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## The Rule of Law and the EU Budget for 2021–2027: More Solidarity or Renouncing the Values of the EU?

**Abstract:** This paper looks at the proposals of the European Commission for the Multiannual Financial Framework 2021–2027, and explores how to achieve a better future for Europe by ensuring compliance with the legally binding values and objectives of the EU: democracy, equality, the rule of law, economic, social and territorial cohesion and solidarity between the member states.

It is argued that introducing progressivity, a reform of the EU’s finances involving a paradigm shift in the financing of policies with redistributive effects and a reform of the system of the EU’s ‘own resources,’ would ensure that solidarity becomes a matter of the rule of law and not of governance through conditionalities and fines.

It is pointed out that, unless the EU undertakes an effective reform 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.’

What is needed is collective action by the member states most immediately interested in a reform to make the system of EU’s ‘own resources’ less regressive and to introduce progressivity in the financing of the policies of the EU. It would take significant skill for those countries to organize themselves as a group and to act together in the course of the adoption of the legislative proposals for the next MFF in order to make the EU more equitable.

**Key words:** rule of law, Multiannual Financial Framework, EU solidarity, cohesion policy, progressive taxation

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### Introduction

Presenting its package of legislative proposals for the European Union’s next long-term budget – the Multiannual Financial Framework (MFF) 2021–2027 – which 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,"<sup>1</sup> the European Commission pointed out that there is "an opportunity [...] to unite around a clear vision for the future of Europe," that choices regarding the MFF "will shape the Union for decades to come," that a "more united, stronger and more democratic Europe needs a new, modern budget" and that this budget will be "guided by the principles of prosperity, sustainability, solidarity and security."<sup>2</sup>

This paper will examine whether the proposal of the Commission on the rule of law will indeed protect the rule of law and other values enshrined in Article 2 of the Treaty on the European Union (TEU), such as democracy and equality, and how a reform of the EU's finances can contribute to the attainment of the Union's objectives of economic, social and territorial cohesion and solidarity among member states enshrined in Article 3 of the Treaty on the Functioning of the European Union (TFEU) and ensure more rule of law and a more democratic future for the EU.

## **1. Protection of the rule of law and of the values of the EU in the Treaties on the EU**

The Treaties on the European Union give no substantive definition of the concept of the 'rule of law.'<sup>3</sup> So it might be appropriate to use as a starting point the definition of 'rule of law' in the regulation proposed by the Commission for the next MFF. According to Article 2(a) of this regulation, 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 process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection by in-

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<sup>1</sup> European Commission, *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(2018) 324 final, Brussels, 2.5.2018.

<sup>2</sup> European Commission, *A Modern Budget for a Union that Protects, Empowers and Defends. The Multiannual Financial Framework for 2021–2027*, COM(2018) 321 final, Brussels, 2.5.2018.

<sup>3</sup> Article 2 TEU (in other languages: *Rechtsstaatlichkeit*, *l'État de droit*, *правова държавна*).

dependent courts, including of fundamental rights; separation of powers and equality before the law.”

Certainly, the principal 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 kind – not simply under another superior power but under ‘higher’ rules and principles. In a democracy, this ‘higher’ law would have to be made democratically, i.e. it must comply with the will of those whom it affects (government by the people) and be in the interest of all (government for the people),<sup>4</sup> 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 the 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 empire,<sup>5</sup>

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<sup>4</sup> Following Abraham Lincoln’s famous expression in his Gettysburg address (“government of the people, by the people, for the people”). See: F. Scharpf, *Governing in Europe: Effective and Democratic?*, Oxford University Press, New York 1999, pp. 6 ff.

<sup>5</sup> See: A. Coughlan, *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, 2015. Coughlan describes the EU as an imperial arrangement “where different countries are ruled by a centralised 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 turn, Streeck describes the EU as an expanding market-economic *Imperium* [empire] (W. Streeck, *Gekaufte Zeit. Die vertagte Krise des demokratischen Kapitalismus*, Suhrkamp, Berlin, 2013, p. 202).

For a different approach, see: J. Zielonka, *Europe as Empire. The Nature of the Enlarged European Union*, Oxford University Press 2006; J. Zielonka, *Is the EU Doomed?*, Polity Press 2014. Zielonka 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,

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 a 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 a legal mechanism to protect them, so that the actions of EU institutions can be reviewed for compliance with EU values, e.g. under Article 263 TFEU. Such a legal mechanism has not been provided in the Treaties.

