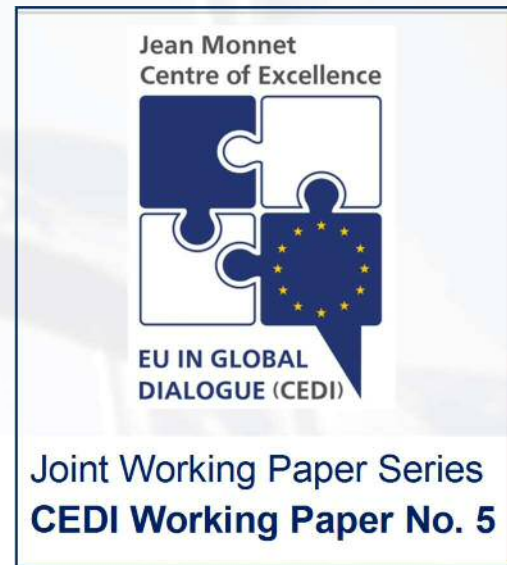


# Boundaries of European Solidarity – Lessons from Migration and Energy Policy

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# Boundaries of European Solidarity – Lessons from Migration and Energy Policy

Michèle Knodt, Anne Tews

## Abstract

The working paper addresses the significance, reality and boundaries of solidarity in the European multi-level system. It analyses the requirements for solidarity and the role that solidarity plays in European multi-level governance. We present an effort to conceptualize solidarity in the European multi-level system and to develop a typology of different forms of solidarity. The working paper focuses on the type of intergovernmental solidarity between member states and explores possible boundaries for solidary acts. We illustrate our theoretical and conceptual considerations with insights from two different EU policy fields: energy and migration policy. Both policy fields are characterized by a fundamental lack of solidary actions and thus give some indications for possible boundaries of European solidarity.

**Keywords:** European integration, European solidarity, migration policy, energy policy

## 1. Introduction<sup>1</sup>

Solidarity served as a fundamental norm or motive for peaceful integration since the beginning of the European integration after the Second World War (Ménendez 2003, 374). Already the Preamble to the European Community of Steel and Coal Treaty of 1951 started from the assumption that the Community will ‘first of all create real solidarity’ (Sangiovanni 2013, 213). All following treaties include the term of solidarity. The Preamble of the Maastricht Treaty listed the desire “to deepen solidarity between the peoples while respecting their history, their culture and traditions”.

The Lisbon Treaty underpinned the principle of solidarity and the consciousness of the European citizens as well as social scientists. The Lisbon Treaty not only mentions solidarity in the Preamble in the same formulation as the Maastricht Treaty, but links the principle with policy areas more than 20 times.

However, the ambitious formulation of the treaties and the prominent role of the concept of solidarity is in contrast to a rather harsh reality where even external shocks fail to induce a coordinated approach or solidary acts between member states. The debates on financial crises and lately the migration crisis are characterized by sporadic references to the concept and a fundamental lack of actual solidary arrangements. This demands a profound analysis of the notion of solidarity within the European Union. Not an easy task as the term is neither without ambiguity nor defined precisely within EU law.

The working paper addresses the significance, reality and boundaries of solidarity in the European multi-level system. What are requirements for solidarity? Which role does solidarity play in European multi-level governance?

In order to give an answer to those questions, we first make an effort to conceptualize solidarity in the European multi-level system and to develop a typology of different forms of solidarity. In the following chapter, we explore the boundaries of solidarity in the EU and illustrate conceptual considerations with insights from two different EU policy fields: energy and migration policy.

## 2. Conceptualizing solidarity in the European multi-level system

Conceptualizing solidarity within the multi-level system of the EU is not an easy task and has been attempted by many scholars. The EU itself does not give a helping hand, as it makes heterogeneous use of the solidarity term within primary law of the EU itself. Article 3,3 TEU states:

*“[The Union] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It shall promote economic, social and territorial cohesion, and solidarity among Member States (...).” (Art. 3,3 TEU)*

Obviously, article 3,3 TEU shows different understandings of solidarity, from solidarity between citizens to solidarity between member states. In order to systematize the different uses and terms as well as conceptions and to define its limits, we will first explore different approaches to the concept of solidarity and possibilities to transfer it to the multi-level system.

Some scholars already put into question whether solidarity can occur within the EU system at all (see among others Faist 2000; Offe 2001; Münch 2001), some do see the possibility of solidarity at the EU level (Sangiovanni 2013; Habermas 2013), others already work on solidary solutions to current political problems in the EU (see Bast 2014; Heinemann 2012). In order to determine

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<sup>1</sup> This paper is a revised version of a paper presented at the conference ‘Solidarity and its Crisis in the European Union’, June 2-3, 2016, University of Hamburg.

whether it is possible to transfer the concept of solidarity to the European system, we will first look at classical conceptions of solidarity.

