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The Rocky Road to Providing Public Goods in the European Union

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On the occasion of the fourth meeting of the Bertelsmann Stiftung High-Level Reflection Group "A strong Europe in a globalised world" on 27 October 2020 we look back to identify where we stand, and look ahead to the upcoming challenges.

Need for reform in the EU

At the start of our reflections stood an analysis of the myriad of challenges the EU faces – pre- and post-corona. Against this backdrop we highlighted both internal and external factors that call for reforms so that the EU can act more decisively in the future.

Internally, successive enlargements increased the heterogeneity of preferences among Member States. This has made the decision-making process significantly more complicated, especially in the context of policies traditionally close to the core of government and issues of sovereignty (e.g. migration, security, economic policy). Often enough, these disagreements block the EU from taking any effective decisions. We see a clear gap between what the EU ought to do in order to address such challenges, and what it is able to do.

This expectation-capability gap is further exacerbated by a dramatically changing regional and global political landscape. A more assertive Russia, the rise of China as a new global power and the loosening of the close alliance with the United States – they all have contributed to a weakening of the rules-based multilateral international order on which the EU had long centred its (foreign) policy approach. In an emerging multipolar world, the EU should develop a genuine European sovereignty to be able to "punch at its weight" as the world's largest market and as the most advanced political project to strengthen democracy beyond the nation state.

In view of the above, it is clear that the EU cannot simply "carry on" as before, nor is a mere focus on the single market sufficient if the EU wants to counter growing internal divergences and assert its place in the international order.

With a view to these multiple challenges, the Reflection Group's initial analysis focussed on possible structural reforms to the set up and governance of the EU. We discussed a possible extension of the scope of qualified majority voting (QMV) and proposals for "differentiated integration" – either in the form of concentric circles or in the form of "clubs" of willing Member States.

Yet, such structural issues go hand in hand with EU policies and competences; there always is the duality of form and function. Building on this discussion, the Reflection Group zoomed in on the concept of European public goods as a framework – and political narrative – for strengthening the EU by identifying the "more European" tasks which the Union should focus on.

European public goods and their provision within the multi-level system

The concept of European public goods draws on the theory of common or public goods. In economics, it is the standard concept to delineate the realm of the private sector and the public sector, respectively. Today, this strand of classic welfare theory often seems to be confined to undergraduate textbooks. Yet, with a view to identifying and classifying tasks that the European Union fulfils today and should fulfil, this archetypal concept provides remarkably useful insights. Whether any common activity may generate a "European added value" (or not) may also be determined by referring to the notion of public goods.

In multi-level systems such as the EU the question arises as to which level of government is responsible for ensuring the provision of which public goods. Applying the concept of fiscal federalism, public goods qualify as European whenever national action triggers significant cross-border spill-over effects, i.e. the measures taken by one country generate benefits or costs in (several) other countries as well. The other important factor for a common good to qualify as European are positive economies of scale, i.e. a public task can be implemented much more cost-effectively – or only – at the European level than by individual Member States.

Once European common goods have been identified the question remains how best to organise their provision in terms of the associated competences: legislation, administration and financing. Again, fiscal federalism and experience from practical governance in federal multi-level polities provide useful guidelines. If cross-border spillover effects go hand in hand with widely homogenous preferences and economies of scale, the Union should take over all three competences of legislating, administrating/implementing and financing, which would result in a clear division of tasks among government levels in line with US-style "dual federalism".

But this clear-cut designation of national and European tasks is not typically the case in the EU. Most of the time, cross-border spill-overs occur in Europe with diseconomies of scale and/or rather heterogeneous preferences for common goods among its Member States. In such situations, the administration competence, as well as possibly the legislation competence that goes beyond the definition of a common framework, should then be delegated to the Member States, to ensure the "balance of subsidiarity" between levels of government.

At the same time, such a situation raises the issue of which government level should take responsibility for the financing of such a task. In Germany, this debate is conducted under the heading of the "connectivity principle". The German federation today is slowly moving from the historically well-established execution connectivity ("who executes, pays") to modern causal connectivity ("who legislates, pays").

In order to strengthen Europe as a Union via the provision of public goods, a common financing based on (new) own resources might prove a valuable step forward. The potential of the recently-agreed Recovery and Resilience Facility (RFF) to deliver such a valuable step forward will be discussed further below.

