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Waltraud Schelkle

To cite this article: Waltraud Schelkle (2022): Monetary solidarity in Europe: can divisive institutions become 'moral opportunities'?, Review of Social Economy, DOI: [10.1080/00346764.2022.2042728](https://doi.org/10.1080/00346764.2022.2042728)

To link to this article: <https://doi.org/10.1080/00346764.2022.2042728>



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Published online: 26 Feb 2022.



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Monetary solidarity in Europe: can divisive institutions become 'moral opportunities'?

Waltraud Schelkle 

European Institute, London, UK

ABSTRACT



How does the inherent norm of integration, notably to share risks among its members in good faith, become a self-sustaining practice? I address this question generally and for a critical case of a divisive institution, i.e. the evolution of sovereign bailout funding in the Euro Area since 2010. Community building between states is a potential *outcome* of solidaristic practices, reinforced by positive feedback processes. Inspired by Deborah Stone's [Stone, D. A. (1999). Beyond moral hazard: Insurance as moral opportunity. *Connecticut Insurance Law Journal*, 6(1), 12–46] work on insurance, I demonstrate that there are social mechanisms at play that favour the secular expansion of risk sharing between states.

ARTICLE HISTORY Received 12 October 2020; Accepted 9 February 2022

KEYWORDS Euro area; insurance; moral hazard; risk-sharing; solidarity

Contested European solidarity

More solidarity is what many observers of the Euro Area (EA) crisis saw as the only way for the union to survive (e.g. Jones, 2012). In fact, the top representatives of European institutions themselves think so. The Five Presidents Report marks a veritable risk-sharing turn in the economic governance of the European Union (EU) (Juncker et al., 2015). This became a demand for solidarity in the public debate on how the EU should support members in and after the COVID-19 pandemic. As early as March 2020, nine member states¹ signed an open letter to the EU Council President, stating that the case for risk-pooling public debt 'is strong, since we are all facing a symmetric external shock, for which no country bears responsibility'; this could finance protection in the 'spirit of efficiency and solidarity' (Wilmès et al., 2020). Even the so-called Frugal

CONTACT Waltraud Schelkle  w.schelkle@lse.ac.uk  European Institute, London WC2A 2AE, UK
This article has been corrected with minor changes. These changes do not impact the academic content of the article.

¹ Belgium, France, Greece, Ireland, Italy, Luxembourg, Portugal, Slovenia, and Spain.

Four² supported 'European solidarity and a common recovery strategy' only to reject categorically the mutualisation of debt or a significant increase of the EU budget (Non-paper, 2020).

The political quest for more solidarity in dealing with European crises has become a focus of conflict between the executives of member states. States, participating in an integration project like the EU or NAFTA, can expect solidarity from each other. This is the starting point of Sangiovanni's (2013) theory of solidarity as justice, which I share. A political economist notes that membership curtails the instruments members are allowed to use in order to protect themselves, notably trade restrictions to address current account imbalances or deindustrialisation from import competition. Membership in the European currency area also exposes their markets to risks that directly stem from integration, such as cross-border capital flows that facilitate unsustainable debt accumulation and lead to overheating housing markets.

The justified expectation of solidarity is not automatically met, however. Once downside risks materialise, the fortunate members have incentives to refuse to provide assistance, on the grounds that those in difficulties have only themselves to blame for unsustainable policies or a lack of preparation in the past, betting on being bailed out by others. The unfortunate are likely to suspect that this accusation of moral hazard amounts to self-serving renegeing on a commitment to mutual support that integration entails. For the success of a cooperative scheme, solidarity requires a robust disposition to accept part of the burden that befell others or share risks with those who may be more susceptible to them. Especially in a diverse union of states, solidarity acknowledges an element of *ex ante* redistribution to those predictably more vulnerable and endorses social insurance.³

These disagreements about mutual obligations of solidarity are not unique to the EU. Solidarity is regularly contested and selective, and has to be mobilised and enshrined in institutions to last, as histories of the welfare state (Baldwin, 1990; Swenson 2002; Ferrera, 2005) and more recent EU crisis research (Cicchi et al., 2020; Lahusen & Grasso, 2018) tell us. What makes the commitment to solidarity particularly strained in the EU is the fact that it is a diverse and still evolving union that cannot rely on traditional loyalties and robust state institutions (Banting and Kymlicka 2017b). Collective action failures of the kind indicated above are stubbornly resistant to persuasive and judicious normative arguments for more solidarity in the EU (Ferrera, 2021; Sangiovanni, 2013; Viehoff, 2018).

² Austria, Denmark, the Netherlands, and Sweden.

³ Economic theory would make us expect for private insurance that competition drives insurance premia down to where the expected loss equals the cost of the insurance, i.e. it is actuarial and self-interested. We will see, however, that Stone (1999) disputes the strict separation of private and social insurance.

The question is how the inherent norm of integration, notably to share risks among its members in good faith, becomes a self-sustaining practice. I address this question generally and for a critical case of a divisive institution. After all, the welfare state is a resilient macroinstitution in Europe and the EU polity has managed, in 2020 and arguably before, to build and develop capacities for risk-sharing between member states. How was this possible? I argue that there are social mechanisms at play that favour the secular expansion of risk sharing between states. Most of the relevant literature is concerned with inter-personal solidarity, for instance all contributors to Banting and Kymlicka (2017a). Between states, sentiments of empathy are rarely enough to sustain solidarity. Capacities for inter-state risk sharing are typically embodied in institutions that evolved for other than overtly solidaristic reasons or were not purpose-built to begin with (Schelke 2017, pp. 37–45). The supported institutions may be originally self-regarding, for instance serve to protect one's own community against the fallout from the bad luck of others. But the sponsor may not get this protection without helping the unfortunate or vulnerable. An institution becomes a manifestation of solidarity if its risk-sharing capacity is acknowledged or at least tolerated, typically during or after a crisis.