As a first general remark we can state that classical approaches to solidarity are on the one hand most often limited to smaller communities or national contexts. On the other hand, they mostly address solidarity between individual members of a group. To transfer classical solidarity conceptions to the European multi-level system we have to overcome these two limits. In multi-level contexts we have to construct solidarity at different levels at the same time and between individuals as well as a member states, as already implied in article 3,3 TEU.

Bayertz offers a first indication and a broad definition of solidarity. According to him, solidarity is first and foremost an “idea of a reciprocal relationship between members of a group” (translation MK, Bayertz 1998, 11). Within this general form, it seems possible to transfer the concept to the multi-level system. The crucial argument against this transfer lies in the construction of the group and the glue, which holds its members together. Is a sense of community or a common identity a prerequisite for solidarity? Could solidarity be based on a common agreement, on shared values and norms? Or could it be built on a contractual agreement on those norms or maybe simply on the reference frame of reciprocity?

Bayertz states more precisely that he generally defines solidarity as the willingness to vouch for each other within a group of persons who are linked to each other by specific commonalities (1998, 21). The linkage of the persons within the group as an attribute of solidarity does not seem to be the difficult part of the definition. It seems far more difficult to define the specific commonalities, which should exist even in the absence of a corporate feeling or identity.

Within the debate, there are many scholars arguing that European identity is a prerequisite for European solidarity (see Faist 2000; Offe 2001; Münch 2001; Kleger/Mehlhausen 2013). Some even confirm that European identity can exist parallel or in addition to other identities in such an adequate level that it could serve as a basis for solidarity (Risse 2013). We argue that firstly, we do not need the identity argument to construct solidarity within the European multi-level system and secondly, multiple identities at the individual level of European citizens are not the factor, which helps us to understand solidarity between member states.

We can link this argument to the work of Durkheim (1988), who elaborates on the term of solidarity to explain stable social order. He starts from the historical development of simple segmented societies up to complex modern societies. The latter are characterized by functional differentiation. Both types of societies in Durkheim’s concept are linked to two different forms of solidarity: mechanic and organic solidarity. The less differentiated archaic and thus less developed societies are based on a high degree of resemblance and a low degree of division of labour. Common traditions, conventions and values as well as rules with repressive sanctions and the prevalence of penal law and coercion are playing an important role. Those societies are segmented, mostly based on clans or territorial dispersal with a low degree of interdependence. This kind of social order is based on mechanical solidarity.

In contrast, Durkheim distinguishes societies, which are highly developed and show a high division of labour, as highly differentiated modern industrial societies. Such a society is characterized by the paradox that it is highly interdependent and at the same time displays a strong ideology of individualism. According to Durkheim, those societies are dominated by organic solidarity, which creates solidarity by contractual structures. The argument is put forward that within functionally interdependent societies, the self-interest in social goods can only be satisfied in cooperation. Thus, self-interest and solidarity are not mutually exclusive per se. Some authors, such as Mau, are speaking of ‘self-interest solidarity’ (Mau 2009). Communities are constructed as instruments of maximising individual benefits (Bayertz 1998, 51, referring to Hare).

Preuß also points to the fact, that solidarity as a modern concept has exceeded the borders of a community based on personal contacts (1998, 402). Thus, this concept develops into an inherent element of society. If we talk about the narrative of solidarity within the EU, we automatically refer to Durkheim’s organic solidarity. Durkheim identifies the category of ‘the other’ as an important element of organic solidarity. The individual has to think of and calculate with ‘the other’ when acting in its own self-interest (Durkheim 1988, 468). Durkheim’s organic solidarity

conception was criticized because of the lack of normative and moral motivations and the strong focus on macro-structural conditions for solidarity. However, these criticized aspects make the concept suitable for the EU context. Only if we eliminate pre-solidarity (*sine qua non*) conditions, such as community feelings or a sense of a shared identity as a basis for the connectedness of the individuals, we can interpret solidarity as a window of opportunity for a mode of action, which promotes integration in the European multi-level context. Thus, even if Durkheim did obviously not construct his concept of organic solidarity with the European Union in mind, it can be applied to this context because it does not need the prerequisites of the mechanical solidarity and it is not explicitly – even if it was always *de facto* used in this sense – constructed for nation states.

Thus, we follow the construction of an organic solidarity in Durkheim's sense. Our definition constitutes solidarity as a unity, which is based on or creates a community of interests, objectives and standards (Preuß 1998, 399 citing Webster's dictionary). With this assumption, the definition overcomes the essential requirement of identity or a common feeling and as such refuses the notion that mechanical solidarity is the only form of solidarity existing in the European Union. The highly differentiated multi-level system is characterized by the division of labour, interdependence and cooperative law as described by Durkheim within the concept of organic solidarity. Identity or a common feeling are conceptualized here as a possible aspect or outcome, not a necessary requirement for solidarity in the EU. Following Durkheim's conception of organic solidarity, the limiting conclusions of mainstream European integrational studies can be overcome.

The complexity and differentiation within the European multi-level system are not only defined by functional differences in societies based on the division of labour, but also by differences across government levels and actor categories. To describe different forms of European solidarity we have to take into account that solidarity can occur within or across government levels as well as between different actor categories.

