

A EUROPEAN INTERFEDERATION

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*'We should not be afraid to dream the impossible,
if we want to make the impossible come true.
Without dreams about a better Europe
we shall never build a better Europe.'*

Vaclav Havel

General Introduction

One has to ask whether we want European integration and if so in what sense, to achieve the goal of integration that one has effectively in mind. This issue must precede the functional and institutional questions. Only then, if one knows why one wants what kind of integration, one can develop a method to achieve that goal.

The entire context of perceptions and opinions, even though they do not quite match facts, should be considered when answering the questions about the needs for a European integration. Therefore, answers should be sought and found to the first challenges that emerge from three types of 'F-factors', the facts, figures and feelings. Emotions are an equally important factor, indeed: if citizens feel unsafe, even when no objective data support that emotion, then it is the duty of the policy makers to mitigate it. That is also Europe's case: if citizens regard the European administration as a threat to cultural or other values, mandated politicians should take into account that feeling, when they make decisions on programs and projects. But, first of all, they must stop disregarding the citizens' opinions on the political system, i.e. the institutional organization of Europe.

Politicians should realize that they must take decisions on integration supported by a significant part of the European population. Such decisions have far-reaching consequences for the inhabitants of the States concerned, and history tells us that top down decisions are ineffective, when not supported by large groups in the population. Top down decisions are other words for imposed decisions. They do not work from the start or they do not last. Society will resist, sooner or later. A bottom up approach of societal and political issues is always more effective.

Another precondition seems to be that the European integration must correspond to the specific characteristics of Europe and its political and geographical environment. This applies to internal and external factors, which are of great political importance. Its cultural diversity is striking and its geographical location is challenging, located near the Russian Federation, the Middle East and North Africa. Specific interests require specific structures and specific policy.

I. FACTS AND OPINIONS

“So the construction of Europe from 9 May 1950 can be seen as an attempt to avoid the spiral of violence between France and Germany... The economic reinforcement of Europe was perceived as a precondition for the struggle against communism and in the same move, a system of avoiding disastrous wars between the old European powers. At the heart of the inspiration for European construction we therefore find the question of violence and the attempt to control this.”

Gonzales d’Alcantara & Pierre Verjans (‘Federalism and Violence: Subsidiarity as a Regulatory Principle’ – in ‘Federalism: choices in law, institutions and policy’)

1. Stability and Security

a. Stability in Europe

The European integration process was born out of the trauma of the wars between nation States. It is built on the ruins of their centuries-long conflicts. The two most destructive world conflicts during the last century started geographically in Eastern Europe, in the Balkans and in Poland, and politically through the concept of regional alliances.

Therein lies the internal strength of the process of European integration that started in 1950. Two antagonists on the continent realized that their rivalry and wars could lead to total destruction. Hence, the project was launched to organize an economic cooperation between them and even integration, to the extent that a conflict would become impossible because of the interweaving of interests. So, this project is based on economic elements, like the integration of the national production factors par excellence, i.e. coal and steel. The Monetary Union strengthened this economic integration between eleven Member States, including the reunited Germany and France. It compels them to strengthen it, e.g. by a fiscal integration. The currency used daily by citizens and businesses in and outside the EU States, will undoubtedly have a psychological effect in favor of a European sense of identity and stability.

Today, Europe counts more States than ever, as a result of the disintegration of the SU, Czechoslovakia and Yugoslavia. This gave rise to seven new States. In modern times, those States have never been sovereign and independent. Four other States have known independence only for some decades: the three Baltic States were independent between the two world wars and Serbia acquired full independence in 1878, to join the new state of Yugoslavia in 1919 (Treaty of Saint-Germain-en-Laye). For all these States, the quite recently acquired sovereignty means very much. That makes them politically not entirely keen of the EU, as they should cede part of their newly won sovereignty, if they wish to become a member.

However, the economic benefit of the integration in the long run and the fear of an authoritarian return of the Russian hegemony lead to the removal of their doubt to accede the EU. Hence, ten countries from Central and Eastern Europe are applying for membership of the EU.

The economic, social and cultural differences among the Eastern European countries and between them and the European Union put pressure on European integration, in every respect. Their standard of living is a fraction of that in the EU, their business is not well organized and their public authorities do not work properly, not only for lack of resources, but also due to a lack of democratic tradition. The internal stability of the current Member States as social and political organizations – with the welfare State as a model, the rule of law and parliamentary democracy – has increased since 1950. A dictatorship in Germany, Italy, Greece, Portugal and Spain seems impossible now. Most of the countries in Central and Eastern Europe have not yet reached that level of stability.