There is bound to be a large discrepancy between the normative evaluation of institutions and this minimalist notion of 'solidarity by stealth,' to borrow the apt term from Hall (2017, p. 223). For him, it is doubtful whether this can really be solidarity. This doubt presupposes an existing community that socialises new members into the prevailing norms of the community. But what about a new, evolving polity like the EU? I start with the view that macro-institutions of risk-sharing are not merely expressions of the attitudes towards inter-personal solidarity by a majority or a representative citizen. They typically shape solidaristic attitudes in the first place. Negative feedback from organised interests, advocacy groups and 'populist' challenger parties can subsequently trigger institutional adaptations.⁴

How can solidarity by stealth generate political bonds that underpin and possibly deepen communities of risk? Community building in this conceptualisation is a potential *outcome*, not a pre-condition, of solidaristic practices, reinforced by positive feedback processes. The argument is inspired by Deborah Stone's (1999) work on insurance. In Stone's analysis, sharing risks of gainful but hazardous activities, i.e. insurance, generates political opportunities for community building, thus ratcheting up the standards for what can and should be insured. Monetary-financial integration can be seen as a gainful but hazardous activity that a number of European countries are engaged in. Different national interests seize opportunities that the risk pooling in a common currency offers, often under duress, to extend insurance to their own

⁴ See De Vries et al. (2021, pp. 20–21) for a recent elaboration of this point. See also Kriesi et al (2021, pp. 8–11).

constituencies, thus potentially expanding it for others. The contribution of my article is, first, to explain how Stone's reasoning about the expansionary dynamic of insurance can be strengthened by including macro-institutions underpinning solidaristic practices. Second, a least-likely case for an expansionary dynamic of insurance provides evidence for this conceptualisation, namely the evolution of sovereign bailout funding in the EA since 2010.

The European Stability Mechanism (ESM) is the most divisive institution of sovereign bailout funding recently created, largely due to the intrusive conditions imposed on countries that needed rescue. The ESM is a hard test for the proposition that political mechanisms generating opportunities for more insurance are even at work here. Against the benchmark of liberal-egalitarian standards, the ESM is bound to disappoint. One standard is of particular relevance here: the principle that countries to be rescued must not be exploited but treated as equals (Viehoff, 2018, pp. 14–15). My analysis contrasts this normative standard with insurance to sovereigns that the ESM provided first as a by-product of the fortunate members' objective to protect themselves against contagion. During the COVID-19 pandemic, it became a re-insurance mechanism for member states when the European Central Bank (ECB) is constrained, projecting commitment rather than the suspicion of moral hazard.

The article discusses, first, how we can understand why and how inter-state solidarity may expand. The following section analyses a critical case of a divisive institution: if the ESM can be shown to follow an expansionary logic, normatively and politically, it is likely to hold in less adverse circumstances. The concluding discussion picks up the link between monetary solidarity and community building that will decide whether the common currency is politically sustainable.

Inter-state solidarity

This section starts with the literature on interpersonal solidarity, and what we can learn from it about the secular tendency of insurance and risk pooling to expand. Then I will argue that the social mechanisms driving this dynamic, as identified by Stone (1999), can be understood even better by appreciating the role of macro-institutions as a missing link.

Normative analyses of solidarity are typically based on a version of social contract theory. Solidarity as justice (Sangiovanni, 2013) is a case in point, based on John Rawls' theory of justice. Rawls (1971) invites readers to a thought experiment in which they have to imagine themselves behind the veil of ignorance. In this original position, they would know neither about their endowments (talents, impairments) nor about their preferences, notably as regards risk-taking. Even the society in which they live is unknown to them, except that this society is committed to justice. The idea is 'to set up a fair procedure so that any principles agreed to are just.' For this, 'we must nullify the effects of

specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage.’ (Rawls 1971, p. 136). The conceptual basis implies that a community of risk is formed, in Rawls’ theory around the commitment to justice, before it can stipulate solidaristic commitments. Rawls’ theory shares this with other, for instance identity-based social contract theories (Banting and Kymlicka 2017a, p. 9; Hall, 2017, pp. 202–4).

My contribution is interested in these underlying assumptions, notably that social bonds necessary for the implementation of just principles already exist or that the implementation of these principles will bring about solidarity. Rawls’ original position invokes the unknowable future. The social contract is therefore an incomplete contract. An incomplete social contract must allow for dynamic adjustments. Sangiovanni’s (2013, p. 228) search for the norms of solidarity in the integration process itself takes account of this quest: ‘the long-term effects of integration on growth and problem-solving capacity are uncertain, and [...] the effects, both positive and negative, will be unevenly distributed among member states.’ Hence, the social contract should adapt to unforeseen problems, testing mutual obligations. The expansion of both the risk pool and of adverse contingencies covered inside the EU is the adjustment I try to explain.

In her explorative article on insurance, Stone (1999, p. 13) argues that insurance ‘creates *social mechanisms* that tend to increase what gets perceived as insurable and deserving of collective support.’ Hence, insurance begets more insurance. The thrust of her article is that this is not because moral hazard incentivises risk taking that then leads to more insurance cases, i.e. free-riding on the community of risk. Stone (1999, p. 13) contrasts the notion of moral hazard with that of moral opportunity:

[I]nsurance *does* change the likelihood of adverse events, but not through its influence on individual behavior. Rather, through its effects on political culture and collective political action, insurance increases the number and kinds of events that we consider adverse and worthy of collective responsibility.