Within multi-level systems, political structures and processes are organized in political entities that are constructed along territorial boundaries and government levels (Benz 2004). The organization can be shaped in a vertical and horizontal dimension. The horizontal dimension refers to solidarity within one government level, be it supranational, national, or subnational. Vertical solidarity spans over different levels.

Addressees and carriers of solidarity can be individuals as well as collective actors, such as member states, within the EU. While Durkheim's concept is based on individuals as means of solidarity, European solidarity can occur with regard to different actor categories, i.e. individual as well as collective actors, such as member states. The conception of organic solidarity implies the possibility to overcome the boundaries of a community in the sense of Tönnies. We argue that it is possible to conceptualize solidarity based on collective actors as well. This extension of the concept is essential if we want to apply it to the EU multi-level system. It also forms the base for our attempt to categorize different forms of European solidarity. When we combine these two dimensions, we can distinguish four types of solidarity:

(1) *Transnational solidarity* can be found in the horizontal dimension between individual actors. It is based on similar living conditions of individuals (similar to national systems), who unite to achieve a common goal. Individuals cooperate to represent their interests together. The literature refers to the French revolution but also to the social movements of the 19th and 20th century as early examples for transnational solidarity. Here, the reference to the solidarity norm was used in the formation of workers, women or ecological movements. Within those movements, the aim of a group was the common representation of interests and the demarcation against competing interests. Beside the aspect of conflict with outsiders of the group, this solidarity form is characterized by the elements of commonality and identity shared among the group members.

Within the European multi-level system, horizontally organized interest groups must always aim to be organized across national borders when addressing European policy. Transnational solidarity is based on ideas and values that transcend national boundaries, such as the slogans of

the international workers movement. But transnational solidarity also goes beyond these ideas and norms. It can encompass different forms, such as the European Trade Union Confederation, the European Works Council, as well as transnational social movements and civic organizations like ATTAC, the “Occupy” movement etc.

(2) *Supranational solidarity* also focuses on individuals but refers to the vertical dimension of the European multi-level system. It directly creates solidarity between European citizens. It is not based on the notion of an already existing community, but on the sense of belonging of European citizens to a political community with its specific rights and duties (Mau 2009). Supranational solidarity aims at the creation of comparable, in the sense of converging living conditions. This may be achieved by regulations as well as distributive or redistributive measures of European policies. It can be witnessed in policy areas where the EU shows its supranational character of deepened integration, i.e. when European law overrides national law (Preuß 1998, 404). Here we can witness Durkheim’s organic solidarity in highly differentiated societies within the European Union. The vertical character of supranational solidarity implies that it is not exclusively focused on the European level but is rather complementing or overarching solidarity on the national or subnational levels. The EU grants additional rights to its citizens, which are at the same time citizens of member states with their national rights. This concerns areas, in which the economic integration and the completion of the European internal market are supposed to be complemented by compensation measures and a strengthened social dimension. It also addresses all rights linked to the European citizenship.

(3) *Intergovernmental solidarity* addresses national member states as collective actors within the European Union in the multi-level system and the vertical dimension without taking into account individual citizens. It creates a kind of membership solidarity. Facing problems and negative externalities that transcend national boundaries, common action in numerous policy fields is necessary because unilateral approaches of one state would not succeed.

This form of European solidarity oscillates between the fundamental principles of the EU: the protection of autonomy and the promotion of the community (Scharpf 1996, 129-131) as well as subsidiarity, which shape the decision-making processes at the EU level. To evaluate if steering instrument are solidary or support further integration, one must always keep the principle of the protection of national autonomy in mind. In addition, the subsidiarity principle influences the distribution of competencies within the EU and serves as a source for legitimacy (Callies 1999). Subsidiarity thus determines the potential content and intensity of solidary acts in the EU (Pernice 2013, 19). Current examples of intergovernmental solidarity (or a lack thereof) can be found in the debates on solutions for the Euro crisis and the migration crisis but also in EU cohesion policy, energy policy and the Common Foreign and Security Policy etc. The solidary clause (Art. 222 TFEU) is another example for intergovernmental solidarity in the case of an emergency (see the contributions in Knodt/Tews 2014).

(4) *International solidarity* aims at collective actors in a horizontal dimension as it is carried out beyond European borders into the international sphere. It encompasses solidarity with societies and nation states in the international arena, for example with former colonies of the EU member states, developing countries. Article 3,5 TEU especially mentions this international dimension:

*“In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights (...)”* (Art. 3,5 TEU).

In accordance with the concept of an inside-outside analogy the article points to the fact that the EU is implementing the norms and values it has agreed on inside the Union also in its external relations.

