

SOLIDARITY IN THE EUROPEAN UNION

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RESUMEN:

La Unión Europea se basa en el principio de solidaridad. La solidaridad no solo es legítima, es esencial para una comunidad de Estados que procuran la paz y la seguridad, la libertad y el bienestar de sus pueblos. La solidaridad es una obligación legal, no sólo un recurso político. Exigir la solidaridad de los demás, pero no estar dispuesto a ser solidario es contrario a la idea de justicia y perjudica a la credibilidad de la Unión Europea.

ABSTRACT:

The European Union is based on the principle of solidarity. Solidarity is not only legitimate, it is essential for a community of states which pursue peace and security, freedom and welfare for its peoples. Solidarity is a legal obligation, not only a political expedient. To demand solidarity from others but being unwilling to render solidarity oneself is counter to the idea of justice and does damage to the credibility of the European Union.

PALABRAS CLAVE: *Multiculturalidad, interculturalidad*

KEYWORDS: *Multiculturality, interculturality*

The European Union regards itself a solidary community. The notion of solidarity appears in the constitutional treaties of the EU in various connections.

1. - SOLIDARITY IN PRIMARY EU LAW

As regards the Treaty on European Union, Paragraph 6 of the Preamble TEU states the desire of the Member States «to deepen the solidarity between their peoples while respecting their history, their culture and their traditions».

Article 2 EU states solidarity among the basic values of the Member States' pluralistic society.¹

¹ Art. 2 TEU: «The Union is founded on the values of respect for human dignity, freedom,

According to Article 3 Paragraph 3 Sub-Paragraph 3 « [the Union] shall promote economic, social and territorial cohesion, and solidarity among Member States. » Sub-Paragraph 5 makes solidarity a principle of the Union's foreign policy.² Equally, Article

democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. »

² Article 3 Paragraph 5: «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, in particular

21 Paragraph 1 provides that the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world, and expressly names in this context the principle of solidarity. In the same context, Article 24 Paragraph 2 bases the Common Foreign and Security Policy «on the development of mutual political solidarity among Member States». Paragraph 3 requires the Member States to «support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.»

In the Treaty on the Functioning of the European Union, solidarity is invoked in the context of the common policy on asylum, immigration and external border control (Article 67 Paragraph 2), to which the Treaty devotes its Article 80 TFEU providing that «the policies of the Union in the field of borders management, asylum and immigration [Articles 77 to 79] shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the member states when such measures are necessary».

Article 122 Paragraph 1 TFEU states: «Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.»

In addition, solidarity is invoked in the context of energy (Article 194 Paragraph 1), and in a special Title of the Treaty, the Solidarity Clause. The basic provision is Article 222 Paragraph 1 which states: «The

Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States».

2.- THE MEANING OF SOLIDARITY

Notwithstanding the fact that solidarity is enshrined in the constitutional treaties, there is a slight tendency to question its meaning, not so much by politicians than by commentators. «The notion of solidarity is frequently invoked in Europe – but it is not completely clear what it really means. More recently, this has become apparent in the Euro crisis. But there are also other European issues which are testing the usual avowals of solidarity.»³

In contrast, there seems to be little agreement on the meaning of solidarity. «Solidarity – is it only a sense of common ground and of conformity or a stance of vouching for each other? Is solidarity thus passively felt or actively rendered?»⁴

However, to what degree is explicit agreement on the meaning of this basic principle necessary to make implementation of the solidarity principle effective? «What part of solidarity requires better definition for all Member States and EU institutions to clearly understand it and agree on its advancement: is it the principle itself; its content; its goals? Is it better to leave some elements of the definition open to the context – both temporal and situational (including aspects such as geography; scope; number of Member States involved) in the

the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.»

