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Solidarity in the European Union: a
quantitative analysis of the European
Council's position

[Ana Isabel Álvarez Nieves](#)

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Ana Isabel Álvarez Nieves
Student of the Official Master's Degree in Europea Integration
Facultat de Dret
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SOLIDARITY IN THE EUROPEAN UNION: A QUANTITATIVE ANALYSIS OF THE EUROPEAN COUNCIL'S POSITION

Abstract

The Lisbon Treaty presents solidarity as a fundamental value. However, the lack of a unitary definition of what it means to act in solidarity within the European Union may contribute to asymmetric responses in each Member State to EU-wide challenges and to distance solidarity from sought horizontality. This paper aims to provide for a definition of solidarity, as well as to analyse the European Council's position, which being the institution providing the general political direction and priorities of the European Union, has an undeniable role in the promotion of solidarity among Member States.

Resumen

El Tratado de Lisboa presenta la solidaridad como un valor fundamental. Sin embargo, la ausencia de una definición unitaria de qué significa actuar en solidaridad dentro de la Unión Europea puede promover respuestas asimétricas por parte de cada Estado miembro hacia problemas de dimensión europea alejándose de la horizontalidad deseada. Este trabajo tiene por objeto buscar una definición de solidaridad, así como analizar la posición del Consejo Europeo, que siendo la institución que define la orientación y las prioridades políticas generales de la Unión Europea, ejerce un indudable papel en la promoción de la solidaridad entre los Estados miembros.

Resum

El Tractat de Lisboa presenta la solidaritat com un valor fonamental. No obstant això, l'absència d'una definició unitària de què significa actuar en solidaritat dins de la Unió Europea pot promoure respostes asimètriques per part de cada Estat membre cap a problemes de dimensió europea allunyant-se de l'horitzontalitat desitjada. Aquest treball té per objecte buscar una definició de solidaritat, així com analitzar la posició de el Consell Europeu que sent la institució que defineix l'orientació i les prioritats polítiques generals de la Unió Europea, exerceix un indubtable paper en la promoció de la solidaritat entre els Estats membres.

Keywords: Solidarity, European Union, European Council, security and defence policy, immigration policy, economic policy, energy policy.

Palabras clave: Solidaridad, Unión Europea, Consejo Europeo, política de seguridad y defensa, política de inmigración, política económica, política energética.

Paraules clau: Solidaritat, Unió Europea, Consell Europeu, política de seguretat i defensa, política d'immigració, política econòmica, política energètica.

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I. Introduction

Robert Schuman, founding father of the European Union, dreamed of a united Europe in which States leave their differences behind and build a common solidary Europe. As such, both the construction of Europe and the same idea of European Integration are about solidarity. Today, seventy years after the Schuman Declaration on the 9th of May 1950, despite the claim for solidarity in the current EU Treaties, the concept of *solidarity* is still a very contested notion within the European Union. Recent challenges have made evident the lack and need for a *de facto* EU solidarity, without which the very existence of the Union has even been questioned.

Recent crises, for instance the Euro crisis, the refugee crisis and particularly the Covid-19 public health crisis, have forced some Member States to call for European solidarity, demanding a united European response. Solidarity, however, is unevenly understood by Member States, who have responded very differently to such calls showing that solidarity is a complex idea to execute, let alone to harmonise or integrate across Member States. Even if it is a formal reality, the lack of an operational definition of solidarity in the Treaties contributes to this disparate situation. Thus, the implementation of such an abstract concept has become a challenge itself. Furthermore, not only do Member States show solidarity differently, the divergent natures of diverse policies also bend the idea of solidarity in such a way that it can and must be shown differently depending on the concerned policy. In fact, the above-mentioned crises belong to different EU policies in which solidarity may behave divergently.

Claims for a real European solidarity come from different sources. Still, the EU, as a supranational organisation, is best placed to foster solidarity among Member States. In fact, the so-called *solidarity crisis* has resulted in the enforcement of solidarity through imposed EU legislation, for instance, through the redistribution of refugees all over the EU territory. As a result, the European institutions exercise a significant influence on the promotion of solidarity and, thus, on its actual implementation. They have a role in the promotion of solidarity not only as a horizontal value, but also in times of crisis.

Given its complexity and versatility, scholars have cast doubt on the feasibility of solidarity in the EU and have tried to provide answers to questions such as *Can solidarity in the EU be achieved at all?*, *Is solidarity just an empty notion?* or *Can solidarity be imposed?*. One of the most relevant and current works answering such questions is

Grimmel and My Giang's book 'Solidarity in the European Union. A fundamental value in crisis' (2017). Literature addresses solidarity in a field-specific approach, as well. Migration and economics have particularly dominated the debate. Despite the range of topics covered in the literature, a definition of solidarity for the specific context and characteristics of the Union cannot be found. Finally, although the EU is the playground for solidarity, and its institutions play a role in its promotion, literature does not address the factual position of the Union or of its different institutions on solidarity. The examination of the institutions' standpoint may reveal whether they actively assume their role in the promotion of solidarity.

The present paper will shed some light upon these gaps in the literature. A definition of solidarity based upon a brief review of the evolution of the Treaties and upon the recent attempts to put it into practice may very well be a first step towards a better solidarity in the EU. Therefore, a comprehensive definition that can cover solidarity among Member States of the Union in all its forms despite its multifaceted character will be identified. Lastly, the European Council's position on solidarity will be examined. Being the institution providing the political direction and priorities of the European Union, it is believed that the European Council has an active voice of its own in calling for solidarity. A quantitative analysis of its conclusions will provide for an understanding of the weight of solidarity in the European Council's discourse.

II. The concept of *solidarity*

1. Definition of *solidarity*

As an abstract term, the meaning of *solidarity* may vary depending on the field of study. Aiming to find a definition for *solidarity* within the European Union, it is required to talk briefly about the etymology of the word and its evolution.

The word *solidarity* comes from the Proto-Indo-European root *sol* meaning *whole, well-kept*¹, which later developed in Roman law into a legal concept 'referring to a common responsibility for debts incurred by one of the members of a group'². This notion arrived

¹ Online etymology dictionary <https://www.etymonline.com>

² STJERNØ, S., *Solidarity in Europe. The History of an idea*. Cambridge, Cambridge, 2004, p. 156.

to the French revolution at the end of the 18th century, when it turned into a sociological and political concept as a *quasi-synonym* of *fraternity*. Accordingly, it developed a connotation of belonging together. During the 19th century, it was used by philosophers to refer to the relation of those bounded in a community –when it was compared to Christian charity– and even to defend a social policy for sharing resources³.

Thus, the notion has evolved into a multidisciplinary concept but still underlying the idea of *well-kept* in a *we*-feeling sense until the arrival of the socio-political discipline. As ‘everybody speaks about solidarity but they all have their own dictionary’⁴, a unitary definition of *solidarity* –one that can embrace all mentioned disciplines– is required. Stjernø contributed to a definition that englobes at least both the sociological and the political perspective:

Solidarity means the preparedness to share resources with others, through personal contributions to those who are struggling and through taxation and redistribution organized by the state. Thus, solidarity means a readiness for collective action and a will to institutionalize it through the establishment of rights and citizenships⁵.

Two dimensions are found in Stjernø’s definition: First, the individual dimension, in which solidarity takes places at a person-to-person level through personal contributions. Secondly, the State dimension, in which solidarity is organized by the State particularly through redistribution within the community and the establishment of rights and citizenship.

The assumption that a *we*-feeling is required for the existence of solidarity within a community goes back to the use of *solidarity* as *fraternity*, that is, the relation between equals. As Miller argues, ‘there has to be a sufficiently precise, and shared, sense that they *are* a group’⁶. In other words, a collective identity is fundamental for solidarity to be present in a community. This *we* is to be understood as opposition to *they*, or in Miller’s words ‘solidarity *among*’ members of a community rather than ‘solidarity *with*’ individuals outside the community⁷.

³ *Ibid.*

⁴ THE ECONOMIST, ‘The idea of solidarity in Europe’, June 13, 2015, p. 53.

⁵ STJERØ, S. op. cit. p. 326.

⁶ MILLER, D. ‘Solidarity and its sources’. Banting, K. and Kymlick, W., *The strains of commitment: the political sources of solidarity in diverse societies*, Oxford University Press, Oxford, 2017, pp. 61-79, p. 63.

⁷ *Ibid.*

The underlying idea is the following: as we belong to the same community, ‘to be solidary I have to take into account that the misfortune hitting you might hit me too’⁸. This implies that for solidarity to arise there must be a situation in which at least one member of the community is in need. However, this is not the only condition. According to Steinvorth, solidarity presupposes apart from the already mentioned condition 1) a ‘relation between equals’ in legal terms, 2) similar long-term objectives and 3) freedom as opposed to authoritarianism. Thus, solidarity can be described as ‘the virtue of equals who help one another in misfortunes they are not responsible for’⁹.

This last definition caters for a simplification as well as for a broader use of the term. In contrast to Stjernø’s above-mentioned definition, this does not mention the share of resources as the tool of solidarity. In fact, while the idea behind Stjernø’s perspective is social-related, Steinvorth’s definition leaves the term open to multiple situations and disciplines. It is also relevant to dedicate a few words to the last part of Steinvorth’s definition: the fact that the member of the community who is being solidary is not responsible for the misfortune of the other is key to understand solidarity. This arises of course the question of parasitism or, in economic terms, free-riding. Such risk can be reduced

if we (1) distinguish misfortunes that the needy *are* responsible for from misfortunes that they *are not* responsible for and (2) limit solidarity to situations in which only the latter are helped. Such a limitation not only stops misuse but also stimulates self-responsibility¹⁰.

The fact that members of a community can decide when to *apply* solidarity and when not, reinforces the idea of solidarity as a choice instead of as an omnipresent value.