Yet, our analysis of the European added-value (see Bertelsmann Stiftung 2013, 2017) of public goods through the lens of federalism theory also highlighted a problematic trait of Europe's current constitution which may lead to a "federal paradox" whenever new European tasks are to be acquired: while one form of European governance is good at establishing new tasks, another form of European governance is more suited to deciding and implementing concrete policies.

We describe the EU as a multi-level system *sui generis* in which an integrated federation (a "supranational system of action") and a confederation of independent states ("intergovernmental system of action") coexist. In the EU as we know it the federation-type supranational system of the Treaties provides a democratically and fiscally appropriate governance framework for the *conduct* of new tasks with European added-value.

Unfortunately, it is very difficult to *introduce* new common goods in this system. For the "confederation" it's the other way around (hence the "federal paradox"). The intergovernmental system of action is poorly suited for the regular conduct of European public goods. Yet, it has the great advantage of flexibility in the initial participation in new tasks, which can also be agreed outside the existing EU treaties.

No constitutional set-up can remain permanently unchanged in a changing world – especially not the European. And, what is more important, an EU-level governance for new common tasks introduced by coalitions of the willing would not necessarily have to use the existing supranational system of action. There would, for example, also be options for federation-like "clubs".

Thus, the conclusion remains: Today, more than ever, it is important that each level of government in Europe takes on the public tasks and competences for which it is best suited. Indeed, to make the EU stronger and more sovereign by bridging its expectation-capability gap, the allocation of European tasks and competences to the appropriate level of government is a key prerequisite.

Legal challenges associated with the introduction of European public goods

While "public good" is not a legal concept *per se*, it is mirrored in the legal notion of common welfare or public interest. The latter defines a general goal that stands behind and summarises the objectives laid down in the constitution of a nation state. In the EU, the principle of solidarity can act as a bridge so as to bring together the national common welfare of all Member States to form the so-called European common welfare, an overarching goal that is pursued by the Community through the objectives laid down in the European Treaties. However, the scope of EU action is limited by the principles of subsidiarity and proportionality (Article 5 TEU), which intend to protect Member States in the realization of national common welfare.

Therefore, in introducing (new) European public goods there is a tension between the principle of solidarity, or strengthening European sovereignty, and the principle of subsidiarity, covering also the debate on European added value. There are several ways in which such a conflict can be resolved:

1. The EU could better exploit the competences conferred on it by the current Treaties and extend the scope of QMV through use of *passerelle* clauses;
2. New competences may be transferred to the EU through Treaty revision;
3. A coalition of willing Member States may embark on the path of differentiated integration within (by enhanced cooperation) or outside the current Treaties.

Listing these alternatives should ensure that (new) European public goods are introduced into the EU's legal framework at least in one way or another. While the chances of introducing (new) European public goods may be greater in the context of differentiated integration, it would then be desirable to provide them within the system of the *acquis communautaire* given its democratic institutional setup and well-established budget.

We looked at several examples to make the valuable input of the European public goods concept more concrete, two of which shall be briefly discussed in the following sections.

Example I: Bridging the gap between task and competence in the Economic and Monetary Union

The EU is a Treaty-based economic and monetary union. While its tasks – economic policy through close cooperation of Member States and a common monetary policy that ensures price stability – are clearly defined, the competences are asymmetrically pooled at EU level: Monetary policy is an EU competence, whereas economic and fiscal policy mainly remained the responsibility of national decision-makers.

The inability of this asymmetric competence to ensure macroeconomic stability – a task defined for and delegated to the EU – became evident in the Eurozone crisis. More binding powers, or additional capacities, would ensure that the sum of all fiscal policies of Member States is able to fulfil its macro-economically important functions, whilst respecting such limits as debt sustainability issues.

While some steps towards reform have been undertaken, they have not resolved the underlying mismatch between the EU's tasks and its competences to realise the public good of macroeconomic stability. Thus, this policy area represents a clear case where a stated public good of the EU can be provided under the current institutional structure to a limited degree only. A Treaty modification would be required to supply the EU with sufficient fiscal competence to overcome this discrepancy, and the lens of European public goods provides a clear justification to do so.