³ ECKART, D.: *Stratenschule, Solidarität in Europa: Wie solidarisch soll Europa sein? in: Bundeszentrale für Politische Bildung (ed.), Eurotopics, 2011.*

⁴ *Ibid.*

need for solidarity and extension of it; political etc.)?»⁵

«To some extent this invokes the proverbial chicken and egg: clearly the drafters of the Treaty found it optimal or convenient not to fully define solidarity, even if some suggested and continue to suggest that a definition could theoretically facilitate the achievement of the principle. Or perhaps they rather surmised that defining solidarity too precisely might impede its actual development. As was explained in Chapter 1, amendments to include a definition or exclude certain aspects of solidarity were not adopted.»⁶

«By leaving ‘solidarity and responsibility sharing’ as broad concepts, it [must] concluded [...] that the drafters intended Article 80 to apply to all matters coming under border, asylum and immigration management. Even if the history of the notions are traceable to ‘burden sharing’ in asylum law, and the relevance for border management was explicitly acknowledged, the principles are now seen to be generally applicable. Suggestions for amendments to limit it to more specific matters in the policy area of border management, asylum and migration, were not adopted.»⁷

What is said here with regard to border, asylum and immigration management, applies *mutatis mutandis* to other areas where the question of solidarity comes up. Integration and solidarity are inextricably connected.

«On the European level this notion is since Maastricht particularly supplemented by idealistically phrased common European norms and values, uniting not only its

member states but now also its citizens. Yet solidarity means different things to different people and different governments. Any political, legal and even moral definition of the term can be re-defined and consequently contested by the (political) opponent. As an important factor of European integration it is consequently and implicitly connected to the notion of (European) legitimacy. Yet it is decisively hampered by national considerations and (mental) borders.»⁸

The following questions must be answered: «What is solidarity within the framework of the European Union? How is the notion of European solidarity defined? What are the legal, political, economic and moral limits of European solidarity? How legitimate is European solidarity?»⁹

«In a recent study, the Paris-based think tank Notre Europe proposed two conceptual distinction of European solidarity: one based on reciprocity and another based on enlightened self-interests.¹⁰ These two flavours of Solidarity are either defined by the rationale of a simple transactional arrangement, rooted in a joint insurance policy against the possibility of a specific calamity or by the rationale of self-interest, which leads governments to identify its own national goals in a shared strategy of integration which consequently secures the stability and viability of the common project.¹¹ In other words: European solidarity is either the concept of shared «homework» with equal partners pooling common risks or the diversified support from stronger member states for weaker member states in

⁵ DIRECTORATE GENERAL FOR INTERNAL POLICIES – POLICY DEPARTMENT C: CITIZEN’S RIGHTS AND CONSTITUTIONAL AFFAIRS – CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS, *The Implementation of Article 80 TEU on the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States in the field of border checks, asylum and immigration*, Study, 2011, p. 22.

⁶ *Ibid.*, p. 99.

⁷ *Ibid.*, p. 99.

⁸ RASPOTNIK, Andreas; VENTURA, Marine Jacob y VENTURA, Laura: *The issue of solidarity in the European Union*, TEPSA BRIEF, 2012, p. 1.

⁹ *Ibid.*

¹⁰ FERNANDES, S. y RUBIO, E. (2012). *Solidarity within the Eurozone: how much, what for, for how long?* Report by Notre Europe. Retrieved 16 May, 2012 from http://www.notre-europe.eu/uploads/tx_publication/SolidarityEMU_S.Fernandes-E.Rubio_NE_Feb2012.pdf

¹¹ *Ibid.*

order to create or sustain European stability.¹² »¹³

«Yet solidarity is not a one-way approach but has to include commitments of responsibility by the country receiving aid. In that regard Vignon emphasized the intrinsic link between solidarity and responsibility and noted that solidarity only grows stronger with consequent responsibility. »¹⁴

3.- SOLIDARITY AS AN ESSENTIAL OF EUROPEAN CREDIBILITY

The allegedly diffuse meaning of solidarity serves as a pretext to excuse oneself from being solidary. If called upon to show solidarity, those who are reluctant to do so pretend that they do not really know what it is and what obligations it entails. Those who do so – whether politicians or scholars – feel supported by a good part of European citizens for whom solidarity often is a one-way road: demanding solidarity from others but unwilling to render solidarity themselves. Clearly, solidarity may imply sacrifices. «And sacrifice» does not appear in the glossary of European integration.