Finally, the concept of *reciprocity* must be addressed. Some define *solidarity* as an ‘idea of a reciprocal relationship between members of a group’¹¹. Although this may be a too broad definition, it does reflect the previously described condition that the members being solidary thinks that the same misfortune might happen to themselves. From this point of

⁸ STEINVORTH, U., ‘Applying the idea of solidarity to Europe’, Grimmel, A. and My Giang, *Solidarity in the European Union. A fundamental value in crisis*, S., Springer, 2017, pp. 9-20, p. 10.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ KNODT, M. and TEWS, A., ‘European solidarity and its limits: insights from current political changes’, Grimmel, A. and My Giang, *Solidarity in the European Union. A fundamental value in crisis*, S., Springer, 2017, pp. 47-65, p. 49.

view, the demand for solidarity could also be considered as the demand for reciprocity for a previously exercised act of solidarity. Thus, this conditional aspect that implies inverting the solidarity flow may be considered as a guarantee for the longevity of solidarity¹².

2. The concept of *solidarity* in the European Union

Since none of the above-mentioned definitions explicitly tackle the particular case of the European Union, we will now try to shed some light upon the concept of *solidarity among Member States*. To this aim, it is necessary to address the logic of the European integration. Secondly, we will try to apply the previously mentioned definitions to the concept of solidarity in the EU and lastly, we will look at the evolution of the concept of *solidarity* in EU primary legislation.

Considering the European integration 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’¹³, we assume that European nations do calculate their costs and benefits¹⁴ when deciding whether to join the European Union. A state deciding to enter the community equals a state calculating the costs and benefits of its accession. Among the costs, a reduction of sovereignty is expected, while the benefits may include, among others, economic support, belonging to a community based on democratic political principles and becoming a member of a customs union. Hence, a candidate state expects to receive more than it is willing to give, particularly but not exclusively in an economic sense. As a consequence, solidarity in this context is not a generous act –after an act of solidarity, a state expects to receive something in return, may it very well also be solidarity. Therefore, solidarity among Member States cannot be described as an altruist virtue, but as an act expecting the same future response in exchange of the undertaken costs or risks. Taking this into consideration, we will now apply the above-mentioned definitions to the notion of *solidarity among Member States*.

Since we are looking at the interstate or intergovernmental level, Stjernø’s definition is not adequate since it expressly defines solidarity at other dimensions. However, its

¹² JOUEN, M., ‘Solidarité 2.0’. *Policy Paper Institut Jacques Delors*, 196, 2017, p. 4.

¹³ SANGIOVANI, A. ‘Solidarity in the European Union’. *Oxford Journal of Legal Studies*, 33(2), pp. 213-241, p. 230.

¹⁴ KNODT, M. AND TEWS, A., *op. cit.* p. 54.

concept of taxations and redistribution as an instrument for solidarity might be useful to define solidarity among Member States because economic support may be one of the benefits of adhering to the European Union. Stjernø also mentions the ‘readiness to collective action’. In the case of the EU, collective action may imply a coordinated response to a particular problem affecting the Union as a whole, but it may also imply the necessity of delegating powers. The existence of the EU institutions to harmonize and unify certain aspects of the legal, economic, monetary systems may be understood as a collective action meaning that solidarity lies at the heart of the European integration.

Member States, in fact, belong to the EU in a full-time basis, which implies that solidarity ‘cannot be flexible or sporadic, not more than their membership to the EU’¹⁵ [own translation]. From this point of view, solidarity is considered to be ‘whole, indivisible and constant’¹⁶. This matches perfectly with the previous idea that taxations and redistribution can be considered as an act of solidarity on a long-term basis. In this sense, Diez Moreno argues that solidarity ‘presupposes the existence of rich countries and poor countries’¹⁷ [own translation], meaning that stronger member States may be solidary towards weaker member States¹⁸. Solidarity is, thus, expressed through cohesion policies¹⁹. Although Diez Moreno affirms that solidarity in the EU may also happen through mutual assistance in emergencies, he argues that solidarity is mostly about economic convergence. On the other hand, Steinvorth’s general definition (‘the virtue of equals who help one another in misfortunes they are not responsible for’) might be, without modification, applied to our dimension.

The question is then: can solidarity among Member States of the European Union, be it in a short or long-term basis, be achieved at all? In this case, Steinvorth’s presuppositions or requirements for solidarity to exist are a good starting point:

According to Steinvorth, at the time of the creation of the European Economic Community, it was presumed that all conditions were fulfilled, meaning that

¹⁵ JOUEN, M., *op. cit.* p. 5.

¹⁶ *Ibid.*

¹⁷ DIEZ MORENO, F., *Manual de derecho de la Unión Europea*, Civitas Ediciones, Pamplona, 2009, p. 161.

¹⁸ JOUEN, M., *loc. cit.*

¹⁹ DIEZ MORENO, F., *loc. cit.*

European nations or states would (1) pursue the common goals of liberty and peace, (2) cooperate and want to cooperate on an equal footing, (3) want to live in non-authoritarian relations, and (4) not forget that they might easily get into the same mess that another European state, through no fault of its own, gets into²⁰.

An in-depth dissection of these conditions shows that requirements 1 to 3 can be summarized as common objectives whereas requirement number 4 could be described as the expected future reciprocity for the costs and risks that Member States may assume when exercising solidarity. We agree with Steinvorth and Grimmel, that the EU fulfils the necessary conditions for meaningful solidarity²¹. As the prerequisites are fulfilled, solidarity *can* practically be exercised.

In any of Steinvorth's presuppositions can we apparently find the need for a pre-existing collective identity. While this notion might be essential in little communities, within the European Union, solidarity among Member States does not necessarily require a feeling of belonging together²², since, as explained above, what is decisive is the benefits and costs balance. Nevertheless, the exclusion of the requirements of a collective identity does not imply that solidarity among member states of the EU shall equal solidarity between EU Member States and any third countries. The contrast between *we* and *they* is not based here on a collective identity but on common objectives that play an undeniable role in the European context.

Finally, it is equally necessary to dive into the creation of the Union. To this aim, the Schuman Declaration, the Treaty establishing the ECSC, the Treaty establishing the ECC and the Treaty on European Union are a unique example of the evolution of the term in the European context.

The Schuman Declaration on the 4th of May 1950 shows the accuracy of Stjernø's definition when referring to *solidarity* as a *preparedness*:

Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a *de facto* solidarity.

²⁰ STEINVORTH, U., *op. cit.* p. 12.

²¹ GRIMMEL, A., 'Solidarity in the European Union: Fundamental Value or "Empty Signifier"', Grimmel, A. and My Giang, *Solidarity in the European Union. A fundamental value in crisis*, S., Springer, 2017, pp.161-175, p. 172.

²² KNODT, M. and TEWS, A., *op. cit.* p. 48.

At the end of World War II, Schuman emphasised the necessity to ‘create a *de facto* solidarity’, without which Europe would not be made. It is important to understand here that solidarity does not exist –it needs to be created first. Some European countries *decide* to create solidarity through the Treaty establishing the European Coal and Steel Community (ECSC) signed in 1951, in which it reads:

CONSCIENTS que l'Europe ne se construira que par des réalisations concrètes créant d'abord une solidarité de fait (...)

In this text it is even more clear that it is *only* through the creation of solidarity that Europe will be made. Therefore, solidarity is here presented as a required core instrument to build Europe. Particularly, the fact that the need for European solidarity serves as a justification for the Treaty brings to light the *preparedness* of the at that time six contracting parties, which aimed at this point at sharing resources in search for economic growth.

Nevertheless, a significant modification is found in the preamble of the Treaty establishing the European Economic Community (EEC) signed in 1957:

ENTENDANT confirmer la solidarité qui lie l'Europe (...)

Just 6 years later, solidarity here is presented as an already existing characteristic of a consolidated Europe. Due to the existing solidarity, the contracting parties can and do create the ECC. Solidarity is presented here not as a preparedness anymore –it exists and binds Europe.

In 1992, the term solidarity appears for the first time not only as a whereas in the Treaty on European Union, but also in article 1:

DESIRING to deepen the solidarity between their peoples (...)

Article 1: [The Union’s] task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.

While the Treaty of Rome confirmed solidarity, the Treaty of Maastricht believes it necessary to ‘deepen the solidarity’. The need for a more profound solidarity is presented here as one of the justifications to go further in the European integration process with the creation of a European Union whose goals go far beyond economic interests. It is the confirmation that the European integration *is* about solidarity.

As for article 1, it demonstrates the necessity of one united European voice in front of the rest of the world, a voice that would be impossible to achieve without ‘consistency and solidarity’ within the European Union itself.

The concept of *solidarity* has clearly oscillated in the Treaties between an essential instrument, a to-be-built or to-be-extended virtue and an undeniably existing characteristic. Even though this lapse through time is very illustrative to know how the concept has evolved in the European context and how it has been presented first as a desire and then as a reality, it is worth to take a closer look at the current stage of the Treaties. This notion appears several times both in the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) –and of course on the Charter–, although for the current analysis only the preamble and articles 2 and 3 of the TEU will be commented.

In the preamble of the consolidated version of the TEU the same justification persists just as in the Treaty of Maastricht. As for articles 2 and 3:

Article 2: (...) 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.

Article 3(3): [The Union] shall promote economic, social and territorial cohesion, and solidarity among Member States.

Article 3(5): In its relations with the wider world, (...) [the Union] shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples.

These articles follow a well-defined purpose. While article 2 delineates the fundamental values that feature the Union, article 3 describes its objectives. Solidarity is therefore contradictorily presented as a present value that defines the EU and as an achievable objective. Both of these articles illustrate the previously mentioned historical oscillation.

The preamble and these two articles of the treaty in effect provides with three kinds of solidarity: solidarity among peoples, solidarity with the wider world and solidarity among States. For the purpose of this paper, we will focus on the latter, that is, on solidarity among Member States, since we will be looking at the supranational and intergovernmental dimension.