Example II: Potential for a "grand bargain" in migration and asylum policy

European migration and asylum policy has been the centre of intense political debate in the last years. This is understandable. On the one hand, the responsibility for the joint asylum system is very unequally shared among Member States under Dublin III. At the same time, attempts to organise policies towards providing more solidary have failed in the face of stiff resistance of several Member States. While the apparent heterogeneity of preferences would call for a decentralised provision of migration and asylum policy, this would effectively end borderless travel in the Schengen area.

Attempts at resolving the political deadlock have proven rather futile so far. Again, approaching the policy field from European public goods perspective proves helpful. A broader look at the subject of migration – including irregular as well as labour migration – on the European goods of free movement and balanced growth opened up new potential areas for potential political bargains. This could see Western European countries focus more explicitly on migration from the South to alleviate Eastern European concerns about depopulation and lack of growth in exchange for cooperation in reform of the asymmetric responsibility-sharing of Dublin III.

If the political deadlock cannot be overcome, however, we also discussed what a move towards differentiated integration would look like, when a "club of the willing" would establish a reformed "Schengen 2.0" regime. We discussed the requirements of such a solution – with a clear separation between club members and other Member States, and a clear mechanism to ensure that the members of the club fulfil their responsibilities in implementation.

Our main takeaways from the work of the Reflection Group

This brief and selective review cannot cover the complete work of the Reflection Group and its accompanying papers and studies (an overview of the papers can be found at the end of the document). Nevertheless, key takeaways from the work of the last two years can be summarized as follows:

The EU developed as an entity that over decades moved more and more towards market integration. Even the shared sovereignty of monetary union can be seen as an instrument of ensuring even further economic integration.
While over time, the **Union has taken up many other policy issues beyond the Single Market**, it still **lacks the structural capability and the political competences to face these challenges** in a resourceful and sovereign manner.

Our main discussions revolved around two issues which relate to the interplay of function – *what* Europe does – and form – *how* the EU comes to deciding and implementing these policies.

With regards to the function(s) of the EU, we must ask **how the concept of European public goods can improve on the allocation of tasks to the different European levels**, and what consequences do we derive from that for the financing of Europe.

The notion of European common goods is a powerful framework to identify "European added-value" and to develop a better allocation of policies and competencies. Yet, empirically, the EU seldom develops by design alone. In practice, the notion of "**situational task acquisitions**" has shaped the integration of the EU – an observation certainly confirmed by the EU's response to the Covid-19 pandemic.

European integration thus thrives where acute needs are greatest and when Member States are weak on their own. Here, the concept of European public goods is useful for ensuring that these developments, "situational" as they may be, end up with the **appropriate administrative, legislative, and financial framework so as to be able to enact efficient and legitimate policy.**

With regards to the form of "making" policy, we observe (political) deadlock on many highly salient issues. The scope of majority voting has continually grown over time, making the EU more capable as an autonomous actor in these policy areas. In areas which touch upon questions of national sovereignty, this poses severe political – and potentially also constitutional – problems. **We must therefore ask how we can overcome the deadlock through alternative institutional arrangements**.

Migration and external security are two important areas where this policy deadlock can be clearly identified. Most issues in these policy areas are currently not decided by Qualified Majority Voting (QMV), and will be blocked in the future if the unanimity requirement prevails.

While a common policy decided on by majority vote might be most effective for asserting European sovereignty in the world, we need to think of other **means to strengthen Member States' (joint) interests** in the rapidly changing geopolitical environment. We have examined alternative ways, ranging from **making better use of the Treaty provisions, to Treaty revisions and to intergovernmental cooperation outside the present Treaties**.

The more heterogeneous the preferences of Member States are, the more one will need to think and act *outside* the Treaty, with all due caution and respect for those who do not (yet) wish to participate.

This can be done through the **principle of differentiated integration**, where clubs or groups of Member States decide on further integration among themselves in certain policy areas.

We identified the **intergovernmental system as the framework with a lower threshold for selectively *introducing* new European tasks**, especially by means of bilateral treaties. From this perspective, the **first step towards** a (possibly rather large) core of members of **a more integrated EU-club would seem less challenging than often anticipated**.

However, the intergovernmental system reaches its limits when a newly-established European task needs to be conducted in a regular, democratic and efficient way. Here, the **supranational system (i.e. the Community method) can provide a constitutionally democratic foundation for differentiated integration**.

