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The European Council and the principle of solidarity: A contested concept

Aline Bartenstein

Institute for Peace Research and Security Policy (IFSH)

at the University of Hamburg



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1. The evolution of solidarity between member states

Solidarity is an essential part of the history of the European Union. Already in 1950, Robert Schuman, one of the main architects of the European Communities claimed that concrete achievements will create a *de facto solidarity* between the member states¹. However, there are only few discussions on how to fulfil this „fundamental imperative in the EU“². Solidarity is used as an obscure political and legal norm in EU politics, and academia hardly discusses the conceptual foundations of solidarity between EU member states either³. Consequently, the expectations on and implications of solidarity are not sufficiently debated. For these reasons, this policy brief illuminates three aspects of solidarity. First, the policy brief introduces solidarity as theoretical concept, second it illustrates the various references to solidarity in primary law and its evolution as legal norm and third, it reveals the different positions within the European Council on solidarity.

Solidarity played an important role in the introduction of financial redistribution and general budget policies from the beginning but was only hardly present in primary law for a long time. The Single European Act of 1987 contained only one reference to solidarity referring to the necessity to speak internationally with one voice. The Maastricht Treaty contains six references to solidarity. “Reflecting the impetus of the Delors commission and Southern enlargement, ‘solidarity’ appeared alongside ‘cohesion’ in (...) the Maastricht Treaty (1992)”⁴.

However, already in the 1973 slaughter premium ruling, the European Court of Justice interpreted solidarity as an obligation for all member states to implement commonly agreed market rules.

“For a state unilaterally to break, according to its own conception of national interest, the equilibrium between advantages and obligations flowing from its adherence to the community brings into question the equality of member states before community brings into question the discriminations at the expense of their nationals, and above all of the nationals of the state itself which places itself outside the community rules. This failure *in the duty of solidarity accepted by*

¹ Schuman, Robert (1950) The Schuman Declaration. Paris, 9.5.1950: European Commission. Available at: https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_de.

² Kim, Sunhyuk and Schattle, Hans (2012) 'Solidarity as a unifying idea in building an East Asian community : Toward an ethos of collective responsibility', *Pacific Review*, 25(4), pp. 473–494.

³ Holesch, Adam (2021) 'Measuring solidarity: towards a survey question on fiscal solidarity in the European Union'. *Acta Polit* 56, pp. 376–394.

⁴ Sangiovanni, Andrea (2013) 'Solidarity in the European Union', *Oxford Journal of Legal Studies*, 33(2), pp. 213–241.



*member states by the fact of their adherence to the community strikes at the fundamental basis of the community legal order*⁵.

This was intended to prevent member states from being treated unequally or from being able to impose special treatment⁶.

Also, the European Council referred only scarcely in its conclusions to solidarity. In December 1973, the European Council mentioned solidarity in its conclusions in the context of the development of a common energy policy responding to the oil crisis. Solidarity was eventually implemented by a joint approach to introduce a certain amount of oil stocks reducing the vulnerability of the individual member states. Nevertheless, solidarity remained a shallow concept over the decades without further reflections on its political or legal implications. Only the Constitutional Treaty revitalized the debate on this fuzzy concept⁷. In 2019, General Advocate Sharpston even stated that „(s)olidarity is the lifeblood of the European project“⁸.

The last 15 years have been coined by a multitude of solidarity debates in the EU. Solidarity emerged as ultimate response in crisis situations since member states aim to „enhance their problem-solving capacities in an era of globalization, while indemnifying each other against the risks and losses implicit in integration“⁹. Solidarity was demanded in the Eurozone crisis¹⁰ and the so-called refugee crisis. But solidarity was also called for in energy and climate policy, foreign policy and in dealing with natural disasters and terrorism. Most recently, the solidarity debate has focused on the Covid-19 pandemic. Nevertheless, former Commission President Juncker declared that „(l)e grand absent européen, c'est la solidarité“¹¹. Solidarity is used in secondary law in a rather declarative manner, i.e. it is used as buzzword in order to demonstrate unity between member states or to imply that member states support each other. But the exact meaning of solidarity remains mostly unspecified since solidarity lacks a coherent definition and there is no agreement between the member states on what solidarity

⁵ European Court of Justice (1973), Judgment of the Court of 7 February 1973. Commission of the European Communities v Italian Republic. Premiums for slaughtering cows. Case 39-72.

