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European energy solidarity: strengthening the EU's *crisibility*

By default, when the EU is hit by a crisis, member states tend to have a national sovereignty reflex. When Italy was hit hard by the Covid-19 pandemic, the first reaction was to close its borders and restrict the export of urgently needed medical equipment. National interest superseded the call for European solidarity. Although member states have repeatedly managed to unite and – in the face of the poly-crisis – developed a certain *crisibility*, no one would have been surprised if member states had preferred to seek their own advantage when Russia started the war in Ukraine on 24 February 2022. Nearly one year later, member states are (still) united – some declaring this as never before – and a gas or electricity crisis has so far been averted.

This unity, which certainly threatened to crumble in the face of Hungarian opposition, German hesitancy, and the different approaches to dealing with the war, leads us to the question of what is different this time? Certainly, the EU's identity has been profoundly challenged by the war since its peacekeeping credentials – the EU is even a recipient of the Nobel Peace Prize – were perceived to be at risk. Was it this identity-threatening experience that united the member states? Or was it the recognition of Russia as a common foe that strengthened the bond between them?

SOLIDARITY AS AN INSTRUCTIVE GUIDING ACTION

Beyond these external and identity-related pressures, we might find that there is more to the story if we look at internal EU dynamics. In fact, we might discover a comparatively different way in which the crisis has

been handled at EU level. From the onset *European solidarity* was [postulated as an instructive guiding action](#)^[1] between the member states although this was never taken for granted. Solidarity has not only been enshrined since the beginnings of the European Union as one of its core principles, but it has also evolved over the last few years as a legal norm. In line with these observations, we can identify two functions of solidarity.

First, solidarity has a purely *normative-declarative function* as it is used to make an appeal to groupness, which illustrates the cohesive function of solidarity. It is fundamentally connected with the [foundation](#) of the European Union^[2] and has been triggered in each and every crisis to create unity and to make nation-states aware of their traits as EU member states. Solidarity is at EU level a positively connoted norm in the main, although member states have not always lived up to their promises. At EU level solidarity as a declarative norm has not, therefore, been sufficient to make member states act in solidarity. Until today the Schengen and Euro crises have affected a negative connotation of solidarity making the lack of this the fundamental crisis-inducing factor for the EU. We should consequently not forget that solidarity is not only group- but also issue-specific.

Second, solidarity as a *legal norm* did not just emerge from nowhere. If we look back at the development of European energy policy, we see that solidarity played a progressive role as of 2005 when Poland entered the EU stage. Poland used its influence in the European Council to insert solidarity in the newly introduced energy article in the Treaty of Lisbon. Energy article [194 TFEU states](#) that European energy

[1] <https://www.auswaertiges-amt.de/en/newsroom/news/weimar-triangle/2552384>

[2] Robert Schuman, 9 May 1950, Declaration: <https://www.robert-schuman.eu/en/declaration-of-9-may-1950>

policy should be carried out in the spirit of solidarity. In times of crisis [art. 122 TFEU](#) is equally important as it enables energy solidarity if severe supply difficulties arise. However, obligations cannot be derived from primary law. Instead, several actors at European level have supported the implementation of solidarity in secondary law.

In this context, we should not forget some key events. In 2006 and 2009, member states were hit by two gas crises that occurred due to the Russian-Ukrainian gas conflicts. Member states realized that they are equally affected by supply disruptions as Eastern European member states. Also, infrastructure was targeted, hence demonstrating the vulnerability of gas supplies[3]. The European Council was aware of these multiple challenges and – as it had already agreed to develop a joint energy policy for Europe in 2005 – was ready to focus on supply security. Consequently, already at that time, European awareness was growing to acknowledge that energy policy also means security policy. But member states have had very different approaches. Some, Germany for example, focused on prices to support the competitiveness of its industry. External supply security was not problematized to the same extent. Others, such as Latvia, chose to reduce their dependence on Russia by investing in LNG terminals. These different decisions have not been based solely on national interests but largely on past infrastructure developments which put certain constraints on the energy system. The European Council shared the concern that the Baltic states were fully integrated into the Russian electricity grid, which was followed by the strategy to connect the Baltic 'energy island' with continental Europe, which is about to be finalized.

