



## **Saar Blueprints**

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Solidarity: the missing ingredient to a  
successful European integration?



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## **Preface**

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## A. Introduction

*“Do we not have to ask ourselves whether we have really always done everything that it has been possible for us to do, whether we have really always first thought of the whole, of our common European interests, whether we have really allowed our individual interests to recede into the background in the way that the spirit of a genuine community requires? We must ask ourselves these questions and we must be especially conscious of the fact that the favourable, the historic, hour, will not return.”*

– Konrad Adenauer, Address to the Council of Europe, Strasbourg, 10 December 1951<sup>1</sup>

In the context of the Coronavirus pandemic, Adenauer’s address to the Council of Europe takes on more meaning than ever before if transposed to the EU. As a matter of fact, what was initially perceived as a health emergency, will not only hide a much more dramatic global economic crisis, but it has also highlighted the shortcomings of a still imperfect European integration, almost leading to an institutional deadlock.<sup>2</sup>

It is true that in the past decade the EU has probably gone through the most difficult tests since its very construction, be it the subprime crisis and the subsequent economic recession, the migrant crisis, or even Brexit and the rise of euro-scepticism. Such challenges, however insurmountable they may have seemed, tended to affect only a limited number of European countries, which ended up being a curse, rather than a blessing. Indeed, this led to further widen the gap between the Member states, giving the feeling of a “disunited union”<sup>3</sup>.

Since March 2020, just as the Brexit standstill seemed to be partly overcome,<sup>4</sup> the EU has been confronted with a renewed fight for its survival. Indeed, the current crisis will have even more detrimental financial consequences than the last economic recession’s. As a matter of fact, contrary to the latter, the Corona crisis “is symmetrical” and “even if it currently strikes

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<sup>1</sup> *Council of Europe, Consultative Assembly, Reports: Third session (26th November - 11th December 1951), Part VII, Sittings 37 to 41, Speech by Konrad Adenauer, 1005-1010.*

<sup>2</sup> Especially with regard to the opportunity of introducing a common debt system, the so-called “coronabonds”.

<sup>3</sup> *Lefebvre, L’Union européenne désunie : les fractures Nord-Sud et Est-Ouest, Questions internationales, 2017, p. 68 et seqq.*

<sup>4</sup> After three years of negotiations the EU and the UK reached an agreement on the terms of the UK withdrawal under **Art. 50 TEU** (Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, *OJ L 29 of 31/01/2020, p. 7–187*; *Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 29 of 31/01/2020, p. 1–6*). As a result, the UK left the EU on 31 January 2020, starting a transition period due to last until 31 December 2020.

especially hard in the countries of the South” it is doomed to affect the whole single market.<sup>5</sup> That is why the outbreak of the Coronavirus crisis was (and to some extent still is) the occasion for the EU to show the world that the European project is still ongoing, reawakening the “spirit of a genuine community” mentioned by Konrad Adenauer.

In this context of emergency, despite initial hesitations, the European Union has soon tried to give a firm united response to the crisis. However, it should be borne in mind that health does not, strictly speaking, fall within the competences of the EU. Specifically, the EU is only entitled to exercise a competence of support and coordination in the field of health.<sup>6</sup> In other words, the EU can only try and promote a common approach, without necessarily being the direct decision-maker. Yet, what we have seen being an inborn limitation in the scope of EU action, has been vehemently criticized by the *Masters of the Treaties* themselves, i.e., the Member States during the ongoing crisis. Accordingly, the EU is said to have been slow to act, or to have done it poorly. These allegations have been rapidly proven wrong by the European Union through action in different fields,<sup>7</sup> as for example, concerning the research of a new vaccine.<sup>8</sup>

That being said, the different responses of the EU Member States should have been more coordinated. For instance, it is at the very least regrettable that the action taken by the Member States, as regards the closure of borders, has been taken unilaterally,<sup>9</sup> creating some

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<sup>5</sup> *Schwan*, Guest Editorial: Without a new European patriotism, the decline of the EU is inevitable, EJIL: Talk!, 3/04/2020, <https://www.ejiltalk.org/guest-editorial-without-a-new-european-patriotism-the-decline-of-the-eu-is-inevitable/> (18/05/2020)

<sup>6</sup> **Art. 6 TFEU**: “*The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health [...]*”

**Art. 168 (2) TFEU**: “*The Union shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action. It shall in particular encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas.*”

*Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.”(emphasis added)*

<sup>7</sup> *ERC Scientific Council*, Resignation of Mauro Ferrari – Statement by the Scientific Council, 08/04/2020, <https://erc.europa.eu/news/resignation-mauro-ferrari---statement-scientific-council> (18/05/2020)

<sup>8</sup> *Valentino*, Coronavirus, la commissaria Gabriel: «La Ue cerca da subito un vaccino, già stanziati 250 milioni di euro», Corriere della Sera, 09/04/2020, [https://www.corriere.it/esteri/20\\_aprile\\_09/coronavirus-commissaria-gabriel-la-ue-cerca-subito-vaccino-gia-stanziati-250-milioni-euro-61e27744-7a99-11ea-880f-c93e42aa5d4e.shtml](https://www.corriere.it/esteri/20_aprile_09/coronavirus-commissaria-gabriel-la-ue-cerca-subito-vaccino-gia-stanziati-250-milioni-euro-61e27744-7a99-11ea-880f-c93e42aa5d4e.shtml) (18/05/2020). In this regard, the European Commission has also recently launched the Coronavirus Global response raising 7.4 billion euros for vaccines: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_797](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_797) (18/05/2020).

<sup>9</sup> With the worsening of the pandemic any countries decided to reintroduce borders controls. For instance, Austria reintroduced unilaterally border controls to Italy on 11 March, then to Switzerland and Liechtenstein on 14 March and to Germany on 19 March: <https://www.bmi.gov.at/news.aspx?id=314A5A707A4547684D55733D> (18/05/2020).

preposterous situations in European regions that had long felt borderless.<sup>10</sup> To put it differently, States turned to tools based on national sovereignty, hence typical of a pre-EU Europe, even though cross-border cooperation mechanisms existed and could have been used, if not on a European level, at least on a regional one.<sup>11</sup>

It is now self-evident that Brexit was just one, albeit burdensome, display of the ongoing European malaise. We are currently experiencing a stalling Europe, not only economically, but also ideologically: Member States tend to block further steps toward integration, which has transformed the EU in a system increasingly *à la carte*.<sup>12</sup>

However, the EU should not be held responsible for the actions of its Member States. This is all the more so, since the Commission's response in the Covid-19 crisis was not long in coming. For example, as far as the reintroduction of borders controls is concerned, the entry to the Schengen area for third-country nationals was suspended, *de facto* closing the EU's external

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Germany reintroduced border controls at the internal borders with Austria, Switzerland, France, Luxembourg and Denmark on 16 March 2020, then the control on the air borders with these countries as well as with Italy and Spain, as well as the maritime border with Denmark were added on 19 March: <https://www.bmi.bund.de/SharedDocs/pressemitteilungen/DE/2020/04/verlaengerung-grenzkontrollen.html> (18/05/2020)

While being technically possible under the Schengen Code, such a decision should have been taken after a concertation with the bordering regions. What is more, the German parliament has recently expressed concerns as for the legality of such a travel prohibition for German citizens: *Deutscher Bundestag*, Ausreiseuntersagungen nach § 10 Abs. 1 S. 1 in Verbindung mit § 7 Abs. 1 Nr. 1 3. Alt. PassG zur Eindämmung der Infektionen mit SARS-CoV-2, 30/04/2020, <https://www.bundestag.de/resource/blob/694066/f301a7087795f12ddc0b9d5b6dc3cf5e/WD-3-108-20-pdf-data.pdf> (18/05/2020).

<sup>10</sup> See as regards the French-German border: *Wieder*, En Moselle, la fermeture de la frontière franco-allemande crée des tensions, *Le Monde*, 3/04/2020, [https://www.lemonde.fr/international/article/2020/04/03/en-moselle-la-fermeture-de-la-frontiere-franco-allemande-cree-des-tensions\\_6035437\\_3210.html](https://www.lemonde.fr/international/article/2020/04/03/en-moselle-la-fermeture-de-la-frontiere-franco-allemande-cree-des-tensions_6035437_3210.html) (18/05/2020); *NN*, Le virus n'a pas de nationalité : l'Allemagne condamne des actes anti-français, *L'express*, 12/04/2020, [https://www.lexpress.fr/actualite/monde/europe/le-virus-n-a-pas-de-nationalite-l-allemande-condamne-des-actes-anti-francais\\_2123566.html](https://www.lexpress.fr/actualite/monde/europe/le-virus-n-a-pas-de-nationalite-l-allemande-condamne-des-actes-anti-francais_2123566.html) (18/05/2020).

<sup>11</sup> An example of the lack of cooperation can be seen between France and Germany. Although the countries have different institutions aimed *inter alia* at cooperating in the border regions, which were reinforced with the Aachen Treaty of 22 January 2019 (for the German version: BGBl. 2019 II S. 898 of 15/11/2019 – *Gesetz zu dem Vertrag vom 22. Januar 2019 zwischen der Bundesrepublik Deutschland und der Französischen Republik über die deutsch-französische Zusammenarbeit und Integration*, for the French version: JORF n°0036 of 12/02/2020 - *Décret n° 2020-108 du 10 février 2020 portant publication du traité entre la République française et la République fédérale d'Allemagne sur la coopération et l'intégration franco-allemandes, signé à Aix-la-Chapelle le 22 janvier 2019*), such committees did not take part in the decisions, which from a European perspective is certainly upsetting. Fortunately, with the support of Members of the French-German Parliamentary Assembly, the Franco-German Cross-Border Cooperation Committee (GrüZ) is currently in charge of discussing the next coordinated strategy as regards the common border.