⁶ Ibid.

⁷ Calliess, Christian and Ruffert, Matthias (2016) EUV, AEUV: das Verfassungsrecht der Europäischen Union mit Europäischer Grundrechtecharta: Kommentar. 5 Edn. München: C.H. Beck.

⁸ Sharpston, Advocate General (2019) Case C-715/17 European Commission v Republic of Poland Case C-718/17 European Commission v Republic of Hungary Case C-719/17 European Commission v Czech Republic: Case C-715/17.

⁹ Sangiovanni (2013)

¹⁰ A detailed analysis on solidarity in the Euro Crisis is provided by Borger, Vestert (2020) “The Currency of Solidarity: Constitutional Transformation during the Euro Crisis”. Cambridge: Cambridge University Press.

¹¹ Juncker, Jean-Claude (2017) “Avec une vue sur l'extérieur” – Discours du Président Juncker auprès du European University Institute à l'occasion de la State of the Union conference: Building a people's Europe, Florence.



actually implies¹². Moreover, literature on solidarity illustrates that solidarity is lacking¹³ or even that there is a European solidarity crisis¹⁴.

2. The concept of solidarity

Sociological research on the phenomenon of solidarity underlines that it is necessary to make a difference between solidarity as guiding principle of action and solidarity as institutionalised principle which informs the design of policies¹⁵. Similar observations have been drawn for the implications of solidarity between member states¹⁶. Solidarity – in the daily context – usually refers to support each other, to stick together in times of need or to team up against others. Solidarity is applied within exclusive groups (solidarity between or among) but also with others (solidarity with)¹⁷. For this reason, solidarity is used particularly often in times of crisis¹⁸. Solidarity in this account can either mean to behave in a certain way (e.g. to send help) or to set aside the own interests in favour of the group's interest (solidarity as behavioural norm). Political solidarity is also interpreted as a “political act of resistance”¹⁹. This form of solidarity reflects the committed support of a struggle against hazards, especially against injustice²⁰. Institutionalised solidarity usually refers to the design and implementation of a concrete policy (e.g. EU crisis management; security of gas supply) and is interwoven with the concepts of ‘responsibility’, ‘deservingness’ and ‘reciprocity’²¹.

But the concept points also to a different discussion – which is equally important for European integration. What sources solidarity between member states? Identity is a common point of reference – people feel united when they are connected by joint experiences of the past or since they perceive each other as alike due to language or ethnic reasons. However, if European solidarity is sourced by

¹² Bartenstein, Aline (2021 forthcoming) *The Concept of Solidarity – Energy Policy in the European Union*, Nomos, Baden-Baden.

¹³ Ondarza, Nicolai von, Rudloff, Bettina and Tokarski., Pawel (2020) 'Corona-Krise: Italien braucht jetzt europäische Solidarität', *SWP: Kurz gesagt*.

¹⁴ Kneuer, Marianne (2017) *Im Kern solidarisch – Politik auf dem Prüfstand*, in: Horster, D. and Martinsen, F. (eds.), *Welches Europa wollen wir? Solidarität in der Politik*, Weilerswist: pp. 12-27.

¹⁵ Schnabel, A. and Tranow U. (2020) *Zur Einleitung: Grenzziehungen der Solidarität*. *Berlin J Soziol* 30, pp. 5–22. <https://doi.org/10.1007/s11609-020-00414-6>.

¹⁶ Bartenstein, Aline (2021 forthcoming)

¹⁷ Miller, David (2017) 'Solidarity and Its Sources', in Banting, K. And Kymlicka, W. (eds.) *The Strains of Commitment: The Political Sources of Solidarity in Diverse Societies*. Oxford: Oxford University Press, pp. 61-79.

¹⁸ Schmale, Wolfgang (2017) 'European solidarity: a semantic history', *European Review of History: Revue européenne d'histoire*, 24(6), pp. 854-873.

¹⁹ Scholz, Sally (2008) 'Political Solidarity', Penn State University Press, University Park, Pennsylvania.

²⁰ Wildt, Andreas (2017) 'Historisches Wörterbuch der Philosophie online', *Solidarität*. Basel: Schwabe Verlag.

