union's policies and actions to contribute to the achievement of the objectives of economic, social and territorial cohesion.

Such a comprehensive reform, necessary to effectively achieve the objectives of cohesion and of democratization, is not envisaged in the package of legislative proposals of the Commission for the MFF 2021-2027. The package consists of different proposals for legislative acts on the financing of the various policies, which will be adopted separately, most often with the ordinary legislative procedure which requires a qualified majority vote in the Council. So, if the Member States interested in a comprehensive reform manage to organize themselves as a sufficiently numerous group¹⁰, they could try to introduce separate elements of progressivity in the financing of the various policies.

What could those elements of progressivity be in the various policy areas?

On the *revenue* side, in the Union's system of 'own resources', progressivity could be introduced for the Member States' contributions based on Gross National Income (GNI) with a coefficient which would reflect the percentage of deviation of the respective Member State from the EU average GNI per capita. It would also be important to eliminate all other regressive elements of the present own resources system, such as the VAT-based contribution by Member States.

In the present system (Council Decision 2014/335/EU, Euratom) the main regressive elements are the permanent correction mechanism in favour of the United Kingdom and the temporary (2014-2020) reductions in the GNI- and VAT-based contributions of some Member States with high GNI per capita. These reductions will expire before the next MFF. For the next MFF the Commission proposes (2018b), however, to reinstall the reductions in the annual GNI-based contributions for 2021-2025 for the Member States which have them now. In addition, the Commission proposes three new 'own resources' (based on a common consolidated tax base, on the EU emissions trading system

¹⁰ The Council, under Article 241 TFEU, 'acting by a simple majority, may request the Commission to undertake any studies [which it] considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals'.

and on plastic packaging) the principal purpose of which is to replace part of the GNI-based contributions of Member States. As has been noted above, reducing the share of the GNI-based contributions would not make the system less regressive and more equitable.

A decision on the Union's 'own resources' would require unanimity in the Council and a strong resistance could be expected to the introduction of a progressive coefficient and to the elimination of VAT-based contributions. On the other hand, unanimity is a guarantee against attempts, such as those of the Commission, to make the EU's revenue system more regressive. Therefore, Member States which are interested in making the EU's own resources system more equitable should not hesitate to oppose any such attempts.

Also, on the *revenue* side, when concluding free trade agreements with third countries whose GNI per capita is above the EU average (including agreements under Article 50 TEU on withdrawal from the Union), arrangements should be made for contributions to the EU budget by such countries, as is the practice with other European non-EU Members.

On the *expenditure* side, i.e. regarding the financing of EU policies, various instruments could be used to introduce progressivity, including coefficients based on the deviation from the EU average GNI per capita, national co-financing, other 'progressive automatic stabilizers' (Stiglitz, 2016, p. 247). For the majority of policies and programmes, most suitable would be a combination of EU funding and national co-financing, respectively increasing and decreasing proportionally to the deviation of the given Member State from the EU average GNI per capita. The aim would be to offset the unfair regressive character of the own resources system whereby Member States with lower GNI per capita contribute to policies more beneficial to Member States with higher GNI per capita.

Cohesion funding from the EU budget, for example, should be available only to Member States with a per-capita GNI of less than 90 % of the Union average, as required by Protocol (No 28) on economic, social and territorial cohesion. For regional aid, national co-financing could be set at a very low level for Member States with a GNI per capita below a threshold (e.g. of 75 % of the EU average) and could increase progressively to a very high level (e.g. up to 99% of the respective amount of the total financing) for Member States with a GNI per capita above another threshold (of e.g. 110% of the EU average GNI per capita).

Similarly, the financing of the EU Common Agricultural Policy, which still accounts for a large part of EU expenditure, could be made to comply with the requirements of Article 175 TFEU by introducing national co-financing¹¹ only for Member States with GNI per capita above the 90%

¹¹ National co-financing was allowed for the new Member States in order to complement the lower agricultural subsidies they received from the EU budget during the first ten years of their membership.

cohesion threshold and below some other threshold, e.g. 110% of the EU average GNI per capita. Member States with a still higher GNI per capita, who would not receive any EU funding, could be allowed to give subsidies from their national budgets up to levels which would not undermine the competitiveness¹² of farmers receiving EU aid in other Member States.

EU cohesion funding could be made available not only for infrastructure and environmental projects, but also – and above all – for investment in, and development of, production capacities for goods and services with high added value, and for the creation of local jobs in the most underdeveloped regions. Such aid is particularly effective as it ultimately makes itself unnecessary.