<sup>12</sup> An illustrative example is the recent introduction of a European Public Prosecutor, which although being foreseen by the treaties (**Art. 86 TFEU**), was created as an enhanced cooperation (**Art. 20 TEU** in conjunction with **Art. 326-334 TFEU**) of 22 Member States, showing once again the difficulty of EU Member States in advancing harmoniously together.

borders, hoping that Member States will lift their internal border controls as early as possible in order to restore free movement of people within the EU.<sup>13</sup>

As underlined by David Sassoli, President of the European Parliament, “[the] time has come to put blinkered self-interest to one side and to make solidarity our guiding principle again.”<sup>14</sup> Hope springs eternal, indeed. The chances are we are currently living in the *favourable, historic hour*, meant by Adenauer. All we need is to grasp at European solidarity. Yet, what does solidarity concretely imply on an EU level and why is it crucial now more than ever before?

After a brief analysis of the EU solidarity policy and some fairly disappointing examples of its implementation, to be regarded as pitfalls, we will delve into the different ways the Union can act to circumvent the adverse effects of the current crisis, highlighting the need for a stronger and effective solidarity to achieve further integration.

## **B. EU Solidarity: easier said than done**

### **I. The logical enshrinement of solidarity as a core principle of the EU**

The very idea of a united Europe in the aftermath of World War Two relied on the need for cooperation in order to rebuild a stronger yet peaceful Europe. Most European countries lay in ruins, and in particular Germany. Solidarity was therefore the key word for the EU construction, and hopefully, also for its salvation. Yet, what does solidarity mean? As per its common usage, *solidarity* can be defined as “the support that people in a group give each other because they have the same opinions or aims”<sup>15</sup>. Placed on the European level, it amounts to the support that Member States give each other in the name of their shared values and objectives, and not least because each of them has a vested interest in the well-being of every other member of the Union.

Thus, it is no surprise that the CJEU, pursuing its role as *catalyst for integration*, could refer to the “principle of Community solidarity” as “one of the foundations of the Community”<sup>16</sup>. Moreover, despite approaching European solidarity from other angles, its fundamental

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<sup>13</sup> *Bayer/Cokelaere*, The EU travel ban explained, Politico, 17/03/2020, <https://www.politico.eu/article/the-eu-european-union-coronavirus-covid19-travel-ban-explained/> (18/05/2020)

<sup>14</sup> *Sassoli*, Reconstruction is in our common interest - Europe must save everyone, European Parliament, 23/04/2020, <https://www.europarl.europa.eu/the-president/en/newsroom/sassoli-reconstruction-is-in-our-common-interest-europe-must-save-everyone> (18/05/2020)

<sup>15</sup> *Macmillan Dictionary*, <https://www.macmillandictionary.com/dictionary/british/solidarity> (18/05/2020)

<sup>16</sup> ECJ, case C-77/77, *Benzine en Petroleum Handelsmaatschappij BV and others v Commission of the European Communities*, ECR 1978, I -01513, § 15.

character is also stressed by other case law. Indeed, the General Court interestingly referred to "the aim of Community solidarity, a fundamental objective of the Treaty, as may be seen from the preamble."<sup>17</sup> By doing so, such principle acquired the status of primary law, which was also highlighted by the sporadic references to the spirit of mutual solidarity among Member States in the Treaty of Amsterdam.<sup>18</sup> However, a real consecration occurred with the entry into force of the Lisbon Treaty. Indeed, with a clear inspiration from the project of the Treaty Establishing a Constitution for Europe, the *Reform Treaty* explicitly mentions solidarity as one of the values of the EU.<sup>19</sup> What is more, several articles in the Treaties refer to it in different areas of EU action.<sup>20</sup> Indeed, solidarity is not only necessary to achieve an economic convergence, but it is also the key factor for a successful EU migration policy. Moreover, according to the present state of EU primary law, solidarity is no longer limited to mutual assistance between Member States, but it also involves the European peoples and individuals.<sup>21</sup>

Now, in order to better understand the measures taken by the EU to anticipate the implications of the Corona crisis, it will be necessary to shortly explain the functioning of the EU budget as well as the EU cohesion policy, two important solidarity tools in the EU ... at least in theory.

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<sup>17</sup> EGC, joined cases T-126/96 and T-127/96, *Breda Fucine Meridionali SpA (BFM) and Ente partecipazioni e finanziamento industria manifatturiera (EFIM) v Commission of the European Communities*, ECR 1998, II-03437, § 101.

<sup>18</sup> For instance, **Article J.1, § 2**: "*The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity. // The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.*" (emphasis added)

<sup>19</sup> **Art. 2 TEU**: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, **solidarity** and equality between women and men prevail."

**Art. 3 (3) TEU**: "The Union shall [...] promote economic, social and territorial cohesion, and **solidarity among Member States.**" (emphasis added)

<sup>20</sup> Notably **Art. 21 (1) TEU** and **Art. 24 (3) TEU** (solidarity among MS in the external action), **Art. 80 TFEU** (general principle of solidarity in all EU actions), **Art. 122 TFEU** (solidarity in case of exceptional occurrences), **Art. 194 TFEU** (solidarity in the energy policies) and **Art. 222 TFEU** (solidarity clause in case of terrorist attacks or natural disasters).

<sup>21</sup> In this respect, it should be noted that the Title IV of the Charter of Fundamental Rights of the European Union, while explicitly named 'Solidarity', it refers rather to social rights, giving solidarity a wider scope.

## II. The impaired implementation of financial solidarity in normal times

### 1. The EU budget: an example of limited financial solidarity

Unlike other international organisations, the supranational EU is financed through an own resource mechanism, which gives the Union a high degree of financial autonomy.<sup>22</sup> Also, the own resources allocated to the Union to cover its annual payment appropriations are capped by the multiannual financial framework, a 7-year financial plan adopted by the Council unanimously after the European Parliament's approval (on the basis of Art. 312 TFEU). In this regard, from 2019, the resources may not exceed 1.20% of the total gross national income (GNI) of the European Union.<sup>23</sup>

However, it should be noted that most of these resources, despite being the Union's own means of financing and theoretically independent of the States, are made available by the latter, since the EU does not directly levy any tax. Indeed, the EU budget is made up of several types of revenue, the most significant part of which can be divided into three categories: traditional own resources, which are customs levied on imports from third countries; a share of the value added tax (VAT) that Member States collect and a deduction from the Gross National Income (GNI) of each State depending on their wealth. In 2018, the GNI resource represented 65.9% of the revenue, traditional own resources accounted for 12.8%, whereas the VAT resource accounted for 11.1% of revenue.<sup>24</sup>

The GNI resources reflect the principle of solidarity since each Member State's contribution depends on its wealth. While this principle portrays the heterogeneity of the Union and the *unity in diversity*,<sup>25</sup> some Member States have expressed (unjustified) dissatisfaction with the idea of having to contribute more to the EU budget than they directly receive from that budget. Indeed, although a distinction is classically made between so-called net contributors and so-called recipient countries,<sup>26</sup> the largest contributors are often the countries benefiting the most from the single market,<sup>27</sup> so that the EU is profitable for all European countries.

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<sup>22</sup> For an example of the importance of State's contributions one can refer to the recent American withdrawal from UNESCO or on a European level, the case of the Council of Europe, whose functioning was partly undermined by the recent Russian freezing of contributions.

<sup>23</sup> *European Parliament*, Multiannual Financial Framework, Factsheets on the European Union, 2019, <https://www.europarl.europa.eu/factsheets/en/sheet/29/cadre-financier-pluriannuel> (18/05/2020)

<sup>24</sup> *NN*, Budget européen : les recettes et les dépenses, *Toute l'Europe*, 12/02/2020, <https://www.touteurope.eu/actualite/budget-europeen-les-recettes-et-les-depenses.html> (18/05/2020)

<sup>25</sup> The European Union motto is "united in diversity", in all 24 official languages.

<sup>26</sup> As for 2019, Germany, France and Italy were the countries contributing the most to the EU budget. See also: *NN*, À qui profitent les finances de l'Union européenne ?, *Le Dauphiné Libéré*, 20/05/2019, <https://www.ledauphine.com/france-monde/2019/05/20/a-qui-profitent-les-finances-de-l-union-europeenne> (18/05/2020)

<sup>27</sup> According to recent studies, Germany which is the largest net contributor is also the country benefitting the most from the single market: *NN*, Deutschland profitiert vom Binnenmarkt wie kein anderes EU-



The greatest manifestation of the flaws of this system was the granting of the UK rebate in 1985 after Margaret Thatcher's fight over her country's financial contribution to the EC.<sup>28</sup> The reduction in contribution had to be directly financed by the other Member States, and in particular, the net contributors. In 1985, by negotiating a fiscal adjustment to the EU budget, the UK opened a Pandora's box, which justified the creation of a system of budget rebates, which is by its very nature an infringement of the principle of solidarity. As a matter of fact, some of the net contributors (Germany, Austria, the Netherlands, Denmark and Sweden) soon negotiated a reduction to their contribution, also called "rebate on the rebate". As a result, in the period "1985-2001, Germany paid two thirds of the share determined for it by the distribution key", whereas "[since] 2002, Austria, Germany, the Netherlands and Sweden have benefited from a permanent reduction in their contribution to the rebate, paying 25% of their respective share."<sup>29</sup> Accordingly, the UK rebate has been *de facto* financed by three countries, namely France, Italy and Spain.<sup>30</sup>

It appears that, although the budget is, in theory, based on a logic of solidarity, this process has been undermined directly by the Member States. Yet, whenever EU action is perceived as insufficient, which has also been the case during the current crisis, the answer is likely to lie in its limited budget, which still depends mostly on the Member States' contributions (based on their GNI). Thus, when Member States complain, they should remember their unwillingness to put their money where their mouth is, so to speak, so that they will realise that they are behaving just like a snake biting its own tail.

Fortunately, the whole rebate system is supposed to end with the UK leaving the EU. Indeed, the European Commission reminds that "[rebates] related to reduced call rates for the Value Added Tax-based Own Resource and the lump sum reductions for contributions based on gross national income will automatically expire at the end of 2020."<sup>31</sup> Therefore, Brexit could be also the moment to rewrite the EU financing rules and to reshape the EU spending, possibly

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Land, *Süddeutsche Zeitung*, 8/05/2019, <https://www.sueddeutsche.de/wirtschaft/eu-binnenmarkt-profiteure-1.4437278> (18/05/2020)

<sup>28</sup> Thanks to the strong position of Margaret Thatcher in Fontainebleau on 25 June 1984 and her notorious '*I want my money back*', the UK's contributions were cut of approximately 111 billion euros: *Gotev*, UK reimbursed in excess of €111 billion by EU since 1985, *Euractiv*, 23/05/2016, <https://www.euractiv.com/section/uk-europe/news/the-thatcher-rebate-uk-reimbursed-in-excess-of-e111-billion-by-eu-since-1985/> (18/05/2020)

<sup>29</sup> *D'Alfonso*, The UK 'rebate' on the EU budget: An explanation of the abatement and other correction mechanisms, European Parliamentary Research Service, 18/02/2016, p.5.