A possible way to overcome 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 stated in Article 2 TEU to be part of the general principles of law of the EU, alongside fundamental rights, “as they result from the constitutional traditions common to the Member States.”<sup>6</sup> When assuming that the values stated 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 values,<sup>7</sup> are also placed at the top of the hierarchy of EU law.

What is provided 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 in terms of the rule of law and democratic legitimacy.

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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).

<sup>6</sup> Article 6.3 TEU.

<sup>7</sup> According to Article 3.1 TEU “[t]he Union’s aim is to promote its values and the well-being of its peoples.”

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 apply to the EU itself which, compared to member states, has major inbuilt deficits of democratic legitimacy and of the rule of law.<sup>8</sup> This hypocrisy is aggravated by the fact that the EU is the very reason for a fundamental deficit 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.<sup>9</sup> Another deficit of the rule of law inherent in 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. 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 of Article 7 TEU 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 for putting political pressure on member states by the Commission and groups of other influential member states.

## 2. The proposed regulation for the protection of the rule of law

The Commission’s 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” 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 the

<sup>8</sup> Such as deficits of accountability and representation (see *infra* points 3.1 and 3.2). See also: J. H. H. Weiler, *Living in a Glass House: Europe, Democracy and the Rule of Law*, EUI Working Papers, RSCAS 2014/25; Д. Георгиев, *Лисабонският договор и бъдещето на демокрацията в Европейския съюз*, “Юридически свят”, 2/2016, pp. 68–95.

<sup>9</sup> See: Д. Георгиев, *Европейската икономическа общност. Международно-правна характеристика*, Изд. на БАН, София 1987, pp. 169–182.

member states, to adopt various measures, including the suspension of payments to members states, reduction of funding, and prohibition on concluding new commitments. These measures will be deemed to have been adopted unless the Council decides, by qualified majority, to reject<sup>10</sup> them within one month of their adoption by the Commission.

The proposal, which is clearly intended to overcome the 'inefficacy' 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 – that same value which it purports to protect.

A major deficiency of the rule of law which would result from the Commission's proposal is that the Commission, an executive body of the EU, not accountable democratically to any national body (and despite its 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 legislatures. 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 in the EU. It is about placing the power of member states under the power of the Commission and enhancing its power to new proportions and thus, rather than protecting the rule of law in the EU, this 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 MFF and the future of democracy in the EU

Will the next MFF contribute to achieving 'a more democratic Europe,' as promised? Will it, in particular, help to overcome the democratic

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<sup>10</sup> In the World Trade Organization – from which the idea of the procedure seems to have been borrowed – Appellate Body reports can be rejected by consensus in the Dispute Settlement Body (the so-called 'reverse consensus'). This 'reverse' vote, however, serves in the WTO to facilitate the adoption of judicial decisions, whereas in the EU, in this case, it would serve to strengthen the political power of an executive body.

deficits of the EU? Trying to answer this question, we can return 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)<sup>11</sup> on the other.

### 3.1. The proposed new MFF and the democratic ‘input legitimacy’ of the EU

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.”<sup>12</sup> In the next MFF, an increase of the already “immense power of direct governance”<sup>13</sup> of the Commission, the executive body of the EU, with its deficits of accountability and representativeness, especially in the field of finances – which, as has been shown, would result in erosion of the rule of law in the EU – would also further undermine the democratic ‘input’ legitimacy of the EU and would make the Union less, not more, democratic.

### 3.2. The proposed new MFF and the democratic ‘output legitimacy’ of the EU

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 peoples and all citizens in the Union – whether it will achieve more equality (which, as well as 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

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<sup>11</sup> According to Scharpf’s widely accepted formulation, democratic ‘input legitimacy’ refers to the will of the people and to ‘government by the people’ and 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).

<sup>12</sup> J. H. H. Weiler, *Deciphering the political and legal DNA of European integration: an exploratory essay*, in: *Philosophical Foundations of European Union Law*, eds. J. Dickson, P. Eleftheriadis, UP, Oxford 2012, p. 140.

<sup>13</sup> Weiler, 2014, p. 26.