A European Union that provides more and better European public goods to its citizens does not automatically have to look like the "United States of Europe". Organising a stronger Europe along the lines of European public goods can make these goals a lot more manageable. By **distributing the tasks appropriately between different levels of government (regional, national, European) and by ensuring an appropriate financial and institutional framework, new European policies can be conducted democratically and efficiently**. Of course this is an immense task with many remaining – political and legal – challenges and won't be done overnight. Through the lens of European public goods, however, it becomes more manageable to approach and think about it.

Looking ahead: the EU of the 2021-2028 MFF

The outbreak of the coronavirus pandemic in early 2020 has further underlined the need for EU reform. Although the global health emergency posed a threat to all Member States, the burden of its containment – at least during the first wave of infections – has not been borne equally, posing a challenge for the stability and functioning of the European economy, as well as to solidarity among Member States. Moreover, the pandemic intensified the confrontation between the US and China and accelerated processes of international realignment, increasing the need for the EU to develop into an independent actor on the global stage. Thus, with additional internal and external pressures, the question about the future course of the Union has intensified.

In order to tackle the economic and social consequences of the coronavirus pandemic the European Council agreed on 21 July 2020 to NextGenerationEU, a fund of 750 billion euro in addition to the next multiannual financial framework (MFF 2021-27) of almost 1.1 trillion euro. After initial disputes among Member States over the use of the European Stability Mechanism or the issuance of so-called corona bonds in early 2020, the European Council decision of July 2020 represents a big leap into new and still largely unchartered territory of Europe's further development.

With the Recovery and Resilience Facility (RRF) at the heart of NextGenerationEU, the European Union plans to borrow a vast sum on the capital market, a large part of which will be channelled to the Member States in the form of grants. In order to repay this new EU-level debt over the coming 30 years, the Union is to be endowed with new, possibly genuinely common own resources – i.e., EU taxes.

The RRF may thus prove a historic turning point for the further development of the European Union and – together with a well-designed MFF – could potentially lay the fiscal foundation for a strong and sovereign Europe. To seize the opportunity for major institutional change created by the European Council decision, some of the following key questions are worth exploring in more depth in the future:

- What is the role and scope of budgets (such as the RFF) to finance new European tasks in addition to the MFF?
- How can the MFF be made more flexible so as to be able to adapt the allocation of resources to the changing environment?
- How could the EU's future own resources system look like so as to overcome Member States' *juste retour* thinking, and to put the European level on an equal footing with the other levels of government?
- How could a fiscal regime look like that improves debt sustainability, and that creates a balance between mutual solidarity and the treatment of national and of European fiscal policies as a genuine issue of common responsibility and concern?
- What is the scope – and possible pathway – to extend Qualified Majority Voting (QMV) to prevent the interests of individual Member States from derailing collective action while balancing the responsibility borne by any Member State at the same time?

Since to date any Treaty amendment requires unanimity, it will be necessary to explore options of flexible geometry when addressing the above questions. At a later stage, these institutional innovations can still be extended to the rest of the EU. Here, it also is crucial to outline mechanisms for democratic governance and control also in phases of the introduction of new instruments or European tasks via intergovernmental initiatives.

After all, the EU simply cannot afford to put off reforms to its legislating, administrating, and financing set-up. The Covid-19 crisis has taken the centre stage of the current debate on the future of Europe. Yet other policy challenges have not disappeared: the digital and green transformation of the European economy, migration and asylum policy, and the rule of law, to name but a few, will also require a European Union ready to act decisively and able to implement its decisions – both internally and externally – in the interest of European citizens and Member States.

List of publications of the Reflection Group:

- Kastrop and Wieser 2020. Mission Statement of the Reflection Group.
- European Public Goods: An Action Manual.
- Thöne and Kreuter 2020. New Models for Europe's Future – Scoping of Tasks and Approaches.
- Thöne and Kreuter 2020. European Public Goods – Their Contribution to a Strong Europe.
- Steiner and Grzymek 2020. Digital Sovereignty in the EU.
- Calliess 2020 (forthcoming). Öffentliche Güter im Recht der Europäischen Union [Public Goods in European Union Law, German].
- Thöne and Kreuter 2020 (forthcoming). Public Goods in a Federal Europe.

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