<sup>30</sup> *Darvas*, Who pays for the EU budget rebates and why?, *Bruegel*, 4/12/2019, <https://www.bruegel.org/2019/12/who-pays-for-the-eu-budget-rebates-and-why/> (18/05/2020)

<sup>31</sup> *European Commission*, Budget correction mechanisms, available at: [https://ec.europa.eu/info/strategy/eu-budget/revenue/own-resources/correction-mechanisms\\_en](https://ec.europa.eu/info/strategy/eu-budget/revenue/own-resources/correction-mechanisms_en) (18/05/2020)

eventually turning to a funding mostly through European public goods, as suggested by some.<sup>32</sup>

## 2. The EU cohesion policy: the distortion of EU solidarity

Not only do EU Member States contribute to the EU budget proportionately to their GNI, but the budget they set up together is also spent in a way which should help the least wealthy regions develop in order to eventually strengthen the Union, through the cohesion policy. In this regard, the Treaties foresee that the “Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions”<sup>33</sup>.

In reality, the EU cohesion policy was not provided for in the original Treaty establishing the European Economic Community of 1957, even though in the preamble the Member States recognized the need for unity of economies and for a harmonious development by reducing the differences between regions.<sup>34</sup> That is why the European Regional Development Fund (ERDF) was created in 1975 on the basis of the flexibility clause (Art. 235 EEC Treaty; see now 352 TFEU). It came in addition to the European Social Fund (ESF), already provided for in the EEC Treaty, and the European Agricultural Guidance and Guarantee Fund (EAGGF), created in 1962, which finances the modernisation of agricultural structures.

The Single European Act of 1986 represented a turning point since it truly enshrined cohesion policy in the Treaties by creating a legal basis for it.<sup>35</sup> From then on, an entire title has been enshrined in the Treaties, enabling this policy to develop further.<sup>36</sup> The fact that it was introduced by the Single European Act is far from insignificant, since that Treaty also set the goal of achieving the single market by 1992. The EU cohesion policy was therefore closely linked to the well-functioning of the single market from the beginning.

Yet, paradoxically, once cohesion policy was enshrined in the Treaties, its very existence has started to be contested. Indeed, the noble objective of tackling regional inequalities within the EU is facing several obstacles. Firstly, the Union's budget is limited, and Member States are not willing to increase the European budget, which, unlike the state budget, must necessarily

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<sup>32</sup> *Darvas*, op. cit. (fn. 30): According to the author, the EU should create more strategic European public goods in order for them to eventually become a source of revenue.

<sup>33</sup> See Art. **174 TFEU**, stating a general objective of economic, social and territorial cohesion in the EU.

<sup>34</sup> The Recital 5 of the Preamble of Treaty establishing the European Economic Community reads as follows: “*ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions*”.

<sup>35</sup> **Art. 23** of the Single European Act (OJ L 169 of 29/06/1987).

<sup>36</sup> See now Art. 174 – 178 TFEU.

be balanced. Secondly, the Eastern enlargement of the Union, with the “10+2 of 2004/2007” has been challenging for the implementation of the cohesion policy. Indeed, in 2004, whereas the geographical extension of the Union was 25%, and the population increase about 20%, the GDP of the new members represented only 5% of that of the old members.<sup>37</sup> Thus, with the entry of the new Member States, the logic of solidarity would have meant that the cohesion policy would have practically only been directed towards them. That is why the so-called net contributor States demanded safeguards to ensure that their least developed regions continued to benefit from structural funds. However, as a poor region in a wealthy Member State is generally richer than a rich region in a poor Member State, the logic of solidarity has *de facto* begun to be denied. Thirdly, the effectiveness of the cohesion policy has been criticized, to the extent that some suggested that funds be targeted to the most profitable regions, departing from the idea of reducing territorial inequalities. Despite not being the primary vocation of cohesion policy, such economic considerations began to be explored, notably due to the *Sapir Report* of 2003.<sup>38</sup> In sum, requirements of economic efficiency are nowadays an obstacle to the realisation of the initial idea of solidarity.

As a result, even though the Treaties aimed at the achievement of both a single market and a more social Europe, the priority was set to the economic aspect of the EU. This was probably due to an easier convergence in economic understanding, contrary to the divergent conceptions of what a social Europe should be. Yet by doing so, Member States have tended to neglect the importance of cohesion for the sake of a stronger single market, creating an “artificial hierarchy” between a prosperous Europe and a social Europe, despite the undeniable link between the two. Unfortunately, over the past few years this approach has led to some regrettable egoistic tendencies, especially in times of crisis, when solidarity is needed the most.

### **III. The feeble reflection of the principle of solidarity in time of crisis**

It is true that the Treaties give solidarity a crucial role in the development of “an even closer union among the peoples of Europe”. Yet, recent examples have highlighted the reluctance of some Member States to abide by their obligation.

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<sup>37</sup> Creel / Levasseur, *Le nouvel élargissement de l'Union européenne*, Revue de l'OFCE, 2004/2 (n° 89), p. 253-269.

<sup>38</sup> *Sapir*, *An agenda for a growing Europe: Making the EU Economic System Deliver*, European Commission, 2003.

## 1. The Schengen and Dublin systems portraying a still flawed migration solidarity

The creation of the Schengen area has led not only to the abolition of the internal borders between the 26 signatories<sup>39</sup>, but it has also created *de facto* common EU external borders. However, as underlined by *Yves Bertoncini*, “the Schengen area also means the surveillance of our common external borders in an asymmetrical context”, since the land and sea borders of certain countries are, by force of circumstances, more exposed to major migratory flows.<sup>40</sup>

As an expression of solidarity between Member States, the EU as early as 2007 set up four different funds to provide financial support to Member States in proportion to their exposure to migratory flows: the European External Borders Fund, the European Refugee Fund, the European Integration Fund and the European Return Fund. In 2014 the funds merged in the new Asylum, Migration and Integration Fund, disposing of an overall budget of 3137 million euro for 2014-2020.<sup>41</sup>

These solidarity mechanisms aimed at restoring a form of balance between Member States, and thus strengthening mutual trust. Indeed, if mutual trust is eroded, solidarity is undermined, and the ultimate solution available to “virtuous States” (northern countries) seems to be to “hide behind their borders”.<sup>42</sup> In this regard, the events following the Arab Spring have been a “convenient pretext” for changing the Schengen rules, opening the way for a challenge to mutual trust between Member States and consequently to freedom of movement in the Schengen area.<sup>43</sup>

Besides, the Dublin system of distribution of asylum seekers has shown its limits, particularly for the peripheral States which, in addition to receiving a large number of asylum seekers, have an asylum system presenting major shortcomings. In particular, in 2011 the European Court of Human Rights determined that the Greek system was not in accordance with the

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<sup>39</sup> Currently 22 EU Members (all except of Ireland, Cyprus, Bulgaria, Romania and Croatia) as well as 4 non-EU Member States (Norway, Switzerland, Iceland, Liechtenstein) are part of Schengen. However, part of the so-called *Schengen acquis* applies to all EU Members.

<sup>40</sup> *Bertoncini*, Les migrants, 'l'espace Schengen' et la solidarité européenne, *Le Mot de Notre Europe*, 22/06/2011, <https://institutdelors.eu/publications/les-migrants-lespace-schengen-et-la-solidarite-europeenne/> (18/05/2020)

<sup>41</sup> *European Commission*, Asylum, Migration and Integration Fund, available at: [https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund\\_en](https://ec.europa.eu/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund_en) (18/05/2020)

<sup>42</sup> *Pascouau*, Schengen et la solidarité : le fragile équilibre entre confiance et méfiance mutuelles, *Notre Europe*, 04/07/2012, p. 14

<sup>43</sup> *Brady*, Saving Schengen. How to protect passport-free travel in Europe, Centre for European Reform, 20/01/2012, p.33, [https://www.cer.eu/sites/default/files/publications/attachments/pdf/2012/rp\\_041\\_km-6422.pdf](https://www.cer.eu/sites/default/files/publications/attachments/pdf/2012/rp_041_km-6422.pdf) (18/05/2020)

standards set by the Convention.<sup>44</sup> A similar stance was taken up by the European Court of Justice,<sup>45</sup> hence further undermining the principle of mutual trust.

In the face of such difficulties, which may lead to violations of EU law and human rights, the European Commission proposed the establishment of a mechanism to suspend the re-transfer of asylum seekers to these member States. However, instead of a suspension mechanism, Member States proposed to introduce an early warning system. As a result, corrective mechanisms must be in place when a problem in the functioning of a Member State's asylum system threatens the implementation of the Dublin system. In other words, this mechanism aims at preventing the risk of a malfunctioning rather than dealing with its consequences.

As underlined by some authors, solidarity between Member States does not seem to be a priority in asylum policy.<sup>46</sup> That being said, in spite of the failure to introduce such a mechanism, "Dublin transfers to Greece from other Member States have been suspended since 2011".<sup>47</sup> However, such a suspension should not be regarded as a prohibition *ex officio*. Indeed, as reminded by the Commission in a recent Recommendation, the suspension is expected to be lifted once the situation in Greece improves, leaving room for a case-based approach.<sup>48</sup> Consequently, it appears that rather than being moved by communitarian solidarity, the mechanism for suspending transfers of asylum seekers exists only under the constraint of the European courts. Moreover, as suggested by *Pascouau*, "the low level of solidarity in the field of asylum fuels the development of the *every man for himself* rule and consequently mutual distrust".<sup>49</sup>

The already fragile situation worsened with the recent migration crisis of 2015 and the parallel rise of nationalisms all over Europe. Indeed, by exploiting the fear of the unknown, many politicians have recreated a distinction between "us" and "them", deviously trying to make up for structural shortcomings in their countries (which were in fact often attributable to their own government).<sup>50</sup> This logic is not new *per se*; yet, in a European context it has nurtured a feeling of distrust towards countries that, for geographical reasons, were already most severely affected. As a result, the latter felt abandoned right in the midst of an unprecedented crisis.