Even private insurance can have this effect of moral opportunity: liability or third party insurance instils in those whose activity can affect others adversely, e.g. by driving a car or employing workers for hazardous jobs, that they must consider these effects (Stone, 1999, p. 27). The quote also shows that the term ‘moral’ here is used to oppose directly the notion of moral hazard, Baldwin (1990, p. 299) would have used ‘political’ for what she describes.

Stone (1999) identifies five social mechanisms by which private and social insurance creates expansionary dynamics. I indicate where I see analogies for inter-state solidarity to be followed up in the case study of the ESM.

1. At the most general level, insurance ‘enlarges the public conception of social responsibility’ and legitimises mutual aid (Stone, 1999, p. 16). Even

profit-oriented life and accident insurers with their individualistic messaging remind prospective clients of their vulnerability and that they must line up help for their family should the adverse contingency arrive (Stone, 1999, pp. 17–8). Mutual aid that is portrayed as reinstating the independence of the beneficiaries also instils the awareness that a community of risk is necessary to make independence possible. Insurance, private and social, is promoted as help for self-help, in contrast to a stigmatising hand-out like social assistance (Moss 1996, p. 4).

Analogously, the ESM projected the idea that reinstated sovereignty is the ultimate goal of mutual support, hence the stipulation of deep reforms in return for cheap long-term loans. The programmes monitored by the ‘Troika’ of Commission, IMF and the ECB triggered an acrimonious debate on the form and scope mutual aid should take and was not confined to executives and parliaments. Especially the quid-pro-quo of loans for reform mobilised anti-austerity movements in Southern Europe and Eurosceptic movements in the North (Manow, 2018). Yet it also triggered the risk-sharing turn in the EA. Once an EU agreement was reached, politicians had to make the case for the institution in national parliaments, which was rarely couched in terms of solidarity in the EA crisis and more explicit during the COVID-19 pandemic. Eurosceptic voices played a similarly unexpected role to private insurers in that they inadvertently convinced reluctant observers of the benefits of risk-pooling.

2. Closely related is, secondly, the effect of specific institutional features by which ‘insurance teaches citizens that they have an obligation to help others and the right to receive aid when they suffer certain kinds of losses’ (Stone, 1999, p. 45). Liability or third-party insurance makes individuals aware that they have a responsibility to others when driving a car; but also businesses: accident insurance for workers acknowledges the social value of and the right to protection when performing potentially harmful activity (Stone, 1999, pp. 26–27). Mandatory private insurance has thus become a standard feature of industrial society.

Analogously, the ESM was established under Article 122 TFEU that allows financial assistance to a member state when risks materialise that are ‘beyond its control’ (more below). This legal basis acknowledges that the pursuit of certain growth strategies may entail risks, such as financial boom and bust, that deserve a collective safety net. Even with such risks, growth in one member state can be valuable to others, e.g. through trade and the expansion of export markets. Certain symptoms of a bust-phase, notably excluding member states from bond market finance, become recognised as unacceptable harm and trigger collective efforts to replace market access. In turn, fiscal rules and, again, conditionality, were meant to make governments aware of their obligations to

avoid harm to other members. Over time, sovereign bailout funding came to stress more the right to aid and the ESM allowed for precautionary support of recovery.

3. A third mechanism works through the finance side: insurance generates funds. This allows developing harm-alleviating technologies and thus 'creates new standards of well-being and changes the social meaning of entire problems' (Stone, 1999, p. 29). A prime example for this process is the right of elderly or disabled citizens to lead a meaningful life rather than merely have their fragility made bearable. An autonomous life requires support by technologies and care services to which all citizens feel entitled in the event. Unequal coverage by such support becomes itself a risk. Insurance is 'one vehicle for remedying inequalities and inequality of insurance coverage becomes an adverse event' (Stone, 1999, p. 40).

Inter-state insurance in a currency union starts with ensured liquidity through central bank cooperation that safeguards uninterrupted payments despite a sudden stop of capital flows (Schelkle 2017, p. 41, 286–289). This changes the notion of macro-economic stability and stabilisation. The inequality of monetary conditions, for instance higher risk premia on debt in some member states, becomes an adverse event that calls for intervention and is no longer accepted as the more or less efficient operation of 'market discipline.' This was exactly the implication of creating the ESM, which tried to substitute market for political discipline through conditionality. Even so, the harm-alleviating credit of the ESM became more differentiated and switched from curative to preventative.

4. Insurance also creates supporters and who all have stakes in the expansion of insurance: claimants who want help with new kinds of problems, career altruists who see insurance as a tool for helping their clients, and service providers who depend on insurance reimbursement for their revenues. (Stone, 1999, p. 46)

While their interests are not aligned, 'insurance policies and regulations offer ambiguity as a political resource' (1999) to pull in the same direction of expansion, the common denominator of their different positions. Claimants litigate against certain exclusions, or advocates on their behalf start a political campaign, and insurers will give in as long as they can get the funding for extended coverage. It is the job of career altruist, be it advocacy groups or public servants, to find regulatory and financial solutions to the contests between the parties.