²¹ Vignon, Jérôme (2011) *Solidarity and responsibility in the European Union*, *Notre Europe*, Policy Brief.



identity, there is the risk to exclude others, who do not share particular features of the group. Additionally, identity might not be sufficiently strong to create European solidarity. But solidarity can also be sourced – for individuals as for member states – by a joint identification with common interests²² and a political project²³ as well as resulting interdependence²⁴. The EU is a joint political project in which member states agree to join and to adhere to the treaties. Therefore, they agree to an ‘ever closer Union’ (art. 1, TEU) and a range of European values (art. 2, TEU). This political allegiance constitutes per se a communal fidelity between member states²⁵, i.e. an awareness by all member states that they are united by a common bond²⁶.

Another characteristic of solidarity is reciprocity. Reciprocity is only excluded in the case of cosmopolitan solidarity, which is based solely on moral convictions. Belonging to the group implies that all group members must equally contribute. Reciprocity can take place either in direct exchange or in the form of insurance. If reciprocity is demanded directly (this might even be in form of a payment), trust between group members tends to be low and the solidarity relationship rather weak. If reciprocity is instead established over a longer period of time, the trust between the group members is stable, and consequently the solidarity relationship is rather strong. Furthermore, group members make solidarity dependent on certain conditions. In case of mistrust, therefore, group members consider the deservingness of solidarity. Solidarity might be dependent on the neediness of the other, i.e. if the other is not to blame for the situation (third-party responsibility) the group members are more willing to help than in situations which are self-inflicted²⁷. If a group member is to be blamed, group members might only provide conditional solidarity²⁸. Additionally, the distribution of burdens and benefits within the group must be considered as fair²⁹.

²² Barbier, Jean-Claude 2012. Les frontières de la solidarité dans l’Union européenne. In: B. Muller, J.-C.B.e.M.B. (ed.) Les solidarités à l’épreuve des crises. L’Harmattan.

²³ Kleger, Heinz and Mehlhausen, Thomas (2013) 'Unstrittig und doch umstritten – europäische Solidarität in der Eurokrise', Politische Vierteljahresschrift, 54(1), pp. 50–74.

²⁴ Loh, Wulf and Skupien, Stefan (2016) 'Die EU als Solidargemeinschaft', Leviathan: Berliner Zeitschrift für Sozialwissenschaft, 44(4), pp. 578–603.; s. also Sangiovanni, Andrea (2013).

²⁵ Schiek, Dagmar (2020) 'Solidarity in the case law of the European Court of Justice – opportunities missed?', in Krunke, H., Petersen, H. And Manners, I. (eds.) Transnational Solidarity. Concept, Challenges and Opportunities: Cambridge University Press.

²⁶ Blanquet, Marc (2009) 'L’Union européenne en tant que système de solidarité: la notion de solidarité européenne', in Hecquard-Théron, M. (ed.) Solidarité(s) : Perspectives juridiques. Toulouse: Service des Presses de l’Université Toulouse.

²⁷ Steinvorth, Ulrich (2017) 'Applying the Idea of Solidarity to Europe', in Grimmel, A. And Giang, S.M. (eds.) Solidarity in the European Union: A Fundamental Value in Crisis. Cham: Springer International Publishing.

²⁸ Kneuer (2017)

²⁹ Scharpf, Fritz W. (1988) 'The Joint-Decision Trap: Lessons from German Federalism and European Integration', in: Public Administration 66(3), pp. 239 – 278.



Finally, the question arises as to how solidarity can be ensured if the norm bond is not sufficient³⁰. Non-compliant behaviour is to be expected if the actors are primarily interested in asserting their own interests. This case can occur when the common interests and the individual interests diverge strongly. Or if the individual group member seeks his advantage in freeriding. Therefore, the group must have monitoring and sanctioning systems in place to ensure the equal behaviour of all group members³¹. In summary, solidarity, if based on exclusive group membership, is characterised by three features:

- Group cohesion and trust;
- Reciprocity;
- Monitoring and sanctioning mechanisms³².

