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EU Membership and Budget Allocation Conditionality

Abstract

The world is shaken by many new developments. In this turbulence, the EU should provide an area of stability and security. It can only be so in case its internal cohesion is strengthened. The EU is a community based on values. Members have committed themselves to respect European values. But in case of a breach of the contract the Union has only two means to enforce respect for its values. Some have a legal character, others a financial one. The legal method is not very effective in this respect. This paper deals with the financial method. It argues that the conditionality of the budget needs to be increased; non-respect of values by Member States should entail loss of allocations. The recent proposals of the European Commission in this matter fall short of this.

Key words: European Union, Fundamental Values, Conditionality, Budget Allocation, Structural Funds, Legal Instruments

Introduction

The illusion of a unidirectional development

Until some years ago, one could think that the world would develop into a direction that we thought of as a universal model. It is defined in the political field by a parliamentary democracy; in the legal field by the rule of law and human rights and in the economic field by liberalism. This model was strengthened on the national level by strong institutions and by a whole set of regulations for socio-economic relations, for safeguard-

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ing fair competition, etc. On the international scene it was strengthened by an ever more dense set of international institutions such as the WTO, the IMF, etc. that supplanted the free fight of all against all by compliance with predictable rules. In the European sphere, the model has been elaborated in a dense net of regulations and institutions, with recent examples including the regulation of the financial markets and institutions like the European Stability Mechanism for preventing major financial and budgetary crises. These were the spirits in which most of the literature was written.¹

In theoretical terms we knew that integration can be turned back. A second chapter in my book on European Integration² deals with the events in the 1930's when this actually happened. The trade chapter in my book on international institutions³ showed that simple trade games lead to generalised protectionism. We did not think, however, that this would occur in our times, as people and countries had learnt their lessons and the mechanisms of democratic institutions and multilateral institutions had built in safeguards against falling back.

We now know that we were wrong on all these scores. Around the world, democracies falter and slip into autocracies. The multilateral system is shaken in its principles by the president of the USA, still the largest power the world, who has imposed old fashioned protectionist measures on its closest allies. Brexit has shown that people may want to subtract from European cooperation; tearing apart nations that have been integrating for two generations. And within the EU, some member countries that have subscribed to the values of the EU on accession now blatantly infringe upon them.

How to get back on track?

There is much discontent with the negative aspects of the present form of the neo liberal economic governance;⁴ in particular due to its recurrent crisis (financial, migration, social). It opens a breach for populist discourses that assume that the retreat from internationalism to nationalism and even regionalism is a better solution. It opens opportunities for governments to closely control the major parts of their society, on the argu-

¹ Including my books on the EU and world governance: W. Molle, *European Economic Governance; the quest for consistency and effectiveness*, Abingdon, Routledge 2011; W. Molle, *Governing the World Economy*, Abingdon, Routledge 2014.

² W. Molle, *The Economics of European Integration: Theory, Practice, Policy*, Aldershot, Ashgate, 1st to 5th ed. 1990–2006.

³ W. Molle, *Governing the World Economy*, Abingdon, Routledge 2014.

⁴ J. Zielonka, *Counter revolution; Liberal Europe in retreat*, Oxford 2018.

ments that nationalist solutions are best. But these are dead end streets. A realistic way out of the problems takes a good look at the new exigencies of the international situation and formulates effective solutions. These are no longer effective on the national level. So one needs to find common answers to common problems.⁵ Fostering stability and security in the EU seems the best way to contribute to stability and security in the whole world.

So, there is much reason to analyse, what the main areas are in which stability and security of the EU citizens and enterprises are at risk and need to be reinforced.

A Union of Values at Risk

From an economic union to a union of values

The beginning of the European integration process was basically economic. However, already in the beginning there was a clear underpinning of the whole process with a set of principles. These became apparent for instance in the refusal of the EU to consider membership of the Southern countries like Portugal, Spain and Greece as long as they were not democracies. The importance of the observance of common values became even greater when the EU was confronted with the Eastern enlargement. The EU opened its doors, but on the condition that the new entrants would observe the basic criteria; henceforth known as the Copenhagen criteria. This essentially political arrangement needed to be translated in legal terms. With the treaty of Lisbon of 2007 the basic values and the accession criteria have been enshrined in the EU Constitution (resp. art 2 and 49.1). Article 2 of the TEU now reads:⁶ “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, rule of law and respect for human rights, including the rights of persons belonging to minorities. These 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.”