Stakeholders of inter-state solidarity are created in the guise of institutional actors in countries that are vulnerable to insurable risks; and Commission officials and other supranational bureaucracies like the IMF that are 'career

altruists' installed to support sovereigns. Repeated crises can also bring the more moderate opponents of inter-state insurance on board, realising that the political backlash against a union in permanent recession can escalate. Those who are staunchly apprehensive of having to provide insurance face accusations regarding their policies that entail downside risks for other member states, like relentless tax and wage competition. The ESM mobilises stakeholders that remind others why even directly opposed interests can find common ground in the availability of a sovereign bailout fund that prevents contagion of financial market panic.

5. Finally, '[t]hose seeking insurance expansion are making the quintessential democratic claim: they are asserting their membership in a community, their right to representation in its collective decisions, and their right to equal treatment vis-à-vis other citizens.' (Stone, 1999, p. 44) They have been supported in their endeavour by advocacy groups, seeking legal redress in higher courts that, over time, acknowledge that exclusion would be discriminatory. Expansion of insurance becomes a major vehicle for equality, understood as a demand for distributive justice. 'Parity,' for instance of treating mental and physical illness equally, thus became 'the insurance term-of-art for equality' (Stone, 1999, p. 42). The principle of non-discrimination has a similar effect. The state of Massachusetts prohibited 'redlining,' i.e. the exclusion of certain neighbourhoods from homeowners insurance, which Stone (1999, p. 43) characterises thus: 'the insurance statute reads like a grand civil rights declaration, prohibiting discrimination against every imaginable social category.' It challenged the practice of risk classification itself, adding a universalising tendency to that of expansion.

So far, the EU is a union of democracies, with weak channels of democratic participation at the supranational level (Lijphart, 2012, pp. 41–43; Kriesi et al., 2021, p. 5). Even so, the norm of equality is strong between formally sovereign states. The ESM seemed to deny programme countries such formal equality and therefore made the fund such a divisive institution. The conditions stipulated and the close surveillance of compliance seemed to create a regime of second-class membership. This overshadowed the fact that the ESM dwarfs the IMF in actual sovereign funding at more favourable financial terms (Schelkle 2017, 166–174). Opposition against the ESM flared up at the next potential instance of economic-fiscal turmoil, the COVID-19 pandemic, and drove a more equitable and empathetic response (Ferrera, 2021).

In short, this section argued that it is possible to draw on Stone's (1999) analysis of expansionary forces of insurance, even though the interest here is in the expansion of insurance between member states. The underlying notion of solidarity is in line with Sangiovanni (2013, p. 230): 'a kind of reciprocity among

states.' It resonates with how Baldwin (1990, p. 299) sums up his historical study of the welfare state: 'Solidarity [...] is only misleadingly analogous to altruism. An individual sentiment, altruism, is generally confined to narrow circles of the like-minded. Solidarity [...] has been the outcome of a generalized and reciprocal self-interest. Not ethics, but politics explain it.' Member states try to achieve through cooperation what they could not achieve on their own and in order to do so, they incur risks associated with integration: they cannot use certain policy instruments or must use them observing restrictions, for instance by keeping their borders open. If these integration risks then materialise for some of them, solidarity as fairness calls for their support. I will now analyse how a divisive institution has been transformed into one that is part of a solidaristic system of re-insurance.

The evolution of a divisive institution

This section outlines the main steps of sovereign rescue funding in the EA. At every step, I ask the question that motivated Stone's (1999) analysis: can we identify the social mechanisms she singled out to explain the evolution of the ESM as one of more risk sharing? Does it also indicate community building in its wake or does it remain solidarity 'by stealth'?

The set-up

The first bailout fund, the now defunct European Financial Stability Facility (EFSF), was agreed at the dramatic summit of heads of state on 9–10 May, 2010, where the first bailout for Greece was agreed (Barber, 2010). The EFSF was created upon request of ECB President Trichet and was meant to last for three years only. The ECB was for the first time pressurised into buying government bonds from overindebted banks, so in return Trichet asked EA governments to create a fund that would indemnify the ECB should a government default. Solidarity was the by-product of the ECB's institutional protection. It was still solidarity as member states agreed the largest sovereign bailout in history.

The path taken was to 'grant financial assistance' on the basis of Article 122(2)TFEU:

Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned.

The first point to note is that mutual financial support is expressly confined to instances of what economists call exogenous shocks. There is more truth and wisdom in the use of this legal basis than conventional cynicism about rule-bending recognises. Greece's fiscal problems were largely homemade but willingly financed by cross-border banks; the financial crisis tipped the country

over the edge. Yet default was considered to be so disruptive that dealing with these fiscal problems became a matter beyond the government's control. And it was: the fear of a second Lehman moment made Treasury Secretary Geithner call into the summit, imploring EU heads of state to ditch the no-bailout clause, which Chancellor Merkel in particular insisted should be invoked (Barber, 2010). The collective decision to prioritise world financial stability did not permit a Greek default at the time. This constellation and the subsequent creation of a permanent institution of bailout funding enlarged the 'conception of social responsibility' (Stone, 1999, p. 16) of member states towards each other. However, Article 122 TFEU does not codify a right of the unfortunate member state to support.

Can moral hazard explain the creation of the EFSF? The fiscal rules have always been justified on these grounds, so Greece seemed to vindicate those warnings: clearly, Greek governments had taken more fiscal risks once they were in the monetary union. Except that they had not. Greek public finances were undoubtedly on an unsustainable path, but there was no change with entry into the euro area. This does not fit the moral hazard story. Was the EFSF a moral opportunity? It did acknowledge that the common vulnerability is cross-border financial market panic to which all member states were susceptible. This would have been true for Germany: if German banks had had to take massive losses from an early Greek default and be restructured, the precedent set would have made Germany extremely vulnerable. Each time another housing bubble burst somewhere, with Ireland next in line, doubts about how many more hits German public finances can take would have resurfaced because its banks were exposed to these markets as well. That financial integration without safety nets was to blame dawned on EU decision-makers as the crisis kept on escalating. Neither Ireland nor Spain could be accused of fiscal profligacy. In this basic sense, the EFSF acknowledged that a member's fiscal problems are an insurance case 'amenable to human agency and collective action' (Stone, 1999, p. 15).