THE INSEPARABILITY OF SOLIDARITY AS A POLITICAL AND LEGAL NORM

In relation to these events, we can see different legislative acts which underline the importance of solidarity to varying degrees. Although the [trans-European networks](#) (TENs), that funded interconnecting European pipelines, might be the clearest and oldest example of financial solidarity in energy policy as

a practice, solidarity has been evolving in multiple directions in secondary law. We can observe an institutionalization process of solidarity over time, which as such clearly affects today's actions.

The gas crises led to the most important changes concerning energy solidarity. The internal market directive of 2009 ([Directive 2009/73/EC](#)) and the security of supply regulation of 2010 ([Regulation \(EU\) No 994/2010](#)) emphasized the need for regional solidarity. The idea was simple: in the event of supply disruptions, member states which are regionally connected should not hamper the free flow of the gas market, but instead support each other. The inclusion of solidarity into secondary law was in this sense a reply to the selfish behavior of some member states during the precedent gas crises when some of them prevented free flows thus leaving others literally in the cold. Member states should leave the power to the market and, in addition, bolster their supply security by investing in transnational infrastructure including reverse flows that permit some flexibility. In terms of external energy supply, member states should diversify their suppliers and supply routes in order to be able to react promptly in case of a supply crisis. As the current energy situation illustrates, supply-side measures, on the one hand, are limited by the existing infrastructure, and demand-side measures, on the other hand, are very challenging to organize and push through on the societal and economic levels.

In the face of the crisis in Crimea and eastern Ukraine in 2014, member states reiterated their resolve to guarantee the security of supply in the event of a gas supply disruption. [ENTSOG](#)[4] presented a case scenario[5] which simulated the disruption of the Russian gas supply thereby underlining the necessity to act cooperatively if ever such an event happened. In response to the perception of the evolving threat to energy, member states agreed to establish the Energy Union, which should further streamline a European energy policy in a spirit of solidarity. These developments led to the reform of the security of gas supply regulation in 2017 ([Regulation \(EU\) 2017/1938](#)). The SoS regulation strengthened solidarity in an unprecedented manner making it the central aspect of

[3] In 2006, the gas pipeline to Georgia was sabotaged leading to severe supply disruptions

[4] European Network of Transmission System Operators for Gas

[5] https://eepublicdownloads.entsoe.eu/clean-documents/events/2014/141202_TSO_Cooperation_and_Security_of_Supply_The_Ukraine_Crisis_and_EUS_SoS_Olivier%20Lebois.pdf

the new regulation. In the event of a severe supply disruption, which would occur when a member state could no longer provide its own protected customers (for example citizens and hospitals) with gas, other member states would need to cut their own gas supply to provide gas to the member state in need. Although member states needed to conclude bilateral agreements to make this legislation work in practice, it was deemed a major step forward in the European organization of gas supply security. Member states thus have developed a form of *insurance solidarity* to strengthen the security of energy supply together.

How is it that member states came to agreement on a regulation such as this? We should not forget that before Russia started the war in Ukraine, the main perception in Germany and France was that Russia was a reliable energy partner. In particular, in Germany, the narrative was upheld that even in times of the Cold War there had never been any disruption in supply. We now know that this was already one major failure in the thought experiment of what happens in a crisis: we should not only ask if the other would use energy as a political weapon, but we should also ask what our capacity is to act in a situation like this?

The clue to understanding how solidarity became such an important tool, going beyond empty promises, is to look at the changes that have occurred in the political background. Most importantly, member states have made self-responsibility the prerequisite for solidarity, meaning that member states should not only rely on European solutions in the event of supply disruptions. In other words, the ban on free riding was seen as essential to establish solidarity. Also, member states wanted to ensure that solidarity is not charity requiring reciprocal duties. Consequently, every member state had the responsibility to introduce a range of supply security measures to prevent a crisis in the first place. These joint but individual efforts had a positive impact on the trust relationship between member states which enabled the institutionalization of solidarity.