This constitutional shrine makes clear that the EU is not only a community of interests, but a community of values that Member States, other public bodies, enterprises and private persons have to respect.

⁵ W. Molle, *European Integration; Past performance, present challenges, future action*, Warsaw 2017 conference. 2018.

⁶ <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-1-common-provisions/2-article-2.html> (5.07.2018).

Values are trampled on, even democracy is at risk

It has been a mistake to think that the laying down of principles and values in a basic legal text would be sufficient to keep respect for them. In many countries liberal democracies have been hijacked by authoritarian leaders that have bent the rules and institutions to such an extent that they no longer serve their original purpose. This holds for the world level, for countries in our neighbourhood like Turkey, but also for some Member States of the EU; in particular Poland and Hungary.

The change has been operated by a very subtle mechanism.⁷ Democracy's assassin's use the very institutions of democracy to take their place. They do that not brutally but silently and apparently in all legality. There is no military coup. There is neither extremist demagoguery. Those in power maintain the veneer of democracy while eviscerating its substance. They operate gradually, which means that there is no formal moment in which values are forsaken or red lines are crossed. All institutions remain nominally in place.

In this process, one can distinguish three stages. First there is the election of an authoritarian leader, who seizes as many levers of power that he can get. The second stage is the gradual luring in of people into this system by distributing favours that are paid for by the abuse of governmental power. The third stage is the complete repression of political opposition and of institutional counterbalancing forces.⁸ The judiciary is muzzled, which is portrayed as combating of corruption and striving for efficiency. The newspapers are bullied into self-censorship either by magnates that have links to those in power, or by government. The private sector is bought off by promises of public sector contracts. Neutral agencies are gradually taken over by sympathisers, and become centres through which the remaining independent parts of society can be influenced to join in. Tight networks are then established between representatives of business, government and the bureaucracy all interested in keeping the system in place.

The problems are great in the fields where there are large sums of money involved

A central element in the process described before is the use of public money for creating networks of influence and power. The system is well known; and consists of covert corruption and fraud. Public sector con-

⁷ S. Levitsky, D. Ziblatt, *How democracies die; What history tells us about our future*, New York 2018.

⁸ A description of this process in literary way is to be found in: E. Ionesco, *Rhinoceros*, Paris 1959.

tracts are awarded nominally on the basis of open and transparent procedures, but in practice tenders are written and governed in such a way that government-friendly firms will obtain them. In some way or another, funds will then be channelled to organisations and persons that support the political administrative system. Organisations that could get in the way of the smooth functioning of this corrupted system, such as independent observers and the judiciary are then made ineffective by regulation and by nominations of people who accept playing the game.⁹ In the worst case, these practices become intermingled with those of organised crime.

In the countries that are large beneficiaries of the EU cohesion policy, a large part of the public investment contracts are actually financed by EU money, brought up by EU taxpayers. The risk of the abuse of this money for the purposes described above is real. The European Anti-Fraud Office and the European Court of Auditors provide ample evidence showing that the European Structural and Investment Funds (ESIF) are particularly amenable to abuse and fraud. This need not surprise: problems with corruption occur always there where the largest money flows. For some time, the European Commission has tried to get a good picture of the extent to which corruption and fraud are a problem in the use of the ESIF and has developed programmes to limit these issues.¹⁰

However, the effectiveness of the EU corrective system is (according to many observers such as Transparency International) very limited. So one has to admit that a significant part of the EU money given out of reasons of solidarity and cohesion, is actually used in ways that go contrary to the interests of the EU as such. It is used to support practices that put at risk the values on which the EU system is based. These basic values are not only important from a moral point of view; they are also consistent with sound economics. If there is disrespect for the rule of law and the authority of the courts of justice, investors will no longer trust the environment in which they invest. They want to be sure that they can refer to an independent judiciary in case they run into a problem with other

⁹ See in this respect for instance: M. Fazekas, I.J. Toth, L.P. King, *Corruption manual for beginners*, Budapest, Corruption Research Centre Budapest, CRCB, WP 2013.1; M. Fazekas, I.J. Toth, L.P. King, *Anatomy of grand corruption; A composite corruption risk index based on objective data*, Budapest, Corruption Research Centre Budapest CRCB, WP 2013.2; M. Fazekas, I.J. Toth, *From corruption to state capture; a new analytical framework with empirical applications from Hungary*, "Political Research Quarterly", vol. 69.2/2016, pp. 320–334.