But it also became clear that the temporary fund set up as a Special Purpose Vehicle was actually destabilising. It had no own capital and the fiscal accounting rules applied by Eurostat meant that the bond issues increased debt levels of both the beneficiaries (Ireland, Portugal and Greece) and the guarantors because the guaranteed bonds had to be booked as a liability (Mabbett & Schelkle 2016). The organisation of its successor, the ESM, remains outside the Treaty, which makes it an intergovernmental body. It has paid-in capital of €80.5 billion. Its constitution was subject to the simplified ratification procedure of international agreements in national parliaments and its decisions are amenable to judicial review in domestic constitutional courts.

The ESM has been set up as a mutual insurance fund of formally equal members. It was established by amending Article 136 TFEU:

(3) 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.

A member faced with the ‘accident’ of crashing prices for its bonds/ skyrocketing bond yields has to make the first step and request a programme. This right of initiative was stretched to its limits when the Irish government refused to exercise it; the government was officially pressurised into a programme by the Council in autumn 2010, because the panic in bond markets was spreading to other member states. It was a stern reminder that the insurance was not only for those directly affected.

The European Commission and the IMF, with the ECB as a vocal observer, negotiate a programme with the country. The programme is presented to the other member states and their consent authorises the ESM to issue bonds that finance the programme. Crucially, no member state becomes a creditor of the receiving country directly: the programme country owes the loan to the ESM. The member states not under such a programme guarantee these bonds in case a country cannot pay back the full amount as agreed and after any default has exhausted the capital of the ESM. Each country is liable according to its share in the paid-up capital of the ECB. Every member, whether programme country or guarantor, has committed public funds to this capital stock. It is burden-sharing in a mutual scheme, in which members insure each other with their comparatively good standing in financial markets: the risks are pooled, resources only as last resort.

Contested insurance

But two issues seem to defy the intention of solidarity and make sovereign bailouts through the ESM divisive. First, the Irish bailout confirmed what the EU’s primary law enshrined, namely the character of the ESM as a ‘permanent firewall’ (ESM, 2019, p. 135) that safeguards not members but the euro area as a whole. Second, it imposes obligatory conditionality.

The EU uses the term ‘firewall’ officially, the hagiography of the ESM creators mentions it 147 times (ESM, 2019, p. 9 and *passim*). This has the scandalising implication that the role of the ESM is primarily to protect the fortunate against the spread of the fire raging among the unfortunate. However, it is perfectly compatible with the mutuality principle. The firewall is constituted by the fortunate standing ready to act as guarantors for the help to those directly affected. Their motivation of self-protection does not diminish the guarantee. On the contrary, it renders the guarantee politically more robust by allowing the contingent liability to be defended against critics. Preventing the spread is essential for providing the protection: if all are affected, the risk cannot be shared. This was particularly important for members like Italy and Slovenia that

were in a diverse group of member states right on the borderline of programme and guarantor countries; Belgium was another. A firewall was essential to prevent this group being pushed over the line.⁵ Italy and Slovenia could therefore also guarantee their share of bonds to finance the five ESM programmes to date.

The ESM has thus extended support (in the form of conditional loans) from the immediate 'accidents' to lucky members and even 'by-standers' in neighbouring countries of the EA. In Stone's analysis, the firewall nature of the ESM raises the expectations of mutual aid and creates stakeholders among those next in line. It encompasses small and big member states alike because, in the context of panicking markets, even the smallest fire can turn into a fire storm. Expelling small members instead of extending solidarity to them would not calm nervous markets that fan such fires. On the contrary, this alternative makes the problem worse: each time the bonds issued by a country are downgraded, questions would arise as regards the viability of its membership and induce financial investors to withdraw pre-emptively, triggering a crisis. When an idiosyncratic crisis can easily become common through spillovers, spending resources on a firewall is a solidaristic practice that protects all concerned.

Conditionality, however, is a jarring element in this portrait of a mutual fund. It has precedents in social insurance: the requirement to be available for work is a condition of unemployment insurance that may be administered more or less tightly. Conditionality tries to ensure that the insurance case arises only as a consequence of bad luck and not bad behaviour. The most benign interpretation in line with Stone (1999) would be that reasonable conditions provide a chance for the crisis country to demonstrate its commitment to change the ways in which it might be a risk to others. They should address the source of vulnerability, like tax collection in Greece, corporate governance of Irish banks and enforcement of regulations against money-laundering by Cypriot authorities. In turn, this interpretation implies that a programme country has a right to reject unreasonable conditions, which do not provide such a moral opportunity. This thrust would make conditionality comparable to third-party insurance once the insurance case has arisen.