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<sup>44</sup> ECtHR, application no. 30696/09, *M.S.S c. Belgium and Greece*, 21/01/2011.

<sup>45</sup> ECJ, joined cases [C-411/10](#) and C-493/10, *N. S. v Secretary of State for the Home Department*, ECR 2011, I-13905.

<sup>46</sup> *Pascouau*, op. cit. (fn. 42), p. 34

<sup>47</sup> *European Commission*, Q&A: recommendation on the conditions for resuming Dublin transfers of asylum seekers to Greece, 8/12/2016, [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_16\\_4253](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_16_4253) (18/05/2020)

<sup>48</sup> Commission Recommendation of 8 December 2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013

<sup>49</sup> *Pascouau*, op. cit. (fn. 42), p. 34.

<sup>50</sup> Part of the Brexiters' campaign was based on the irrational fear of an "invasion" of migrants coming to the UK, which albeit clearly irrational sufficed to convince 51.9% of Britons to vote for "leave".

Nevertheless, although the reaction in the short term has been paradoxically the same, namely the thickening of the internal borders, solidarity in migration policies can hardly be compared to financial solidarity. In fact, migration is a relatively new field of European cooperation, compared to economic and financial stability within the Union. The reluctance of some Member States to further cooperate in the matter can thus be partly understood, albeit not shared. Yet, the response to the current pandemic requires first and foremost financial solidarity. Bearing that in mind, it seems more relevant to address the European response to the past economic recession, before tackling the current action of the EU facing Covid-19.

## 2. Greece and the financial crisis: whatever it took?

In the aftermath of the Lehman Brothers' collapse, the world was probably experiencing the biggest financial crisis since the Wall Street crash in 1929. Predictably, the crisis soon hit the EU resulting in economic stagnation. However, whereas the consequences of the subprime crisis led to a global recession, due to structural problems, some European countries were hit harder than others. To crown it all, the newly elected Greek Prime Minister George Papandreou revealed that previous governments had falsified the budgetary data of public accounts in order to enable Greece to enter the euro zone. As a result, the Greek public deficit for 2009 was 12.7%, more than double the previous estimates,<sup>51</sup> and undoubtedly above the 3% required by the EU Treaties.<sup>52</sup> Such a revelation downgraded Greece's status internationally, notably by raising interest rates, making it hard to finance itself through borrowing.

The EU soon acknowledged the risk of a Greek collapse, which would impact the whole EU, and in particular the Eurozone. Ten years after its creation the continued existence of the European Monetary Union was being threatened. As a response, on 9 May 2010, the Euro area Member States decided to establish the European Financial Stability Facility (EFSF) as a temporary Special Purpose Vehicle expiring in July 2013.<sup>53</sup> From a legal point of view, it was a private company under Luxembourg law whose members are the Eurozone countries and which can issue bonds or other debt instruments on the market to raise the funds needed to provide loans to Eurozone countries in financial difficulties, recapitalise banks or purchase

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<sup>51</sup> NN, Panandreou tries to prop up the pillars, *The Economist*, 17/12/2009, <https://www.economist.com/node/15127474/print> (18/05/2020)

<sup>52</sup> **Art. 1 Protocol 12**, in conjunction with **Art. 126 (1) TFEU**, prescribes Member States to avoid excessive deficits by sticking to a maximum of 3% deficit to GDP as well as a 60% debt to GDP.

<sup>53</sup>As it is stated in the EFSF Framework agreement between the EFSF and all contracting parties: [https://www.esm.europa.eu/sites/default/files/20111019\\_efsf\\_framework\\_agreement\\_en.pdf](https://www.esm.europa.eu/sites/default/files/20111019_efsf_framework_agreement_en.pdf) (18/05/2020). It should be noted that each State had to implement the agreement according to its national procedure. For instance, Germany adopted the *Stabilisierungsmechanismusgesetz* of 22/05/2010 (BGBl. I S. 627), amended through Art. 1 *Gesetz* of 23/05/2012 (BGBl. I S. 1166).

sovereign debt. Thus, the EU could deploy funds for Ireland, Portugal and Greece through the EFSF.

However, soon doubts arose as to the legality of such a mechanism. Admittedly, the Union can provide financial assistance to a Member State “in difficulties [...] caused by [...] exceptional circumstances beyond its control”,<sup>54</sup> so that solidarity could be theoretically possible in case of a global recession. Yet, helping a country in financial need through debt assumption is in violation of the *no bail-out clause*.<sup>55</sup> The introduction of a new instrument was therefore needed to clarify the EU action.

Accordingly, the European Council of 24-25 March 2011 added a third paragraph to Art. 136 TFEU by using the simplified treaty amendment procedure of Art. 48 (6) TEU.<sup>56</sup> Art. 136 (3) TFEU allowed the countries of the Euro zone to conclude a Treaty establishing the European Stability Mechanism (ESM) which was signed in February 2012 resulting in a permanent intergovernmental organisation under public international law based in Luxembourg.<sup>57</sup> Further, in order to ensure better coordination and prevent new crises, taking note of the British opposition to the adoption of measures for the coordination of budgetary policies and the reduction of public debt, 25 out of then 27 Member States decided to adopt the *Fiscal compact*, which although making reference to the EU is not a EU treaty.<sup>58</sup>

However, the introduction of the ESM was not well accepted either among the financing Member States or among the receiving Member States. On the one hand, contributors and especially “compliant Germany” feared that it would eventually need to cut its own public spending to save “undisciplined Greece”. At some point some even suggested a Grexit from

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<sup>54</sup> Art. 122 (2) TFEU

<sup>55</sup> Art. 125 (1) TFEU: “*The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.*” (emphasis added)

<sup>56</sup> European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro. As a result, the new Art. 136 (3) TFEU reads as follows: “*The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.*” (emphasis added)

<sup>57</sup> Treaty Establishing the ESM, signed on 2 February 2012 (in Germany: *Gesetz zu dem Vertrag vom 2. Februar 2012 zur Einrichtung des Europäischen Stabilitätsmechanismus*, BGBl. II S. 981).

<sup>58</sup> Treaty on Stability, Coordination and Governance in the Economic and Monetary Union of 2 March 2012 (in Germany: *Gesetz zu dem Vertrag vom 2. März 2012 über Stabilität, Koordinierung und Steuerung in der Wirtschafts- und Währungsunion*, BGBl. II S. 1006). The Treaty (TSCG or Fiscal Compact) was ratified by all EU countries except of the UK, the Czech Republic and Croatia (not a Member yet). A clear example of the interdependence of the TSCG and the EU is the jurisdiction clause giving competence to the CJEU (Art. 8 TSCG).

the Eurozone.<sup>59</sup> Yet, as justly pointed out by some authors, the in-need Member States did not obtain unconditioned grants but rather non-concessional loans.<sup>60</sup> In other words, although being “an implicit act of solidarity”, the risk is merely linked to Greece’s ability to reimburse its loans, since the lending countries are supposed to “recover the money they have lent to Greece and the guarantees they have made to the EFSF [and *mutatis mutandis* to the ESM] will not be called in”.<sup>61</sup> On the other hand, beneficiaries were not obtaining unconditioned loans either. Indeed, such loans were *subject to strict conditionality*, meaning that the countries applying for help would need to put in place severe austerity plans damaging the welfare acquis of the country (especially education, health and retirement system).

Eventually, although the risk was real,<sup>62</sup> thanks to ECB President Mario Draghi’s efforts to do “whatever it takes” to save the Eurozone and his firm belief in the Euro as irreversible legal tender,<sup>63</sup> Greece was not abandoned. In fact, different recovery plans were proposed to the country by the *Troika*.<sup>64</sup> Yet, it should be borne in mind that each financial aid was linked with the need for a series of structural reforms by the country. In fact, although the idea of the creation of a form of common European indebtedment (Eurobonds) to help Greece had emerged, it was soon discarded since the crisis was seen as a mere Greek structural problem.

Eventually, in June 2018 the EU acknowledged the Greek government’s efforts on the implementation of the required reforms. Along with the last tranche of loans, amounting to 15 billion euros, the *Troika* agreed to ease Greece’s debt allowing it to be repaid from 2032 and no longer from 2022. Greece was “released”, while still being “on probation”, as creditors will carry out checks at regular intervals. While Prime Minister Tsipras, as promised several times, wore a tie for the first time to seal the moment, Economic Affairs Commissioner Pierre

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<sup>59</sup> Siedenbiedel, Der Grexit ist die Rettung, Frankfurter Allgemeine Zeitung, 22/06/2015, <https://www.faz.net/aktuell/wirtschaft/konjunktur/griechenland/hans-werner-sinn-der-grexit-ist-die-rettung-13658526.html> (18/05/2020). What is more, as early as 2010, BILD had contributed to spread the ideas of Greeks being spendthrifts: *Vehlewald*, So verbrennen die Griechen die schönen Euros, Bild, 28/02/2010 <https://www.bild.de/politik/2010/pleite-euro-verbrennen-milliardenhilfe-11650864.bild.html> (18/05/2020).

<sup>60</sup> *Fernandes / Rubio*, Solidarity within the Eurozone: how much, what for, for how long?, Notre Europe, 2012, p. 22, <https://institutdelors.eu/wp-content/uploads/2018/01/solidarityemus.fernandes-e.rubionefeb2012.pdf> (18/05/2020).

<sup>61</sup> *Ibid.* p. 24

<sup>62</sup> *Hoeren*, Die Griechen-Krise spaltet Europa, Bild, 12/07/2015, <https://www.bild.de/politik/ausland/grexit/griechen-krise-spaltet-europa-41751656.bild.html>, (18/05/2020)

<sup>63</sup> *Moulds*, Euro is irreversible declares European Central Bank President Mario Draghi, The Guardian, 26/07/2012, <https://www.theguardian.com/business/2012/jul/26/euro-irreversible-mario-draghi-ecb>, (18/05/2020)

<sup>64</sup> An informal body composed by the European Commission (COM), the European Central Bank (ECB) and the International Monetary Fund (IMF).