The Treaties provide with no further explanation of what is to be understood by *solidarity*. Additionally, the mentioned oscillation alters the concept of *solidarity* making it a complicated goal to achieve. As a matter of fact, ‘it is largely unclear what the concept implies in terms of the policies and practice of the EU’²³.

3. Solidarity: concerned EU policies

Even though solidarity could be understood as a horizontal concept because of its appearance in the preamble and first articles of the Treaties, a further lecture reveals that solidarity is referred to in a limited number of aspects considering primary law. Below, the articles dealing with solidarity will be classified in policies: security and defence, migration, economic policy and energy. In each of these fields the actual realisation of solidarity is tackled. Article 21(1) TEU will be, however, disregarded due to its external dimension, since we will focus on solidarity within the EU. Additionally, although it does not mention the world *solidarity*, we will include article 42(7) TEU, the so-called *mutual assistance clause*, given its relation to the concept of solidarity. Articles are classified according to their content:

a) Security and defence

- Specific provisions on the common foreign and security policy: articles 24(2), 24(3), 31(1), and 32 TEU
- Provisions on the common security and defence policy: article 42(7) TEU
- Solidarity clause: article 222 TFEU

b) Migration policy

- General provision of the area of freedom, security and justice: article 67(2) TFEU
- Policies on border checks, asylum and immigration: article 80 TFEU

c) Economic policy

²³ GRIMMEL, A., *op. cit.* p. 162.

- Economic policy: article 122(1) TFEU
- d) Energy policy
- Energy: article 194(1) TFEU

This first look at primary law illustrates how concentrated the term is. *Solidarity* as a general value or as an important horizontal objective is translated deeper in the Treaties into just four policies. It is in the field of security and defence where the concept is further developed.

The EU has recently been at the centre of several challenges that are closely related to mentioned policies, for instance the rise of terrorism in EU floor, the refugee crisis and the eurozone crisis. Now, these four policies will be examined so as to find out how solidarity is understood, what role does solidarity play and how solidarity is actually exercised in each of these fields. Further examples will be presented so as to complete the framework of each field.

A. Security and defence

Despite the external scope of the chapter on specific provisions on common foreign and security policy, the construction *mutual solidarity* –that is, solidarity among Member States and not *solidarity with* –is repeated over again. It is a reminder of the necessary united voice of the EU towards the rest of the world. In fact, article 31(1) foresees an exception to unanimity in the Council: in the event in which one member of the Council abstains, it ‘shall accept that the decision commits the Union’ even though it is not obliged to apply the decision. Furthermore, in a ‘spirit of solidarity’ it shall not take any action to impede the application of the measure in question and ‘the other Member States shall respect its position’. This article illustrates how solidarity among Member States is applied in the decision-making process: both the abstaining Member State –not against-voting– and the rest of them shall act in solidarity for the sake of the decision.

The intergovernmental remainders of the second pillar in the Common Security and Defence Policy (CSDP) has led to two similar but considerably different assistance clauses in the Treaties: the mutual assistance clause (article 42(7) TEU) and the solidarity

clause (article 222 TFEU). While the mutual assistance clause²⁴ stipulates that in the case of an ‘armed aggression’ in a Member State, *the other Member States* ‘shall have towards it an obligation of aid and assistance by all means of their power’, article 222 foresees the action in a spirit of solidarity of *the Union and its Member States* and presents a broader scope in including not only terrorist attacks but also ‘a natural or human-made disaster’. Despite article 42(7), which suggests that the article applies automatically, in practice it shall be evoked by the Member State suffering the armed aggression, just like article 222. As a result, Member States suffering a terrorist attack in its territory possess a discretionary power in invoking either the mutual assistance or the solidarity clause. Nevertheless, article 4 of the Council Decision on the EU’s implementation of the solidarity clause²⁵ specifies that the clause can be invoked by a Member State ‘after having exploited the possibilities offered by existing means and tools at national and Union level’. The direct consequence is that the solidarity clause is the last resource. Finally, article 222 falls within the scope of the EU Court of Justice jurisdiction. Consequently, failure to assist a requesting Member State in need after a terrorist attack or a natural or human-made disaster can result in a judicial proceeding²⁶.

In summary, three conclusions can be drawn: firstly, solidarity among Member States in the context of the CSDP needs to be requested –solidarity does not arise automatically or by the initiative of the Member States exercising solidarity. Secondly, every other existing means needs to be exhausted before turning to solidarity. Lastly, the lack of solidarity in this context might result in a judicial proceeding before the Court of Justice.

It is worth mentioning that article 222 has, to date, never been activated. On the other hand, the mutual assistance clause was evoked for the first time by France in the context of several terrorist attacks in Paris on the 13th of November 2015. The activation of the article implied the initiation of bilateral discussions but no unified response. Thus, the activation of the mutual assistance clause encouraged Member States to offer France

²⁴ The creation of article 42.7 responded to the model of the international organisation of the Western European Union, which was dissolved little after the clause entered into force with the Treaty of Lisbon (see n. 25).

²⁵ Council Decision 2014/415/EU of 24 June 2014 of the arrangements for the implementation by the Union of the solidarity clause, OJ L 192/53

²⁶ European Parliament, ‘Briefing: The EU’s mutual assistance clause. First ever activation of Article 42(7) TEU’, PE 572.799, 2015, available at [https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572799/EPRS_BRI\(2015\)572799_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572799/EPRS_BRI(2015)572799_EN.pdf) (last accessed July 30, 2020).

operative support in any form to give a response to the attacks outside EU territory. For instance, the UK offered France the use of its airbase in Cyprus²⁷.

The EU Civil Protection Mechanism, including its recently created pillar RescEU, has as an objective the reinforcement of cooperation between Member States in the case of natural or human-made disasters²⁸. Any Member State may invoke this mechanism and demand material and/or operational assistance or expertise from other Member States. The mechanism also relies on the European Civil Protection Pool, a voluntary pool bringing together operational resources financially supported by the European Commission²⁹. For instance, a number of planes, helicopters, vehicles and personnel from 7 Member States was put in place to assist Sweden on forest fires in July 2018. In the framework of these mechanism, Italy asked for mask provisions to protect its population and face the Covid-19 in 2020.

The European Solidarity Fund aims to respond to natural disasters in European territory, too³⁰. Contrary to the Civil Protection Mechanism, the Fund is managed exclusively at supranational level. After a State applies for a grant from the Fund, the Community budget is amended to assist the state –a maximum amount of €1 billion per year may be allocated to the Fund³¹. Since its creation in 2002 and up to November 2019 a total of €5 535.6 million³² have been granted to aid States tackle natural disasters.

B. Migration policy

Despite article 67(2) TFEU, which stipulates that the EU ‘shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States’, the refugee crisis starting in 2015 has fuelled criticism on the lack of one common asylum policy. The lack of prevision and of rapid response from the EU has raised

²⁷ *Ibid.*

²⁸ EUROPEAN COMMISSION, ‘EU Civil Protection Mechanism’, 2020, available at https://ec.europa.eu/echo/what/civil-protection/mechanism_en (last accessed July 30, 2020).

²⁹ *Ibid.*

³⁰ EUROPEAN PARLIAMENT, ‘EU Solidarity Fund’, 2020, available at https://ec.europa.eu/regional_policy/en/funding/solidarity-fund/ (last accessed July 30, 2020).

³¹ HOCHRAINER, S., LINNEROOTH-BAYER, J. and MECHLER, R., ‘The European Union Solidarity Fund: Its legitimacy, viability and efficiency’, *Mitigation and Adaptation Strategies for Global Change*, 15(7), 2010, pp. 797-810, p. 799.

³² EUROPEAN COMMISSION, ‘EU Solidarity Fund Interventions since 2002’, 2019, available at https://ec.europa.eu/regional_policy/sources/thefunds/doc/interventions_since_2002.pdf (last accessed July 30, 2020)

questions about ‘some of the basic pillars of European Integration, such as solidarity. The call for a *solidarity with* refugees has been one of the main discussions in the public scene while the European Union made a call for *solidarity among* Member States in order to handle it as a European-wide problem instead of as a national issue. Moreover, article 80 states that this common policy ‘shall be governed by the principle of solidarity and fair sharing of responsibility’. Here, responsibility sharing is a key concept around solidarity since the creation of the Area of Freedom, Security and Justice and especially of the concept *EU territory*, which implies that some countries’ physical borders are both national and European borders. Those countries have, thus, a double responsibility when it comes to external border control. Some scholars speak of *solidary burden sharing*³³. However, the Dublin Regulation³⁴ stipulates that asylum applications must be processed in the first country a refugee enters³⁵ which, with most probability, due to geographic reality, will be a Southern or Eastern State. Hence, ‘Northern and Western European countries have a much smaller burden to bear’³⁶. Therefore, we can affirm that the Dublin Regulation establishing the framework for the European asylum policy does not comply with the idea of solidary burden sharing introduced in article 80 TFEU. This has led to a so-called *solidarity crisis*³⁷ in which the Union has failed to correctly support Southern European countries asylum systems such as Greece’s, Italy’s or Malta’s, which have been object of a great pressure³⁸ given the unprecedented flow of refugees³⁹ arriving at their borders.

The solidarity crisis in EU asylum policy has had multiple impacts: on the one hand, overloaded migration systems and the failure of the EU to respond has developed into ‘anti-immigration discourses’⁴⁰ and the rise of nationalist movements in certain countries

³³ KNODT, M. and TEWS, A., *op. cit.* p. 59.

³⁴ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

³⁵ WIHTOL DE WENDEN, C., ‘Actual patterns of migration flows: the challenge of migration and asylum in contemporary Europe’, Grimmel, A. and My Giang, *Solidarity in the European Union. A fundamental value in crisis*, S., Springer, 2017, pp. 67-80, p. 74.