But could programme countries challenge conditions that were neither relevant nor proportional? Spain ended up with a bank restructuring programme because the government resisted the conditionality of a full stabilisation programme as disproportionate and irrelevant. The Irish programme from November 2010 contained a condition that asked Ireland to lower its minimum wage, which could not possibly bear responsibility for the country's financial disaster. The Irish Labour Party campaigned against this condition during the election and, when it came to power in a coalition government, succeeded in

⁵ The ESM firewall was not sufficient for Italy as the extraordinary speech of ECB President Draghi in July 2012 suggests, which was also given to protect Spain. Tooze (2018, ch.18) tells the story brilliantly.

renegotiating this 'structural reform' in spring 2011 (Whelan, 2014, p. 436n). Similarly, the Cypriot parliament rejected almost unanimously an agreement between the Cypriot government and the Troika to bail-in small deposit savings with a haircut of almost 7%. This made it impossible to implement the condition, which in any case was dubious given that savings deposits of up to €100,000 should be protected under an EU Directive (Lütz et al., 2015, pp. 9–11). The Portuguese programme was systematically re-negotiated because the President of the Republic referred each annual budget between 2012 and 2014 to the constitutional court, given that these budgets had to implement the structural reforms required (Lütz et al., 2015, p. 15; Lütz et al., 2019, pp. 1450–1452). The judicial review repeatedly struck down agreed cuts of public pensions and wages as well as the liberalisation of employment protection after parliament had ratified the Memorandum of Understanding (MoU). This forced the government and the Troika to find substitutes for these conditions. The EU and the IMF eventually gave up. Conditionality could not override the national rule of law. Regular democratic procedures could overturn conditions of doubtful relevance and proportionality.

To me, this is evidence that the ESM programmes provided moral opportunities through political contestation of their design. When programme countries could make the case, conditions were sometimes withdrawn or not imposed in the first place. The guarantors did not end the programme as they would have if moral hazard had been the perceived problem. This is not to deny that the critics of the ESM and its programmes have a point when arguing that the ESM is much more about risk prevention than risk sharing.⁶ Conditions imposed in return for the guarantees rule deep into national welfare state provisions, which they could not if the ESM were a creature of the EU Treaty (Dawson & De Witte, 2013, pp. 824–828; Kilpatrick 2015, pp. 339–340). But conditionality benefitted the third party of vulnerable countries, like Belgium and Slovenia, not safe-haven countries like Germany and the Netherlands. The latter were so relentless in their demand for conditionality because they did not want to become the last countries standing.

The third bailout programme for Greece seems to provide the most extreme and excruciating illustration of solidarity denied. Juri Viehoff (2018, pp. 14–15) discusses the 'humiliation' that the Tsipras government suffered at the hands of other members when his newly elected administration had to accept the MoU that a majority of Greek citizens had rejected in a referendum. This can be seen as a flagrant violation of the *non-exploitability principle*, which follows from the fundamental equality of states: 'a prohibition of outright threats against another state's democratic procedures when it comes to critical choices about

⁶ The then German finance minister Schäuble argued repeatedly that '[e]very step we take towards risk-sharing prevents risk reduction. That is why risk reduction has to have priority.' (FAZ, 2015; own translation).

basic economic structures.’ (Viehoff, 2018, p. 15) Stone’s perspective that insurance provides moral opportunities would endorse this normative benchmark. But reciprocity between states arguably allows for a different interpretation of the case.

Prime Minister Tsipras had signed the Memorandum and then proceeded to put this agreement to a referendum, advising the electorate to reject his endorsement of the Memorandum. He was arguably in a dilemma: having campaigned against Troika-imposed austerity programmes, he would now have to break the promise or not get a programme. His way out was to threaten with mayhem from a Greek default and exit and that this would make the Eurogroup ease the original conditions. However, the guarantor states had agreed to underwrite financial support that was historically singular in volume and duration; and it was clear that a write-down of Greek debt next time would not be borne by the private sector.⁷ A number of officials retorted that Greece should exit if the government so wished (Chan, 2015). This refusal to accommodate Tsipras treated Greece as a partner of equal status who must reciprocate in good faith.

It was revealing, and embarrassing, for the Greek government that the heads of state in other programme countries like Spain were vocal in their opposition to yielding to Tsipras’ blackmail (Faber & Seguí, 2015). They would have had to pay a high price at the ballot box and possibly in financial markets if Tsipras had succeeded in getting debt relief by calling a referendum. It is hard to see how a lenient response of less vulnerable guarantors could have prevented this other-harm of Tsipras’ action. In terms of the non-exploitability principle, the Greek referendum was a threat against the democratic procedure in other programme countries, notably to choose harsh adjustment with non-market finance rather than an immediate cut-off from credit that leaves only spending cuts and default. Their reaction arguably suggests that the Greek prime minister had violated the principle himself.

The other member states did indeed play hardball when confronted with Tsipras’ tactics, using their stronger bargaining position to resist his pressure. Officially adding even harsher conditions to make up for lost time was a ‘humiliation,’ especially since the harder conditions were ameliorated in the details of the loan agreement. But does power play always constitute a violation of the non-exploitation principle? If so, then this principle asks those with more power not to use it. This can be an implication of treating the other as an equal, but it is not generally justified. If the party with the weaker bargaining position

⁷ The third programme that was eventually agreed excluded a nominal write-down of Greek debt but eased the conditions such that they became similar to World Bank support for low-income countries. After repeated restructurings, first repayments will start in 2020 while the last payment to the ESM is scheduled for 2059 (2030 for the IMF loan). The ESM part of the loan charges an average interest rate of ‘around 1 percent’ compensating the ESM for its (variable) funding costs (Colasanti, 2016, p. 20). The IMF loan costs 3 percent plus funding costs which was 3.6% in December 2015. The exact conditions are opaque but amount to a transfer of over 3% of Greek GDP annually, according to a senior German Treasury official.