On investment, for programmes like the ‘Juncker Plan’, funding from the EU budget could be reserved for projects in the economically less advanced Member States only and the amounts from the EU budget available to each Member State could reflect its deviation from the EU average GNI per capita and could be fixed in advance in the MFF so as not to depend on discretionary decisions by the Commission or other bodies. The European Investment Bank (EIB) and other EU financial facilities could give preferential loans and guarantees for projects for developing less developed regions (which is the EIB's first task under Article 309 (a) TFEU), ensuring a fair distribution between the Member States.

EU funding for social programmes could be made available only for Member States with a GNI per capita less than the EU average (or a certain percentage of the EU average) and the amounts allotted to Member States would reflect their deviation from the EU average.

A comprehensive reform, aimed at adjusting the financing of the Union's policies to its fundamental values and objectives, should also include an adjustment of its competition policy. It could be decided, for instance by using the procedure in Article 107.3(e) TFEU, that any aid granted to the economy of any Member State with a GNI per capita less than a certain percentage of the EU average (e.g. 75% or 90%) shall be compatible with the internal market.

Generally, in a comprehensive reform of the Union's finances of *all* policies and programmes, fair distribution of EU funding could be ensured by using clear, fair and transparent formulae analogous to the ones mentioned, which could be applied automatically as ‘progressive automatic stabilizers’, rather than based on case-by-case discretionary decisions by EU bodies or reached through political bargaining between Member States. In order to comply with the value of the rule of law, there should be no discretionary decisions by the Commission or by other bodies on the distribution of funding between the Member States. The allocations of EU funding between the

¹² For that it would be necessary to have identical maximum direct subsidies per hectare in all Member States.

Member States (or beneficiaries from the Member States) should be fixed in advance, both for the various programmes and overall, for the whole MFF, and there should be no ‘flexibility’ to move funding between Member States. Funding not used by a Member State should not be returned to the EU budget but should remain available to the respective Member State in the next budgetary period and for other policies or programmes.

In the debate on the financing of policies related to migration – a politically controversial matter – there is the perverse view on solidarity as a ‘two-way street’, implying that Eastern and Central European Member States, who receive cohesion money, should in exchange pay in case they refuse to host migrants (Euractiv, 2018). It would be difficult to make an assessment what a fair system of financing migration would be without taking into account all elements of that system, in particular which Member States should be responsible for hosting migrants. Now it is the first Member State where the migrant entered EU territory, but in most cases, this is not necessarily the country where the migrant wants to go and it is proposed that this be changed. Compulsory resettlement cannot be described as fair either to migrants or to Member States who do not want to host migrants. *Prima facie* it would appear that in a system with a freedom of movement of people, such as the EU claims to have, EU money should go with the migrant freely moving in the EU. With an overall regressive EU financial system this would, however, mean that poorer Member States would be paying to richer Member States to host migrants, who – at least theoretically – would, in the long term, help to boost the economies of these richer countries. Such a system would, therefore, be highly unfair to the poorer Member States. In this situation the new MFF could envisage, on the one hand, to discontinue payments of EU funds related to hosting migrants to Member States with a per-capita GNI higher than the EU average (or higher than a threshold related to the EU average – e.g. the cohesion threshold of 90%). On the other hand, it could be made financially attractive for Member States below that threshold to host migrants – if they are willing to do so – by giving them much more than they would actually spend on each migrant, in order to strengthen the social security systems for their own citizens.

A separate EU budget for the euro area, as advocated by some (Habermas *et al.*, 2018), especially one ‘focused mainly on investment and convergence’, that provides solidarity and automatic and discretionary stabilizers not within the EU as a whole, but for the euro area only (Rios, 2018), would of course lead to further deepening of the divergence with those countries outside the euro area which need it most. Since burdens, disadvantages and inequalities do not arise uniquely as a result of the functioning of the euro area itself, but within the internal market as a whole, having a separate budget for the euro area, especially for investment, would be in breach of fundamental values and objectives of the EU such as solidarity and cohesion.

Conclusion

If the EU does not undertake an effective reform of its redistributive policies to ensure that progressivity and solidarity in the EU become a matter of the rule of law, to replace governance through conditionalities and fines, in the foreseeable future the Union will bear less and less resemblance to a democracy and will increasingly look like an empire with an economically stronger and more rapidly developing 'core' and an economically weaker 'periphery' in the East and the South, lagging behind the 'core'. The challenge for the future of the EU is to succeed in reforming the system of the financing of its policies, so that they comply with the values of democracy, equality, the rule of law and solidarity and with the objectives of economic, social and territorial cohesion among Member States.