³⁶ KNODT, M. and TEWS, A., *loc. cit.*

³⁷ WIHTOL DE WENDEN, C., *loc. cit.*

³⁸ VILLAR, A., *loc. cit.*

³⁹ WIHTOL DE WENDEN, C., *op. cit.* p. 72.

⁴⁰ *Ibid.* p. 70.

based on a ‘growing xenophobic sentiment’⁴¹, as well as separatist and independence movements⁴². On the other hand, human rights and refugee rights established by the Geneva Convention of 1951 were challenging to respect in the context of national overloaded refugee systems⁴³. For instance, ‘Greece was not able to comply with its obligations to ensure fair asylum procedures for all applicants’⁴⁴.

EU proposals to modify the Dublin system or create a redistribution mechanism that allows for burden-sharing have not been successfully implemented⁴⁵. This is due to the reticence of some EU countries, particularly the Vicegrád group (Poland, Hungary, the Czech Republic and Slovakia). The ‘Juncker plan’, presented in 2015 to relocate asylum seekers, was frontally opposed by the Vicegrád group with the exception of Poland. Solidarity played its part on their arguments: they defended the ‘flexibility nature of solidarity’, meaning that solidarity cannot be imposed on a particular form and defending that Member States could decide themselves on other solutions –such as financial contributions– which would also show EU solidarity⁴⁶. The Vicegrád group was criticised by other Member States for the opposition to compulsory relocation measures. Their response to this criticism was very illustrative from the point of view of solidarity: ‘Poland and Slovakia criticised the EU’s “unsolidarity” support for the Nord Stream 3 pipeline project’, that is, in the field of energy policy, ‘calling it the result of “national egoism” and “betrayal” within the EU’⁴⁷. Thus, the alleged lack of solidarity in the energy policy from the rest of Member States towards the Vicegrád group was translated then in an argument to reject the pressure of Member States to create a compulsory asylum relocation mechanism. Undoubtedly, different policies are connected through the thread of solidarity and reciprocity plays a leading role. Lastly, some scholars defend that this reluctance mirrors the xenophobic sentiments of citizens –electoral calculations are part of the process of the balance of costs and benefits towards future elections⁴⁸. All this

⁴¹ FRELAK, J. S., ‘Solidarity in European Migration Policy: the perspective of the Visegrád States’, , Grimmel, A. and My Giang, *Solidarity in the European Union. A fundamental value in crisis*, S., Springer, 2017, pp. 81-96, p. 81.

⁴² DE WAELE, H., ‘Disintegration from Within: Independence and Separatist Movements, the EU response and the role of solidarity’, Grimmel, A. and My Giang, *Solidarity in the European Union. A fundamental value in crisis*, S., Springer, 2017, pp. 119-129, p. 127.

⁴³ VILLAR, A., *op. cit.* p. 2.

⁴⁴ KNODT, M. and TEWS, A., *op. cit.* p. 59.

⁴⁵ WIHTOL DE WENDEN, C., *op. cit.* p. 73.

⁴⁶ FRELAK, J. S., *op. cit.*, p. 82.

⁴⁷ KNODT, M. and TEWS, A., *op. cit.* p. 61.

⁴⁸ *Ibid.* p. 60.

demonstrates that ‘solidarity is not unconditional’⁴⁹. In fact, in this case not all our presuppositions for solidarity are fulfilled as far as different degrees of commitment towards a common asylum policy are found.

Evidently, we find here the paradox of solidarity. Measures to impose solidarity to the Member States in the migration policy reaffirm the crisis of solidarity in a broader concept. Although solidarity is one of the fundamental values that allow for the existence of the EU, it needs to be imposed as a compulsory rule so that Member States respect it⁵⁰.

C. Economic policy

One of the objectives of the European integration process according to article 3(3) TEU is the promotion of economic cohesion (‘[the Union] shall promote economic, social and territorial cohesion, and solidarity among Member States’). Cohesion policies, introduced by the Maastricht Treaty, translate into a convergence goal, which presupposes the existence of both wealthy countries and emerging countries within the Union.⁵¹ In this context, the way the Structural and Cohesion Funds work is related to the notion of solidarity. In particular, as far as these funds serve as the redistributive system of a Union lacking its own fiscal policies, we are reminded of Stjernø’s definition mentioned above according to whom contributions through taxation and wealth redistribution are the centre of solidarity.

The origin of the funds lies in the EU budget, whose sources are mainly Member States contributions. Not only are Member States contributions to the EU budget proportional to their wealth, their level of benefits from said funds will also depend on their structural and regional level of development. It is evident that the funds are a way to help those countries that have fewer economic resources. But not only. The flaws of the European integration also become evident, in particular the economic integration through the Economic and Monetary Union, which cannot be considered a ‘win-win arrangement’

⁴⁹ BÖRZEL, T. A. and RISSE, T., ‘From the euro to the Schengen crises: European integration theories, politicization, and identity politics’, *Journal of European Public Policy*, 25(1), 2017, pp. 83-108., p. 96.

⁵⁰ VILLAR, A., *op. cit.* p. 7.

⁵¹ DIEZ MORENO, F., *op. cit.*, p. 161.

while ‘the design of the Eurozone (...) create losers and winners’⁵². Solidarity through redistribution is a method of convergence but it cannot be disregarded as a way to compensate for the wrongs caused by the integration process as well.

The heterogeneity in economic terms of the EU territory calls for a minimum harmonisation in economic policies. An additional asymmetry can be found in economic cohesion policies that apply to all 27 Member States of the European Union while only 19 are members of the Economic and Monetary Union (EMU) and share a common currency. By the time of the constitution of the EMU, for instance, the different national economic growth models were not taken into account⁵³. It is thus not surprising that article 122(1) establishes that the Council ‘may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the *economic situation* (...)’.

Wallaschek⁵⁴ defines economic solidarity as ‘supportive actions for economies’ in relation to ‘public investment and coordinated strategies to support growth and employment’. Despite the fact that the arrival of the economic crisis and the Euro crisis of 2008 clearly resulted in a particular *economic situation* and made said heterogeneity even more evident, given how it hit Member States very differently, ‘demands for more unconditional solidarity on moral grounds (...) to avoid some of the social consequences of the Euro-crisis did not stand a chance in the intergovernmental arena’ since fiscal rather than social concerns dominated the political negotiation in an intergovernmental decision-making process⁵⁵. Creditor Member States, such as Germany, defended the idea of deficit countries like Portugal, Spain and particularly Greece solving their problems on their own⁵⁶ and that the adjustment costs should be assumed by the debtor countries⁵⁷, obviously not matching Wallaschek’s definition. Nonetheless, this view prevailed and, in fact, ‘solidarity from other countries was highly conditional upon debt payment’⁵⁸ and budgetary discipline⁵⁹, supporting the above-mentioned idea that solidarity is not

⁵² ERIKSEN, E. O., ‘Structural Injustice: the Eurozone crisis and the duty of solidarity’, Grimmel, A. and My Giang, *Solidarity in the European Union. A fundamental value in crisis*, S., Springer, 2017, pp. 97-118, p. 98.

⁵³ WALLASCHEK, S., ‘Contested solidarity in the Euro crisis and Europe’s migration crisis: discours network analysis’, *Journal of European Public Policy*, 27(7), 2019, pp. 1034-1053, p. 1034.

⁵⁴ *Ibid.* p. 1040.

⁵⁵ TREIN, P., ‘Federal dynamics, solidarity and European Union crisis politics’, *Journal of European Public Policy*, 27(7), 2019, pp. 977-994, p. 987.

⁵⁶ *Ibid.*

⁵⁷ BIERMANN, F. ET AL., ‘Political (non-)reform in the euro crisis and the refugee crisis: a liberal intergovernmentalist explanation’, *Journal of European Public Policy*, 26(2), 2019, pp. 246-266, p. 252.

⁵⁸ TREIN, P., *op. cit.* p. 987.

⁵⁹ BÖRZEL, T. A. and RISSE, T., *op. cit.*, p. 85.

unconditional. Creditors imposing certain political, economic or fiscal reforms on debtors, leads to the idea that solidarity comes at a cost. In fact, the German Federal Finance Minister Wolfgang Schäuble kept repeating that ‘solidarity is not a one-way street’⁶⁰. Such a cost, other than being limited to the conditionality of solidarity, also resulted in little influence of the *spirit* of solidarity claimed by article 122(1). This idea is supported by the fact that such a strict conditionality runs the risk of overlooking its effects over the social dimension⁶¹.

The European Central Bank, however, responded in a different manner. Its decision to buy Member State’s bonds was a form of unconditional solidarity, although this action cannot fall under the above defined notion of *economic solidarity* but rather *monetary solidarity*⁶². The role of the ECB did not end there though: with the goal of converting debtor countries into self-sufficient states, the Commission and the ECB enforced both structural reforms and austerity measures⁶³, leaving the social consequences of the economic situation behind.

The preceding shows a growing disparity between the appeal for social solidarity –in terms of redistributive measures– during a time of economic and financial crisis⁶⁴ and the political idea of solidarity focusing on fiscal adjustments. Even though a ‘cost-free solution’ to the crisis was not a feasible scenario, a non-reciprocal comprehensive solidarity –together with other measures– was considered necessary to end the crisis⁶⁵ without forgetting social and economic consequences.

In conclusion, on the one hand, there are economic cohesion systems and different funds that aim at correcting development asymmetries, which have a social impact; on the other hand, the management of the crisis which with its strict conditional solidarity, ignores its social effects and, in part, annuls the social effects of the cohesion funds. Therefore, the

⁶⁰ GRIMMEL, A., *op. cit.* p. 163.

⁶¹ SCHILLACI, A., ‘Gobierno de la economía y desarrollo democrático de la Unión Europea. Apuntes sobre el principio de solidaridad’, *Revista de Derecho Constitucional Europea*, 13(25), 2016.