(Greece) threatens to take self- and other-harming measures, the other party, powerful or not, must be allowed to protect itself from harm and leave the self-harm to the sovereign decision of Greece. In my view, this is compatible with non-exploitation. Besides, a more lenient attitude vis-à-vis Greece that the safe-haven countries could have afforded and thereby avoided the moral outrage against their lack of empathy, would not have addressed the concerns of the vulnerable countries like Spain. On the contrary, leniency with Greece is exactly what would have created a domestic backlash for them. Not surprisingly, the safe haven countries sided with those that had acted in good faith when they signed their MoUs.

It is striking that this fallout had nothing to do with moral hazard on either side. If Tsipras was freeriding on an eventual bailout, Greece would have exited after the referendum in the hope that the sudden impoverishment of the country would make the EU come to the rescue eventually. The other member states called Tsipras' bluff but did not withdraw all support for fear of moral hazard. They made Tsipras sign another MoU, which stretched compatibility with democratic self-determination to its limits, in a clear sign that his gamble had overstepped the mark.

The divisive construct of conditionality requires beleaguered heads of state to square a circle: to maintain self-determination while accepting intrusive conditions on support. Conditionality can be renegotiated when salient campaign promises to renegotiate find democratic legitimation, strong majorities in parliament reject disproportionate or irrelevant conditions and judicial reviews by an independent constitutional court strike down specific conditions.⁸ The sovereign guarantors accept that a formally equal sovereign can refuse their conditions in good faith. This is in the interest of every other member of a mutual insurance scheme.

Expansion

The last step in the evolution of bailout funding came in spring 2020, under the exigencies of the COVID-19 pandemic. At the end of February, Italy asked the Commissioner for Crisis Management and EU Emergency Response to activate the Civil Protection Mechanism by which member states can ask other members for help. There was no reaction from European countries. Italy's request overlapped with European governments suddenly realising the dangers of this pandemic. They were busy taking stock and prohibiting trade in medical equipment (Herszenhorn & Wheaton, 2020). On 10 March, the Italian Ambassador to the EU, Maurizio Massari, published an open letter to fellow Europeans in Brussels, which ends on a dramatic note:

⁸ This directly contradicts Dawson and De Witte (2013, p. 827).

We are facing exactly the type of emergency in which a 'Europe that protects' must show it can deliver. Unless we wake up immediately, we run the risk of going down in history like the leaders in 1914 who sleepwalked into World War I. The virus will pass, but any rotten seeds of complacency or selfishness will stay. (Massari, 2020)

The letter shows that the absence of insurance coverage became the politically more adverse event (Stone, 1999, p. 40).

International financial markets showed signs of panic around the same time. Risk premia on Italian bonds rose substantially. The ECB responded by announcing a large asset purchase programme to bring down 'the spread' that has become a household term in Italy. At the same press conference ECB President Lagarde actually responded to a question that the ECB was 'not here to close spreads,' when the thrust of her statement was that fiscal authorities should do more and rely less on the ECB. This caused spreads to rise sharply and the stock market to fall by 17%. Prime Minister Conte retorted that 'Europe is asking member countries for decisive measures to combat the health emergency effectively. In particular, the job of the central bank should not be to hinder but to help such measures by creating favorable financial conditions for them.' (Reuters, 2020) This is exactly what Lagarde then confirmed in a CNBC interview soon after. Once seen as an expression of (capricious) market discipline, rising interest rates became the insurance incident itself. Not only shows this that the meaning of the underlying problem changed. The ECB, once asking for being indemnified by a bailout fund, has also become the insurer of first resort for sovereign bonds, thanks to the availability of new harm-alleviating policies that extraordinary monetary measures amount to. We will see that the ESM reform went the same way.

The Italian government, in 2020 a coalition of the anti-austerity Five-Star movement and the Eurosceptic Lega party, rejected the stigma of ESM conditionality. After an acrimonious Council meeting, in which the Dutch finance minister insinuated that Spain had failed to prepare for the pandemic, nine heads of state sent an open letter to Council President Michel on 25th March, arguing for expanded insurance:

The case for [...] a common instrument is strong, since we are all facing a symmetric external shock, for which no country bears responsibility, but whose negative consequences are endured by all. And we are collectively accountable for an effective and united European response. (Wilmès et al., 2020)

Yet, in first responses to the nine leaders, the opponents of 'Coronabonds' (as they were soon dubbed) proposed to use standard ESM lending instead (Valero, 2020).

President Macron doubled down, however, on the need for solidarity. In an interview with the *Financial Times* three weeks later, he reminded the fortunate members (in terms of fiscal capacity) of the need for reciprocal commitment:

'[P]eople will say 'What is this great journey that you [the EU] are offering? [The EU] won't protect you in a crisis, nor in its aftermath, they have no solidarity with you,' [...] paraphrasing populist arguments politicians will use about the EU and northern European countries.

When immigrants arrive in your country, they tell you to keep them. When you have an epidemic, they tell you to deal with it. Oh, they're really nice. They're in favour of Europe when it means exporting to you the goods they produce. They're for Europe when it means having your labour come over and produce the car parts we no longer make at home. But they're not for Europe when it means sharing the burden. (Mallet & Khalaf, 2020)

The message to the Netherlands and Germany was blunt: more than standard ESM bailouts would be required.

As part of the 9th April package, it was then decided that every ESM member could get cheap funding equivalent to 2% of its GDP, €240bn in total, as long as it is used for direct or 'indirect' spending on public health. This is earmarking, i.e. stipulating the use of credit for particular purposes, not conditionality that stipulates policy reforms in return for general budget support. The MoU is therefore similar to a covenant of a business loan that can be cancelled if a debtor uses the credit for private consumption.

