

A burden to share

The need to acknowledge the complexity of member state differences in the Eurozone

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The spread of the Coronavirus disease prompts the question whether EU Member states should show solidarity and, if so, to what extent. It is clear that Italy is one of the European countries to have been severely struck by the consequences of the spread of the Coronavirus disease 2019. The lock-down and restrictions for public life have [a dire effect](#) on the Italian economy. As a consequence, Italy has called on the European Union for aid, stressing the need for solidarity. How should the European Union respond and what are the risks of unconditional aid? The following analysis will shed some light on the complexity of the issue and will try to show the downsides of unconditional solidarity.

Solidarity between the Member states is an important principle in EU law (Art. 122 par. 1 Treaty on the Functioning of the European Union ([TFEU](#))). It is easy to adhere to such a lofty principle in times when those united under a single banner have no need to invoke it. The value of that banner is put to the test in times when their interests do not harmonize. In certain respects, the European Union, and in particular the Eurozone, is more aptly characterized as a union of dissent than as an organization whose members agree upon compliance with commonly agreed upon rules. May a country such as Italy rightly call on the European Union as a whole and thus, in fact, on those countries that have followed a more austere budgetary policy than it has?

Italy is faced with an immediate crisis, to which a swift response is fitting. This is arguably not the time to blame Italy for fiscal policy and political choices that have resulted in its present poor economic position; such time would not even exist. On the other hand, simply providing aid does not seem appealing, either, since such a policy results in rewarding Member states' bad behavior.

Short-term assistance may be realized by referring to Art. 122 par. 2 TFEU, which appears to provide a sufficient basis to aid Italy, since it indicates that financial assistance may be granted to a Member state that is "seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control". Importantly, the article stipulates that the aid shall be granted "under certain conditions." Similarly, Art. 12 par. 1, of the Treaty establishing the European Stability Mechanism ([ESM](#)) stipulates: "If indispensable to safeguard the financial stability of the euro area as a whole and of its Member States, the ESM may provide stability support to an ESM Member subject to strict conditionality, appropriate to the financial assistance instrument chosen. Such conditionality may range from a macro-economic adjustment programme to continuous respect of pre-established eligibility conditions."

Greece was notably aided when it was confronted with the government-debt crisis of 2009. It was forced, in return, to privatize government assets and to reform its economy. The first demand could be made here, too (although, admittedly, this does run the risk of a possibly undesirable external – such as Chinese – influence). In exchange, Italy could receive the means to address the health care issues. If this seems too harsh, one may consider making funds available unconditionally, provided

they are indeed allocated to combat the immediate health problems. The need for economic reforms is a separate issue, to which I will return later.

One may, in addition, consider aiding Italy in the long term. The aid would then not have an incidental but a structural character, being intended to support the Italian economy. In this case, it would be wise to exercise restraint. The principal argument is based on the fact that the Member states that have adhered to the demands that the ratio of the government deficit to gross domestic product not exceed 3% and that the ratio of government debt to gross domestic product not exceed 60% (Art. 126 par. 2 TFEU, in conjunction with Art. 1 Protocol no. 12 TFEU) have reaped the benefits of their budgetary policy. Member states such as Finland and the Netherlands have almost consistently met these criteria. Their economy is thriving and they are able, accordingly, to issue bonds intended to solve their problems at low interest rates. Being cautious before granting structural aid for those Member states which have consistently *not* met the criteria is not to be interpreted as a means to berate them, or as a sort of punishment. Rather, aiding them unreservedly conflicts with the basic idea that Member states are individually responsible to effectuate sound economic policy.

The European Central Bank has established a temporary pandemic emergency purchase programme in the amount of EUR 750 billion (Art. 1 [Decision \(EU\) 2020/440](#)), notwithstanding the previously defined limit of 33% under the public sector asset purchase programme (Art. 5 [Decision \(EU\) 2015/774](#)). Thus, it does not directly support Member states, but it is, on this basis, able to do so indirectly, by purchasing bonds, thereby ensuring that Member states will be able to continue to attract sufficient financial means at an interest rate that is mitigated as a result of this measure.

Consequently, Italy will be able to increase its already substantial debt at – veritably artificially – low interest rates. This will result in a reduction or even – in a pessimistic scenario – a removal of its incentive to carry through economic reforms, especially if it is able to operate on the assumption that other Member states or the European Union as a whole will come to its aid if the debt becomes too great to bear. National political considerations may be an important factor as well.

One may think that the problems are exaggerated; as long as Italy simply promises to realize the reforms desired by the European Union (and certain Member states in particular), the issue will resolve itself, albeit in the long term, its debt gradually decreasing to manageable proportions. Still, even irrespective of the issue just addressed, namely, that the incentive to realize those reforms is diminished, the demand to keep the government deficit and debt in check exists for all Member states. Reforming one's economy as a means to realize those goals just means that one does what one is already obligated to do, so that it should not merit a special reward. Suppose an employee has been on the payroll for several months without performing any of his tasks. It would be peculiar if his employer were to promise him a bonus, on top of his wages, if he starts doing his job. This is not an inapt simile; it is not inapposite to point once more to the precedent of Greece.

I have previously used, assessing the government-debt crisis of 2009, the simile of negotiating with someone who threatens to jump down a cliff while being chained to those with whom he is negotiating ([“A Third Way Out of the European Crisis.” King’s Student Law Review, August 2012](#)): his suicide brings their deaths with it, which gives him a strong negotiation position. This characterization appears to apply here, too. The more so since Italy is the third largest economy in the European Union.

Disburdening Italy has obvious positive effects for Italy itself as far as the immediate needs are concerned, irrespective of whether the other Member states consent to the measures on the basis of humanitarian considerations or self-interest. In the latter case, a very difficult calculation, given the variables, would have to be made in order to determine whether they are – in the long run – better off without a weak Member state. Such a state may, incidentally, arguably be better off itself if a devaluation of the new currency (a new Lira) is possible. Currently, Italy is unable to do so, being bound by the same rules as Member states that are both able and willing to act in accordance with them. Whereas those Member states consider these rules sensible directives, Italy seems to deem them a straitjacket from which it must free itself; it must be remarked, though, that this summary presentation is not accurate, states themselves not having viewpoints, the actual viewpoints rather being a representation of the majority opinion.) Given the fact that isolated devaluation is not possible, the harm of the ‘remedy’ of monetary financing cannot be ignored, an increased inflation in the Eurozone in its wake being a serious danger.

I readily grant that it may seem rather easy for me, exercising armchair jurisprudence from a relatively comfortable position, to judge these matters. In any event, should it, for whatever reason, be decided that certain measures in addition to those focused on addressing the immediate health care problems are necessary, a piecemeal approach would be prudent. Such an approach was not taken by the former President of the European Central Bank in his policy of quantitative easing; Italy was, as a result, able to muddle through, not being forced to save for the winter, having to request others to contribute to the purchase of a decent coat now that it has arrived.

It remains difficult to say what the effects of rigorous measures to provide structural support will be, but the adverse result of the attempt to bring the Member states together may be that they end up further apart than ever before.

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