⁶² *Ibid.*

⁶³ BÖRZEL, T.A. and RISSE, T., *op. cit.*, p. 89.

⁶⁴ WALLASCHEK, S., *op. cit.* p. 1040.

⁶⁵ FERNANDES, S. and RUBIO, E., ‘Solidarity within the Eurozone: how much, what for, for how long?’, *Notre Europe*, 51, 2012, p. 49-50.

crisis management with such lack of a spirit of solidarity has revealed ‘both the need for *and* the lack of solidarity in the context of the EU’⁶⁶.

D. Energy policy

Solidarity is one of the key elements in energy policy and even serves as ‘the heart of the Energy Union’⁶⁷, including gas, electricity and oil. Ensuring access to these resources across the EU is one of the main objectives in this field. Thus, article 194(1) TFEU establishes that the

Union policy on energy shall aim, in a spirit of solidarity between Member States, to: (a) ensure the functioning of the energy market; (b) ensure security of energy supply in the Union; (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and (d) promote the interconnection of energy networks.

The importance of solidarity in energy policy lies in different factors. Firstly, as a major energy importer⁶⁸, the Union plays a fundamental role in ensuring that supply reaches every region, in case of shortages. External crises can and do have a great impact on the transmission of energy towards the Union. For instance, in 2006 and 2009 the Russia-Ukraine gas crisis –where they could not agree on gas prices– resulted in a downfall in the amount of gas reaching Europe, particularly Western States that depend exclusively on Russian supply⁶⁹. To avoid similar situations, EU legislation, particularly Regulation 2017/1938,⁷⁰ insists on the importance of solidarity: Member States must take determined measures in case of supply disruption and follow a solidarity mechanism, which establishes that they must pump a certain volume of gas to a directly connected Member State requesting solidarity during the time of shortage. Since the Member State in need must first use all available national measures before activating this solidarity mechanism,

⁶⁶ GRIMMEL, A. and MY GIANG, S., *Solidarity in the European Union. A fundamental value in crisis*, Springer, 2017, preface.

⁶⁷ EUROPEAN COMMISSION, ‘A framework strategy for a resilient energy union with a forward-looking climate change policy’, COM (80), 2015.

⁶⁸ TOMASZEWSKI, K., ‘Energy solidarity in the European Union in the context of the particular interests of the Member States’, *Energy policy journal*, 21(2), pp. 5-18, p. 8.

⁶⁹ FLEMING, R., ‘A legal perspective on gas solidarity’, *Energy policy*, 21(2), pp. 102-110, p. 107.

⁷⁰ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, OJ L 280/1.

solidarity is presented as the last resort. Leaving aside the different possible exceptions that may prevent a State from fulfilling this solidarity obligation, the main problem with the regulation is that it imposes solidarity through legislation. A similar mechanism exists for oil in Council Directive 2009/119/EC⁷¹, which obliges Member States to create stocks of oil that shall be available in case of major disruption in supply. This solidarity mechanism implies that ‘Member States shall prohibit, and refrain from taking, any measure hindering the transfer, use or release of emergency stocks or specific stocks held within their territory on behalf of another Member State’.

Secondly, efficient transnational infrastructure is vital for ensuring supply: ‘[providing] the backbone for electricity and gas to flow where it is needed’⁷² is a new challenge according to the Commission’s communication ‘Energy 2020. A strategy for competitive, sustainable and secure energy’. However, the construction of the Nord Stream I—inaugurated in 2011— and II —expected to be operative in 2020— was a motive of deep disagreement between Member States that proved that energy solidarity exists only as a formality. In fact, the construction of a direct gas connection between Russia and Germany through the Baltic Sea constituted a threat for existing connections between Russia and Western States such as Poland or Slovakia, who feared a potential energy blackmail from Russia, on whom their supply strongly depends. Ignoring these arguments, Member States proved not only a lack of solidarity but also that national interests are still much stronger than written solidarity claims⁷³.

Lastly, it is worth mentioning that the Energy Union was created in 2015 with aims of creating a greater negotiation power with Russia than single countries which, in addition, depend exclusively on Russia’s supply. Even if the initial idea was to weaken Russia’s position by negotiating at EU level for gas price reduction, joint gas purchases are far from being implemented⁷⁴.

⁷¹ Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, OJ L 265/9.

⁷² TOMASZEWSKI, K., *op. cit.*, p. 11.

⁷³ *Ibid.* p. 12.

⁷⁴ *Ibid.* p. 11.

4. Characteristics and definition of solidarity among Member States

From these previous sections on the idea of solidarity in the four policies under examination, some conclusions can be drawn. Firstly, solidarity is not only claimed in the Treaties, but also on some secondary legislation and institutional texts. Such formal solidarity claims have been linked with different types of crisis. In any case, all of these challenges have made evident numerous disparities among Member States resulting in difficulties in reaching concrete measures to implement solidarity in a crisis scenario –to the point, that solidarity must occasionally be imposed in legislation through solidarity mechanisms that force Member States to assist each other, like in the case of energy or migration. The very same idea of an enforced solidarity is at odds with the idea of *solidarity* as a founding fundamental value that underpins the European integration process. The mission of the EU in this respect is, thus, to convince Member States of the many benefits of solidarity mechanisms⁷⁵. Without Member States trusting the value of solidarity, flexibility and discretion in its practical implementation will remain absent.

It is obvious that discouraging free-riding, while encouraging responsibility, especially through conditionality, are important objectives. Conditionality and reciprocity play, consequently, an important role. Furthermore, most of the claimed forms of solidarity are rather temporary, that is, usually being enacted during times of crisis. Although the economic cohesion redistributive system may be considered an exception, it can be seen as a convergence measure, as way to right the wrongs created by the European integration process and as a way for stronger economies to not need to bear with weaker economies. As such, redistribution in the EU cannot be considered a way of solidarity in the Union, even if it may play that role at a national level.

Despite formal claims for solidarity, Member States have difficulties implementing it and solidarity has not played a decisive role in leading the way out of before-mentioned crises. In fact, discrepancies dominate the political debate on solidarity. Asymmetric interests and contexts are clearly a factor resulting in different goals –for instance, while some States look for an effective way to deal with the flow of refugees, others simply do not consider it a topic; while some States have various energy sources, others depend exclusively on one supplier; even if every State wants a strong economy, their economic growth models are dramatically diverse. The only exception would be security and

⁷⁵ FLEMING, R., *op. cit.* p. 110.

defence. EU safety constitutes a clear long-term objective that finds few cultural or ideological obstacles capable of deviating Member States of its attainment, whereas other goals may follow a winding road due to deep discrepancies. Consequently, even if Steinvorth's requirements for solidarity are in place in the EU in a general way, a policy-specific approach shows that divergences in some matters run too deep for shared goals to exist, resulting in a lack of coordinated solidarity actions in most previous crises.

In the light of all the above, an *act of solidarity among Member States* will be defined as the EU's and/or Member States' conditional response to the request of one or more Member States for actions that help tackle a particularly difficult situation or crisis that cannot be effectively handled at the national level. This conditional response will only be able to occur if clear, common goals are set out and agreed upon first by all Member States in a way that recognizes and addresses incompatible discrepancies.

This stance is in agreement with Grimmel and My Giang, who affirm that 'solidarity is used instrumentally'⁷⁶ during crisis periods but that 'there is no such thing as solidarity unless it is practiced, regardless of the underlying definition of what it means to act in solidarity'⁷⁷.

III. Analysis of the European Council's position on solidarity

In this second section, a practical approach will be adopted. The European Union as a whole expresses its view on solidarity in the Treaties and further legislation. However, what the institutions view on this is must also be considered.

The current crises that the EU is confronting have revealed the degree to which there is dissent among the European institutions (...) about what solidarity actually means and how it should be translated into concrete measures⁷⁸.

As the institution providing the political priorities of the Union, the European Council (EUCO) will be the study subject. A practical analysis of the EUCO conclusions will shed some light on the position of this institution in relation to solidarity, allowing for a better understanding of the institutional defence of the value of solidarity. The EUCO has been chosen for two main reasons: firstly, because it defines the general political directions

⁷⁶ GRIMMEL, A., *op. cit.*, p. 170.

⁷⁷ GRIMMEL, A. and MY GIANG, S., *op. cit.*, introduction.

⁷⁸ GRIMMEL, A., *op. cit.*, p. 162.

and priorities of the European Union. In this sense, the EUCO may therefore be the main voice calling for a greater weight of the value of solidarity among Member States. Its call for solidarity should then result in further and better solidarity mechanisms in the legislative and non-legislative sphere. Secondly, as this paper deals with solidarity among member States, it is believed that the European Council, consisting of the heads of state or government of EU Member States, plays a crucial role in the promotion of this value. The question is whether it actively assumes such a role or not.

1. Methodology

One of the main goals of this paper is to ascertain the European Council's position on solidarity through its conclusions. Not being legislative texts, its conclusions represent the EUCO's position and view on different topics. Using the online public document register provided by the European Council website⁷⁹, the use of the term *solidarity* will be analysed in every retrieved EUCO conclusions. The quantitative analysis will be time limited and will go back to 2004 because the document register contains EUCO's conclusions only from this date onwards.