¹⁰ European Commission, *EU anti-corruption report*, Brussels, COM(2014) 38 final; K. Schmidt-Pfister, H. Moroff, *Fighting corruption in Eastern Europe, a multi-level approach*, Abingdon, Routledge 2012.

private parties, or with the public sector. So the safeguarding of values is a fundamental issue for the good functioning of the EU internal market, and hence for the safeguarding of the benefits of the EU integration. Indeed, it is of the greatest importance to see what can be done to bring the deviant practice in some Member States back in line with fundamental EU values.

The Lack of Effectiveness of the Legal Option

EU legal means tend to fall short of ambitions

The European Union is an experiment in cooperation among nations. It could not build on the experiences of similar constructions. Each time the Union decided to move into a new area of integration, it had to decide how much central power this would require, and thus how large the inroads would have to be into national sovereignty. Each time, national governments have tended to limit as much as possible this loss of national political and administrative power, with the consequence that many new integration enterprises started without sufficient mechanisms in place for safeguarding the effective work of the scheme. A recent example is the Economic and Monetary Union, that has been created with minimal rules for the maintaining of budgetary equilibrium and stability in financial markets. It took the financial crisis to bring into the open the flaws of the system. Only then could the political support be mobilised for the set-up of the various mechanisms that are essential to prevent further crises. Another example is the creation of the Schengen area of internal free movement of people but without sufficient common measures to control immigration. It took the recent migration crisis to make EU countries accept the need for common outer border controls (for instance Frontex). Other examples can be found.

This is also the case for the enforcement of the respect for values

The case of the respect of EU values is not different from the examples given before. The EU has only two treaty provisions at its disposal. It has introduced in the Amsterdam treaty (prior to enlargement) the possibility of sanctions in the case of non-respect of the basic values of the EU. The main sanction is the suspension of the voting rights in the Council. This seemed too bold an instrument to be made effective. So, the Treaty of Lisbon has introduced a preventive mechanism (now article 7 of the Treaty on the European Union). The preventive mechanism can be triggered in case of a serious breach of EU values by an EU Member State, either by the Council (if one third of the Member States agree), by the Commission,

or by the Parliament. As a result, it is essentially a political procedure; the European Court of Justice (ECJ) has a very limited role.

Most observers do not put much confidence in this mechanism. It is rather difficult to put into effect due to its political character, to the high thresholds for coming to a decision and to the limited instruments available.

So new mechanisms have been proposed

In view of the lack of effectiveness of the treaty provisions, a number of complementary mechanisms have been proposed by scholars, by politicians and by EU institutions.¹¹ The European Parliament has launched the idea of a “European Fundamental rights policy cycle”. This mechanism would incorporate an early warning system with formal notices to Member States where a breach in the rule of law appears likely, before formal proceedings under article 7 and a freezing procedure for national measures infringing upon EU values. The European Commission launched in 2014 the “New framework to strengthen the rule of law.” This text provides for a three stage procedure. In the first stage the Commission makes an investigation and an assessment of the situation in a Member State. In the second stage it makes a recommendation for changes and in the third stage it checks on the follow up of the recommendations.

Poland has been on the radar of the Commission for two years, in particular for its controversial reforms of the judiciary. It has been subject to scrutiny under the procedure but has rebutted any allegations. The problem with this country, and with other countries that infringe the values, is that the political procedures based on the legal and regulatory provisions are unlikely to lead to effect.

So Another Option Is Needed: Conditionality of Disbursement from the EU Budget

Some basic ideas and questions

The EU has a number of instruments at its disposal to put its policies into practice. The weakest one is coordination. The one most used is regulation. Less used but in general very powerful is the financial support

¹¹ See for instance: *The enforcement of EU law and values; Ensuring Member State’s compliance*, eds. A. Jakab, D. Kochenov, Oxford 2017; E.-M. Poptcheva, *Member States and the Rule of Law; dealing with a breach of EU values*, EPRS, Briefing, March 2015, www.europarl.europa.eu/thinktank (5.07.2018); A. Dauvergne, *Entorses a l’état de droit: quelle dissuasion Européenne?*, 2017, ww.institutdelors.eu.

from the EU budget.¹² The previous sections have shown that the regulatory method is not very effective in forcing a Member State's compliance with values. Coordination will be even less effective. So, it seems logical to turn to the financial instrument; the power of the purse. In practice the use of the financial instrument would mean that disbursements from the EU budget are made conditional upon respect for EU basic values. In plain words: a country that does violate the rule of law, the independence of the judiciary or other basic EU values would no longer be entitled to certain EU funds. This instrument would potentially be very effective. We may recall that under the present financial framework (2014–2020) Poland receives almost a billion euro a month under various titles of the cohesion policy.