Moscovici was relieved to see that "the Greek crisis [had ended] in Luxembourg" after a 10-year Odyssey.<sup>65</sup>

However, although ten years later Greece seems to have recovered from the financial crisis, the country that is emerging from it has been deeply affected by the austerity policy implemented in recent years. As a result, the fear of "ending up like Greece" has been used as a political argument by populist parties in Italy in the recent years.<sup>66</sup> Yet, the EU response, albeit not perfect, can be seen as a starting model for future crises from which, in due course, the EU will deftly draw lessons.

All in all, the Greek crisis, combined with the European unpreparedness in the face of huge migratory flows and the question of Brexit, has led many detractors to popularise the image of a Europe hit by a profound crisis of values undermining its existence. Still, a new feeling of solidarity seems to be timidly growing among Europeans. In this regard, the Covid-19 crisis could be analysed as a godsend for the EU, allowing it to take unprecedented measures aimed at rescuing the single market, and by doing so, finally fostering European solidarity.

## **C. The Covid-19 crisis: a durable turn to true EU solidarity?**

### **I. Off to a rocky start: a 'grossly unprepared' continent**

#### **1. The EU Civil Protection Mechanism: Conspicuous by absence**

When the Chinese province of Hubei was hit by the new type of Coronavirus, many countries first ignored the risks linked to it, talking of a new Chinese disease, which with due precaution would be unlikely to hit Europe. Yet, Europe, as well as most countries in the world, proved wrong, confirming the experts' concerns, which nowadays seem almost prophetic, about global unpreparedness in the face of a hypothetical new type of influenza.<sup>67</sup>

In late February, aware of the seriousness of the situation, Italy turned to Europe at once, wishing to activate the EU Civil Protection Mechanism.<sup>68</sup> Specifically, the country explicitly

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<sup>65</sup> *Moscovici*, The Greek crisis or the end of the odyssey, Le Blog de Pierre Moscovici, 22/06/2018, <http://www.pierremoscovici.fr/2018/06/22/the-greek-crisis-or-the-end-of-the-odyssey/> (18/05/2020).

<sup>66</sup> Even today, Matteo Salvini (Lega) uses the Greek example to vehemently oppose the use of the ESM in the context of the Corona crisis: <https://twitter.com/matteosalvinimi/status/1247819529897549825> (18/05/2020).

<sup>67</sup> *NN*, We are grossly unprepared for major outbreaks, Global Biodefense, 26/01/2017, <https://globalbiodefense.com/2017/01/26/grossly-unprepared-major-outbreaks/> (18/05/2020); *McVeigh*, Experts warn world 'grossly unprepared' for future pandemics, The Guardian, 18/09/2019, <https://www.theguardian.com/global-development/2019/sep/18/a-deadly-virus-could-kill-80-million-people-in-hours-experts-warn> (18/05/2020).

<sup>68</sup> Decision No. 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism: On the basis of Art. 196 TFEU, the EU established a European

asked the EU Member States for help as regards the provision of medical supplies in hospitals. Yet, this public call for EU solidarity went straight to voice mail. As most Italian newspapers reported, no EU country seemed to be willing to help Italy, notwithstanding the dire crisis the country was facing.<sup>69</sup> Further, pursuing a nationalist, hence pre-communitarian spirit, Germany and France had even refused to export their surgery masks, which although not contrary to EU law, was clearly not the best solidarity sign to give. This desertion has been a serious blow for Italy, from which the country has not fully recovered yet. Indeed, according to the Italian public opinion, the EU, represented by the Franco-German couple, was selfishly turning a blind eye on a severe situation. Some conservative newspapers even talked of a “slap in the face” coming from the EU.<sup>70</sup> Instead, unexpected allies such as China promptly responded bilaterally. The Italian public opinion shifted: people began to see China not only as a reliable ally,<sup>71</sup> but also as an impeccable example to follow in the crisis management, seemingly forgetting the human rights violations perpetrated by its regime.<sup>72</sup> What is more, simultaneously, popularity polls showed Italians beginning to perceive Germany as the new enemy (45% of the partakers), followed by France (38%).<sup>73</sup> Still, the Italian government

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Union Civil Protection Mechanism replacing the previous Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions. The instrument has been adopted by all Member States as well as other six countries (Norway, Iceland, Serbia, North Macedonia, Montenegro and Turkey).

<sup>69</sup> In this regard, it is interesting to note the reaction of the two main Italian newspapers:

*Bresolin*, L'Italia chiede le mascherine ai partner UE, ma nessun Paese risponde all'appello, La Stampa, 06/03/2020, <https://www.lastampa.it/esteri/2020/03/06/news/l-italia-chiede-le-mascherine-ai-partner-ue-ma-nessun-paese-risponde-all-appello-1.38559005> (18/05/2020);

*D'Argenio*, Coronavirus, UE divisa sulle mascherine: niente aiuti all'Italia, La Repubblica, 06/03/2020, [https://www.repubblica.it/politica/2020/03/06/news/coronavirus\\_ue\\_divisa\\_sulle\\_mascherine\\_niente\\_ai\\_uti\\_all\\_italia\\_speranza\\_serve\\_piu\\_solidarieta\\_-250487344/](https://www.repubblica.it/politica/2020/03/06/news/coronavirus_ue_divisa_sulle_mascherine_niente_ai_uti_all_italia_speranza_serve_piu_solidarieta_-250487344/) (18/05/2020).

<sup>70</sup> *Franchini*, L'UE ci prende a schiaffi - Ci lascia senza mascherine, Il Giornale, 06/03/2020, <https://www.ilgiornale.it/news/cronache/coronavirus-italia-chiede-pi-mascherine-allue-nessuno-ci-1836472.html> (18/05/2020).

<sup>71</sup> *Bechis*, Se gli italiani preferiscono la Cina agli Usa (e all'UE), Formiche, 21/04/2020, <https://formiche.net/2020/04/italiani-preferiscono-cina-usa-ue/> (18/05/2020).

<sup>72</sup> It is believed that the crisis would have been easier to manage, if only China had ensured freedom of expression to the medical staffs who had tried to announce a new kind of pneumonia as from October 2019, thus giving a prompt access to national information and warning the international community from the very beginning of the new disease. In this regard: *Grotti*, Coronavirus, il modello cinese ha causato il disastro. Altro che imitarlo, Tempi, 11/03/2020, <https://www.tempi.it/coronavirus-il-modello-cinese-ha-causato-il-disastro-altro-che-imitarlo/> (18/05/2020); NN, Coronavirus in Cina forse già da Ottobre, ANSA, 28/02/2020, [https://www.ansa.it/canale\\_scienza\\_tecnica/notizie/biotech/2020/02/28/coronavirus-in-cina-forse-gia-da-ottobre-\\_6d17112c-a177-4eec-9e98-49806aea17a3.html](https://www.ansa.it/canale_scienza_tecnica/notizie/biotech/2020/02/28/coronavirus-in-cina-forse-gia-da-ottobre-_6d17112c-a177-4eec-9e98-49806aea17a3.html) (18/05/2020).

For more readings about the manipulation of the crisis by the Chinese regime: *Rachman*, How Beijing reframed the coronavirus response narrative, Financial Times, 16/03/2020, <https://www.ft.com/content/20ab52d8-676a-11ea-800d-da70cff6e4d3?segmentId=63bac0e6-3d28-36b1-7417-423982f60790>, (18/05/2020).

<sup>73</sup> *Bechis*, op. cit. (fn. 71)

recognized the importance of the EU and especially the help of the Commission,<sup>74</sup> which found the export restrictions of France and Germany incompatible with EU law, urging Member States to lift them.<sup>75</sup>

## 2. The ECB: the dangers of a too rational approach

Since the measures taken to fight the pandemic were leading towards temporarily shutting down the Italian economy, the government was hoping for some rapid signs of financial solidarity, starting from the European Central Bank, whose Governing Council<sup>76</sup> was set to meet on 12 March 2020. The ECB Governing Council, while leaving interest rates unchanged, took steps to increase liquidity, thus, in many respects, responding to the very delicate situation arising from the economic consequences of Covid-19.

However, after the presidency of Mario Draghi, investors wanted to understand whether, in the face of a major global emergency, the European Central Bank would still be not only the guardian of monetary stability, but also the actor of an economic policy to support individual countries. The mystery was eventually solved thanks to ECB President Lagarde's revelations during the press conference. Indeed, after sketching the future scheme of the ECB, Christine Lagarde frostily reminded that although "[the ECB] will be there using full flexibility", they "are not here to close spreads", since "[this] is not the function or the mission of the ECB."<sup>77</sup>

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<sup>74</sup> As underlined by Stefano Patuanelli, Italian Minister of Economic Development: <https://www.mise.gov.it/index.php/it/per-i-media/notizie/it/198-notizie-stampa/2040880-sblocco-delle-esportazioni-di-dispositivi-sanitari-da-germania-e-francia>, (18/05/2020).

<sup>75</sup> The export restrictions could be seen incompatible with **Art. 35 TFEU**. That is why, the Commission urged Member States to reduce third-country exports in order to preserve the integrity of the single market and thus enhance intra-EU-State solidarity. See in particular: *Communication from the Commission Guidance note to Member States related to Commission Implementing Regulation (EU) 2020/402 making the exportation of certain products subject to the production of an export authorisation, as last amended by Commission Implementing Regulation (EU) 2020/426 2020/C 91 I/02*, OJ C 911 , 20/03/2020, p. 10–15.

<sup>76</sup> According to **Art. 283 (1) TFEU** as well as **Art. 10 Protocol 4**, the ECB Governing Council is composed by the Members of the Executive Board (President, Vice-President and four other Members – as of **Art. 283 (2) TFEU**) as well as the governors of national banks of the Euro-zone (only 15 of which have a voting right, following a rotating system, as of **Art. 10.2 Protocol 4**). The Governing Council meets on a regularly basis (at least 10 times a year, as of **Art. 10.5 Protocol 4**). Although the meetings are confidential, the outcome can be made public by the President of the ECB, Mrs. Lagarde (**Art. 10.4** in conjunction with **Art. 13.2 Protocol 4**).