With the help of an Excel sheet, the following data from every retrieved resolution will be collected: year, subject, whether it refers to the Union or to third states and whether and how many times it contains the term *solidarity*. Based on our theoretical approach and definition of *solidarity*, the following hypotheses will be tested as variables in the data base:

1. Our main hypothesis suggests that the EUCO addresses solidarity among Member States on a constant basis, clearly showing its defence for a solidary Europe.
2. Secondly, it is believed that the relationship between solidarity and crisis expressed in our definition will be reflected in our data. As such, at least one resolution for each of the policies during the time of a respective crisis is expected. The crises analysed for this paper are as follows: the greater influx of migrants that took place

⁷⁹ EUROPEAN COUNCIL. Document register, Conclusions (2004 to present) available at https://www.consilium.europa.eu/register/en/content/out/?typ=SET&i=ADV&RESULTSET=1&DOC_ID=&DOS_INTERINST=&DOC_TITLE=&CONTENTS=&DOC_SUBJECT=CONCL&DOC_DATE=&document_date_single_comparator=&document_date_single_date=&document_date_from_date=&document_date_to_date=&MEET_DATE=&meeting_date_single_comparator=&meeting_date_single_date=&meeting_date_from_date=&meeting_date_to_date=&DOC_LANCD=EN&ROWSPP=25&NRROWS=500&ORDERBY=DOC_DATE+DESC (last accessed July 30, 2020)

from 2014 to 2016, the Euro crisis that took place mainly between 2008 and 2013, and the energy supply shortage happened in 2006 and 2009 (the period from 2006 to 2010). Other smaller related challenges will not be looked at. On the other side, for security and defence, a period of time cannot be delineated, but the presence of conclusions dealing with natural disasters and/or terrorist attacks in the EU is expected.

If the hypotheses are correct, it would mean that the EUCO has a strongly defined position defending a *de facto* solidarity among Member States, both as a horizontal value and in times of (solidarity) crisis.

2. Results

Aiming to analyse the European Council's position on the value of solidarity, the original data base includes N=83 cases, i.e. EUCO conclusions from 2004 to 2019. The variables considered here include year and subject of the conclusions, whether it refers to the EU or to third states and whether and how many times it includes the term *solidarity*. Additionally, five more variables –i.e. one for every four outlined crisis period of each of the above-mentioned policies and one for other topics– aim to test the hypotheses.

The original data base counts with 83 documents, including the conclusions of both ordinary and extraordinary meetings of the EUCO from 2004 to 2019. 45 of these documents refer to solidarity, that is 54.2%, while 38 (45.8%) do not include the term *solidarity*. The 45 documents dealing with solidarity among Member States will be examined here in order to know in which context and to what extent the EUCO defends the value of solidarity at the core of the Union.

So as to weight the significance of solidarity in the EUCO discourse and check hypothesis 1, the word count of the term *solidarity* is calculated. The following graph shows the number of conclusions including the term *solidarity* from 1 to 10 times from 2004 to 2019.

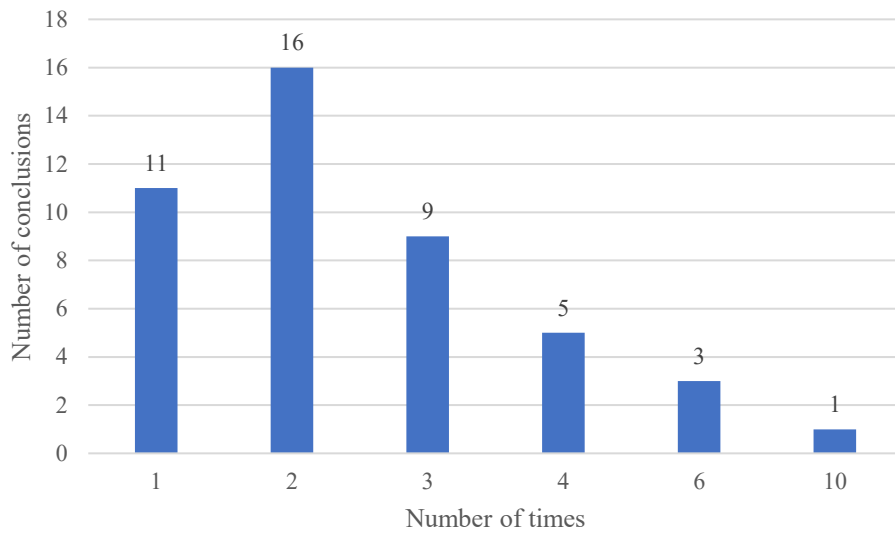


Figure 1: Number of conclusions including the term *solidarity* from 1 to 10 times

As observed in the graph, 16 documents (35.6%) mention the term *solidarity* twice and 11 (24.5%) mention it only once. As a consequence, 39.9% of the 45 conclusions include the term three or more times in the text, reaching a maximum of 10 times. Altogether, the term appears 118 times in 45 conclusions, an average of 2.6 times per document.

Regarding a temporal perspective, figure 2 shows the conclusions adopted for each year together with the word count on a yearly basis.

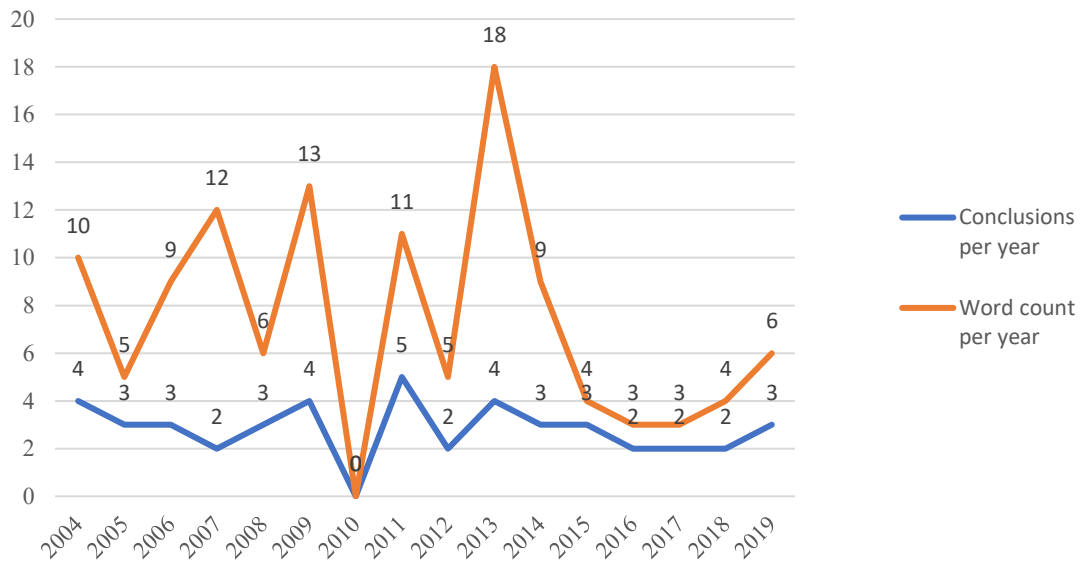


Figure 2: Appearance of the term *solidarity* on a yearly basis

The graph shows that both the number of conclusions and the word count of the term *solidarity* throughout the time period chosen for this analysis increases and decreases in

certain years. While the conclusions stay under 6 per year consistently, reaching a minimum of 0 in 2010 and a maximum of 5 in 2011 and 2012, the word count starts to decrease considerably from 2013 onwards, when the maximum is reached.

As for hypotheses 2, it establishes a relationship between solidarity and crisis periods related to the four analysed policies. Actually, a number of 41 appearances of the term *solidarity* in 22 documents can be counted in the context of a crisis period related to the policies under examination. In the framework of the policies of economy, migration, energy and security and defence, the term *solidarity* is found in EUCO conclusions also in a broad manner, that is, out of a crisis context. Figure 3 and figure 4 show the number of EUCO conclusions dealing with solidarity among Member States in the context of the above-mentioned policies both in and out of the context of a related crisis, and the word count, respectively.

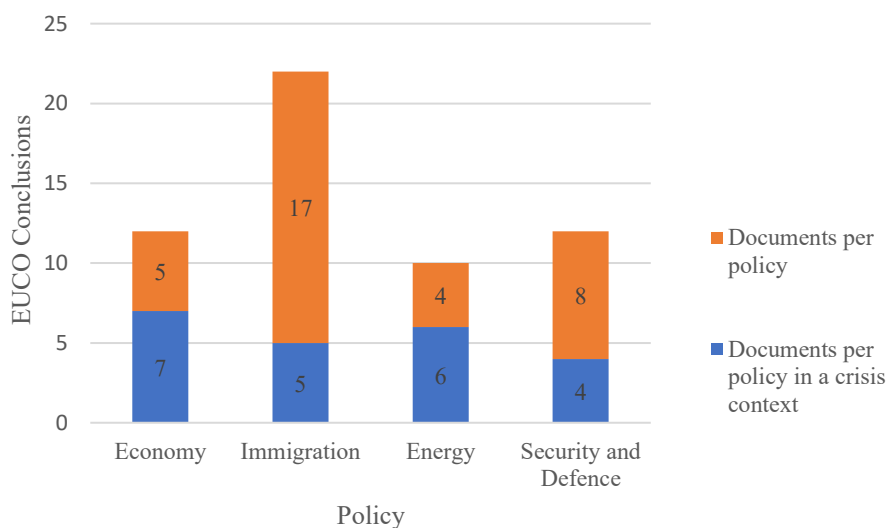


Figure 3: EUCO conclusions per policy.

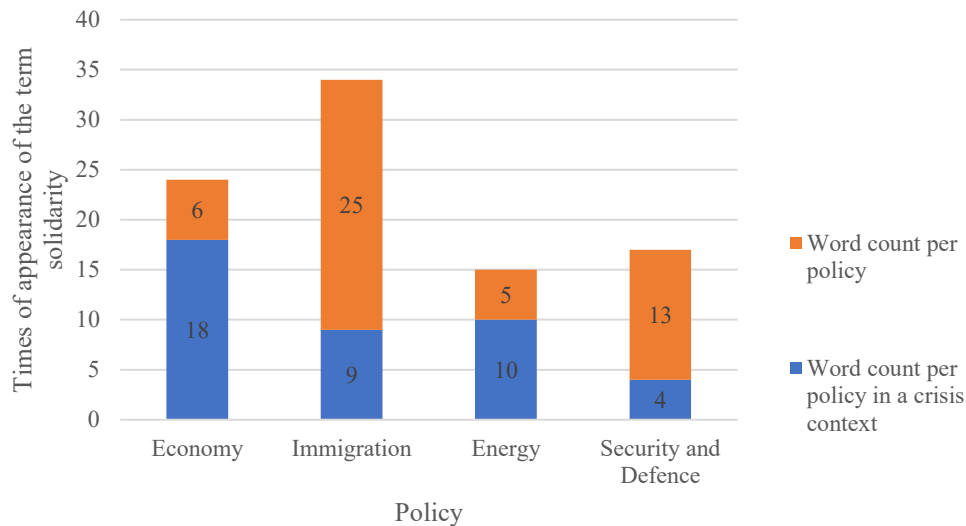


Figure 4: Word count of the term *solidarity* in EUCO conclusions per policy.