Only if these three characteristics are present, solidarity between member states can unfold. The concrete form of solidarity depends on which solidarity is demanded. Possible forms are (a) certain action (or omission) to achieve (or not to jeopardise) a common goal, and (b) solidarity as insurance, i.e. paying into the provision of a good. These theoretical considerations are helpful for the analysis of the different practical applications of solidarity, because they reveal:

- (1) what expectations a group may have of its members' willingness to show solidarity;
- (2) what forms of solidarity there are and what goals these forms are linked to;
- (3) on which conditions the institutionalisation of solidarity depends when the norm bond is not sufficient.

3. From the Laeken conclusions to the Treaty of Lisbon

Having in mind these theoretical reflections, the second part of the policy brief outlines evolutionary trends in law and politics. The embracement of solidarity goes back to the European Council of Laeken (2001), where the European Council affirmed that "Europe (...) is the continent of solidarity"³³. Thus, the Council underlined that Europe is different from other regions in the world. Additionally, the

³⁰ Härtel, Ines (2012) §82 Kohäsion durch föderale Selbstbindung – Gemeinwohl und die Rechtsprinzipien Loyalität, Solidarität und Subsidiarität in der Europäischen Union. Handbuch Föderalismus – Föderalismus als demokratische Rechtsordnung und Rechtskultur in Deutschland, Europa und der Welt Berlin Heidelberg: Springer Verlag.

³¹ Fernandes, Sofia and Rubio, Eulalia (2012) Solidarity within the Eurozone: how much, what for, for how long?: Notre Europe.

³² Bartenstein (2021 forthcoming)

³³ Conclusions (2001) Presidency Conclusions European Council meeting in Laeken 14 and 15 December 2001, DOC/01/18. Laeken, 15.12.2001: European Council.



Laeken conclusions stated that “(a)s a result of mutual solidarity and fair distribution of the benefits of economic development, moreover, the standard of living in the Union’s weaker regions has increased enormously and they have made good much of the disadvantage they were at”. This point highlights how solidarity is an integral part of the integration process.

Solidarity has been up and trending during the Convention and was used in three different ways³⁴. First, solidarity served as overarching principle guiding the integration process. Second, solidarity was understood as crisis instrument in order to guarantee mutual support based on reciprocal commitments. And third, solidarity was called upon to decrease regional and socio-economic disparities.

Although the number of references to solidarity increased with each treaty reform, the most comprehensive changes occurred with the Constitutional Treaty where solidarity was mentioned 20 times. Although the Constitutional Treaty failed, the Treaty of Lisbon contained nearly all references to solidarity. Additionally, solidarity was added to the energy article 194 TFEU at the instigation of Poland³⁵. „Poland succeeded at placing the issue of ‘energy solidarity’ onto the EU agenda and successfully exploited the opportunity of the reform treaty negotiations to secure the inclusion of scaled-down references on ‘energy solidarity’ into the Lisbon treaty“³⁶.

The Treaty of Lisbon is declared a “fireworks of solidarity”³⁷. Altogether, we find 22 references to solidarity in the treaty (including the Charter of Fundamental Rights and Protocols). Nevertheless, it remained unclear „which overall expectations, moral obligations, political assumptions and normative force can be attributed to what the Union’s primary law calls ‘solidarity’“³⁸. Art. 2 TEU – the so-called value article - lists solidarity, however, solidarity is not mentioned as a value but as a characteristic of European society³⁹. Art. 3 TEU mentions solidarity three times. First, solidarity has a temporal

³⁴ Hartwig, Ines and Nicolaides, Phedon (2003) 'Elusive Solidarity in an Enlarged European Union', *Eipascope*, 2003(3), pp. 19–25.

³⁵ Further reflections on the treaty change: Fischer, Severin (2009) 'Energie- und Klimapolitik im Vertrag von Lissabon- Legitimationserweiterung für wachsende Herausforderungen': 52; Andoura, Sami (2010) 'Energy Cooperation under the Aegis of the Weimar Triangle- Springboard for a Common European Energy Policy', Friedrich Ebert Stiftung – International Policy Analysis, October 2010: 6.

³⁶ Roth, Mathias (2011) 'Poland as a Policy Entrepreneur in European External Energy Policy: Towards Greater Energy Solidarity vis-à-vis Russia?', *Geopolitics*, 16(3), pp. 600–625.

³⁷ Calliess, Christian (2011) 'Das Europäische Solidaritätsprinzip und die Krise des Euro - Von der Rechtsgemeinschaft zur Solidaritätsgemeinschaft?', Vortrag an der Humboldt-Universität zu Berlin, 18.01.2011(FORUM CONSTITUTIONIS EUROPAE).

