

# THE CHALLENGES OF A FEDERATIVE EUROPE

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**Abstract:** *The article offers a quick overlook on the main aspects concerning the development of the European construction. It focuses upon the two fundamental principles which emerged along the adoption of the successive Treaties from Rome to Lisbon. The Article remarks that over more than five decades the European project has found resources to overcome a series of difficulties of institutional matter. Several modalities of exercising the decision at the level of the European institutions are also highlighted – integration, government agreement and federalism. As far as current issues claim special attention from the European leaders, the authors consider that, in the context of a prolonged economic and financial crisis, the pattern of a strengthened Europe should prevail only if coherent policies are formulated. A two speed Europe works against the common benefit of the Member States and does not respect of the spirit of the Founding Treaties.*

**Keywords:** *European Union, institutions, integration, cooperation, federalism, sovereignty, Treaties, competences, euro, economic crisis.*

The European Union is, undoubtedly, a sui generis construction, even if legally speaking it represents an international regional organization with a strong political-economic character. If during the romantic period of the rising of national states, when the great writer and thinker Victor Hugo referred to the national United States of Europe this concept seemed an illusion, after the two devastating wars and almost five decades of a war of attrition, as the cold war was, the utopia ceased to seem as such.

## THE DEVELOPMENT OF THE EUROPEAN CONSTRUCTION

In the context of the beginning of the European construction, which was linked to a confrontation of ideas between the supporters of federalism and those of co-federalism, the way that the united Europe stepped onto was an original one, which put together elements belonging to both visions. These elements have been manifesting as two superposed and separate forms of action included in an effective and undoubtedly original mix. The expression of this approach is based on the concept of supra-nationality, within which the principle of permanent expansion has triggered and strengthened the political component of the European approach. It was also this context and this type of pragmatic and

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flexible approach that made possible the permanent and continuous transfer of national sovereignty competencies to the European institutions. This direction is still continued today on a constantly ascending spiral, even if in some stages, such as that of the current crisis, one can notice a slowdown of the process. At the same time, cooperation was emphasized and that allowed for the harmonization of national policies with maintaining permanent sovereignty, protected by the principle of unanimity.

During the five decades of existence and evolution of the E.U. there have been tense moments as well, but, starting with the Single European Act, they allowed that, by combining these two strategies, the treaties considered to be true steps of the united Europe be elaborated: Maastricht, Amsterdam, Nice and Lisbon. Throughout this entire period – the history of the Constitutional Treaty seems to be the most relevant – very effective solutions have occurred from the permanent confrontation between the supporters of a federative Europe and those of a sovereign Europe, and these solutions have constantly propelled the construction of a more and more integrated Europe.

The concept of the United Europe was born out of the necessity of a politically united Europe, at the very moment of the cold war breaking out and because of the necessity of the existence of a space united in democracy and prosperity, capable of facing the socialist model of the Soviet Union and its satellites, which exerted a rather powerful attraction for the citizens of the states that have just ended a world war and which were economically weakened and exhausted from the point of view of human resources. The answer that the founding fathers formulated at that time was extremely efficient, as it was founded on the creation of a strong, unique internal market, the economic factor, the only one that can bring prosperity to the citizens, being the one that guaranteed a powerful political Europe of democracy and liberty. The European communities were the successful result of applying a successful strategy which, by intelligently combining political and economic objectives, permitted not only the elimination of the socialist danger but also the healing of the deep wounds produced by the Second World War, especially the French-German reconciliation which has been the main axis of consolidation of the European integration process since then.

If the first step, after the success of the Marshall Plan, was the one related to the management of charcoal and steel resources, the main reconstruction elements after the war, through the CECO Treaty of 1951 regarding the management of the production of steel and charcoal in the six founding states, the second step was taken together with the passing from the Paris Treaty to the Rome Treaty. The qualitative difference resides in the fact that, while the CECO Treaty was based on supra-nationality, wherein the power of decision and enactment was held by the High Authority, the Rome Treaty approves the intergovernmental principle as the main element for the decision-taking process. Thus, by using the two elements – supra-nationality and inter-governance – a medial formula occurred, wherein the power to initiate common projects belonged to an autonomous structure – the Commission – and the legal power belonged to a Council of Ministers, which was empowered by their governments with full powers and which expressed the point of view of the national states that were

members of the European Community, while the European Parliament was a gathering with an advisory role to which amendment powers were conferred later<sup>1</sup>.

Because of the supra-national element – the subjects of this institutional triangle being the national, sovereign and independent states – these structures and the way in which decisions are taken are a sui generis way, where the principle of power separation within a state is not applied.

As stated before, this path has been strongly marked by ups and downs. The French Parliament's decision of rejecting the Treaty regarding the European Community of defense was such a moment when supra-nationality tried to impose itself. That decision was much dimmed by the later will of many of the member states, including the French one, and further steps were taken, constantly consolidating the institutional construction, while the component institutions became stronger by delimitating the powers of the Commission from the powers of the Council or by electing the European Parliament through direct voting in all of the member states.