Moreover, the borders of these European States are not generally accepted. They are, after all, the product of treaties negotiated and ratified between winners and losers of the two world wars, according to a centuries-long tradition. The German borders seem to be generally accepted by public opinion, but this is not the case for the Hungarian borders, for example. The Hungary of 1920 (Treaty of Trianon) is, until today, a ‘trunk Hungary’: one third of Hungarian people live outside Hungary. For Hungary participated, as part of the dual monarchy, in World War I on the wrong side, i.e. the vanquished side, and thereby two thirds of its territory was lost in 1920. After World War II, the Hungarian borders were confirmed, during the Paris Conference of 1947, as the country stood on the wrong side again. As a matter of fact, the SU was the territorial winner throughout Central and Eastern Europe.

Through the enlargement of the EU towards the East, Europe is confronted once again with its past. That past is violent. The result of that violence made the destiny of the victorious and vanquished parties. An intervening party, the USA, participated in that reckoning: Yugoslavia, for example, arose at the expense of the defeated dual monarchy of Austria-Hungary, as proposed by the American president Wilson (1919). The past is alive, until today, in the current political division of Europe between culturally heterogeneous States, constituted from that violence and the following settlements.

b. Power of Identities

Europe has the highest ‘culture density’ of the five continents. On a relatively small area, essentially a peninsula of Eurasia, there are dozens of cultures and languages. There is a strong religious cleavage, Christianity and Islam. Within Christianity there are three very different communities, namely, the Catholic, the Orthodox and the Protestant community. These religious cleavages have caused cultural cleavages, representing other views and behavior patterns – *‘There is neither good nor bad, thinking makes it so’* (Shakespeare). Europe has even more languages than States: apart from the 11 official languages of the EU, there are 15 EU Member States in

which dozens of regional languages are used, which may or may not have an official status. This number will increase with ten languages at least, looking at the official languages of the 12 candidate countries.

If one takes into account the regional languages and cultures, leaving out the States with a cultural hegemony (e.g. the largest four EU Member States), then few States in Europe can be considered as cultural homogeneous: the Republic of Ireland, the Netherlands (if one considers Friesland as culturally integrated or assimilated) and Portugal. This religious, cultural and linguistic diversity is somehow recognized and politically governed in the West, which is reflected in the reform of institutions: Great Britain is decentralized, Italy and Spain are regionalized; Belgium became a federation. On the other hand, centrally controlled States with minority groups exist in Central and Eastern Europe, of which some are former parts of disintegrated federations, such as Yugoslavia and Czechoslovakia.

There is more concerning diversity. There are also two fundamentally different legal systems in Europe. On the mainland, several legal systems developed, all of them influenced by Roman law, integrating or substituting local and regional customary law, and were written down in general codes of law. That brought equality and legal security. Whereas, on the British Isles, another legal system was created: right and law are no projections of the ideal, as on the mainland, but are based on precedents, on what is empirically identifiable from needs of the ruled. The different customary laws were integrated through the travelling judges of the monarch (hence 'common law'). The number of British laws increases, but they are not complicated.

For the British the text of a law or a treaty is a minimum, an 'understatement', for the citizen's behavior; for the 'mainlanders' a legal instrument is a maximum, a model, for ideal behavior (thus which never occurs). This different approach of law causes misunderstandings in the EU. British people do not feel threatened by a law, the mainlanders do. The laws on the mainland are frightening, as they are complicated. At the same time, they are constantly looking for ways to escape from them. The huge difference in history between these both parts of Europe, from the nation building through the French Revolution until the course of World War II, manifests itself also in the way of making general rules and the behavior towards them. That might also lead to a different attitude towards institutions: the state nationalism on the mainland has been so destructive that it got a negative connotation and that there is a structural and a priori distrust of the Government and its institutions, which is not the case in Great Britain.

c. Security for Europe

From 1945 to 1990 the process of European integration was enhanced by the external factor of the threat to social and political values, which would emanate from the Soviet Union (SU). That factor in favor of further integration seems to have disappeared with the SU itself. This enemy or competitor has disappeared, and with it an incentive for a political integration with a high stability, e.g. a Federation. Yet, the dissolution of the SU makes it possible that some Central and Eastern European States, liberated from its hegemony, soon join the EU.