The first conclusion of the conceptualization of European solidarity draws our attention to the fact, that there is not one form of solidarity within the EU but several. This is neither trivial nor common sense. Most authors who talk about ‘European solidarity’, and the solutions they provide for a lack thereof, focus on supranational solidarity. In his ‘plea for European solidarity’ (2013) Jürgen Habermas asked for more supranational solidarity, which is intrinsically interconnected with a deeper integration of the EU. If the EU is shifting more competences to the European level and broadening the supranational integration especially towards social policies, the expectation is that national solidarity is transferred to the supranational level, too. This might be a possible development in the future. But it does not help to analyse the current challenges as it disregards the multi-level context of the EU for the conceptualization of solidarity. We argue, that European solidarity has to be defined more clearly and categorized into different forms, as has been shown above. Secondly, it has to be acknowledged that solidarity can exist at several government levels at the same time: within member(nation)-states and between member states and the European level with addressees from different levels.

However, incidences of transnational, international and supranational solidarity are rare within the EU. In order to carve out the special characteristics and to analyse the state and the limits of European solidarity, we therefore focus on intergovernmental, or member state solidarity. This form of solidarity combines the vertical or rather multi-level aspect and the actor category of collective actors and thus takes into account the specific characteristics of the EU multi-level system. Furthermore, intergovernmental solidarity plays a role in most of the policy fields of European governance, at least according to the Lisbon Treaty.

In order to answer the question of what exactly intergovernmental solidarity within the EU multi-level system is and what its limits are, we have to put some more thought into the question of how to model intergovernmental solidarity.

First of all, we again stress the fact, that intergovernmental solidarity is overarching, not replacing solidarity within the member states. The solidarity within national societies and state systems remains to a large extent untouched. European member states as modern social welfare states aim to balance material inequalities in order to produce sufficient equal opportunities for all citizens. Even if some hesitate to attribute this objective with the term solidarity because of its anonymous and abstract transfer mechanisms, which operate without any kind of sense of community anymore, this realization of the principle of solidarity and social justice through redistributive mechanisms is only existing at the national level. This is what citizens expect of the welfare state. This is the security of a social community everybody needs in order to live a good life (Hartmann 2013). We cannot attribute the same kind of solidarity expectation to the European intergovernmental solidarity. In fact, we have to ask what member states in general calculate as costs and benefits when acting within the European Union. Sangiovanni pins down the main collective benefits that member states see in joining European integration:

*“The EU secures a range of collective goods including a stable and predictable legal system (which forms the background for all other goods provided by the EU), a single market (comprising a customs union, competition law, elimination of tariff and non-tariff barriers and so on), and regional stabilization both internally among members and on the EU’s periphery” (Sangiovanni 2013, 225).*

Thus, on the one hand the EU tries to enhance growth, regional stability, global standing and internal problem-solving capacity (Sangiovanni 2013, 228). On the other hand, member states have to calculate possible costs of European actions such as the integrated single market challenging member states social protection measures, their ‘services of general interest’, and the rise of tax competition with negative externalities and growing inner-regional welfare disparities and inequalities (Sangiovanni 2013, 225-228).

Every decision and cost-benefit calculation member states take within the EU, is taken under uncertainty concerning their own costs in the remote and less remote future. They have to calculate the possible costs and gains of reciprocity particularly with regard to a potential need for help in the future from the Community of European states. Thus, a decision is taken partly because states trust in future reciprocity. This trust in future reciprocity has to span medium- or



long-term time horizons, because in a medium- to long-term calculation it will contribute to fulfil member states self-interest. It is a calculation of fair return member states owe one another. Here we come back to the category of 'the other' within Durkheim's organic solidarity, which has to be taken into account when calculating the costs and benefits of solidarity action.

Sangiovanni is framing this kind of calculation as a risk insurance that the member states take within the integration project. He models the European project as a 'project in which states collaborate to achieve aims that they otherwise would have been unable to achieve, but where their capacity to benefit comes with significant risks' if they chose not to cooperate (2013, 230). The risk and insurance perspective allows us to make assumption about the limits of the amount of risk (or in other words costs and disadvantages, other member states might cause) a member state is willing to bear. A state that does not want to insure against future risks, is less likely to engage in solidary acts with a reciprocity perspective in mind.

Other limitations of solidarity within the EU can be assumed to come from member states not calculating in a medium- or long-term horizon but only on a short-term perspective when making decisions within the EU. Especially while making decisions in crisis mode, as it holds true for financial or migration crisis, short-term horizons seem to be the preferred calculation perspective.

Furthermore, calculation has to be done including more than one policy issue. If states fail to take into account the costs and benefits of developments in other policy fields, or even in other areas of the same policy field, they will be less likely to show solidarity. The cross-issue calculation is necessary to ensure reciprocity within European solidarity as a whole. Without it, competing principles and issues within one policy field or across policy fields will cause member states to have different interpretations and calculations of the situation. They select certain principles or issues to plea for solidarity, ignoring others.

In addition, we have to be aware that decisions of member state governments at the European level are influenced by the national context. These can be national interest groups pressing for a special decision at the European level, as it is modelled in two level games by Putnam (1988) as well as Moravcsik (1998). But it can also be the calculation of future voting behaviour of national citizens. The closer to an important national (maybe even subnational) election the more important will the goal of maximising votes will become when government officials decide on solidarity issues at the European level.