Although this sounds like the happy ending to a great European integration story, we should not forget the bumpy parts. The debate around Nord Stream

2 illustrates how trust was endangered by national interest-based decision-making within the European Union. However, the [European Court of Justice](#) argued that it was necessary to hedge the national interest and that solidarity is a legal principle that has to be applied^[6]. The court case on the use of [the OPAL gas pipeline capacity](#), which connects Nord Stream 1 with the central European gas grid, exemplifies that solidarity means taking into account the interests of other member states. This is particularly interesting, as it turns solidarity into more than a tool to ensure cooperative behavior during a crisis. Solidarity in this case resembles rather more a federal principle ensuring that the constituent units do not harm each other (*behavioral solidarity*). What emerges from this assessment is not that negative consequences can ever occur. The challenge is thus as old as the European Union itself: raising the awareness of the fact that different interests exist and that these interests should be equaled out in a solidarity community.

SOLIDARITY IN TIMES OF CRISIS: NEW CHALLENGES

These developments provide a different perspective on the [EU's handling of the current energy crisis](#). Although we have seen a great deal of debate on what to do and whom to blame in the face of the energy supply situation, the year 2022 can allow us to be guardedly optimistic about what to expect subsequently in terms of the EU energy policy. Member states did not play the blame game throughout, probably because Germany lived up to the new reality and proved that it could deal with the supply situation, hesitantly but consequentially, taking up self-responsibility to enable fast-track legislation and consensual negotiation outcomes. Member states rightly expressed their intense discontent with Germany's past decisions, not only in the energy sector but also with its perceived self-righteous behavior during the Euro crisis. It was also felt necessary to point out unreasonable and selfish actions because Germany increasingly expressed its wish to take up a leadership role. Nevertheless, it was broadly accepted to stand together in solidarity, to oblige gas storage, save gas and plan for joint gas purchases. Tools that were not supported in

[6] <https://curia.europa.eu/juris/liste.jsf?num=C-848/19&language=en>

the past. The prudence of some member states is understandable as they were – and still are – not sure if Germany's proclaimed *Zeitenwende* was only empty words or a substantial game changer to end Russian energy supplies and to strengthen renewable energies.

The recent development regarding individual financial support in response to high energy prices draws our attention to a different solidarity perspective compared to the previous understanding of the main tasks comprising European energy policy. In the past, energy and social policies were strictly separated at European level apart from some cautious attempts to discuss the measurement of energy poverty. This is not surprising given the very limited possibilities and weak resolve to pursue social policy in a common European approach. However, this crisis is a perfect illustration that financial solidarity is a different approach from "insurance solidarity" or "behavioral solidarity", which has been mostly followed in European energy policy so far. Growing pressure due to high gas prices has become increasingly noticeable over time, with some member states fearing a wave societal anger and thus diminishing support for Ukraine. In response, various support systems have been established to alleviate pressure from citizens and domestic industry. Again, the German government's "double whammy" was interpreted as a lack of solidarity by other member states that were hoping for financial relief. Instead,

the impression was given that the German go-it-alone approach might even cause economic damage. It remains to be seen whether the price cap in combination with joint gas purchasing can dispel growing concerns.

This situation is not limited to the current circumstances and similar developments will occur regarding the green and just transition. The French *Yellow Vest* movement has given us a foretaste of how social issues are linked to the green transition. Since the latter and the vision of the EU as a climate-neutral continent is a joint political and economic project, social policies will also have an increasing transnational dimension. The EU member states will eventually need to raise more than just a limited and narrowly defined amount of funds to meet their 2050 climate goals whilst simultaneously ensuring economic prosperity and social welfare. Today, one could say, energy policy is not only security policy, but it is also climate and social policy. Looking to the not-too-distant future, we will therefore see an increasing need for social solidarity, which will certainly lead to some serious conflict, not only in terms of distribution, but also for the EU as a political project.

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