### **DECISION MODELS AT THE INSTITUTIONAL LEVEL**

A quick look over the project of the European construction as an extension of the integration and cooperation strategies emphasizes more ways of applying the decisions at the institutional level.

#### **a. Integration**

The first model comes from a logical process named, naturally, of integration and which stands at the basis of the Union's accomplishments. According to this modality, the member states – governments and administrations – are closely associated to the preparations and applications of decisions, and the supra-national European body appears as the logical result of cooperation between the member states and not as a distinct result, arbitrarily placed above these states. In this framework, the European Commission plays a vital role because it initiates the accomplishment of some objectives decided in the treaties and judges whether a certain decision will be taken with qualified majority or unanimity. Qualified majority voting in the Council is determinative. However, contrary to the constitutional model of democratic states, it does not aim at the development of a stable majority. On the contrary, this type of voting contributes to the success of negotiations, acting in favor of reaching a compromise. According to this logic of integration, a member state is encouraged to enter a compromise demarche, taking into account the fact that the main effort in this sense will be alternatively asked for from each of the member states, on the basis of the decided common objectives.

One must notice that the integration logic has witnessed a considerable slowdown once the European Parliament was elected through direct voting and once co-decisional powers were conferred to this organization. Indeed, before 1979, having a European Parliament formed of representatives of national

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<sup>1</sup> Jean –Claude Gautron, *Droit européen*, Vème edition, Paris, Dalloz, 1999

parliaments, who had a mainly advisory role except for the budgetary matter, the European construction respected the integration strategy. After that, the national parliaments have not been involved, the parliamentary dimension being assumed by a body elected through direct voting.<sup>2</sup>

### **b. Intergovernmental cooperation**

In this framework, the intergovernmental decision follows a different type of logic, being perceived as contrary to the spirit of the European construction. This logic is characterized by the veto right of each of the member states. In reality however, this happens very rarely, because none of the member states can risk to be marginalized as a result of supporting a negative vote at any cost. In general, the existence of this vote led to minimal compromises, with no major effects on the European law. The weak points of this model come from the existence of an increasing number of states that, because of the differences in their perspectives, act against efficacy. Meanwhile, the European Council managed, by acting as a true center of negotiation between member states, to represent the most coherent institution in defining the general lines of action at the European level.

### **c. The federal model**

The federal approaches are based on the preeminence of the political – for example, historical experiences, the German or the American federalism, intellectual or political constructions. In this sense, the European Union presents a series of characteristics that are close to the federal model. The European institutions ensure a representation of the member states, which stipulates for a body elected through universal direct voting and which has co-decisional power in regard to the budgetary matter. The Court of Justice is empowered to decide over conflicts between institutions of the member states, guaranteeing the unity of interpretation of the communitarian law, which is above the national law and which can have a direct effect. According to this model, a Commission resulting from the majority given by the European Parliament should represent the government of the Union, while the Council would constitute a second Chamber representing the member states, while the Parliament represents the citizens. The Union forms a single market, its commercial policy regarding third states being relevant to the communitarian institutions.<sup>3</sup>

In reality however, this logic does not function in the above-described manner. Firstly, the existence of a federal state presupposes a Constitution, which is currently rejected by the majority of the member states (see the failure of adopting the Constitutional Treaty). Regarding the political Union, one can state that the divergences regarding its goals – being of federal nature or not – have led the member states to adopt a formula based on three heterogeneous pillars, functioning together with a series of common institutions. While the first pillar, the economic and monetary Union was consolidated, the other two pillars – External

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<sup>2</sup> Jean Marc Favert, *Droit et pratique de l'Union européenne*; Paris, Gualiano Editeur, 4 e edition, 2003.

<sup>3</sup> Jean – Pierre Jaque, *Droit institutionnel de l'Union européenne*, Paris, coll. Cours Dalloz, Serie droit public, 2001.

and Common Security Policy and Internal Affairs and Justice – remained strictly at the intergovernmental level, the states not being willing to cede their sovereignty. Furthermore, the third pillar has never really functioned, the basic rule being still the resort to the old communitarian methods. The second pillar of PESC suffered from the insufficiency of the mechanisms and especially from the lack of a political will of the majority of the member states, which opted either for consolidating their ties with NATO or for a neutral attitude. Therefore, EU did not play any role on the international scene, and the European defense did not develop.