³⁸ Kotzur, Markus (2017) 'Solidarity as a Legal Concept', in Grimm, A. And Giang, S.M. (eds.) *Solidarity in the European Union: A Fundamental Value in Crisis*. Heidelberg: Springer.

³⁹ Jacqué, Jean-Paul (2015) 'Rn. 1–18', in von der Groeben, H., Schwarze, J. And Hatje, A. (eds.) *Europäisches Unionsrecht: Vertrag über die Europäische Union – Vertrag über die Arbeitsweise der Europäischen Union – Charta der Grundrechte der Europäischen Union*. Baden-Baden: Nomos.



dimension since it is demanded between the generations, which is also described as “diachronic solidarity”⁴⁰. Second, the Union should foster the economic, social and territorial cohesion and solidarity between the member states. As such, the principle of solidarity refers to the social dimension of the European Union to equal out discrepancies between the European regions. Cohesion policy is as such reflecting financial solidarity⁴¹. Third, the Union shall “concerning its relations with the wider world (...) contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples (...)” (art 3, TEU). This kind of solidarity corresponds to cosmopolitan solidarity, which means that solidarity is not only related to an exclusive solidarity group, but that solidarity exists between all human beings based on the principle of equality⁴².

4. Solidarity in the European Council conclusions

As outlined above, solidarity was inserted in the Constitutional Treaty at the instigation of the European Council. But how is solidarity actually addressed in the European Council? The European Council refers to solidarity in its conclusions on different occasions and in relation to various policy fields. Although solidarity “is *per se* a quite fuzzy notion”⁴³ the European discourse on solidarity highlights the high relevance of this value for the EU. Solidarity is the most mentioned value in the European Council conclusions, which were published between 2004 and 2019, covering 71 % of those conclusions⁴⁴.

„The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the 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“ (Art. 2 TEU).

⁴⁰ Härtel, Ines (2014) *Solidität, Austerität, Solidarität: Staatsverschuldung und die (verfassungs)rechtliche Verankerung von Schuldenbremsen im föderalen Mehrebenensystem (USA und Deutschland)*. Tübingen: Eberhard-Karls-Uni Tüb. Europ. Zentrum f. Föderalismusforschung.

⁴¹ Bachtler John and Mendez Carlos (2020) ‘Cohesion and the EU Budget: Is Conditionality Undermining Solidarity?’ in Coman, Ramona, Amandine Crespy, and Vivien A. Schmidt, (eds.), *Governance and Politics in the Post-Crisis European Union*. Cambridge: Cambridge University Press.

⁴² Díez Medrano, Juan; Ciornei, Irina; Apaydin, Fulya (2019) *Explaining Solidarity in the European Union*. In: Ettore Recchi, Díez Medrano, Mike Savage et al. *Everyday Europe: Cross-border Lives in Europe*. London: Policy Press.

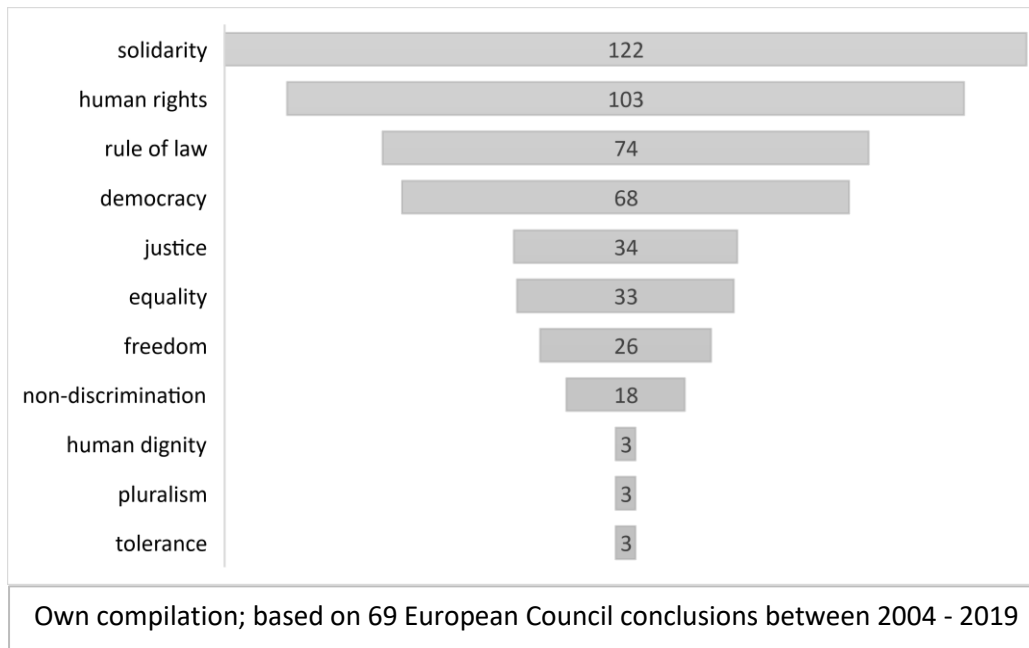
⁴³ Lang, Kai-Olaf and Westphal, Kirsten (2017) ‘Nord Stream 2 – A Political and Economic Contextualisation’, SWP Research Paper, pp. 1–39.