In the following chapters we will have a look at two policy fields in order to gain evidence of the empirical reality of solidarity in the EU multi-level system.

### **3. One-way solidarity in energy policy**

Since the Treaty of Lisbon, energy policy is part of the EU primary law. According to Article 194 TFEU, EU energy policy shall be guided by "a spirit of solidarity between Member States" and aim to "ensure the functioning of the energy market, ensure security of energy supply in the Union, promote energy efficiency and energy saving and the development of new and renewable forms of energy, and to promote the interconnection of energy networks" (Art. 194, 1 TFEU). Article 194, 2 states however, that decisions concerning the energy mix of the member states are not affected. Member states continue to determine the conditions for exploiting their energy resources, their mix of different energy sources and the general energy supply structure. The development as well as implementation of solidary energy policy within the EU is shaped by three fundamental frames: (1) competitiveness, (2) energy security and (3) sustainability/climate protection (see European Commission 2006). To explore solidary acts between EU member states, we will focus on the frames of energy security and sustainability as they have been closely linked to the concept of solidarity between member states (see Knodt/Piefer 2014).

The discussion of the energy security frame dates back to the perceived international energy threats in the late 1960s and 1970s (McGrowan 2011). The shortness of oil supply due to international threats was pushing the frame of energy security to the top of the agenda. In 1968

energy security became an issue within the European Community for the first time as a direct result of the six-day-war in the Middle East which had an impact on oil supply (Fischer 2011, 112). The Community agreed upon a directive, which imposed an obligation on member states to maintain minimum stocks of crude oil and/or petroleum products (Council of the European Community 1968).

By 2000, the focus had shifted to the growing dependence on external energy. The EU had to cover up to 50 percent of its energy needs through imports. The European Commission released a green paper on energy security (European Commission 2000) and initiated a discourse on the security frame. The Commission's 2002 proposal to increase the obligatory stocks of oil and gas was met with criticism from the Council and the Parliament. The counter argument stated that there was a very low risk of disruptions of supply at this moment (see Herranz-Surrallés 2015, 10).

However, the perception changed and the linkage between energy security and solidarity became relevant only a few years later. The eastern enlargement of the EU and disputes on gas deliveries between Ukraine and Russia (2006) as well as Belarus and Russia (2007) lead to an urgent discussion of energy security and solidarity towards more vulnerable member states in the East. Especially Poland played an important role in this debate. The Polish supply of energy depends to a high degree on Russian gas and oil, thus the conflicts of Ukraine and Belarus with Russia threatened Poland's supply as well. During the negotiations prior to the Lisbon Treaty, the Polish government demanded more solidarity of the EU member states in case of supply disruption and wanted to ensure energy security for its citizens (Knodt/Piefer 2014).

The Commission reacted to this development in its communication on 'An energy policy for Europe' (European Commission 2007). The communication reflects on the EU's dependence on external fossil fuels and, in accordance with the Polish government, demands more solidarity:

*„Europe is becoming increasingly dependent on imported hydrocarbons. With 'business as usual' the EU's energy import dependence will jump from 50% of total EU energy consumption today to 65% in 2030. (...) This carries political and economic risks. (...) In addition, the mechanisms to ensure solidarity between Member States in the event of an energy crisis are not yet in place and several Member States are largely or completely dependent on one single gas supplier.“* (European Commission 2007, 4)

The Commission pointed out, that “it remains important for the EU to promote diversity with regard to source, supplier, transport route and transport method” and calls for the set-up of effective mechanisms to “ensure solidarity between Member States in the event of an energy crisis” (European Commission 2007, 10; Knodt/Piefer 2014, 228-229).

The member states discussed the means to reach these goals, especially how to diversify energy supplies, but did not question the need to find solidary solutions in general. The discussion focussed more on the advantages and disadvantages of different pipeline projects than on the need to show solidarity in general (see for example Herranz-Surrallés 2015, 11).

This evaluation changes when we look at the sustainability or climate protection frame. In this frame, energy policy aims at the reduction of greenhouse gas emissions, the increase of energy efficiency and expansion of renewable energy sources. The sustainability frame was developed particularly in the Commission's 2006 Green Paper on energy issues. The “European Strategy for Sustainable, Competitive and Secure Energy” (European Commission 2006) stated, that European energy policies should fulfil three main objectives (Knodt/Müller/Piefer 2015, 64-65): (1) Sustainability with regard to renewable sources of energy and other low carbon energy sources in order to combat climate change and improve air quality; (2) Competitiveness to open the energy market, which should ensure benefits for consumers; (3) Security of supply, which should tackle the EU's rising dependence on imported energy (European Commission 2006, 17-18). In 2007, the European Council decided to “develop a sustainable integrated European climate and energy policy” (European Council 2007, p. 1) in order to link energy policy closely to climate policy and focus on emissions reduction, the expansion of renewable energies and energy efficiency. The targets for these three objectives were set under the slogan of “20-20-20 by 2020”: a reduction of

at least 20 percent in greenhouse gas emissions by 2020 compared to the year 1990, a 20 percent share of renewable energies in EU energy consumption by 2020 and the reduction of primary energy use through energy efficiency by 20 percent in comparison with projected levels (European Council 2007).