<sup>77</sup> *European Central Bank, Governing Council of 12 March 2020, Press Conference*, available at: <https://www.ecb.europa.eu/press/pressconf/2020/html/ecb.is200312~f857a21b6c.en.html#qa> (18/05/2020).

This answer was clearly delivered at the wrong time, “not taking into account the irrational-rational rationality that drives the markets (and from which speculators take advantage)”.<sup>78</sup> As accurate as it may be, Lagarde’s announcement was an unnecessary stinging reminder to Italians, who had hardly forgotten the austerity policies to which they had been subjected following the subprime crisis. Indeed, although Mrs. Lagarde was only referring to the role of the ECB according to the European Treaties,<sup>79</sup> this alleged denial of solidarity affected tremendously the Italian stock exchange market, which was already suffering due to the outbreak of the Covid-19 crisis, causing a drop of 17 points in *Piazza Affari*.<sup>80</sup> No wonder journalists described this press conference as the EU’s “final stab in the back” of Italy.<sup>81</sup>

Following such events, the ECB slightly reviewed its strategy on 18 March 2020 announcing unprecedented measures, namely the new Pandemic Emergency Purchase Programme (PEPP) with an overall envelope of 750 billion euros.<sup>82</sup> Moreover, the Governing Council stated explicitly that it “will do everything necessary within its mandate [...] to support the economy through this shock”.<sup>83</sup> Yet, Lagarde’s *whatever it takes* has been perceived as “less impressive than Draghi’s”, especially because of the added “within its mandate”.<sup>84</sup>

Actually, the ECB Governing Council was right in insisting on the need for a more comprehensive response to the crisis from other EU institutions and bodies. By pointing out the limits of the ECB, Mrs Lagarde was probably fearing that an overzealous response would be seen as an excess of competence leading to legal consequences. Indeed, in light of a recent ruling of the German Federal Constitutional Court, this cautious attitude has, to some extent, proven premonitory.<sup>85</sup> Moreover, soon some Member States dusted off the idea of creating a new common European debt, which had been abandoned for the Greek crisis.

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<sup>78</sup> *Esposito*, Errori di Lagarde, lezioni da apprendere e responsabilità dei banchieri centrali, Huffington Post, 16/03/2020, [https://www.huffingtonpost.it/entry/errori-di-lagarde-lezioni-da-apprendere-e-responsabilita-dei-banchieri-centrali\\_it\\_5e6f5d7cc5b6dda30fcd70fc](https://www.huffingtonpost.it/entry/errori-di-lagarde-lezioni-da-apprendere-e-responsabilita-dei-banchieri-centrali_it_5e6f5d7cc5b6dda30fcd70fc) (18/05/2020).

<sup>79</sup> According to **Art. 127 (1) TFEU**, in conjunction with **Art. 119 (2)** and **282 (2) TFEU**, the primary objective of the ECB is to maintain price stability and only when this objective is reached the ECB can support the general economic policies. Although the ECB has a rather broad margin of manoeuvre to conduct its operations, the fight against inflation remains its primary concern.

<sup>80</sup> *Carrà*, Borsa italiana sprofonda con la Bce che delude: il Ftse Mib chiude a -17%, Forbes, 12/03/2020, <https://www.forbes.it/2020/03/12/borsa-italiana-oggi-ftse-mib-azioni-in-calo-del-9-per-cento-per-coronavirus-e-misure-bce/> (18/05/2020).

<sup>81</sup> *Caporale*, La coltellata dell’Europa, Il fatto quotidiano, 12/03/2020, <https://www.ilfattoquotidiano.it/2020/03/12/listantanea-la-coltellata-delleuropa/5734846/> (18/05/2020).

<sup>82</sup> *European Central Bank*, ECB announces €750 billion Pandemic Emergency Purchase Programme, Press release, 18/03/2020, [https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200318\\_1~3949d6f266.en.html](https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200318_1~3949d6f266.en.html) (18/05/2020).

<sup>83</sup> *Ibid.*

<sup>84</sup> *Rettman*, ECB promises (almost) whatever it takes, EU Observer, 19/03/2020, <https://euobserver.com/coronavirus/147808> (18/05/2020).

<sup>85</sup> BVerfG, Judgment of the Second Senate of 05 May 2020 - 2 BvR 859/15 : the ruling does not explicitly refer to the PEPP, but by condemning previous ECB quantitative easing measures, it could influence

### 3. Coronabonds: restoring the North/South divide?

Following a similar project proposed for the Greek crisis, Eurobonds, renamed for the occasion Coronabonds, would be bonds issued jointly by the Eurogroup Members to support European necessary spending and investments in the aftermath of the Covid-19 crisis. The new form of help would differ from that of the European Stability Mechanism, since there would be no conditionality - in form of austerity policies - to the help granted to the most affected regions.

Nonetheless, as expected, the idea was not welcomed by all the Members of the Eurogroup, and in particular Germany, Austria, Finland and the Netherlands fiercely opposed to it. Indeed, the group of the “frugal four” see “the issuance of a common debt instrument” as a punishment for “the countries that had saved for such a rainy day” (the Northern countries) and an unjust encouragement to “further fiscal mismanagement [for] those who did not.”<sup>86</sup> In other words, a denial of the very essence of the principle of solidarity. However, Italian Prime Minister Giuseppe Conte tried to win Berlin’s support in this cause, in particular with an interview on German public television.<sup>87</sup> Soon, the debate was heated in Germany, a country traditionally devoted to respecting the financial constraints imposed by EU membership, adding to the national divide between conservative and more progressive politicians.<sup>88</sup> Meanwhile, Portuguese Prime Minister António Costa denounced the selfish attitude of the Dutch,<sup>89</sup> which led to rising criticisms against the government in the Netherlands.<sup>90</sup>

As if this were not enough, in the middle of the negotiations the German newspaper, *Die Welt*, published an article inviting the Chancellor Angela Merkel not to give in to Italian pressure. According to the journalist, Italian mafia is currently itching for a new “rain of money from

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the future evolution of the role of the ECB, whereby the CJEU will most likely try to thwart the German court in name of the supremacy of EU law.

<sup>86</sup> *Adler/Roos*, If coronavirus sinks the eurozone, the ‘frugal four’ will be to blame, *The Guardian*, 31/03/2020, <https://www.theguardian.com/world/commentisfree/2020/mar/31/solidarity-members-eurozone-coronavirus-dutch-coronabond> (18/05/2020).

<sup>87</sup> *Troendle*, „Ein Notfall, der alle betrifft“, *Tagesschau*, 31/03/2020, <https://www.tagesschau.de/ausland/conte-corona-101.html> (18/05/2020).

<sup>88</sup> Although the German government, and especially the CDU/CSU opposes the implementation of coronabonds, other MPs from different political parties showed their support to Italy. In this regard, Franziska Brantner (Grüne) organized a demonstration to show support to Italy before the Italian Embassy: *Seitzer*, Heidelberger Politikerin setzt mit Demo Zeichen der Solidarität zu Italien, *SWR*, 22/04/2020, <https://www.swr.de/swraktuell/baden-wuerttemberg/solidaritaet-mit-italien-100.html> (18/05/2020).

Conversely, the position of Friedrich Merz (CDU), candidate in the 2020 CDU leadership election, is unequivocally against the new mechanism: *Schlieben*, „Wir können in dieser Krise nicht alle retten“, *Die Zeit*, 02/05/2020, <https://www.zeit.de/politik/deutschland/2020-05/friedrich-merz-coronavirus-politik-wissenschaft-massnahmen-pandemie/komplettansicht> (18/05/2020).

<sup>89</sup> *Lourinho*, “Either the EU does what it has to do or it will end”, reiterates Antonio Costa, *Jornal Economico*, 27/03/2020, <https://jornaleconomico.sapo.pt/en/news/or-the-eu-does-what-it-has-to-do-or-it-will-end-reiterates-antonio-costa-567348> (18/05/2020).

<sup>90</sup> *Von der Burchard/Schaart*, Dutch face friendly fire as corona bond bad cops, *Politico*, 31/03/2020, <https://www.politico.eu/article/dutch-corona-bond-bad-cops-face-backlash/> (18/05/2020).

Brussels”.<sup>91</sup> Italian Foreign Affairs Minister declared this statement as absolutely shameful, and it almost brought the two countries to the brink of a diplomatic incident.<sup>92</sup>

Admittedly, doubts may arise as far as the management of resources from Italy, especially considering the high deficit of the country even before it was hit by the Covid-19 crisis. However, this apprehension can in no case justify the idea that EU funds will, if granted, end up in mafia’s hands. Quite the opposite, considering the system’s weaknesses, it is sure that if no funds are granted, Italy will have difficulties coping with the economic consequences of the Covid-19 crisis. The mafia will then grab the chance to replace the State. Indeed, seeing no help coming from the EU, and *a fortiori* from the State, some people living in extreme poverty will find in the mafia the only answer to their financial struggle. In short, the only winners of a selfish attitude on the part of the EU Member States will be criminal organisations.<sup>93</sup>

Nevertheless, beyond the ideological debate on the creation of a common European debt system, the message that the Southern countries, i.e. the countries which have been most significantly affected by the pandemic, wanted to pass on to their European partners was that this crisis will certainly have an impact on the single market as a whole. Also, since the problem is not limited to some “lazy Southern European countries” (pejoratively related to as PIGS<sup>94</sup>) a European rescue plan is necessary. After all, having a stronger European Union is in the interest of all Member States.

In sum, the Italian trust in the EU and the allies has reached an unprecedented low as a consequence of some initial crisis (mis)management and the expressed nationalist thinking. The situation is all the more serious as in Italy, a founding member which had been traditionally strongly pro-EU, the trust in the EU has been sagging since the 2000s<sup>95</sup>, reaching a new low

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<sup>91</sup> *Schiltz*, „Frau Merkel, bleiben Sie standhaft!“, *Die Welt*, 08/04/2020, <https://www.welt.de/debatte/kommentare/article207146171/Debatte-um-Corona-Bonds-Frau-Merkel-bleiben-Sie-standhaft.html> (18/05/2020).