“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 is determined (following what rules or principles) and *how much* higher or lower respectively it would be.

#### 4. The way forward: Reform of the finances of the EU

If member states want to bring more rule of law into the Union’s finances, they would need to introduce more rules and principles into its budget and its policies and leave less room for arbitrary political decisions by the executive bodies, *ad hoc* decision making, 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 into 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.

A reform of the finances of the EU could ensure that those who benefit more from the Internal Market and its policies would also contribute more financially and could make certain 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 the need to transform the EU's own budgetary system, which is currently regressive,<sup>14</sup> into a *progressive* one. As Galbraith emphasizes, “[f]or 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.”<sup>15</sup> Similarly, Piketty points out that “[t]he major twentieth century innovation in taxation was the creation and development of the progressive income tax. This institution [...] played a key role in the reduction of inequality in the last century,” with an important role in modern redistribution.<sup>16</sup>

Introducing progressive taxation in the EU by obliging member states to harmonize their national tax laws is, however, not desirable at this stage as it would be counter-productive to cohesion. 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, conversely, to less investment, capital flight and 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, 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 social legislation.

Therefore, the EU can bring more justice to its redistributive system, its policies and its budget not by harmonizing member states' tax laws but by reforming the Union's own revenue system, and by carrying out a thorough reform of its redistributive policies, based on progressivity.

For such a reform of the Union's finances to be effective and to create surplus recycling mechanisms, it needs to be comprehensive and cover all of its policies and actions, as required by Article 175. Certain policies,

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<sup>14</sup> M. Monti et al., *Future Financing of the EU, Final report and recommendations of the High Level Group on Own Resources*, European Commission, Brussels, December 2016, p. 8.

<sup>15</sup> J. K. Galbraith, *The Good Society: The Humane Agenda*, NY 1996, p. 65.

<sup>16</sup> T. Piketty (2014) *Capital in the Twenty-First Century*, The Belknap Press of Harvard University Press, p. 397.

of course, have stronger redistributive effects than others, and they could, therefore, have priority in a reform. But, in order not to reduce the effect of what has been achieved in one area by neglecting reform in other areas, and in order to achieve overall synergy in the reform, all policies need to be reconsidered with a view to providing mechanisms of solidarity by the stronger economies to benefit the weaker ones.

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 member states interested in a comprehensive reform manage to organize themselves as a sufficiently numerous group, they could try to introduce separate elements of progressivity in the financing of the various policies.

### 5. Progressivity in the ‘own resources’ system

On the *revenue* side, in the Union’s system of ‘own resources,’<sup>17</sup> progressivity could be introduced for member states’ contributions based on Gross National Income (GNI), with a coefficient which would reflect the percentage deviation of the respective member state from the EU average of 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,<sup>18</sup> the main regressive elements are the permanent correction mechanism in favor of the United Kingdom and the temporary (2014–2020) reductions in the GNI-based and VAT-based contributions of some member states with high GNI *per capita*. The latter will expire before the next MFF.

For the next MFF, however, the Commission proposes<sup>19</sup> to reinstate the reductions in the annual GNI-based and VAT-based contributions for

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<sup>17</sup> Article 311 TFEU.

<sup>18</sup> Council Decision of 26 May 2014 on the system of own resources of the European Union, (2014/335/EU, Euratom).

<sup>19</sup> European Commission, *Proposal for a Council Decision on the system of Own Resources of the European Union*. COM(2018) 325 final, Brussels, 2.5.2018.

2021–2025 for the member states which have them currently. In addition, the Commission proposes three new ‘own resources’ (based on a common consolidated tax base, on the EU emissions trading system and on plastic packaging), the principal purpose of which is to replace part of the GNI-based contribution of member states, even though the GNI-based contribution is perceived as the most equitable of the EU’s ‘own resources.’<sup>20</sup> Thus, the proposals of the Commission would make the ‘own resources’ system more regressive and less fair.

Any decision on the Union’s ‘own resources’ would require unanimity in the Council. Proposals to eliminate regressive elements and introduce a progressive coefficient to make the ‘own resources’ system more equitable are likely to be met with a strong resistance. The requirement for unanimity, however, allows member states interested in a fair ‘own resources’ system to prevent the reinstating of the reductions in the annual GNI-based and VAT-based contributions or the introduction of new ‘own resources’ which would reduce the share of the GNI-based contributions.