The idea is straightforward but runs into a number of objections. The first is legal, and assesses the fact that there is no treaty provision on which this could be vested. The second is economic, and says that if spending for specific purposes is withheld, it impairs the quality and effectiveness of the EU policy to reach certain goals. The third is a practical one; it says that conditions for an effective implementation cannot be made operational. We will deal with these arguments in the next sections.

What is conditionality?¹³

Conditionality comes in very different shapes and in various forms of complexity and detail. In general the setting of conditions is necessary for aligning actions according to clear priority objectives across several levels of government. Non-compliance with the conditions by one of the lower levels then triggers a sanction; which can range from a simple notification via a partial withholding of finances to exclusion from the club.¹⁴

Generally one distinguishes between *ex-ante* and *ex-post* conditionality:

- *Ex-ante* conditionality requires a country to fulfil, before it will receive any reward (for instance financial aid), certain precise conditions and prove it does fulfil them. *Ex-ante* conditions often imply policy and institutional reforms. When the country does not fulfil the conditions the donor in general decides to withhold its financial support.

¹² W. Molle, *European Economic Governance...*, op. cit.

¹³ This section is a literal citation from W. Molle, *Cohesion and growth; the theory and practice of European policy making*, Abingdon, Routledge 2015, p. 156.

¹⁴ Conditionality can take different legal forms. For instance the conditions for membership of the EU or of the EMU are defined in the fundamental treaties. Conditionality for a specific loan of the European Investment Bank will be in the form of a (simple) contract. Conditionality in matters of cohesion takes an intermediary position that of the regulation.

- *In ex-post* conditionality, the recipient country agrees to pursue a set of actions during the period in which it benefits from aid permitting it to meet certain conditions set by the donor. So performance or policy outcomes are specified and need to be delivered. In order to stimulate compliance aid is often split up in instalments and disbursements are made conditional on progress towards the agreed objectives.

Can conditionally work?

There is much experience with conditionality in matters of financial support to policies. This comes partly from International Financial Institutions like the IMF. Other useful experiences come from the conditionality used by the EU in matters of accession to the EU (Copenhagen criteria) and accession to the Eurozone (Maastricht criteria). These experiences show that the effectiveness of conditionality for entitlement to funding depends on many factors. First parties need to be convinced that the conditions set are the appropriate tool for reaching a target. Next the recipients need to show ownership; they need to agree to the target set and to the need for action on their part. Third the process needs to be credible; in case of non-compliance the donors need to apply the sanction instead of being lenient to the recipient.

The question is, however, whether this experience is applicable in matters of the EU cohesion policy financed from the large European Structural and Investment Funds. Initially, there was some doubt about the legality of conditions to the disbursement of the ESIF because there is no specific treaty provision mentioning the possibility. However these doubts have been lifted in the preparation of the 2014–2020 programming period. Indeed, a very large part of the spending (around 2/3rds) has been made subject to a series of *ex-ante* conditions. The EU thereby requires all programmes to be framed in such a way that they comply with accepted general EU priorities, such as environment, digital plans, education, etc. Without the correct framing Member States do not receive the envelope of money from the ESIF to which they are in principle entitled to. In some cases (particularly where a country suffers from a weak administrative capacity) conditionality has been made very specific; the European Commission requires the country to put in place a specific programme to address these weaknesses; in particular to promote the efficient working together of administrative levels. This is fully justified in the framework of cohesion policy, as an efficient public administration is key to the success of investment programmes.¹⁵ A similar form of conditionality exists

¹⁵ European Commission, *The value added of ex ante conditionalities in the European Structural and Investment Funds* (SWD(2017) 127 final; available from EC website).

with respect to the consistency of the EU macro-economic governance (the European Semester and its country specific recommendations) and cohesion. Member States are supposed to comply with both.

The main argument against conditionality is that the cohesion policy is a form of redistribution that comes as a materialisation of the notion of solidarity from the rich with the poor. A somewhat weaker form of this argument is that the ESIF are meant to boost the growth possibilities of the countries that are less well-off, and in this sense they are the reflection of a high degree of inter-country solidarity in the EU.¹⁶ It follows that any withholding of funds would go against solidarity and would be inefficient as it would hamper not only the growth of the targeted recipient, but also due to interregional interrelations, even overall EU growth. However, this argument is flawed, as non-compliance with the other objectives of the cohesion policy and with the higher objectives included in EU values can be shown to involve considerable losses of resources, and to have a negative impact on growth due to the creation of barriers.