⁴⁴ Multiple entries were counted once per paragraph. Freedom and justice were not counted when they were mentioned under the ‘area of freedom, security and justice’. Solidarity was mentioned in 49 out of 69 documents. The documents don’t include all extraordinary summits, such as the summits on Art. 50.

⁴⁵ Bartenstein (2021 forthcoming)



Figure 1: Values in European Council Conclusions 2004-2019



In the time frame between 2004 and 2020, the European Council referred mostly to solidarity in the context of refugee and migration policies. This was followed by energy, the Euro as well as budget and cohesion. Solidarity is often declared in reaction to crises. In December 2020, the Council referred to solidarity in face of different terrorist attacks in the EU, in July 2020, international solidarity was claimed in the context of the Covid-19 pandemic⁴⁶. Climate solidarity – which might cover international solidarity, solidarity between member states as well as solidarity between generations – did so far not play a prominent role. In 2014, climate solidarity was called upon concerning the general need to reduce CO2 emissions and the particular point of being in solidarity with member states “whose GDP per capita did not exceed 90% of the EU average (in 2013)”⁴⁷. Only after the Paris Agreement international climate solidarity became vocalised, however, to a very limited extend.

Solidarity fulfils a normative function since member states are underlining that they stick together also in difficult times and against different adversaries. There are different features referring to this normative function. First, solidarity between member states in the area of foreign and security policy – according to the Treaty of Lisbon – means that if a member state abstains from voting, it accepts nevertheless that the decision is definite for the Union. This means that the member state refrains from doing anything which could harm the Union’s action based on the decision. At the same time, the other member states must respect the diverging position. This behaviour is also called ‘negative’

⁴⁶ The Council dedicated a webpage to “European solidarity in action”, on: <https://www.consilium.europa.eu/en/policies/coronavirus/european-solidarity-in-action/>

⁴⁷ European Council Conclusions, October 2014.



solidarity since there is no resulting obligation to help but the announcement to refrain from harming others.

In the European Council, solidarity has been invoked between the member states in relation to the EU's foreign relations on several occasions. Solidarity has been used in order to demonstrate unity between EU member states. In 1982, the conflict between Great Britain and the Falklands resulted in a demonstration of solidarity from the other community members, who agreed to support Great Britain by implementing a trade ban of products from the Falklands⁴⁸. Since then this kind of solidarity in external policy has been reproduced several times. Recent examples include the expression of solidarity with Cyprus in light of Turkey's drilling activities in the Mediterranean⁴⁹ and the resulting (threat of) sanctions as well as the support of the EU towards the Czech Republic in case of the actions of the Russian intelligence service⁵⁰. However, Cyprus also blocked sanctions on Belarus in order to pressure for sanctions on Turkey. This dispute highlights that not only joint interests are necessary in order to act in solidarity but also a joint perspective. Nevertheless, joint sanctions are an expression of solidarity since sanctions produce political costs for each country but with different consequences.