The internal approval of the EU weakened, its external promotion strengthened. However, the Russian Federation (RF) is an unstable actor of importance on the European continent. The average income there is at least four times lower than in Poland. The RF, however, remains a potential great power with nuclear weapons.

Close to Europe, the Greek-Turkish relationship remains delicate, culminated in the divided Cyprus, and the conflict between the modern Israel and the ancient Palestine is more than ever relevant today. These conflicts threaten the trade routes and energy pipelines between Asia and Europe. Moreover, the territorial disputes in the Persian or Arabian Gulf are curbed, but not settled. Even North Africa is a concern: Algeria is not stable, this country and Morocco are not friends, as evidenced by a border conflict and by their opposite attitudes towards the Western Sahara with its indigenous population, and Egypt, important in a geopolitical and economic way, has a regime that is insufficiently legitimate.

So, at the EU's external borders exist situations, which hold a risk for the prosperity and stability of the EU. Besides a challenge in terms of internal stability, there is a continuing challenge on external security. The recent assaults in the USA prove that this external security can no longer be insured just by traditional means as an army.

2. Prosperity

Today, the economic interests of Germany and France, and of Western Europe as a whole, are very integrated. The USA have played an important role in that project too, i.e. through the Marshall Plan (1948). This Plan stipulated that the European States would enjoy the financial aid from the USA (17 billion dollars) on the condition that they would cooperate to create a plan for reconstruction. At that moment, the American hegemony played a positive role in the devastated Europe.

The project of the internal market (European Single Act, 1987) has removed the borders between 15 Member States for trade; it has an economic added value. The Commission's investigation at the end of the 1980s, pointed out that the EU would lose about 243 billion US dollars annually, or more, if it would maintain physical (e.g. border control), technical (e.g. product standards) and fiscal barriers (e.g. excise duties and VAT). Anno 2001 tax obstacles still exist between the Member States. The euro currency will be the key to mitigate those remaining barriers.

Peace, emancipation, technological development and integration have raised the prosperity in Western Europe to a level never reached before. This high level is challenged by the request of 12 countries to join the EU. Some figures show the difference in economic development between the present EU and the 12 candidate members (Cyprus, Malta and 10 Central and Eastern European countries).

EU & applying Countries / Data 1998	Population (million)	GNP (billion \$)	GNP a person (\$) each year	Percentage farmers of working population
EU (15 MS)	373,9	8,357	22,351	4 %
12 candidates	106,2	347	3.270	20 %
First of 12	Poland: 38,7	Poland: 136	Cyprus: 13.636	Poland: 27 %
Last of 12	Malta: 0,4	Malta: 3	Bulgaria: 1.227	Malta: 3 %

Source: Economic Intelligence Unit & OECD

An EU citizen is on average ca. seven times richer than a resident of one of the 12 candidate members. This entails that the EU should do huge investments in these countries to bring their level of prosperity close to that of the EU countries. According to recent calculations by two working groups commissioned by the Dutch Government, the EU enlargement would cost 22.7 to 43 billion euros per year from 2007 on. The EU budget system would bear 20 billion euros; for the rest, the EU Member States will have to find a solution by adjusting the policy, by savings or by increasing the EU budget.

3. Democratic Development and Public Opinion

Since 1950, the Western European population reaches a level of prosperity, education, information and communication never known before. This may have built up a popular frustration concerning its political participation. The present political institutions, on the continent designed through the French Revolution, are since then barely modified. Therefore, this emancipation requires other forms of participation in public power.

Representative democracy is no longer popular in the EU, proved by the low turnout of voters in countries where there is no compulsory suffrage and by the low number of members of political parties. In France for example, between 17% and 30% of the voters do not show up. It could well be necessary to organize a form of direct democracy, through citizens' consultations and referenda, and to reform the representation of the citizens on all political levels, from the local authorities to the European. There appears to be a (vertical) 'democratic deficit' in Europe, a danger for democracy itself.

Moreover, elections in the Member States disrupt the European decision-making. The center of power lies in the EU Councils of Ministers. Which are composed of government members of the Member States. They therefore have a dual mandate: they form the daily management of the Member States and at the same time they are part of the most important regulatory institution of the EU. Hence, European decision-making is not separate from the national.