<sup>92</sup> *NN*, *Die Welt*: “La mafia aspetta gli aiuti europei”. Di Maio: “Toni vergognosi. Berlino si dissocia”, *La Repubblica*, 09/04/2020, [https://www.repubblica.it/politica/2020/04/09/news/coronavirus\\_die\\_welt\\_e\\_risposta\\_di\\_maio-253551424/](https://www.repubblica.it/politica/2020/04/09/news/coronavirus_die_welt_e_risposta_di_maio-253551424/) (18/05/2020).

<sup>93</sup> In some areas of the country the mafia is already helping people in need, replacing the role of a State who has been too slow in acting: *Tondo*, Mafia distributes food to Italy’s struggling residents, *The Guardian*, 10/04/2020, [https://www.theguardian.com/world/2020/apr/10/mafia-distributes-food-to-italys-struggling-residents?utm\\_term=Autofeed&CMP=tw\\_t\\_gu&utm\\_medium&utm\\_source=Twitter#Echobox=1586520473](https://www.theguardian.com/world/2020/apr/10/mafia-distributes-food-to-italys-struggling-residents?utm_term=Autofeed&CMP=tw_t_gu&utm_medium&utm_source=Twitter#Echobox=1586520473) (18/05/2020).

<sup>94</sup> The acronym stands for Portugal, Italy, Greece and Spain. In its version PIIGS, the acronym includes Ireland.

<sup>95</sup> Italian trust in the EU and the feeling of belonging used to be above the EU average. Yet, figures show that increasingly few Italians believe the EU is beneficial to Italy (from 75% in 1987 to less than 40% in 2017). Also, the feeling of belonging has dropped from almost 80% in the 1980s to 35% in 2017. For further details, see: *Debomy/Rivière/Husson*, Gli Italiani e l’Europa, cronaca di un disincanto, *Notre Europe*, 20/02/2018, <https://institutdelors.eu/wp-content/uploads/2018/02/GliItalianiEiEuropa-DebomyKantar-Febbraio18.pdf> (18/05/2020).

in April 2020.<sup>96</sup> Accordingly, if the EU does not take concrete action, the crisis will be a breeding ground for the rise of right-wing parties in the country, which will affect the geopolitical stability of the whole Union. Fortunately, the EU soon realized what was at stake, by launching *ad-hoc* financial plans.

## II. The game is afoot: the EU exploring creative solutions

### 1. Promising signs of unprecedented medical solidarity

Despite a difficult start, the EU has been in the front line in the fight against Covid-19. What is more, the seriousness of the crisis was also understood by its Member States, so that various solidarity actions were undertaken in particular towards the most affected countries, i.e. Italy and later Spain. In this regard, the German response stands out, as the country has been the first one to welcome EU Covid-19-patients in order to relieve Italian, French, and soon also Dutch hospitals.<sup>97</sup> Such a strong and clear solidarity message helped Germany partly restore its image among its European allies, becoming as well a signal of hope for Europe.<sup>98</sup> Moreover, as the situation in Italy worsened, many European countries donated medical equipment to Italian hospitals to cope with this unprecedented crisis. At the same time, some States started to send volunteer doctors to Italy for special Covid-19 missions. For its part, the EU was able, thanks to the civil protection mechanism, to send Romanian and Norwegian doctors to the worst-hit regions where the lack of medical staff was most acute. But this was just the begin of a wave of solidarity acts, which will hopefully endure.

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<sup>96</sup> The trust in the EU and its institutions has slumped over the last semester, dropping from 41% to 24% for the trust in the Commission, from 43% to 25% for the ECB and from 42% to 27% for the EU as a whole: *Corda*, Sondaggi, l'Europa crolla nella fiducia degli Italiani. Germania nemico numero uno, EU News, 08/04/2020, <https://www.eunews.it/2020/04/08/sondaggi-leuropa-crolla-nella-fiducia-degli-italiani-germania-nemico-numero-uno/128811> (18/05/2020).

<sup>97</sup> *Auswärtiges Amt*, Wie Deutschland Europa in der Coronakrise hilft, 17/04/2020, <https://www.auswaertiges-amt.de/de/aussenpolitik/europa/maas-corona-europa/2328038> (18/05/2020);

*Stadler*, Deshalb hilft Deutschland ausländischen Covid-19-Patienten, BR, 05/04/2020, <https://www.br.de/nachrichten/deutschland-welt/deshalb-hilft-deutschland-auslaendischen-covid-19-patienten,RvCrBGx> (18/05/2020).

<sup>98</sup> Since the beginning of the pandemic public opinion had been, for different reasons, hostile to Germany especially in Italy and France. On the one hand, as mentioned before, the Italians had felt betrayed by the French and the Germans when they were first asking for medical supplies. Unfortunately, Germany's popularity drastically decreased after the infamous article of *Die Welt* (fn. 85-86). On the other hand, the French, in particular those living in the region Grand-Est were having difficulties understanding the unilateral closure of a border which had not felt as such since the beginning of the European construction. Thus, the welcoming of French nationals in German hospitals was seen as a sign of French-German friendship, and, subsequently, hope for Europe: *Wieder*, Coronavirus: l'Allemagne accueille des malades de France et d'Italie, *Le Monde*, 24/03/2020, [https://www.lemonde.fr/international/article/2020/03/24/coronavirus-l-allemande-accueille-des-malades-de-france-et-d-italie\\_6034299\\_3210.html](https://www.lemonde.fr/international/article/2020/03/24/coronavirus-l-allemande-accueille-des-malades-de-france-et-d-italie_6034299_3210.html) (18/05/2020).

## 2. A timely well-rounded response from the EU

The intervention of the EU (or even of its Member States) should arguably have taken place earlier. Commission President Ursula von der Leyen herself acknowledged it, openly addressing the EU excuses to Italy.<sup>99</sup> However, contrary to popular belief, the EU as a whole did provide the most support to Italy, and not China. Indeed, the EU aid has been deployed in different forms: starting from repatriation of EU nationals, to flexibility concerning government deficits, flexibility in the rules concerning state aid and other solidarity tools.<sup>100</sup> Unfortunately, all these measures were barely advertised in Italy, where most media continued to focus on non-EU support (in particular the help of China, Russia but also Cuba), arguably due to a structural deficiency of the Italian medias, as highlighted by some.<sup>101</sup>

Specifically, as regards the economic solidarity tools, on 18 March the EU first of all allowed Member States to make full use of the flexibility provided by the State aid rules to support the economy in the context of the coronavirus emergency. Subsequently, Member States have been free to support rapidly and effectively citizens and businesses, in particular small and medium-sized enterprises facing economic difficulties due to the Covid-19 outbreak. This was possible also because EU Finance Ministers agreed to suspend spending limits for national budgets to give EU countries sufficient leeway to fight the coronavirus pandemic.<sup>102</sup> In other words, for the very first time the rule that a country's budget deficit should remain within 3% of GDP has been suspended.

Moreover, on a proposal from the European Commission, 37 billion euros from the cohesion policies have been allocated for the fight against the coronavirus and for the health systems, businesses and workers affected by the emergency, of which a between 6 and 10 billion will

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<sup>99</sup> Von der Leyen, "Scusateci, ora la Ue è con voi", La Repubblica, 01/04/2020, [https://rep.repubblica.it/pwa/commento/2020/04/01/news/europa\\_ursula\\_von\\_der\\_leyen\\_bruelles\\_scusateci\\_ora\\_la\\_ue\\_e\\_con\\_voi-252912437/?ref=RHPPTP-BH-I252597018-C12-P1-S1.4-T1](https://rep.repubblica.it/pwa/commento/2020/04/01/news/europa_ursula_von_der_leyen_bruelles_scusateci_ora_la_ue_e_con_voi-252912437/?ref=RHPPTP-BH-I252597018-C12-P1-S1.4-T1) (18/05/2020).

<sup>100</sup> For an overview of the EU response to the Covid-19: *European Commission*, Coronavirus response: Timeline of EU action, [https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/timeline-eu-action\\_en](https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/timeline-eu-action_en), (11/05/2020); *European Commission*, Jobs and Economy during the Coronavirus pandemic [https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/jobs-and-economy-during-coronavirus-pandemic\\_en](https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/jobs-and-economy-during-coronavirus-pandemic_en) (18/05/2020).

<sup>101</sup> Lovisolò, Perché l'Italia pensa che l'Europa non la aiuti, 25/03/2020, <https://www.lucalovisolò.ch/internazionale/attualita/perche-litalia-pensa-che-leuropa-non-la-aiuti.html> (18/05/2020).

<sup>102</sup> *Council of the European Union*, Statement of EU ministers of finance on the Stability and Growth Pact in light of the COVID-19 crisis, Press release, 23/03/2020, <https://www.consilium.europa.eu/en/press/press-releases/2020/03/23/statement-of-eu-ministers-of-finance-on-the-stability-and-growth-pact-in-light-of-the-covid-19-crisis/> (18/05/2020).



benefit Italy.<sup>103</sup> Adding to that, all unused structural funds will be devoted to the coronavirus emergency allowing flexibility with regard to thematic concentration.

At the European Council meeting on 23 April, Member State leaders endorsed the € 540 billion package proposed by the Eurogroup (consisting of 100 billion SURE, a mechanism helping workers and companies granting them loans, 200 billion from the European Investment Bank and 240 billion from the ESM) and entrusted the Commission with the task of defining the characteristics and volume of a Recovery Fund (which could be worth between € 1000 and 2000 billion) to mitigate the economic consequences of the pandemic. All this adds up to the ECB Pandemic Emergency Purchasing Programme, a 750-billion plan aimed at boosting the economies of the Eurozone. To put it simply: the EU response has been an all-round response, which because of its fragmentation has been misperceived as incomplete or insufficient.