In order to implement the European Council decision from March 2007, the Commission prepared a set of legislative proposals, the 'climate and energy package', in 2008. It includes measures to promote renewable energies, regulation for the EU emissions trading system and development of low carbon technologies as well as for carbon capture and storage. In addition, binding targets for member states were agreed. All member states were obligated to take part in emission reduction according to their potential. Both the Council and the European Parliament approved the package on a very short notice. The remaining controversial issues – especially on CO<sub>2</sub> reduction – had to be decided at the EU summit in December 2008. The discussion at this summit illustrates the beginning of the opposition of the new Central and Eastern European member states against solidarity within the sustainability frame (Knodt forthcoming).

French president Nicolas Sarkozy as then head of the EU presidency was negotiating lower targets in CO<sub>2</sub> reduction and exceptions for affected industries in order to reach an agreement. In addition to the opposition of the Central and Eastern European member states the German government was not supporting ambitions in this respect either. Chancellor Merkel was arguing for exceptions in favour of the German industry (cited according to Spiegel online international 2009).

In 2011 the Commission published an Energy Roadmap 2050 as an addendum to a Climate Roadmap that had been published earlier (European Commission 2011b). The Energy Roadmap focusses on climate policy as well as energy security and competitiveness of the EU and promotes a transition towards a low-carbon and climate friendly economy (Knodt/Piefer 2014, 235f). The Energy Roadmap highlighted the economic benefits of EU regulation and solidarity:

*“The Roadmap does not replace national, regional and local efforts to modernize energy supply, but seeks to develop a long-term European technology-neutral framework in which these policies will be more effective. It argues that a European approach to the energy challenge will increase security and solidarity and lower costs compared to parallel national schemes by providing a wider and flexible market for new products and services”* (European Commission 2011b, 4f).

The EU climate policy goals met the opposition of Central and Eastern European member states, among others the Polish government. The Polish government argued that binding emission reduction goals would have adverse effects on the national economy. Poland is the biggest producer of coal in the EU and highly dependent on fossil fuels. Consequently, Poland spoke against joint solidary approaches to these issues. The criticism focussed on the binding reduction goals as well as on the idea of a common European approach and the projected speed of the transformation process towards renewable energies (Knodt/Piefer 2014, 236). Poland was joined in this opposition by other Eastern European countries, i.e. Czech Republic, Slovakia, Hungary, Bulgaria and Romania (Geden/Fischer 2014, 11; Fischer 2014, 2-3). The member states insisted on their sovereignty with regard to their national energy mix and tried to limit the role of the EU while at the same time arguing for more solidarity and European regulation in the field of energy security (Fischer 2014, 2-3).

The debate about new climate protection targets for 2030 was shaped by the same conflict between Northern and Western sustainability oriented member states and the Central and Eastern European member states asking for solidarity to ensure energy supply. Hence, the targets remained rather ambiguous: “at least” 40 percent reduction of greenhouse gas emissions compared to 1990, “at least” 27 percent share of renewable energy consumption and “at least” 27 percent energy savings compared with the business-as-usual scenario. Also the extent to which the decision can be revised was framed in an ambiguous way. The European Council conclusions included a review of the framework after the climate conference in Paris in December 2015. Both camps interpreted this in different ways. Whereas the Northern and Western member states hoped for higher percentages of greenhouse gas reduction, the Central and Eastern member states expected an unsuccessful outcome of the international negotiations. Thus, both sides were

willing to agree. In addition, the European Council addressed the concerns of the Eastern camp and stated that “these targets will be achieved while fully respecting the Member States' freedom to determine their energy mix. Targets will not be translated into nationally binding targets” (European Council 2014, 5). In addition, there were extensive concessions to the governments of Central and Eastern Europe in terms of financial compensation and exemptions from the regulations (Fischer 2014, 3-5). Nevertheless, the current effort of the Commission to create an Energy Union is met with the same divide and selective pleas for solidarity as just described (Knodt forthcoming).

The policy field of energy policy illustrates some of the limits of intergovernmental solidarity. Especially the Eastern member states demanded solidarity with regard to energy security because their own interests were at stake. Yet, they did not link their demands to the discussion on energy policy in the sustainability frame but rather refused to show solidarity on this issue. Again, this can be explained by their national interests. However, they do not seem to have a reciprocity perspective in mind when demanding or refusing solidarity between member states.