The EUCO has defended solidarity in each of the policies. In fact, most analysed conclusions raise one or more of these topics both in and out of a respective crisis. As for the word count, of the total of 118 times of appearance of the term *solidarity*, 90 can be classified into the four policies under examination, and 41 during a related crisis period. While energy is the field in which the term is least used, the term was found 34 times in 22 documents ascribing to the migration policy. However, if we focus on the results during crisis periods, the EUCO especially defended the value of solidarity in the economic crisis.

3. Analysis and discussion

The results will now be interpreted in consideration of the previous theoretical approach. It is assumed that these conclusions express a position in favour of solidarity, that is, a call or a claim for solidarity among Member States.

The fact that our analysis includes 45 (54.2%) of the total EUCO conclusions in the selected time period is already quite revealing. This result seems to suggest that the EUCO does defend solidarity among Member States in a constant basis. Therefore, at first glimpse, the results appear to imply that the value of solidarity among Member States play a decisive role for the EUCO. Consequently, these results seem to support hypothesis 1. This idea is also supported by the fact that solidarity was not only defended in times of

crisis, as figure 3 and 4 show, but also as a horizontal value in the policies under examination.

Concerning the temporal perspective, the number of conclusions increases and decreases during specific years, but remains in a constant range between 2 and 5 conclusions per year with the exception of 2010, a year in which no EUCO conclusions dealing with solidarity was published. Such results support hypothesis 1. On the other side, even if the word count is rather turbulent from a yearly perspective, the highest points coincide with crisis periods: for instance, one of the highest peak was reached in 2009, at the beginning of the Euro crisis and the highest peak was reached in 2013, that is, in the middle of the Euro crisis. This suggests that even if solidarity is defended in a constant basis, some crisis can result in a stronger demand for solidarity from the EUCO.

The claim for solidarity is highly concentrated on specific topics. This is because the term *solidarity* is found 118 times in only 45 conclusions, with an average of 2.6 times per resolution. Furthermore, 60.1% of the conclusions include the term only once or twice, meaning that the remaining 39.9% contain the remaining 75 times. This high concentration suggests that for the EUCO, solidarity is a substantially important value for the topics discussed in those concrete conclusions.

The results also seem to support hypothesis 2. There is, in fact, at least one conclusion related to each of the policies under examination in their respective outlined crisis periods. Such results indicate that crises in the areas of economy, migration, energy and security and defence find a response from the EUCO claiming for solidarity among Member States. This idea is supported by the fact that 41 of the 118 times of appearance of the term *solidarity* can be classified as being during crisis periods related to the four studied policies. Consequently, solidarity claims from the EUCO also arise during or after a challenge, difficult situation or crisis period in the mentioned areas.

When comparing the different fields, there are some significant differences. Even if challenges in the field of security and defence, especially natural disasters, occur more frequently than economic, migration or energy crises, it seems that the EUCO tends to defend the value of solidarity particularly in the three latter, maybe because they extend over time. Also, as exposed in the first part of this paper, the security and defence policy is the only policy in which solidarity fulfils the conditions to exist. It could be affirmed that the EUCO defends solidarity more timidly in the security and defence policy

precisely because this solidarity is already a fact, and there is for the EUCO no need to further develop this kind of solidarity among Member States.

Undoubtedly, the EUCO has claimed for solidarity in the four policies indicated by the Lisbon Treaty after their respective crises. The economic crisis, however, was the one in which the EUCO further defended the idea of a solidary Europe. In fact, the yearly perspective shows that the highest peaks were reached during the Euro crisis. This may be because the consequences of national difficulties in the economic area can be devastating to the overall EU's economy. On the other hand, it is especially interesting to note that in the migration policy, the EUCO referred to solidarity more often out of the context of the latest refugee crisis. This can be due partly to the fact that only this latest biggest challenge was taken into account in our analysis, disregarding smaller previous challenges. In fact, during the span of time from 2004 and 2019, different migratory and refugee waves have knocked to the Union's borders and, as shown in the theoretical part of this paper, solidarity still needs to be deeply developed in this field. It seems that the EUCO defence of solidarity in relation to migration tries to send the message that the European Union shall act to tackle the challenges that only few countries face, 'through no fault of their own'⁸⁰, due to their geographic realities.

In summary, the EUCO's position on solidarity is reflected in its conclusions. Given that the term *solidarity* appears frequently, the results indicate that the value of solidarity is a horizontal value for the European Council. Hence, results suggest that the EUCO embodies the horizontality of solidarity, since it had a high rate of appearance when compared to the total number of EUCO conclusions. It is worth noting that the high concentration of the term indicates that, in very specific topics, solidarity is of high importance for the EUCO. A further examination of the conclusions dealing with solidarity illustrates that the EUCO has so far not only claimed for solidarity in a general broad manner, but also shortly after a particular crisis or challenge. In particular, those crises take place within the framework of the policies where the current Treaty insists in the significance of solidarity. As a higher number of conclusions refer to migration, it is clear that the EUCO insists on the importance of this value in a policy in which not all member States are equally positioned because of their geographic context and which clearly needs to be further developed. On the other hand, the economic crisis was the one

⁸⁰ STEINVORTH, U., *op. cit.* p. 12.

that awoke a further defence of this value. As such, the EUCO refers to solidarity more frequently in those policies in which shared goals are rather blurred, and thus a further claim for solidarity is needed.

IV. Conclusion

The aim of this paper was, firstly, to provide for a definition of solidarity among Member States in the context of the European Union. Based on both a general and policy-specific approach, the features of solidarity in the EU have been outlined. The characteristics previously presented illustrate that even if the required conditions –particularly the existence of common objectives– are present for solidarity to exist in the European Union, this does not necessarily mean that those same conditions are in place for every EU policy. The previously described particularities for solidarity within the Union, however, do allow for a clear distinction of solidarity as a universal concept and as a value among the European States who collaborate at a supranational level.

Since solidarity among Member States is a broad concept which plays a particularly fundamental role in definite policies and which can be practiced in a variety of forms, the provided definition –constructed, precisely, upon these particular features of the EU– attempts to cover a wide-ranging casuistry. Such definition, which portrays solidarity as Member States’ last resource for tackling a challenging situation, illustrate the direct correlation between a crisis and the implementation of solidarity. This association implies that only sporadic difficult situations are capable of triggering solidarity. In this sense, the idea expressed by some scholars that a supranational economic redistribution system is an act of solidarity is abandoned, as far as such redistribution responds to other ends.

The new definition provided here does not neglect the horizontality of the term within varying situations that are independent of the EU competences and policies, which are liable for triggering a Member State requesting for solidarity. It is assumed that an institutional claim for a *de facto* solidarity could further develop such horizontality. In this sense, this research also aspired to conduct an empiric study of the institutional defence of solidarity. In particular, the European Council’s position was analysed.

In line with initial expectations, results suggest that the EUCO actively assumes its role as a highly influential institution in safeguarding solidarity as a horizontal value. Not only

is solidarity defended in a general manner; a quantitative analysis of its conclusions shows that the crisis periods related to the four policies under examination held a certain weight in the EUCO's claim for solidarity. More specifically, the migration policy arose a high defence of solidarity in the EUCO conclusions, while the security and defence policy – where, contrary to other fields, common goals are firmly shared by Member States – is the area in which solidarity is only timidly claimed by the EUCO. That may be because solidarity is already a fact in this field. Thus, the results suggest that the EUCO defends solidarity not only during a crisis period related to our four studied fields – particularly those in which common goals are blurred and therefore solidarity needs to be especially developed – but also in a constant basis and in a wider range of topics. As a consequence, results seem to support the idea that the EUCO has indeed a strong favourable position on the value of solidarity.

The conducted analysis seems to indicate that claims for solidarity as a horizontal value may mainly come from the European Council, and raises the question of whether or not this has an effect on the EU's overall defence of solidarity. Further research could examine whether other institutions have a more or less favourable position on solidarity. Undoubtedly, further research is needed in the areas of legislation and case law alongside other institutions, in order to gain an overall perspective on solidarity among Member States of the European Union.

Solidarity lies at the very base of the creation of the European Union and as a vital value, its inherent character should not be taken for granted.