As a result, despite using the Greek example as model, the EU seems to have drawn the necessary lessons from its previous mistakes. Indeed, the controversial need for conditionality normally contingent upon financial help from the ESM has been lifted, at least as regards the public spending on the health system. Yet, these loans were not the solutions some Member States were expecting. The only unknown remains the concrete nature of the Recovery Fund, the Southern states preferring block grants to boost their economies instead of simple loans.<sup>104</sup>

Interestingly, from the European Council on 23 April it appears that the EU budget will undoubtedly have a key role in the EU's response to the economic recession following the pandemic.<sup>105</sup> Indeed, the EU had been negotiating the new multiannual financial framework for 2021-2027 since early 2018, without being able to reach a compromise. Yet, the crisis has unveiled the evidence: the need for an increase in the EU budget. In fact, as we have seen, currently the EU budget cannot exceed 1.20% of the GNI of the Member States.<sup>106</sup> An increase of the multiannual financial framework would clearly help the EU deal with the crisis, allowing it for instance to include a recovery fund. Alternatively, the EU could grant the most affected countries some rebates in their budget contribution. Yet, this system should be used only as

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<sup>103</sup> *Representation of the European Commission in Italy, Coronavirus, la risposta dell'Europa*, 24/04/2020, [https://ec.europa.eu/italy/news/20200317\\_covid\\_19\\_risposta\\_europa\\_it](https://ec.europa.eu/italy/news/20200317_covid_19_risposta_europa_it) (18/05/2020).

<sup>104</sup> An interesting solution could be the implementation of a new Pandemic Solidarity Instrument: *Grund/Guttenberg/Odendahl, Sharing the fiscal burden of the crisis: a Pandemic Solidarity Instrument for the EU*, Vox.eu, 05/04/2020, <https://voxeu.org/article/pandemic-solidarity-instrument-eu> (18/05/2020).

<sup>105</sup> See in this regard a research on the subject published by Deutsche Bank: *Körner/Böttcher, Covid-19: Interlinking Europe's recovery plan and the next EU budget*, DB Research, 24/04/2020, [https://www.dbresearch.com/PROD/RPS\\_EN-PROD/PROD000000000507359/COVID-19%3A\\_Interlinking\\_Europe's\\_recovery\\_plan\\_and.pdf](https://www.dbresearch.com/PROD/RPS_EN-PROD/PROD000000000507359/COVID-19%3A_Interlinking_Europe's_recovery_plan_and.pdf) (18/05/2020).

<sup>106</sup> cf. *supra* B-II-1

*ultima ratio*, as it would in all likelihood reestablish the vicious rebate system, which Brexit enabled the EU to get rid of.

### 3. What's next: reviving old projects or moving on?

While recognising the EU's enormous efforts to combat the economic consequences of the crisis, the EU response still needs improving, so that “instead of budgetary deception” it will “bring about real economic transformation”.<sup>107</sup> Indeed, in spite of its integrative nature, the EU remains an supranational organisation that is nowhere near a federal State. As such, its action is deeply hindered by its comparatively small budget, and in particular its limited own resources. In order to solve this problem, the idea of having European taxes seems to have recently reappeared. In reality, ever since the creation of a Monetary Union, some believed that the EU should have the competence to directly levy a tax. While initially such an idea seemed to be utopian, or in any case “not convincing”, especially because of the lack of support among the EU citizens,<sup>108</sup> the case for a European tax is “no longer taboo in Brussels”<sup>109</sup>. This project is all the more appealing, as it would also ideally blur the distinction between net contributors and beneficiaries, since the EU budget would progressively be emancipated from State contributions, relying on taxes levied directly by the EU, as it is currently the case for custom duties.

The easiest way to levy a European tax would be through a new income tax. Yet, introducing a direct income tax would be a delicate matter especially in the current climate of crisis. Indeed, if that were the case, the taxpayers' “verdict on the EU tax idea [would inevitably] be: These things must be nipped in the bud!”<sup>110</sup> Although cutting expenditures seems to be a possible solution to avoid further taxes, it is often linked to cuts which occur in the very areas where expenditures are needed the most, undermining the States' welfare systems. That is why other solutions need to be explored. In this regard, introducing a bank or carbon tax would politically be acceptable for citizens who are more inclined to make banks pay or to spend for a greener future. Besides being clearly in line with the European Green Deal promoted by the European Commission,<sup>111</sup> this path is also part of the strategy out of the crisis presented by the Spinelli

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<sup>107</sup> *Garicano/Hayer/Verhofstadt*, Commission's magical thinking won't save us from the coronavirus crisis, Politico, 07/05/2020, <https://www.politico-eu.cdn.ampproject.org/c/s/www.politico.eu/article/european-commission-ursula-von-der-leyen-magical-thinking-wont-save-us-from-the-coronavirus-crisis/amp/> (18/05/2020).

<sup>108</sup> *Mutén*, The case for an EU tax is not convincing, *Intereconomics*, Vol. 36, 2001, p. 228–230.

<sup>109</sup> *Chaltiel*, L'Union Européenne : tournant ou tourments ?, *Revue de l'Union européenne*, 2010, p. 485

<sup>110</sup> *Caesar*, An EU Tax? Not a good idea, *Intereconomics*, Vol. 36, 2001, p. 231–233, 233.

<sup>111</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM/2019/640 final.

Group.<sup>112</sup> Still, such a measure would not only be technically complex to implement,<sup>113</sup> but it would not suffice as a response to the Covid-19 crisis.

In this respect, as I have already mentioned, Eurobonds as a common debt mechanism seemed to be the suitable solidarity tool for the EU. However, due to the ongoing debate and the “north-south divide”, Eurobonds are not likely to be adopted as a response to the crisis. The introduction of Eurobonds would have been a crucial step for further integration, inasmuch as they would have contributed to the completion of a financial union strengthening the federal character of the ECB. Although, under current circumstances, the Commission could arguably propose the introduction of federal bonds using the flexibility clause (Art. 352 TFEU),<sup>114</sup> the mechanism should probably need to be legitimised with a Treaty amendment.<sup>115</sup> Yet, on the one hand, such an instrument would not have been a short-term response, and on the other hand, it would have required intense thinking on the ways the funds should be used. In this regard, investments could have been directed to the green economy, in order to fulfil the Green Deal agenda at the same time. Furthermore, bonds require a sound economy to be effective and to avoid speculations which could lead to a Lehman brothers 2.0. It is therefore easy to understand the doubts that arise as for the opportunity of taking such a decision right now, in the heat of the moment.

Bonds are definitely a decisive step towards further European integration, but as it was highlighted during the Greek crisis, they are not the “miracle drug” which will immediately boost the economies of all Member States. Indeed, the “nub of the problem” seems to be to that the EU “lacks its own taxpayer base”.<sup>116</sup> In other words, “establishing a sufficient degree of fiscal union in the euro area is [...] an economic and institutional challenge wrapped inside the political one of persuading sceptical populations that the common interest is also their interest.”<sup>117</sup> Also, it is well-known that citizens will accept no taxation without representation. As a result, both the hypothetical introduction of a new tax and the completion of the fiscal union through Eurobonds require beforehand a better representation of the citizens in the European institutions. Admittedly, the European Parliament already plays a crucial role, often forwarding interesting ideas for enhancing European integration. Yet, neither do the Treaties

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<sup>112</sup> *Spinelli Group*, A Federal Europe: the way out of the crisis, 28/04/2020, [https://www.federalists.eu/fileadmin/files\\_uef/press\\_releases/Spinelli\\_Group\\_Way\\_out\\_Crisis\\_20200428.pdf](https://www.federalists.eu/fileadmin/files_uef/press_releases/Spinelli_Group_Way_out_Crisis_20200428.pdf) (18/05/2020).

<sup>113</sup> Chaltiel, *op. cit.* (fn. 109).

<sup>114</sup> As proposed by the Spinelli Group (fn. 112).

<sup>115</sup> In particular a debt-sharing mechanism in the EU seems to be in violation of the non bail-out clause (**Art. 125 TFEU**).

<sup>116</sup> *Begg*, Fiscal union for the euro area: an overdue and necessary scenario?, Bertelsmann Stiftung, November 2011, p. 14.

<sup>117</sup> *Ibid.*

confer on it the right of initiative,<sup>118</sup> nor is it always involved in the decision-making of the EU. Only once the European Parliament becomes a real parliament the citizens will feel fully represented in an institution which they truly trust. What is more, a renewed trust in the EU will make it feasible to widen the Union's competences, especially in those fields where a national response often proves insufficient.<sup>119</sup> It is definitely not too late to think of new ways to shape our European Union.<sup>120</sup>

## D. Final remarks

The last decade has been extremely challenging for the EU. Indeed, the Greek crisis but also the highlighting of the flaws in the Schengen system have led to the perception of a disunited Union. Now, the Covid-19 pandemic is once again testing the EU survival, questioning in particular one of the core principles of the Union, namely solidarity. Yet this pandemic occurs also at a convenient time: the EU renewal in the aftermath of Brexit. In a way, the EU has already made a good start in the fight of the Covid-19 crisis, but in view of all the obstacles its path is going to be tumultuous. Thus, whatever action EU is taking and will take, it is crucial that European solidarity is duly advertised, so that unlike what happened in Italy, such measures do not go unnoticed.<sup>121</sup>

Admittedly, many structural changes can be suggested to the EU. In any case, the path to follow to overcome current and future crises inevitably leads towards more integration, enabling the EU to finally pick up the torch passed to it by its Founding Fathers whose aim was to build a solidarity-based community. Put differently, solidarity will only be possible through a more integrative approach; and the achievement of more solidarity will eventually foster further federalism in the EU. Ultimately, it's up to the Member States to let this virtuous circle save the EU. But we definitely cannot let them miss the *historic, favourable hour* we have in front of us

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<sup>118</sup> On the basis of **Art. 225 TFEU** the European Parliament only has an indirect legislative initiative.

<sup>119</sup> In this respect, in the midst of the Covid-19 pandemic an Italian political group has launched a petition to increase the EU competencies in health matters: <https://team.piueuropa.eu/eusanitaeng> (18/05/2020).

<sup>120</sup> Especially, in view of the Conference on the Future of Europe which is about to start. See also: *Guérot/Marsili*, Elites have failed us. It is time to create a European republic, *The Guardian*, 10/05/2020, <https://www.theguardian.com/world/commentisfree/2020/may/10/elites-failed-create-european-republic-pandemic-eu-citizens-democracy-equals> (18/05/2020).

<sup>121</sup> Although the EU is currently actively fighting against fake news (e.g., [https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/fighting-disinformation\\_en](https://ec.europa.eu/info/live-work-travel-eu/health/coronavirus-response/fighting-disinformation_en)), its efforts do not seem to be effectively reaching EU citizens.

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