#### **4. Unsolidary handling of the migration crisis**

Solidarity or solidary burden sharing is an important pillar of EU migration policy, which covers asylum, immigration and border controls (Art. 67, 2 and Art. 80 TFEU; Bast 2014, 145f.). The Treaty implies that the Union legislature is obliged to ensure a fair sharing of the financial and administrative burdens of immigration. These burdens are dispersed unevenly due to different geographical contexts and economic power of the member states (ibid., 147).

However, the specific mechanisms of burden sharing are highly contested. This can be illustrated with the debate on the reform of the Dublin system, the central element of EU migration policy. The current Dublin regulation (No. 604/2013) defines a common asylum space that consists of the EU member states as well as the EFTA states Iceland, Liechtenstein, Norway and Switzerland. Within this asylum space, the country of first entry of a refugee is responsible to evaluate asylum applications and to grant asylum and protection if the claims are valid. If a refugee applies for asylum in a second Dublin country, they can be transferred back to the country of their first application.

Due to established migration routes, different population sizes and economic power of the Dublin states, this arrangement leads to disproportionate burdens for some countries. South and East European countries are more often countries of first entry due to their geographic location. They have higher costs of examining applications and integrating recognized refugees in relation to their population size or economic power. North and West European countries have a much smaller burden to bear. Bast concludes that the Dublin system does not ensure a solidary burden sharing mechanism but rather reinforces existing differences. Thus, the Union legislature failed to comply with its duty according to the Treaty (Bast 2014, 148ff).

The lack of solidary mechanisms is one of the main reasons for the escalation of the migration crisis since 2014. This can be illustrated with the example of Greece. The Dublin country Greece was not able to comply with its obligations to ensure fair asylum procedures for all applicants due to an enormous increase of refugees. As early as 2011, the return of refugees to Greece as their first country of entry could not be justified anymore because a fair procedure and a humane treatment could not be guaranteed by Greek authorities (ibid., 150f.).

Numerous reform proposals for the Dublin system that included solidary mechanisms to significantly share the burdens were discussed but not implemented due to opposition from some member states (see European Commission 2011a; Bast 2014, 152ff.). One of the reform proposals that were discussed in 2011 included a mechanism to distribute refugees between EU member states (European Commission 2011a, 8ff; Bast 2014, 154-155). As only some of the Southern member states were negatively affected and had to cope with the high cost of such an unequal distribution system, all the other member states did only calculate in a short-term

perspective and decided against solidary action. Member states such as Germany, Austria or Slovenia ignored the shadow of the future of possible changes in refugee routes and did not decide in favour of future needs and reciprocity.

In light of the escalation of the migration crisis, this proposal of the Commission from 2011 was on the agenda again in 2015. However, the aim was not to reform the Dublin system but to react to the dire situations in Greece and Italy with preliminary measures in accordance with Article 78, 3 TFEU (Council of the European Union 2015). The debate revolved around a mechanism for the distribution of a certain number of refugees from Italy, Greece and Hungary to the other member states. One option was the establishment of an automatic mechanism. Based on criteria like economic power and population size, a certain number of refugees would automatically be allotted to each member state. This mechanism could be used for future crisis situations as well. Without this mechanism, the number of refugees for each receiving country would have to be negotiated between the member states again for each new crisis situation (European Commission 2011a, 9-10; Lang 2015; Becker 2015a).

Lang shows that especially the Visegrád group opposed this EU-wide automatic mechanism for refugees (Lang 2015, 2). He states, that the opposition was mainly fuelled by domestic concerns. For example, the Polish government under Ewa Kopacz was facing a growing conservative and nationalistic opposition and wanted to demonstrate determination and power in light of the upcoming parliamentary election in 2015. Hungarian head of government Victor Orbán followed his tough approach to react to growing right-wing extremism. Furthermore, the opposition of the governments also reflected a growing reluctance of the citizens to receive refugees into their countries (*ibid.*, 2f.). These examples show how the decision against solidarity measures can be influenced by national governmental calculation of costs related to future voting behaviour of their citizens.

In September 2015 the Justice and Home Affairs Council convened to vote on relief measures for Italy, Greece and Hungary. The issue at hand was the distribution of 120,000 refugees among the member states. Due to firm opposition from the Visegrád group, the issue of an automatic distribution mechanism was not even on the agenda (Council of the European Union 2015). Nevertheless, the decision about the distribution of these 120,000 refugees and the fixed quotas that had been assigned to each member state, was highly contested. Poland was the only Visegrád country that approved the Council decision to distribute the 120,000 refugees according to fixed quotas for each state.<sup>2</sup> Slovakia, Czech Republic and Hungary rejected the concept of fixed quotas and, together with Romania, voted against the decision. Slovakia and Hungary later decided to take this issue to the European Court of Justice (Reuters 2016).

Lang explains Poland's deviating voting behaviour mainly with the fear of the Polish government to lose political influence in Europe. A continuing blockade would have meant serious political costs in terms of influence and negotiating power (Lang 2015, 4). At least here, the shadow of the future was calculated by the Polish government, if with respect to influence or negotiating power categories or with regard to future solidarity decisions is hard to determine.