A final argument against conditionality is that provisions cannot be made effective as a cohesion policy tool. Indeed many practitioners were sceptical about the way in which this innovation in EU policy making brought about in the present programming period would work out in practice. So an evaluation of the experience in the first years of the 2014–2020 period imposed itself. One such evaluation has been made by the European Commission (2017), which concluded that these ex ante conditionalities have proven to be a powerful incentive for Member States and regions to realise policy consistency and to carry out pro-growth reforms which would otherwise have been delayed or not have been implemented at all. Another evaluation has been made by independent observers; their assessments show conditionalities as a generally accepted effective legal/administrative instrument to realise policy consistency in the EU.¹⁷

Plea for stricter conditionality

The question is now justified whether the conditions already put in place and those that are proposed in the previous section are sufficient to reach all major EU goals. The answer is a clear no. The EU is confronted with a big problem, in the sense that the quality of government is very

¹⁶ K. Pantazatou, *Promoting solidarity in crisis times; Building on the EU budget and the EU Funds*, “Perspectives on Federalism”, vol. 7.3/2015.

¹⁷ V. Vita, *Revisiting the dominant discourse on conditionality in the EU: the case of EU spending conditionality*, “Cambridge Yearbook of European Legal Studies”, no. 19/2017, pp. 116–143; M. Koelling, *Policy conditionality – a new instrument in the EU budget post-2020?*, 2017, www.sieps.se.

weak in a number of its Member States and seems to deteriorate even further.¹⁸ This hampers the good functioning of the EU system, as quality investment is dependent on quality government. In that respect, we have made pleas to further conditioning of the disbursements of the ESIF on the significant improvement not only of administrative capacity but more in general of government quality.

Molle wrote:¹⁹ “One way is to impose strict conditionality with respect to quality governance and thereby force a change in political and administrative culture. It would involve the introduction of a conditionality check on quality governance before funds are committed, coupled with a compulsory participation in a considerably stepped up participation in programmes financed by the ESI funds to improve the quality of government in convergence countries. There is a list of actions that the EU can impose on Member States to realize efficient and transparent institutions that are resistant to fraud and corruption. However they may take quite some time to produce significant effects. Mind that the option of (this enhanced) conditionality has been proposed for the present programming period²⁰ but finally not adopted on the argument that piling up conditions would make the whole instrument ineffective.”

There is also a functional link between basic values and effectiveness of funds

Given the problems at hand and the inadequacy of the legal option to make Member States comply with the basic values of the EU we think that the mere extension of conditionality to quality government is not enough. We think that there is all reason for the extension of the conditionality of the cohesion policy with the criterion: “respect for basic values.” We think that this position is justified because the compliance with EU basic values has a direct link with effective spending of money and stable growth. We can explain this as follows:

Investment flourishes under certain conditions. As such, we mention the assurance of competitive procurement processes, a stable and predictable legal system, an impartial bureaucracy and an independent judiciary. If investors lack confidence in a country because of insufficiencies on one or more of these points they are likely to put off their investment. Poorly governed places are unlikely to attract the best investment, and so will lack growth possibilities. Where corruption creeps in, public money ends up in the pockets of business as rent, and in the pockets of corrupt

¹⁸ W. Molle, *European Economic Governance...*, op. cit.

¹⁹ W. Molle, *Cohesion and growth...*, op. cit., p. 300.

²⁰ See for instance: W. Molle, *European Economic Governance...*, op. cit.

officials that will sustain the forces that have been permitted to erode the values of the EU. So the EU money in the end finances the wrongdoings of the system and the maintenance in power of an elite that helps itself and its associates at the expense of the contributions of ordinary EU taxpayers. As a matter of principle, the EU should not finance the erosion of its basic values.

Now, in a highly integrated EU this problem is not confined to single Member State. Citizens and business need to be sure that if they are active in a different Member State, they work on a level playing field with the local businesses and citizens. In case of a conflict, they must be able to count on the impartiality of the courts in the host state. If not, the functioning of the EU single market is undermined, and the benefits of integration are foregone. So, the respect for EU values and the impartial enforcement of EU law is an essential prerequisite for the economic base of the EU. In that sense the national judicial system is an essential part of the European one and should reveal the same high quality.²¹

Up till now, such pleas for increased conditionality have not been listened to, mainly on the basis of the argument that the piling up of conditions would make it more difficult to make the countries comply. This position should be abandoned.