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, it would be very important to make arrangements 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 of GNI *per capita*, national co-financing, and other ‘progressive automatic stabilizers.’<sup>21</sup> For the majority of policies and programs, the most suitable would be a combination of EU funding and national co-financing, respectively increasing or 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*.

Co-funding for cohesion, as well as any other co-funding from the EU budget, for example, could be made available only to member states with a *per capita* GNI of less than 90% of the Union average, as required by

<sup>20</sup> M. Monti, op. cit., p. 37.

<sup>21</sup> J. Stiglitz, *The Euro and its Threat to the Future of Europe*, Penguin 2016, p. 247.

Protocol No 28 on economic, social and territorial cohesion. For regional and other 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. 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*). For example, 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-financing<sup>22</sup> only for member states with GNI *per capita* above the 90% cohesion threshold and below some other threshold, e.g. 110% of the EU average GNI *per capita*, while member states with a still higher GNI *per capita*, which would not receive any EU funding, could be allowed to give subsidies from their national budgets only up to levels which would not undermine the competitiveness<sup>23</sup> of farmers receiving EU aid in the other member states.

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

Regarding investment, funding for programs such as the Juncker Plan 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 be made to reflect its deviation from the average GNI *per capita* and 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 institutions could give loans and guarantees for projects for developing the less developed regions (which is the EIB's main responsibility under Article 309 (a) TFEU), ensuring a fair distribution between the member states.

EU funding for social programs could be made available only for member states with a GNI *per capita* less than the EU average, and the

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<sup>22</sup> National co-financing – to match the lower subsidies from the EU budget – was allowed for the new member states during the first ten years of their membership.

<sup>23</sup> For this to be possible, it would be necessary to have identical maximum direct subsidies per hectare in all member states.

amounts allotted to member states would reflect their deviation from the average GNI *per capita*.

Generally, for all policies and programs, fair distribution of EU funding could be ensured by using clear, fair and transparent formulae analogous to those described herein, which would 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 would be no discretionary decisions by the Commission or by other bodies on the distribution of funding between the member states. The allocation of EU funding between the member states (or beneficiaries from the member states) would be fixed in advance, both for the various programs and overall for the whole MFF, and there would be no ‘flexibility’ to move funding between member states. Unused funding by the member states would not be returned to the EU budget but would remain available to the member state in question in the next budgetary period or for other policies or programs.

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 the member states which receive cohesion money should in exchange pay if they refuse to host migrants.<sup>24</sup> It would be difficult to make an assessment of 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. Currently, it is the first member state in which the migrant entered EU territory, but in most cases this is not necessarily the country where the migrant wants to go, and it has been proposed that this should 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, 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 the richer member states to host migrants, who – at least theoretically – would, in the long term, help to boost the economies of those richer countries. Such a system would, therefore, be highly unfair to the poorer

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<sup>24</sup> Euractiv with Reuters, *Host migrants or pay, France and Germany propose*, 7.12.2018.

member states. In this situation, the new MFF could envisage discontinuing 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%), while also making it 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 Eurozone, as advocated by some,<sup>25</sup> especially one “focused mainly on investment and convergence”<sup>26</sup> that provides solidarity and automatic and discretionary stabilizers not within the EU as a whole but for the Eurozone only, would, of course, lead to further deepening of the divergence with those countries outside the Eurozone which need cohesion aid most. Since burdens, disadvantages and inequalities do not arise uniquely as a result of the functioning of the Eurozone itself, but within the internal market as a whole, having a separate budget for the Eurozone, especially for investment, would be in breach of fundamental values and objectives of the EU such as solidarity and cohesion.

A reform of the Union’s own revenue system and of its redistributive policies would eliminate the unfair distribution of benefits and burdens arising from the functioning of the liberalized EU internal market. If the reform is carried out properly and is effective, it would be of economic interest to all countries as it would lead to an increase in purchasing power and in demand and consumption in the economically less advanced member states and hence to an increase in imports from other member states, leading to the growth of their own economies. Furthermore, since the companies which are beneficiaries of government procurement projects financed by cohesion programs are, in many cases, from member states with high GNI *per capita*, a considerable amount of the financing from EU funds would go to these countries. Therefore, the overcoming of inequalities, as well as economic, social and territorial cohesion, needs to be seen to be of general interest – a genuinely European public good.