It must be mentioned that at least Hungary would have benefited from the decision as it also included a number of refugees from Hungary to be distributed. This would have meant a relief for Hungary but despite this, Hungary voted against it. However, Hungary decided not to benefit from this decision and stopped to take back refugees that entered the Dublin asylum area in Hungary from other Dublin countries instead (Becker 2015a; Lang 2015, 4; Than/Nasralla 2015). In addition, Hungary will hold a referendum on the quota system in October 2016 (Reuters 2016).

Overall, the opposing East European member states, especially the Visegrád group, could not block solidary relief mechanisms for the most affected member states. However, they prevented the establishment of an automatic EU-wide distribution mechanism. Consequently, the member states are forced to negotiate new quotas for each crisis situation in the future. Based on the complicated and tedious negotiation processes for quotas in the past, the lack of consensus on quotas in general, pending lawsuits and the lack of implementation of the decisions, it is safe to

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<sup>2</sup> However, following the terror attacks in Paris in November 2015 the new government announced that Poland would not accept any refugees and demanded a review of the quota system (Reuters 2015).

assume that this will not lead to a solidary and effective burden sharing in the future. Thus, member states have to resort to individual solidary acts. For example, Germany invoked the „sovereignty clause“ of the Dublin regulation and refrained from sending Syrian refugees back to the country of their first entry in 2015. However, this unilateral approach was criticized by the Visegrád group as well (Lang 2015, 3).

The Visegrád group and other East European countries were criticized because of their opposing behaviour and were accused of a lack of solidarity with the other member states. Interestingly enough, the accused countries replied with a link to the field of energy policy: Poland and Slovakia criticized the „unsolidary“ support for pipeline project „Nord Stream 2“ and called it the result of „national egoisms“ and a „betrayal“ within the EU (Lang 2015, 3).

The discussions on solidarity in migration policy illustrate the limits of intergovernmental solidarity. Member states tend to calculate costs and benefits in a short-term perspective and do not take future risks into account. Furthermore, national constraints, i.e. domestic opposition or voting behaviour of citizens, play an important role. Again, there is no evidence of a sense of reciprocity or a link of current solidary demands with possible needs in the future, or vice versa.

## 5. Conclusion

Within the Lisbon Treaty, a firework of solidarity is presented in quite a diversity of policy fields. But is solidarity within the EU even possible? The paper asked about the requirements and limits of solidarity in the European multi-level governance. In modelling solidarity within this context, we built on Durkheim’s concept of organic solidarity and adapt it for the multi-level system of the EU. In order to do so, we had to assume that addressees or carriers of solidarity can be individuals as well as collective actors, like the member states. In addition, explicitly with regard to Durkheim’s organic solidarity, we do not assume that a pre-solidarity prerequisite such as a European identity is necessary for solidarity within the European Union. Further, we had to take the vertical dimension of the multi-level system serious in constructing solidarity within the EU. The latter is neglected by most approaches aiming at constructing solidarity at the European level. Hence, they are not adequate and leave an important dimension of solidarity in the European multi-level system untouched.

To conceptualize European solidarity, we combined the horizontal and vertical dimension of the multi-level system with the two actor categories of individual and collective actors, ending up in a four-fold matrix. According to the matrix and as a first conclusion we stated that there is not only one form of European solidarity but several: Transnational, international, supranational and intergovernmental or member state solidarity. We looked at the form of intergovernmental solidarity more closely and analysed discussions about member state solidarity in the two EU policy fields energy and migration policy.

The analysis shows that in order to decide for or against solidarity, member states calculate their costs and benefits. In order to be positive about solidary decisions that include higher costs than benefits in a short-term perspective, member states would have to calculate in medium- to long-term time horizons. They should consider a decision for solidarity as an insurance for future reciprocity within the multi-level system. The case of migration policy shows that especially in crisis situations, short-term calculations predominate. Thus, one of the limits of European solidarity is the lack of medium- to long-term calculation of reciprocity within the EU by member states.

Closely linked to the time horizon, the examples showed that the calculation of reciprocity is also very much focused on one issue whereas most decision-making processes within the EU mostly include diverse issues in order to create room of manoeuvre for log rolling and similar processes. In order to insure themselves with regard to reciprocity, member states should calculate the costs and benefits of solidarity across issue areas, but yet they do not. For example, the Visegrád group demands solidarity in energy security policy but denies solidarity in energy policy under the

sustainability frame and in migration policy. Across or within policy fields, different principles are taken up for solidarity claims while others are ignored. Member states select the issues for which they demand or refuse solidarity and do not calculate that “the others” might not agree to their picky claims as they do not see reciprocity promises within or across policy fields become reality.

Last, the analysis demonstrated, that the fact that European intergovernmental solidarity is overarching national solidarity and has to be provided by member states, gives the national context an important notion. The example of migration policy showed, that national election horizons became significant constraints in calculations about solidarity decisions and are closely tied to the short-term horizon limit of European intergovernmental solidarity.

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