The reason for this was stated as follows: «The European Union owes its existence to the efforts of political elites who could count on the passive consent of their more or less indifferent populations as long as the peoples could regard the Union as also being in their

¹² *Ibid.*

¹³ RASPOTNIK, Andreas; VENTURA, Marine Jacob y VENTURA, Laura: *The issue of solidarity in the European Union*, TEPESA BRIEF, 2012, p. 1. *et seq.*,

<http://www.tepsa.eu/download/TEPSA%20Policy%20Paper%20The%20issue%20of%20solidarity%20in%20the%20European%20Union.pdf>

¹⁴ *Ibid.*, p. 2, fn. 5; with reference to VIGNON, J: *Solidarity and responsibility in the European Union*, Notre Europe Policy Brief, No. 26, June 2011. Retrieved June 7, 2012 from http://www.notre-europe.eu/uploads/tx_publication/Bref27_JVignon_EN.pdf

economic interests, all things considered. The Union has legitimized itself in the eyes of the citizens primarily through its outcomes and not so much by the fact that it fulfilled the citizens' political will. »¹⁵

«Thus, to the present day, there remains a gulf at the European level between the citizens' opinion and will formation, on the one hand, and the policies actually adopted to solve the pressing problems, on the other. This also explains why conceptions of the European Union and ideas of its future development have remained diffuse among the general population. Informed opinions and articulated positions are, for the most part, the monopoly of professional politicians, economic elites, and scholars with relevant interests; not even public intellectuals who generally participate in debates on burning issues have made this issue their own. »¹⁶

«The concept of European integration seems to fade in the light of the current economic and financial crisis, scrutinised by the European public and some of its academic representatives. Hence, its fundamental elements of discipline, solidarity and legalization start to crumble. Yet it is particularly the moral aspect of solidarity that provides the basis for subsequent political solidarity as outlined above. Although significant progress addressing the (economic) crisis has been made, only history will judge if the specific steps taken have put the European Union back on track. However, opinions differ on re-tracking European integration, bringing face to face the discrepancy between public perception

¹⁵ HABERMAS, JÜRGEN: *Democracy, Solidarity And The European Crisis, in: Social Europe*, 2013. Retrieved from <http://www.socialeurope.eu/2013/05/democracy-solidarity-and-the-european-crisis-2/>, 6 August 2015, Part I.

¹⁶ *Ibid.*, with reference to LACROIX, Justine; and NICOLAIDES, Kalypso: *EUROPEAN STORIES: INTELLECTUAL DEBATES ON EUROPE IN NATIONAL CONTEXTS*, Oxford, Oxford University Press, 2010.

and political and academic 'knowledge', demonstrating that European politics run past its own citizens.»¹⁷

The European «citizen's perception of solidarity is intrinsically linked to the respective national environment they are exposed to, yet being subtly different between different policy agendas. However is the notion of shared European solidarity an exhausted belief undermined by national self-interests throwing mutual European responsibility back and forth? The European Union's currently widespread perceived credibility gap can only be closed if the concept of European solidarity as the national calculation of implementing self-interests can be detached from these considerations and rather become a borderless, truly European concept.»¹⁸

The «lack of solidarity» has been said to be the «major hindrance» for the integration Europe as a «supranational democracy».¹⁹

«What does it mean to show solidarity, and when are we entitled to appeal to solidarity?» On the basis of conceptual analysis, JÜRGEN HABERMAS has undertaken to exonerate appeals to solidarity of accusations of moral stuffiness or misplaced good intentions that the 'realists' want to level against them. Moreover, showing solidarity is a political act and by no means a form of moral selflessness that would be misplaced in political contexts. Solidarity loses the false appearance of being unpolitical once we learn how to distinguish obligations to show solidarity from both moral and legal obligations. 'Solidarity' is not synonymous with 'justice', be it in the moral or the legal sense of the term.»²⁰

¹⁷ *Ibid.*, p. 6.

¹⁸ *Ibid.*, p. 6.

¹⁹ HABERMAS, Jürgen: *Democracy, Solidarity And The European Crisis*, in: *Social Europe*, 7 May 2013. Retrieved from <http://www.socialeurope.eu/2013/05/democracy-solidarity-and-the-european-crisis-2/>, 6 August 2015. Part III.

²⁰ *Ibid.*, Part III.