Furthermore, solidarity appears in the European Council conclusions on certain issues as a twin of the notion of responsibility. These topics concern mostly questions of insurance (Euro, energy) and redistribution (migration, cohesion). Responsibility does in this context not mean that member states share a joint responsibility for the fate of the European Union, but that each member state must be self-responsible concerning its individual political and economic decisions in order to be eligible for help or support from the EU and other member states⁵¹. The solidarity question is differently approached depending on the policy field. In case of the Corona-19-pandemic, member states were divided between the frugal four, who pledged for 'fiscal responsibility', and Southern European member states, who demanded 'financial solidarity'. Ideas of solidarity are thus split between those who favour more contributions between member states and those who want more responsibility in the sense of the group⁵².

However, solidarity and responsibility are not necessarily opposing approaches, which has been more visible in the debate on energy solidarity. In the course of enhancing the EU's energy security of supply

⁴⁸ Petit, Yves (2010) 'La solidarité énergétique entre les Etats membres de l'Union européenne : une chimère?', *Revue des affaires européennes*, 17(4), pp. 771–783.

⁴⁹ European Council Conclusions March 2018, June 2019 and October 2020.

⁵⁰ European Council Conclusions, May 2021.

⁵¹ The Eurozone crisis involved a heated discourse on solidarity and responsibility, s. Calliess, Christian (2013) *Europäische Solidarität und nationale Identität - Überlegungen im Kontext der Krise im Euroraum*, Mohr Siebeck Tübingen.

⁵² Bartenstein (2021 forthcoming)



(in particular in the field of gas), member states were also discussing the principles of solidarity and responsibility. Although solidarity was considered as unavoidable and necessary to reach 'strategic independence' in the gas sector, responsibility was set as pre-condition by other member states. Responsibility means that a common framework is agreed upon and applied (e.g. gas storage) as a pre-condition to agree to solidarity as measure of last resort⁵³. Therefore, the individual risk of member states to encounter a gas crisis had to be sufficiently reduced, in order to create the necessary trust for a solidarity relationship.

Solidarity has been particularly often voiced concerning migration in the conclusions. However, solidarity together with responsibility is in this account pronounced as aim in relation to the creation of a consensus in this policy field (compare conclusions from September 2015 and Bratislava declaration 2016). Member states bordering the Mediterranean as well as Northern member states, Germany and the Netherlands argued that quotas were necessary to show solidarity. Poland and Hungary strongly opposed this proposal. Member states like Italy and Greece were blamed not to show sufficiently their responsibility for the incoming refugees and migrants⁵⁴. In 2017, European Council President Tusk claimed that "while everyone accepts the need for solidarity, there is currently no consensus on what it should mean in practice"⁵⁵. But the problem was not only on how to define solidarity, but also on how to express solidarity⁵⁶. Member states did not find a compromise on how to design a solid refugee and migration policy. Instead, member states shifted the attention to external borders and the joint 'protection' of the Schengen area. Although the European Council expresses regularly its support for the "proper functioning of Schengen"⁵⁷, trust between member states remains fragile regarding the control of external borders⁵⁸.

But solidarity has also an ordering function. In the December 2020 conclusions, the European Council demanded that climate policy must be based on solidarity and fairness which is a direct reference to the new legislation on effort-sharing⁵⁹. In this account, solidarity means that member states are willing to reduce emissions not only according to their size of population, but also depending on their

⁵³ Ibid.

⁵⁴ Desmond, Dinan (2020) The European Council in 2018 - Overview of decisions and discussions, on: <https://op.europa.eu/en/publication-detail/-/publication/8f0d6699-47c9-11ea-b81b-01aa75ed71a1/language-en/format-PDF/source-search>

⁵⁵ Tusk, Donal (2018), Report to the European Parliament on December European Council meetings, on <https://www.consilium.europa.eu/en/press/press-releases/2018/01/16/report-by-president-donald-tusk-to-the-european-parliament-on-december-european-council-meetings/>

⁵⁶ Ibid.

⁵⁷ European Council Conclusions, June 2019.

⁵⁸ Pascouau, Yves (2012) The Schengen evaluation mechanism and the legal basis problem: breaking the deadlock, European Policy Centre, Policy Brief.

⁵⁹ European Council Conclusions, December 2020.



respective wealth measured by the GDP / per capita. The principle of fairness – as counter-principle to solidarity – implies the limits to solidarity, e.g. in how far cost-efficiency and convergence between member states must be considered. This again proves that solidarity must be assessed carefully since it can unfold as normative guiding principle but might also entail legal consequences when it is transposed into secondary law.