Promoting an essentially federal logic would lead to the drastic diminution of the role of the member states, determining a weakening of the Union's legitimacy. Thus, a European Commission with its legitimacy generated by a certain parliamentary majority could not ensure the mediation between the member states or to exert its essential functions of jurisdiction of competition and of treaty guardian. The characteristics of a common mediating Commission could not be met by a political Commission. Moreover, the power that each member state has to propose the establishment of the commissaries college, which is of the way in which the Commission would function as a college, could not be maintained. In this sense, we must underline the fact that the European Council is the institution having the highest legitimacy, since the state and government leaders who form it are in the centre of the national public spaces, being considered by their own citizens as final respondents in taking decisions. The generalization of a federalist logic would question the existing balance<sup>4</sup>.

#### **THE NECESSITY OF CONCEIVING A EUROPEAN UNION AS A FEDERATION OF NATION STATES**

In the context of a prolonged crisis, a logical question is worth asking: to what extent is the Union able to adapt to the current serial challenges of economic and social nature? Aiming at giving coherent and efficient answers, the evoked strategies should not remain in a conceptual state. In this sense, the phrase belonging to Jacques Delors *A federation of Nation States* is extremely valid today in defining the originality and the creative power of a closer and closer Union between the European peoples.

The European construction has been gradually accomplished and it was due to the compromise between the supporters of the two rival models of integration, at the limit between collective sovereignty and interstate competition. The failure of the European Convention is prolonged by the current economic-financial crisis, by the abandonment of the Lisbon Strategy and by the stagnation in the strengthening of common policies, for example energy. All these factors demonstrate not only that the process of institutional rearrangement of the European Union must be fathomed, but also that the member states must define a model of economic and social governing which can favour the solving of the difficulties that the Union is currently facing.

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<sup>4</sup> Hubert Haenel, Francois Sicard, *Enraciner l'Europe*, Seuil, Paris, 2002, pp. 100-130.

At an institutional level, the prolonged economic crisis accelerated the slowdown of the rotational presidency. In a Union in search for leadership, the European Council had to meet more often and the stable Presidency played a more and more active role in exerting economic governance, such as the imposing of a task force.

The single currency allowed for the Union to play at the monetary level a role that fit its power as the first economy of the world. Although it represented a decisive stage in the European construction, the adoption of the single currency did not represent a sufficient measure to coordinate the economic policies of the member states.

The strengthening of the Union remains the main condition for it to be able to respond to the current challenges. The functioning of the Euro asks for a true political union having as its aim the coordination of the budgetary and financial policies for the fiscal harmonization and for the fight against unemployment, as well as for the application of a conjunctural policy for going back to economic growth.

The clear development of a legal form that would represent a true federation of European States will not be attained unless concrete policies are applied, with which citizens can identify. In these conditions, going back to the models of a federation with a variable configuration<sup>5</sup> or which promotes the large scale use of consolidated cooperation cannot be a solution for the future of the Union.

The current dead end asks for harmonized financial, fiscal and budgetary policies. In this context, it is necessary that single economic and financial governance should be enforced, governance that is capable of contributing to the reform of the international monetary system and to the strengthening of financial regulations. The answer to the challenges generated by the macroeconomic unbalance of globalization can only be a collective one. Inside the EU more cooperation solidarity is needed around budgetary discipline ensuring – the stability and convergence programmes, but also around the policies regarding the lifting of the obstacles determined by the economic growth and by the employability.

The current context imposes the urgent passing to an economic federalism in order to avoid Europe's disintegration under the financial speculative attacks. This economic governance cannot be meaningful however unless it is politically associated with strong economic growth, based on the thoroughness of the internal market, on the strengthening of industrial policy and on the development of a framework of loyal competition.

A strong Union cannot be conceived but within the conditions of increased competitiveness based on innovation and on the development of the infrastructure, doubled by adapted sector policies that cannot be put into practice unless all member states do so. The taxing of financial transactions is an objective that in short term can rebuild the citizens' trust in an efficient Union.<sup>6</sup> Moreover,

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<sup>5</sup> The union of hard nuclei, of the concentric circles constitutes the intellectual models presented at the beginning of the 90s.

<sup>6</sup> The current lack of coherence is underlined by the lack of a common point of view regarding the economic governance. While the president of the Commission, J.M. Barroso, considers that the

the problem of bank recapitalization – at European level or by each of the member states – represents another problem that needs a common answer. In this context, the establishment of an economic federation could be the political solution for a united Europe<sup>7</sup>.

In conclusion, it is obvious that in order for it to be done, the European re-launch needs more solidarity between the member states, based on a common commitment similar to that promoted by the founding fathers of the EC in the 50s. The consolidation of the European construction imposes political will to the state and government leaders of the 27 member states for economic governance through fiscal harmonization, a budget adapted to the Union's needs and for a careful approach of the social domain.

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economic government must be represented by a Commission under the control of the Parliament, since the Euro zone comprises 17 member states, the presidents of France and Germany propose an economic government of the Euroe zone formed of the state and government leaders of the respective countries.

<sup>7</sup> Jacques Delors, Europe must plan a reform not a pact, Financial Times, March 3<sup>rd</sup>, 2011