

# Solidarity and legality in EMU

## PhD-Project

The debt crisis has shaken the EU to its foundations. In combating the crisis the Union and its Member States implement a range of reforms to strengthen economic policy in the Union, especially in the euro area. This response to the crisis forms the subject of the present PhD-research.

**The aim of the research is two-fold:**

1. It seeks to examine these reforms and conceptualize their implications for economic governance in the Union.
2. It intends to reflect on the reforms' consequences for the development and character of the Union legal order.

The research is carried out along the connecting threads of solidarity and legality.

## Research question

How can the reforms in the area of economic policy be understood in the light of solidarity and legality and how do these changes influence the character of the Union legal order?

## Solidarity

The concept of solidarity underlying the original Treaty law on EMU is mainly **negative** in nature. It is based on the idea that the stability of the currency union can be secured as long as each Member State on its own carries out proper budgetary policies. Few possibilities exist at European level to implement policies tailored to the needs of the euro area as a whole.



Theo Waigel (1995)

*“They form a community of solidarity in the sense that the stability of the common currency will be reliably and permanently secured through strict budgetary discipline in all the participating countries.”*

The crisis shows that the solidarity in the Union is much stronger than this concept. There is a transition from **negative** to **positive** solidarity. Characteristic is a greater room for action at European level to stabilize the euro area as a whole.

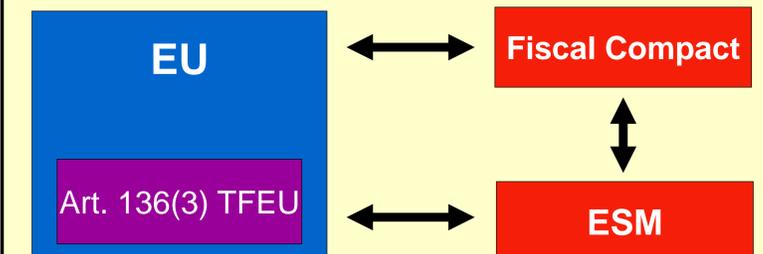


Angela Merkel (2011)

*“What matters most now? Solidarity, of course. We demonstrated our solidarity by establishing funds to provide guarantees which will be used to bail out other countries when they find themselves in difficulties.”*

## Legality

In incorporating this stronger conception of solidarity in its legal order the Union experiences a conflict between **legitimacy** and **legality**. Member States are hesitant to transfer economic competences to the Union. During the first years of the crisis reforms have therefore been implemented on the basis of EU secondary law and international treaties, creating legal and instrumental differentiation.



However, legality eventually demands EU Treaty amendment. This raises the question how these legitimacy concerns are reflected in the amended Treaties.

## Preliminary findings

- The emergency funds and ECB action are the first signs of positive solidarity. The ESM is the first unmistakable consolidation of this solidarity in EU Treaty law.
- Elements of the six-pack and the new intergovernmental treaties sit uncomfortably with legality. This underlines the need for EU Treaty change.