This ESM credit line, called Pandemic Crisis Support, has not been taken up by any member state by mid-2021, despite extremely favourable terms. The leader of the right-wing Eurosceptic Lega, Matteo Salvini, triumphed in an interview with the FT: 'Covid has forced European institutions to listen to us. We hope that Covid has taught everyone that austerity doesn't work.' (Johnson 2021) Obviously, the EU did not listen to Salvini specifically, but he used the moral opportunity to discredit a restricted and stigmatising form of risk-sharing effectively. To prevent extremist advocacy groups to gain the upper hand, the political mainstream in the EU, not least the 'career altruists' in the Commission and the ECB, conceded that stigmatising insurance does not promote solidarity. Non-discrimination was the imperative of the ESM reform, extending the same relative volume to all members. But it became credit of last resort. The ESM can buy bonds directly from the issuing government and therefore fill a gap if the ECB is constrained in its hoovering up of government bonds that have been issued too recently. It is a truly remarkable expansion of insurance for the public finances of members who are threatened by 'market discipline' when neither institution has been created for this purpose.

Concluding discussion

In 'Beyond moral hazard,' Deborah Stone identified five mechanisms that can explain ever more comprehensive inter-personal insurance: (1) the perception and legitimation of mutual responsibility; (2) institutionalised reminders of responsibility for others; (3) funding of innovations that change the definition

of the policy problem; (4) the creation of diverse insurance stakeholders; and (5) the imperative of equality in democracies. The transposition of these social mechanisms to the inter-state context provided insights even for a least-likely case. This transposition can explain how even a divisive macro-institution of risk-sharing, that did not contribute to community-building and explicitly limited solidarity, can provide political opportunities for extending solidaristic insurance.

During the COVID-19 pandemic, it was no longer a question whether particularly hard-hit countries deserved solidarity, but how much and in what form (Schelkle 2021). The ESM evolved from an intrusive bailout fund to protect the fortunate ('firewall') into a kind of mandatory third-party insurance scheme (Irish and Greek bailout programmes) that makes sovereigns aware of their responsibilities towards those vulnerable to the same financial turmoil. The creation of a Pandemic Crisis Support facility in 2020 enabled this divisive institution, at least temporarily, to play the role of re-insurer to the ECB should its remaining constraints on sovereign financing lead to panic. The transformation of the ESM shows at every turn how powerful the political opportunities were that made executives accept the principle of 'mutual aid and collective responsibility' (Stone, 1999, p. 14).

The account provided here does not start with a community of risks but explains how it comes about. By combining Stone's study of the expansionary dynamics of insurance with risk-sharing as a by-product of self-protection (Schelkle 2017), we get a better understanding of how solidarity in a nascent political community evolves. The ESM is an example for an institution that was not created to extend but to limit solidarity. It starts with an implicit insurance scheme that generates, through mechanisms like liability insurance and funding, a closer and/or expanding risk pool. Yet, political community-building does not automatically follow from risk-sharing. The ESM is a case in point. The fund has been relegated to a secondary role compared to new instruments in the COVID-19 pandemic, the Recovery and Resilience Facility handing out grants and a re-insurance scheme for job-retention schemes (SURE). They overshadowed the ESM, which had provided Eurosceptics like Matteo Salvini with a chance to call for insurance that respects the principle of equality among states that share their sovereignty voluntarily. While the self-serving opportunism of Eurosceptics like the Lega leader is blatant,⁹ their criticism touched a raw nerve and could have escalated political polarisation. That the ESM is no longer divisive means it helps maintenance of the EU polity.

The last insight one can gain from the study of a divisive institution like the ESM is that there may be principled reasons why institutions cannot

⁹ In 2020, Salvini portrayed conditionality as 'an attack on our country' by 'loan sharks in Berlin and Brussels' (Khan 2020). Ironically, he thus perpetuates the misconception on which German Euroscepticism feeds, namely that Germany, and Germany only, had to give ESM loans. Italy was a guarantor of all ESM programmes.

function according to a finite set of agreed norms. Democratic politics in a compound polity has to reconcile conflicting norms, not just find majorities for a few. I have given an example for why even an agreed principle like that of non-exploitability (Viehoff, 2018) can be contested in its application. In the ESM, there are at least three relevant constellations of member states that shape their normative expectations. First, programme countries that depend urgently on solidarity because they would have to exercise extreme austerity if they could not replace dwindling private credit with public funds. Second, vulnerable countries that are threatened by any escalation of another member's crisis and become even more vulnerable by having to guarantee a programme, so their attitude towards solidarity is understandably ambivalent. And, third, safe haven countries which have a tendency to feel vindicated by their good fortune and are, on the whole, not inclined to be very solidaristic asking for conspicuous self-protection. What seems fair to a majority in one group of countries does not necessarily seem fair to majorities in the others. The conflict cannot be settled by majorities at the EU level or small countries would lose out continuously.

Stone's notion of moral opportunities implies that different parties can seize them and their realisation is subject to democratic contestation in and between members. This implies a paradox that needs further research: while the diversity of stakeholders makes the process of community-building and solidaristic risk-sharing more difficult, it may also make it more robust.

Acknowledgements

I am grateful for detailed constructive comments by Kate Alexander Shaw, Maurizio Ferrera and Juri Viehoff, as well as two insightful reviewers.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This work was supported by European Research Council [grant number ERC_SYG_2018 grant number 810356].

Notes on contributor

Waltraud Schelkle is a Professor in Political Economy at the European Institute at LSE. Her research interests are European integration and welfare states.

ORCID

Waltraud Schelkle  <http://orcid.org/0000-0003-3594-4290>

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