« [I]t is the trust-founding *Sittlichkeit* of informal social relations that, under the condition of predictable reciprocity, requires that the one individual 'vouches' for the others. Such 'ethical' obligations rooted in ties of an *antecedently existing* community, typically family ties, exhibit three features. They ground exacting or supererogatory claims that go beyond moral or legal obligations. On the other hand, when it comes to the required motivation the claim to solidarity is less exacting than the categorical force of a moral duty; nor does it coincide with the coercive character of law either. *Moral commands* should be obeyed out of respect for the underlying norm itself, without regard to the compliance of other persons, whereas the citizen's *obedience to the law* is conditional on the fact that the sanctioning power of the state ensures general compliance. Fulfilling an *ethical obligation*, by contrast, can neither be enforced nor is it categorically required. *It depends instead on the expectations of reciprocal favours — and on the confidence in this reciprocity over time.* »²¹

«In this respect, unenforceable ethical behaviour also coincides with one's own medium or long-term interests. And it is precisely this aspect that *Sittlichkeit* shares with solidarity. However, the latter cannot rely on pre-political communities such as the family but only on political associations or shared political interests. Conduct based on solidarity presupposes *political* contexts of life, hence contexts that are legally organized and in this sense artificial ones. This explains why the credit of trust presupposed by solidarity is less robust than in the case of ethical conduct because this credit is not secured through the existence of a *quasi-natural* community. What is missing in the case of solidarity is the moment of conventionality in antecedently existing ethical relations.»²²

Jürgen Habermas rejects «by the way» a connection between solidarity and nationalism, because nationalism obscures

²¹ *Ibid.*, Part III.

²² *Ibid.*, Part III.

the difference between political solidarity and pre-political bonds. It appeals without justification to this kind of communitarian bond when it assimilates the civic solidarity of *Staatsbürger* to the «national solidarity» of *Volksgenossen* (tying people of the same descent).²³ Civic solidarity goes beyond this kind of national solidarity and extends to all citizens across national lines, whether they belong to a national majority or a national minority.

Apart from the fact that reasonable expectations have been considered to be the basis of international obligations and thus of legal relevance by Myrus S. MacDougal, the head of the Yale Sociological School of International Law long ago,²⁴ the distinction made by Jürgen Habermas between law, morality, and ethics (*Sittlichkeit*) obscures the fact that norms which originally might have only been moral or ethical ones may have been transformed into legal ones. This is certainly true for solidarity, which in Article 2 TEU appears among the fundamentals of the Union and its Member States and which is applied by the Treaties in various contexts. There is thus no need to engage the special figure of ethics (*Sittlichkeit*) for the purpose of providing a basis for solidarity, a basis which, by the way, is a far-fetched one.

Thus, solidarity is expressed by doing something, to behave in a solidary manner. This happens only on the basis of a feeling of belonging together. Solidarity based on social cohesion (whether common national heritage, membership in a party, in a trade union or in a (sports or country) club must be distinguished from general human solidarity.²⁵

Natural and other catastrophes (e.g. wars or civil wars) cause a general human solidarity

rendered to people with whom we have nothing in common but who are in a much worse situation. However, this kind of solidarity is rendered on a purely voluntary basis and to an extent decided by us individually. Since, as a rule, it is rendered only out of our plenty or abundance, it does not impose a sacrifice on us and can practically be rated as costing nothing. In contrast, solidarity with persons or social groups to whom there exists a certain bond may be more exacting and not limited to just giving alms.²⁶

Thus, « [w]hat lends solidarity [...] a special character is [...] the *offensive character* of pressing or even struggling for discharging the promise which is invested in the legitimacy claim of any political order. This forward-looking character becomes particularly clear when solidarity is required in the course of social and economic modernization, in order to adjust the overstretched capacities of an existing political framework, that is to adjust eroding political institutions to the indirect force of encompassing systemic, mainly economic, interdependencies that are felt as constraints on what should be in the reach of the political control of democratic citizens. »²⁷

«European states assumed their present-day form of welfare states only after the catastrophes of the two world wars. In the course of economic globalization, these states find themselves in turn exposed to the explosive pressure of economic interdependencies that now tacitly permeate national borders. Systemic constraints again shatter the established relations of solidarity and compel us to reconstruct the challenged forms of political integration of the nation state. This time, the uncontrolled systemic contingencies of a form of capitalism driven

²³ *Ibid.*, fn. 15.