References

- BIERMANN, F. ET AL., ‘Political (non-)reform in the euro crisis and the refugee crisis: a liberal intergovernmentalist explanation’, *Journal of European Public Policy*, 26(2), 2019, pp. 246-266.
- BÖRZEL, T. A. & RISSE, T., ‘From the euro to the Schengen crises: European integration theories, politicization, and identity politics’, *Journal of European Public Policy*, 25(1), 2017, pp. 83-108.
- CATHERINE, W. D. W., ‘Actual patterns of migration flows: the challenge of migration and asylum in contemporary Europe’, Grimmel, A. and My Giang, S., *Solidarity in the European Union. A fundamental value in crisis*, Springer, 2017, pp. 67-80.
- DE WAELE, H., ‘Disintegration from Within: Independence and Separatist Movements, the EU response and the Role of Solidarity’, Grimmel, A. and My Giang, S., *Solidarity in the European Union. A fundamental value in crisis*, Springer, 2017, pp. 119-130.
- DIEZ MORENO, F., *Manual de Derecho de la Unión Europea*, Pamplona, Civitas Ediciones, 2009.
- ERIKSEN, E. O., ‘Structural Injustice: the Eurozone crisis and the duty of solidarity’, Grimmel, A. and My Giang, S., *Solidarity in the European Union. A fundamental value in crisis*, Springer, 2017, pp. 97-118.
- FLEMING, R., ‘A legal perspective on gas solidarity’, *Energy policy*, 21(2), 2019, pp. 102-110.
- FRELAK, J. S., ‘Solidarity in European Migration Policy: the perspective of the Visegrád States’, Grimmel, A. and My Giang, S., *Solidarity in the European Union. A fundamental value in crisis*, Springer, 2017, pp. 81-96.
- GRIMMEL, A. and MY GIANG, S., *Solidarity in the European Union. A fundamental value in crisis*, Springer, 2017.
- GRIMMEL, A., ‘Solidarity in the European Union: Fundamental Value or "Empty Signifier"’, Grimmel, A. and My Giang, S., *Solidarity in the European Union. A fundamental value in crisis*, Springer, 2017, pp. 161-175.

HOCHRAINER, S., LINNEROOTH-BAYER, J. & MECHLER, R., 'The European Union Solidarity Fund: Its legitimacy, viability and efficiency', *Mitigation and Adaptation Strategies for Global Change*, 15(7), 2010, pp. 797-810.

JOUEN, M., 'Solidarité 2.0.', *Policy Paper Institut Jacques Delors*, 196, 2017.

KNODT, M. & TEWS, A., 'European solidarity and its limits: insights from current political changes', Grimmel, A. and My Giang, S., *Solidarity in the European Union. A fundamental value in crisis*, Springer, 2017, pp. 47-65.

MILLER, D., 'Solidarity and its sources'. Banting, K. and Kymlicka, W., *The strains of commitment: the political sources of solidarity in diverse societies*, Oxford University Press, Oxford, 2017, pp. 61-79.

SANGIOVANNI, A., 'Solidarity in the European Union', *Oxford Journal of Legal Studies*, 33(2), 2013, pp. 213-241.

SCHILLACI, A., 'Gobierno de la economía y desarrollo democrático de la Unión Europea: Apuntes sobre el principio de solidaridad', *Revista de Derecho Constitucional Europeo*, 13(25), 2016.

STEINVORTH, U., 'Applying the idea of solidarity to Europe', Grimmel, A. and My Giang, S., *Solidarity in the European Union. A fundamental value in crisis*, Springer, 2017, pp. 9-20.

STJERNØ, S., *Solidarity in Europe. The History of an idea*, Cambridge University Press, Cambridge, 2004.

STJERNØ, S., 'The idea of solidarity in Europe', *European Journal of Social Law*, (3), 2011, pp. 156-176.

THE ECONOMIST, *A walk down solidarity street*. 13 June, 2015p. 53.

TOMASZEWSKI, K., 'Energy solidarity in the European Union in the context of the particular interests of the Member States', *Energy policy journal*, 21(2), 2018, pp. 5-18.

TREIN, P., 'Federal dynamics, solidarity, and European Union crisis politics', *Journal of European Public Policy*, 27(7), 2019, pp. 977-994.

VILLAR, S. A., 'Refugiados e (in)solidaridad en la UE: la no aplicación de la Directiva 2001/55/CE', *Barcelona Centre for International Affairs*, 2017.

WALLASCHEK, S., 'Contested solidarity in the Euro crisis and Europe's migration crisis: a discourse network analysis', *Journal of European Public Policy*, 27(7), 2019, pp.1034-1053

Legislation and institutional communications

EUROPEAN COMMISSION, *Energy 2020. A Strategy for competitive sustainable and secure energy*, COM (2010) 639, 2010

EUROPEAN COMMISSION, *A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy*, COM (80), 2015.

EUROPEAN PARLIAMENT, *Briefing: The EU's mutual assistance clause. First ever activation of Article 42(7) TEU*, PE 572.799, 2015

Council Decision 2014/415/EU of 24 June 2014 of the arrangements for the implementation by the Union of the solidarity clause, OJ L 192/53

Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products, OJ L 265/9

Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard the security of gas supply and repealing Regulation (EU) No 994/2010, OJ L 280/1

Websites

EUROPEAN COMMISSION. European Civil Protection Pool, 2020, available at https://ec.europa.eu/echo/what/civil-protection/european-civil-protection-pool_en (last accessed 15 April 2020)

EUROPEAN COMMISSION. EU Civil Protection Mechanism, 2020, available at https://ec.europa.eu/echo/what/civil-protection/mechanism_en (last accessed 15 April 2020)

EUROPEAN COMMISSION. EU Solidarity Fund Interventions since 2002, 2019, available at https://ec.europa.eu/regional_policy/sources/thefunds/doc/interventions_since_2002.pdf (last accessed 15 April 2020)

EUROPEAN PARLIAMENT. EU Solidarity Fund, 2020, available at https://ec.europa.eu/regional_policy/en/funding/solidarity-fund/ (last accessed 15 April 2020)

EUROPEAN PARLIAMENT. Legislative Observatory, 2020, available at <https://oeil.secure.europarl.europa.eu/oeil/search/search.do?searchTab=y> (last accessed 4 May 2020)

Annex I: Sample of original data base

id	ref	web	subject	year	corpus	n times (w	EU(1)/Nor	Hip1 econ	Hip2 immi	Hip3 ener	Hip4 secu	Other
1	EUCO XT 200	https://data.	European Co	2019	0	0	0	0	0	0	0	0
2	EUCO 29/19	https://data.	European Co	2019	1	1	1	0	0	0	0	1
3	EUCO 23/19	https://data.	European Co	2019	1	2	1	0	0	0	0	2
4	EUCO XT 200	https://data.	Special meet	2019	0	0	0	0	0	0	0	0
5	EUCO 18/19	https://data.	: Special mee	2019	0	0	0	0	0	0	0	0
6	EUCO 9/19	https://data.	European Co	2019	1	3	1	0	1	0	1	1
7	EUCO XT 200	https://data.	Special meet	2019	0	0	0	0	0	0	0	0
8	EUCO 1/19	https://data.	European Co	2019	0	0	0	0	0	0	0	0
9	EUCO XT 200	https://data.	Special meet	2019	0	0	0	0	0	0	0	0
10	EUCO 17/18	https://data.	European Co	2018	0	0	0	0	0	0	0	0
11	EUCO XT 200	https://data.	Special meet	2018	0	0	0	0	0	0	0	0
12	EUCO XT 200	https://data.	Special meet	2018	0	0	0	0	0	0	0	0
13	EUCO 13/18	https://data.	European Co	2018	0	0	0	0	0	0	0	0
14	EUCO XT 200	https://data.	European Co	2018	0	0	0	0	0	0	0	0
15	EUCO 9/18	https://data.	European Co	2018	1	2	1	0	2	0	0	0
16	EUCO 1/18	https://data.	European Co	2018	1	2	1	0	0	0	1	1
17	EUCO XT 200	https://data.	European Co	2018	0	0	0	0	0	0	0	0
18	EUCO XT 200	https://data.	European Co	2017	0	0	0	0	0	0	0	0
19	EUCO 19/17	https://data.	European Co	2017	0	0	0	0	0	0	0	0
20	EUCO XT 200	https://data.	European Co	2017	0	0	0	0	0	0	0	0
21	EUCO 14/17	https://data.	European Co	2017	1	1	1	0	1	0	0	0
22	EUCO 8/17	https://data.	European Co	2017	1	2	1	0	1	0	0	1
23	EUCO XT 200	https://data.	Special meet	2017	0	0	0	0	0	0	0	0
24	EUCO 34/16	https://data.	European Co	2016	1	2	1	0	1	0	0	1
25	EUCO 31/16	https://data.	European Co	2016	1	1	1	0	1	0	0	0
26	EUCO 26/16	https://data.	European Co	2016	0	0	0	0	0	0	0	0
27	EUCO 12/16	https://data.	European Co	2016	0	0	0	0	0	0	0	0
28	EUCO 1/16	https://data.	European Co	2016	0	0	0	0	0	0	0	0
29	EUCO 28/15	https://data.	European Co	2015	0	0	0	0	0	0	0	0
30	EUCO 26/15	https://data.	European Co	2015	1	1	1	0	1	0	0	0
31	EUCO 22/15	https://data.	European Co	2015	1	2	1	0	2	0	0	0
32	EUCO 11/15	https://data.	European Co	2015	1	1	1	0	0	1	0	0
33	EUCO 237/14	https://data.	European Co	2014	0	0	0	0	0	0	0	0
34	EUCO 169/14	https://data.	European Co	2014	1	2	1	0	0	0	0	2
35	EUCO 163/14	https://data.	Special meet	2014	0	0	0	0	0	0	0	0
36	EUCO 147/14	https://data.	: Special mee	2014	0	0	0	0	0	0	0	0
37	EUCO 79/14	https://data.	EUROPEAN C	2014	1	6	1	1	4	1	0	0
38	EUCO 7/14	https://data.	EUROPEAN C	2014	1	1	1	0	0	1	0	0
39	EUCO 217/13	https://data.	EUROPEAN C	2013	1	6	1	5	1	0	0	0
40	EUCO 169/13	https://data.	EUROPEAN C	2013	1	3	1	1	2	0	0	0
41	EUCO 104/13	https://data.	EUROPEAN C	2013	1	3	1	2	0	0	1	0
42	EUCO 104/13	https://data.	EUROPEAN C	2013	0	0	0	0	0	0	0	0
43	EUCO 75/13	https://data.	EUROPEAN C	2013	0	0	0	0	0	0	0	0
44	EUCO 23/13	https://data.	EUROPEAN C	2013	0	0	0	0	0	0	0	0
45	EUCO 3/13	https://data.	: EUROPEAN	2013	0	0	0	0	0	0	0	0