Now, the French elections in May and June 2002 complicate and even postpone the EU decision-making in the WTO, especially regarding the global consultations on its negotiation agenda for the further liberalization of world trade and on the mandate of the Commission in this context. The same goes, for example, for the German, Portuguese and Dutch elections in this same year. Such difficult political situation occurs almost every year since the EU counts 15 Member States. An enlargement of the EU will have an increasing impact on the European decision-making, as every year a national parliament will be elected and a national Government will be formed.

There is a double challenge for the EU in terms of democratic development: the challenge to the current institutions of the EU as a whole and the one to the general organization of political decision-making in each EU Member State. So far, these two types of challenge in terms of democratic functioning are not met. The Maastricht Treaty limits itself to enter the subsidiarity principle as the basis for the functioning of the European Communities without stipulating how this principle should be converted into practice. The Treaties of Amsterdam and Nice are only equipped with adjustments to the EU system which are inevitable on the accession of new Member States, such as the weighted voting rules in the Councils of Ministers. These Treaties just build on the organization form that emerged with the establishment of the European Communities in the 1950s.

Not surprising that Europeans do want a European integration, but one of a different sort. This is proved repeatedly by special surveys and by the serial 'Euro-barometer' of the European Commission. Therefore, it is to offer an effective response to the citizens' wishes. A few results of opinion polls show people's choice.

In May 1999, just after the resignation of the Santer Commission under pressure from the European Parliament, a poll conducted by the Louis-Harris Institute and the newspaper 'Le Monde' in 12 out of 15 Member States (no investigation in the Netherlands, Portugal and Sweden) gave the following result:

Question subject (May 1999)	Percentage of population pro	Percentage of population contra
Working of the EU	43 %	49 %
Trust in Commission	38 %	53 %
Trust in Parliament	40 %	50 %
Support for way of integration	43 %	49 %
Support for forming government	46 %	44 %
Support for forming army	52 %	37 %
Support for EU enlargement	54 %	34 %

The most recent Euro-barometer poll, no. 55, was conducted in April-May 2001, published in July and summarized in September 2001. It offers the following picture of the opinion in the 15 EU Member States:

Question subject (May 2001)	Percentage of population pro	Difference with previous poll
Trust in Commission	45 %	- 1
Support for EU membership	48 %	- 2
Return on membership for own country	45 %	- 2
Support for integrated EU security and defense policy	73 %	0
Support for integrated EU foreign policy	65 %	0
Reform of institutions & their functioning: top priority	50 %	/
Support for EU enlargement	43 %	- 1

From the above research emerge two bottom lines in the public opinion, albeit with regional differences – i.e. on the one hand, the awareness that the continent has a common future for the sake of economic interests and political values, and on the other hand, the desire to preserve the different identities. That this political opinion usually belongs to a social elite does not diminish its value. History shows that economic and political changes often take place under the pressure of an elite, not by a majority of the population. The majority is often indifferent and reticent. That gives exactly the political space to the elites to make decisions and to turn them into practice.

Those elitist recognized conditions imposing a European integration are of an economic and political nature. The larger scale through the internal single market offers advantages to all those who take part of it. Security and protection and promotion of democratic institutions are better assured in a larger and more stable whole. The recognized and cherished identity of the own region or State forms a counterweight for that integration. This requires apparently a differentiated approach of a European structure.

Surveys of public opinion in the EU show that the majority of the interested and responsive population wishes a further integration. It believes that the current rate must be maintained. It calls for an integration of the security, defense and foreign policies. At the same time the public believes that the current way of integration, is not appropriate. Once again, there is little confidence in institutions, which can be partly explained with wars, civil wars and dictatorships on the European continent. This distrust can also be due to the globalization of economic powers. Of the 100

largest economic powers in the world, now already 52 are in private hands, 48 in the hands of Governments. Citizens and Governments learn and experience this concentration of economic power without a political power as a counter balance. This 'horizontal' democratic deficit may constitute a second basis for the public openness to more political integration.

According to these opinion polls, further integration of Europe is desired, at least in the classic areas of the nation State, such as justice, defense and foreign policy. After international crises, it is very clear when asking about European policy on defense, security, stability and cooperation. When the questions become more tangible, e.g. about the formation of a European Government and a European army, the judgment of the citizens of the 15 EU Member States is less clear.

Thus, not a merely economic, but also a political integration seems to be desired or at least tolerated by most citizens of the present EU. Yet, a cleavage on this matter may well exist between the current EU and Eastern Europeans, for the reasons explained above.