Generally, the reform of EU distributive policies should ensure that progressive automatic stabilizers and solidarity within the EU become

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<sup>25</sup> T. Piketty et al., *Manifesto for the Democratization of Europe*, 2018, <http://tdem.eu/en/manifesto/>; also H. Eichel, J. Habermas et al., *Für ein solidarisches Europa*, “Handelsblatt”, 21.10.2018.

<sup>26</sup> B. Rios, *Eurozone budget to be ready by 2021 say France and Germany*, *Euractiv*, 20.11.2018.

a matter of the rule of law, and not of governance through conditionalities and fines.

Such a reform of the EU's finances and an increase in contributions to the Union budget by some member states would not necessarily lead to higher taxes or reductions in the social expenditure for the populations of these member states. At present, about half of the total GNI of member states with a higher GNI *per capita* than the EU average is subject to redistribution by means of taxation, whereas their contributions to the EU budget account for only around 1% of their GNI. A small increase in this percentage could have a significant positive effect on all economies in the Union, including on their own.

### Conclusion

If the EU does not undertake an effective reform of its redistributive policies to ensure that progressivity and solidarity within the EU become a matter of the rule of law and not of 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 and the rule of law and with the objectives of economic, social and territorial cohesion and solidarity among member states.

Although such a reform is in the interest of all, immediate support for it in the Council in the course of the adoption of the legislative proposals for the 2021–2027 MFF package is not likely. Therefore, what is needed is collective action by the member states most immediately interested in making the EU's finance system less regressive and more equitable. They could propose a coefficient to the GNI-based contribution reflecting the deviation of the member state's GNI *per capita* from the EU average and prevent the reintroduction of regressive elements in the system of the EU's 'own resources.' They could also work together for a reform to introduce progressivity in the financing of EU policies by means of progressive automatic stabilizers and progressive national co-financing.

Such a reform to make the system of the financing of EU policies more equitable would be of direct interest to those member states whose GNI *per capita* is less than the EU average, and it would take considerable skill for those member states to join efforts and organize themselves as a group and to act collectively at all levels – in the different Council formats, the European Council and the European Parliament – in order to defend their interests in the course of the adoption of the legislative proposals for the next MFF.

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## Rządy prawa a budżet UE na lata 2021–2027: większa solidarność czy wyrzeczenie się wartości UE?

### Streszczenie

Artykuł analizuje propozycje Komisji Europejskiej dotyczące wieloletnich ram finansowych na lata 2021–2027 i rozważa sposoby zapewnienia Europie lepszej przyszłości poprzez przestrzeganie prawnie wiążących wartości i celów UE: demokracji, równości, rządów prawa, spójności gospodarczej, społecznej i terytorialnej oraz solidarności między państwami członkowskimi.

Postawiono tezę, że wprowadzenie progresywności, reforma finansów UE obejmująca zmianę paradygmatu w finansowaniu polityk o skutkach redystrybucyjnych i reforma systemu „zasobów własnych” UE zapewnią, że solidarność zostanie zapewniona przez rządy prawa, a nie zarządzanie poprzez warunkowość i grzywny.

Zwraca się uwagę, że jeżeli UE nie podejmie skutecznej reformy swojej polityki redystrybucyjnej zapewniającej, że progresywność i solidarność w UE staną się kwestią rządów prawa, Unia będzie coraz mniej przypominać demokrację, a coraz bardziej imperium z silniejszym gospodarczo i szybciej rozwijającym się „rdzeniem” oraz słabszym gospodarczo „peryferiami” na wschodzie i południu, które pozostają w tyle za „rdzeniem.”

Potrzebne jest wspólne działanie państw członkowskich najbardziej zainteresowanych reformą, aby system regionalny UE stał się mniej regresywny i wprowadził progresywność w finansowaniu polityk UE. Państwa członkowskie musiałyby się wy-

kazać znacznymi umiejętnościami zorganizowania się w grupę i wspólnego działania w trakcie przyjmowania wniosków ustawodawczych dotyczących kolejnych WRF, aby uczynić UE bardziej sprawiedliwą.

**Słowa kluczowe:** praworządność, wieloletnie ramy finansowe, solidarność UE, polityka spójności, progresywne opodatkowanie