²⁴ MYRES, Cf. & MCDUGAL, S.: *International Law, Power, and Policy: A Contemporary Conception*, in: *Recueil des Cours*, Vol. 82, 1953, pp. 139-259.

²⁵ STRATENSCHULTE, Eckart D.: *Solidarität in Europa: Wie solidarisch soll Europa sein?*, Bundeszentrale für Politische Bildung (ed.), *Eurotopics*, 2011.

²⁶ *Ibid.*

²⁷ HABERMAS, Jürgen: *Democracy, Solidarity And The European Crisis*, in: *Social Europe*, 7 May 2013. Retrieved from <http://www.socialeurope.eu/2013/05/democracy-solidarity-and-the-european-crisis-2/>, 6 August 2015. Part III.

by unrestrained financial markets are transformed into tensions between the member states of the European Monetary Union. If one wants to preserve the Monetary Union, it is no longer enough, given the structural imbalances between the national economies, to provide loans to over-indebted states so that each should improve its competitiveness by its own efforts. What is required is solidarity instead, a cooperative effort *from a shared political perspective* to promote growth and competitiveness in the Eurozone as a whole. »²⁸

«Such an effort would require [economically stronger Member States, i.e.] Germany and several other countries to accept short and medium-term negative redistribution effects in its own longer-term self-interest – a classic example of solidarity, at least based on the conceptual analysis [...] presented. »²⁹

The question for the reach of European solidarity embodies a great challenge that calls for more public discussion and which, in connection with the EURO crisis, should indeed be discussed because this question also involves the future of the European Union. Some say if the readiness for solidarity of the European citizens is overstrained this would carry the danger of also overstraining the European Union, and even the European Integration project as such.³⁰ But it does not make sense to speak of the solidarity of the European citizens as if all European citizens would all be in the same position with regard to this issue. Citizens in those Member States who presently have to rely on the support of other Member States will be in favour of solidarity. If we speak of overstraining the solidarity of European citizens, we think only of citizens in the donor countries. The statement must therefore be rephrased in the following way: if the readiness for solidarity of the European citizens in the better-off Member States is

overstrained this would carry the danger of also overstraining the cohesion of the European Union, and even the danger of overstraining the European Integration project as such.

But such rephrasing of the statement divests it from its seeming neutrality. In its original form, the statement conveys the impression that that the degree of solidarity among the European citizens is a kind of natural resource the scope of which is independent from the citizens' will. But the contrary is true. It is the decision of each of the European citizen whether and to which extent he will act in a solidary manner.

Moreover, to speak of the solidarity of European citizens at large obscures the fact that it is not *the* European citizen whose solidarity is in question, but that of those European citizens who are called upon to accept solidarity as an obligation – whether legal, moral or ethical – towards those who are in a situation that makes them dependent on the solidarity of others. Those who claim that their solidarity is being overstrained either have not understood what is reasonably expected from them or are not willing to live up this obligation. The notion of the European citizen overstrained by the amount of solidarity due is a typical creation of writers from those Member States which are donor countries; those who are in need of solidarity would not use such a phrase, except if criticizing or deploring the lack of solidarity on the part of those whose solidarity is demanded.

The statement under discussion should thus be rephrased to run as follows: «If the reasonable expectations in solidary help held by one part of European citizens (because they are in need) is not fulfilled by the solidarity of the other part of European citizens (who are in a position to render help), the patience of the former will sooner or later be overstrained, and this would carry indeed the danger of also overstraining the European Union, and even the European Integration project as such. »

²⁸ *Ibid.*, Part III.

²⁹ *Ibid.*, Part III.

³⁰ *Ibid.*

Most of the writings on European solidarity in the meaning of solidarity within the European Union obscure rather than elucidate that meaning. Solidarity is a legal obligation, not only a political expedient. If citizens have not understood this fact, or are unwilling to accept it, they must be set right by those who have the means to do so: (academic and other) writers, politicians, and the media. If they should fail to do so, it would be more difficult to live up to the Member States' obligation of solidarity. But such failure would not divest solidarity of its character as a binding obligation under European Union law.