To conclude, Europe is faced with both internal and external challenges, which are not exclusively located in the economic sphere – as the internal market and the Monetary Union are already a reality, they are economic incentives. E.g. the EU agricultural policy is coming under increasing pressure from an intercontinental liberalization of food products and the new euro currency weakens other European currencies, such as the British pound.

The biggest challenges now relate, in a few words, to stability and security. Apparently, the disappearance of the Soviet Union should not lead to the conclusion that those issues should be kept off the European political agenda. On the contrary, because exactly such challenges of security and defense, were repeatedly answered by the formation of federations...

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II. CONCEPT FOR EUROPE: AN 'INTERFEDERATION'

“The larger scale of (state) power explains ... the extention of the two monopolies of the state, which are a monopoly on violence and a monopoly on taxation. The strenght of the modern state (...) allows us to forget the main constant in human culture, id est the attempt to avoid the mimetic crisis and generalized mutual violence. (...) But the danger of a mimetic crisis as a climax to the process of revenge and counter-revenge still persists, as a series of contemporary tragedies show us. So that the main policy issue still remains the avoidance of a violent explosion of the social unit. And the principle of subsidiarity could be a key which is able to protect society against the risk of mimesis.”

(Gonzales d'Alcantara & Pierre Verjans, ibidem)

Introduction

Since 1950, cooperation and integration at the European level are built on four justifications, each calling for specific actions:

1. to answer the perceived threat from the outside, on the steps of the current EU, now first of all the Balkans, then the unstable Russian Federation as the successor of the Soviet Union, also nearby the conflict in the Middle East and the threatened stability in North Africa, therefore the integrated strengthening of military and police devices to oppose those of the actual or potential enemies;
2. to avoid the resurgence of the antagonism on the mainland, especially between Germany and France, hence preventing competitive States coalitions;
3. to protect specific values, such as individual rights and freedoms, the rule of law and the representative democracy, hence preventing European dictatorships;
4. to promote economic development in a sustainable way, hence creating a free market on a European scale.

The facts and opinions mentioned above show that these four justifications remain current, albeit that they now cover other actors or are active elsewhere on the mainland, then 50 years ago. They still affect the core of the nation States in Europe.

Any cooperation assumes the belief that it is better to act together for a common purpose, than separately and a minimal trust that the common arrangements will be honored. If one wants not only cooperation, but also a degree of integration through shared institutions, whether public or private, which function independently from those of the parties involved, then that belief and trust must be stronger.

To make political institutions work independently, specific centers of power are indispensable for those new institutions. If not, they are only formally independent. In democratic organizations, power centers must be legitimate, based on the voluntary loyalty of the citizens, the voters. If so, then institutions acquire recognized power or authority, in such a way that the citizens tune their behavior on the policy of the institutions. E.g. EU farmers no longer march in their own capitals, but all do in Brussels, knowing and accepting that here lies the power center relevant to them.

The question I submit here is how the larger European integration of today could be enhanced. In the same way as in the past or not? How then? My answer follows.

1. A 'double' Union or 'Interfederation'

a. Starting Points

Functionalism as approach has proven its services. It is a practical way to integrate in a number of not sensitive policy domains that are for the benefit of all, such as the economy. Yet, since all policy areas are connecting – there is a mutual impact – this 'spill over' leads to the integration of other policy domains. The economic domain is dynamic, constantly subject to cycles on the shorter and the longer term, but rarely subject to crises which disrupt the society in such a way that the Government should intervene immediately.

Now we see that functionalism starting from the economic approach has reached its limits. First, trade policy was fully integrated and the policies on competition, industry, consumers, exchange rate and regional development were partially transferred. Later on, the single market has raised a lot of national regulations, partly substituted by a European code. The Economic and Monetary Union (EMU) is already a fact for 12 Member States and it will expand. In this context, the sovereignty of most Member States is almost fully transferred to the EU. In the EMU the national exchange rate policy and interest rate policy will expire; money creation, debt policy and budgetary policy in the Member States are limited by the three convergence criteria. Economic integration of the EU became effective at the global level, e.g. during negotiations in the World Trade Organization (WTO).