Although such a reform of the EU's finances would boost the wellbeing of the citizens of the Union as a whole and would, therefore, be in the interest of all, immediate political support for such a reform – in the course of adoption of the legislative proposals for the MFF 2021-2027 package – in the Council is not likely. Therefore, what is needed is collective action by the Member States most immediately interested in such a reform. It would take the ability of these countries to join efforts and organize as a group and act collectively at all levels – at the level of the European Council, in the different Council formats and in the European Parliament – in order to defend their interests in the course of the adoption of the legislative acts for the next MFF.

References

- Consolidated versions of the *Treaty on the European Union* (TEU) and the *Treaty on the Functioning of the European Union* (TFEU), in: OJ C 202, 07.06.2016.
- Coughlan, A. (2015), *Tackling the EU Empire. Basic critical facts on the EU/Eurozone. A handbook for Europe's democrats, whether on the political Right, Left or Centre*, The Bruges Group.
- Council Decision (2014/335/EU, Euratom) of 26 May 2014 *on the system of own resources of the European Union*.
- Euractiv with Reuters (2018), *Host migrants or pay, France and Germany propose*, 7.12.2018.
- European Commission (2018a), *A Modern Budget for a Union that Protects, Empowers and Defends. The Multiannual Financial Framework for 2021-2027*, COM 321 final, 2.5.2018.

- European Commission (2018c), *Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States*, COM 324 final, 2.5.2018.
- European Commission (2018b), *Proposal for a Council Decision on the system of Own Resources of the European Union*, COM 325 final, 2.5.2018.
- European Commission (2017), *White Paper on the Future of Europe. Reflections and scenarios for the EU27 by 2025*, COM(2017) 2025, 1 March.
- European Commission (2015), *Completing Europe's Economic and Monetary Union. Report by: Jean-Claude Juncker in close cooperation with Donald Tusk, Jeroen Dijsselbloem, Mario Draghi and Martin Schulz*, 22 June.
- Galbraith, J. K. (1996), *The Good Society: The Humane Agenda*, NY.
- Georgiev D. (2019), *The Rule of Law and the EU Budget for 2021-2027: More Solidarity or Renouncing the Values of the EU?* *Środkowoeuropejskie Studia Polityczne*, 2/2019.
- Georgiev, D. (2017), *Inequalities and the Future of the European Union*. In: *The EU beyond 2020: in Search of Identity, Sustainability and Growth*. Bulgarian European Studies Association, Annual conference papers, Sofia, 26 October 2017, 70-79.
- Georgiev, D. (2016), *Lisabonskiyat dogovor i badeshteto na demokratiyata v Evropeyskiya sayuz* (The Lisbon Treaty and the Future of Democracy in the European Union) *Yuridicheski svyat*, 2/2016 [in Bulgarian].
- Georgiev, D. (1987), *Evropeyskata ikonomicheska obshtnost: mezhdunarodnopravna karakteristika* (The European Economic Community: A Characterization from the Point of View of International Law), Publishing House of the Bulgarian Academy of Sciences, Sofia [in Bulgarian].
- Habermas, J., Eichel, H., Koch, R., Merz, F., Rürup, B., Zypries, B. (2018), *Für ein solidarisches Europa*, *Handelsblatt*, 21.10.2018.
- Monti, M., Dăianu, D., Fuest, C., Georgieva K., Kalfin I., Lamassoure, A., Moscovici, P., Šimonytė, I., Timmermans, F., Verhofstadt, G. (2016), *Future Financing of the EU. Final report and recommendations of the HighLevel Group on Own Resources*, European Commission. Brussels, December 2016.
- Piketty, T. (2014), *Capitalism in the Twenty-First century*, Harvard University Press.
- Rios, B. (2018) *Eurozone budget to be ready by 2021 say France and Germany*, Euractiv.com, 20.11.2018.

- Scharpf F. (1999), *Governing in Europe: Effective and Democratic?* New York: Oxford University Press.
- Stiglitz, J. (2012), *The Price of Inequality*, New York: Norton.
- Stiglitz J. (2016), *The Euro and its Threat to the Future of Europe*, Penguin.
- Streeck W. (2013), *Gekaufte Zeit. Die vertagte Krise des demokratischen Kapitalismus*, Berlin: Suhrkamp.
- Weiler, J.H.H. (2014), *Living in a Glass House: Europe, Democracy and the Rule of Law*, EUI Working Papers, RSCAS 2014/25.
- Weiler, J. H. H. (2012), *Deciphering the political and legal DNA of European integration: an exploratory essay*. In: Dickson, J., Eleftheriadis, P. (eds.), *Philosophical Foundations of European Union Law*, Oxford University Press.
- Zielonka, J. (2014), *Is the EU Doomed?* Polity Press.
- Zielonka, J. (2006), *Europe as Empire. The Nature of the Enlarged European Union*, Oxford University Press.