5. Conclusion

Member states need to cooperate due to institutional but also factual reasons of interdependence⁶⁰ in order to resolve collective action problems⁶¹. However, just as in federal systems, member states risk to blunder into the ‘joint decision trap’. As pre-condition, solidarity demands a cooperative interaction mode expressed by a ‚problem-solving‘ decision style⁶², which means not only to take into account the interests of the other member states but also the negative externalities of a decision. Solidarity can thus be understood as the willingness to agree to solutions in favour of the group, if the group cohesion (expressed by political allegiance, joint interests or interdependence) is strong enough. On this basis, solidarity can be further institutionalised, however, as has been outlined above, only if certain conditions are fulfilled. “Trust, fairness and reciprocity as well as self-responsibility and monitoring remain crucial for the implementation of solidarity and their absence can lead to the abandonment of solidarity”⁶³.

Despite the various calls for solidarity, different authors certify a deficiency of solidarity in the EU. Reasons for this observation are manifold. The spirit of solidarity is strongly dependent on the solidarity group and its cohesion. Different sources, such as identity and political allegiance, can generate solidarity feelings. However, various sub-groups exist in the EU, such as the Euro-Group. As consequence, member states might face different competing solidarity relationships. Also, opt-outs might contribute to the feeling of cherry-picking, which could even signify the end of solidarity⁶⁴. Additionally, there are competing solidarity relationships within the EU. Member states need to be aware that it effects their solidarity with the Union, if they focus on intra-country solidarity only. These

⁶⁰ Scharpf, Fritz W. (1991) ‚Koordination durch Verhandlungssysteme: Analytische Konzepte und institutionelle Lösungen am Beispiel der Zusammenarbeit zwischen zwei Bundesländern‘, MPIfG Discussion Paper, No. 91/4, Köln; Sangiovanni (2013).

⁶¹ Trein, Philipp (2020) ‘Federal dynamics, solidarity, and European Union crisis politics’, *Journal of European Public Policy*, 27:7, pp. 977–994; Kneuer (2017).

⁶² Scharpf (1988)

⁶³ Bartenstein (2021 forthcoming)

⁶⁴ Wessels, Wolfgang and Wolters, Johannes (2017) "Chancen und Risiken von Aufbau- und Abbauflexibilisierung: Der Europäische Rat vor einem Trilemma." *Integration* 40, no. 2, 89–100.



competing solidarity relationships cause problems as in the case of the export bans of medical protective gear to avoid supply shortages at the beginning of the Covid-19-pandemic.

The European Council calls for solidarity for various reasons, however, this should not be confused with institutionalised solidarity. Solidarity is mostly functioning as guiding principle and has as such a declarative purpose. At best, member states stand together without harming each other and continue to stick to the same approach despite diverging interests. However, the European Council makes an impact on the ordinary policy-making process by issuing strategic programmes⁶⁵ which is why its take on solidarity is of importance. The European Council provides the Commission and the Council with the underlying principles on which new legislation should be based on. The recent discussion on the design of climate policies serves as one example. The foreign policy examples underline that political solidarity is understood as principle to demonstrate unity towards an adversary.

Solidarity is still trending since it is a principle which has the power to unite. “The concept of solidarity underpins the phenomenon of European Integration. To forget this is to forget the very essence of Europe”⁶⁶. In the recent years, member states have been discussing new political concepts, such as strategic autonomy, which should ameliorate the EU’s capacity to act. However, strategic autonomy is connected with solidarity, since both can only develop if perceptions between member states are shared by common analysis and information-sharing. Primary law provides the necessary tools to institutionalise solidarity in various policy fields, but a ‘we-perspective’ is a prerequisite for solidarity between the member states.

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⁶⁵ Wessels, Wolfgang and Wolters, Johannes (2019) 'Der Europäische Rat', in Becker, P. and Lippert, B. (eds.) Handbuch Europäische Union. Wiesbaden: Springer VS.

⁶⁶ Andreosso-O'Callaghan, Bernadette (2002) 'The Centrality of the Solidarity Concept in the Process of European Integration', An Irish Quarterly Review, 91(362), pp. 134–143.



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