The Position of the Commission

Reflection paper

In the early spring of 2018 the Commission has published a reflection paper on the recast of the European budget. In its chapter 4 the Commission wrote:²² “It has been suggested that the disbursement of EU budget funds could be linked to the respect for the values set out in Article 2 of the EU Treaty and in particular to the state of the rule of law in Member States. Some have gone further, arguing that serious breaches of EU law should have consequences and should lead to the suspension of disbursements of the EU budget.”

The Commission seemed to support the reasoning behind these suggestions as it stated further: “The respect for fundamental values is an

²¹ Indeed respect for values is not only a question of morality it is also good economics. There is a growing literature about the economic benefits of the respect of the rule of law, see e.g.: S. Yu, S. Beugelsdijk, J. de Haan, *Trade, trust and the rule of law*, “European Journal of Political Economy”, no. 37/2015, pp. 102–115.

²² European Commission, *A budget for our Union at 27; A new modern Multiannual Financial Framework for a European Union that delivers efficiently on its priorities post-2020*; COM(2018) 98 final (available from EC website).

essential precondition for sound financial management and effective EU funding. Respect for the rule of law is important for European citizens as well as for business initiatives innovation and investment. The European economy flourishes most where the legal and institutional framework adheres fully to the common values of the Union.” The Commission states further that any such conditionality needs to be made legally watertight, should be proportionate, should reveal as much as possible a direct link, and should protect groups such as Erasmus students, civil society organisations, etc.

The Proposals for a new regulation

The Commission has presented its policy proposals on the Multiannual Financial Framework on the 2nd of May 2018²³ and its views on Cohesion on the 29th of May 2018.²⁴ In the latter its initial position on conditionalities has been changed.²⁵

Conditions come under two different headings in the proposals. The first form applies to macroeconomic governance. The link between cohesion policy and the EU’s economic governance will be strengthened. The draft Regulation says: “When a Member State fails to take effective or corrective action in the context of key EU economic governance mechanisms or fails to implement the measures required by a stability support programme, the Commission shall make a proposal to the Council to suspend all or part of the commitments or payments for one or more of the programmes of a Member State. However, the Commission may, on grounds of exceptional economic circumstances or following a reasoned request by the Member State concerned, recommend that the Council cancels the suspension”.²⁶

The second set of conditionalities proposed are now called “enabling conditions.” They maintain to a large extent the former ex-ante conditions with respect to thematic issues such as smart specialisation strategies and horizontal issues such as state aid. New in this draft regulation

²³ Ibidem.

²⁴ European Commission, *Regional Development and Cohesion Policy beyond 2020; Questions and answers*; European Commission; *Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, The European Social Fund Plus, The Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa instrument*, COM(2018) 375 final Annexes (all available from EC website)

²⁵ European Commission, *Proposal for a Regulation of the European Parliament...*, op. cit.

²⁶ European Commission, *Regional Development and Cohesion Policy...*, op. cit.

are the effective application and implementation of the EU Charter of Fundamental Rights and of the United Nations Convention on the Rights of Persons with Disabilities.

There is nothing here about values: apparently the notion could not be made legally watertight. The reference to Fundamental Rights is legally of a more limited scope than would have been a reference to values, but it is based on more solid ground. Indeed, the EU already has quite some experience in the application of Fundamental Rights: there is an Agency specifically dedicated to the task and an annual reporting procedure. However, its effectiveness in making Member States comply with values in the framework of cohesion needs to be seen.

Conclusion

The EU is a community based on values. Members have committed themselves to respect these values. Compliance with the rules deduced from such basic values is not only important for moral reasons but also for good economic reasons. Where values are in danger, the economic system becomes less effective and productive.

The European Union has seen in the past decade an increasing number of infringements of EU values. It has had to admit that its legal instruments are insufficiently effective in forcing compliance. Therefore, it is important to see what other instruments can be used. The budget is the logical option. Its use would imply withholding payments of different budget lines to countries that do not respect basic values.

The past has shown that such conditionality can be made operational. There is much to say that this conditionality should be extended to the respect for the basic values of the EU such as the rule of law and an independent judiciary, as a direct link can be established between the effectiveness of the use of the Funds and the respect of values.

It is sad to see that the Commission has missed the opportunity to propose strong measures in its recent draft Regulation. The introduction of the Charter of Fundamental Rights in the enabling conditions does, however, give hope for the putting in place of at least some levers to exert pressure on wrong-doers.

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