That economic-monetary integration, however, has not yet led to an increase in own EU resources: the 15 Member States transfer only 1.6% of their GDP to the Union and up to 1.4% of their VAT-revenue, although in 1994 eleven of them (Luxembourg is missing) collected 44,76% of their GDP on average as current income. However, there is no single tax that the EU determines (the tax basis), raises (the tax rate) and collects from its citizens or its businesses – yet, there are fines for businesses according to competition law. The EU still applies the principle 'representation without taxation'! EU taxation only exists for the outside world, i.e. through custom duties and agricultural levies. For the time being, the tax integration within the EU is only State driven, i.e. intergovernmental, e.g. in the field of common tax bases.

Further integration, apparently wished or permitted by an important part of the population, touches other policy domains, which are much more sensitive for the Member States. They concern the core tasks of the sovereign nation State, such as security, defense and external relations. Those domains require a more central leadership, because they have to be very effective and efficient in crisis situations.

The military sovereignty of the EU Member States shrunk, because their budgets for this policy area watered down since 1980. Formally, they have lost nothing in terms of military sovereignty, but compared to the USA, the EU States are more than ever dependent on the US. The US just increased their spending in the same period: in 1980 its expenditures amounted to a 33% more than all the European allies together, in 1994 the gap was 50%. In 1999, the USA would have spent 40% more on defense than the 15 EU Member States all together.

The foreign policy of the EU in the political sense, with its defense component, does not amount much. External trade policy really exists, proven by the representation of the EU in the WTO. The EU as a whole, represented by the Commission, really weighs on decision-making in that global Organization.

Yet, in the pursuit of such integration, the cultural tradition and the nationality feeling in Europe should be taken into account. The continent does not count many States, which already were a political entity, as a forerunner of the current model, before the French Revolution. Those few States are since then geographically, economically and politically important. Moreover, the feeling of kinship is in Western European States a few centuries older than their political unit. That makes the integration even more difficult with other European cultures, due to the sensitivity for external threats.

Leaning on those facts, opinions and considerations, the concept of a 'double' EU seems to be effective and politically feasible: this Union would operate in a federal way and in an intergovernmental way. Both types of operation systems would be used in different policy domains, but would be institutionally intertwined.

One can consider them as two interconnected spheres, the Federal Union is the inner sphere or core Union. There would be a dynamic connection between the two spheres in this sense that powers of the outer (intergovernmental) sphere can be transferred in a flexible way to the inner (federal) sphere and vice versa. So, the two spheres are not totally separated from each other: their respective institutions can decide to share policy areas, i.e. the exercise of different aspects of the same policy domain or the transfer of homogeneous domains, either temporarily or indefinitely.

These two forms of organization would constitute together a single legal entity. That has the advantage that the internally double Union acts externally as one whole and is legally accountable in all the domains of both policy spheres. This does not mean that there would be only one budget and one estate; both spheres could have and use their own budget and assets.

b. Federalism and 'Intergovernmentalism', in Combination for the EU

A federal State is a stable form of public organization. A federal integration is based on the need for solidarity, because there are common interests. That conviction lives in a federation and dominates the sense of identity of the federated units, without lifting those identities, on the contrary they are guaranteed by the federal whole.

A federation assumes a basic political agreement (a constitutive and institutional Act, say a 'Constitution') between the citizens of the willing States, while these States continue to exist separately, yet they yield some of their decision-making powers to federal institutions, which will act autonomously for the whole. That basic Constitution must be perfectly reciprocal. This is an essential feature of a federal organization: the change or the termination (secession, dissolution) of the federation can be possible provided the approval of the federal institutions and that of all the federated units, in this case the Member States. That promotes stability.

A League of States or Confederation cannot offer the stability of a federation, because its Member States can unilaterally break the pact. They do give up some decision-making power, but in a way that the cession can be lifted unilaterally at any time. Its base is a Treaty and no Constitution. That makes the crucial difference between a Federation and a Confederation, not e.g. deciding by majority or by consensus. In both organizations all kinds of decision-making procedures are used.

Intergovernmental organizations of which dozens exist at international level, have been established by treaties, so according to the system concept of confederalism. They are usually stable, but due to their organizational model, they are not able to respond quickly to international security crises. This applies to the United Nations Security Council and also to NATO, as shown after the terrorist assaults on the USA.

Research on the development of federations demonstrates that in Europe some facts and opinions are in favor of creating a fully-fledged federation. Europeans share the belief that economic benefits are connected to a political integration. In security crises, they have the desire to provide common means. And they care permanently for the same values. All this is living on a geographical whole, which is enhanced by modern transport and communication. Modern technology makes economic globalization, even on world scale, come true and thereby makes the national States and their international relations partly redundant in the way they were developed since the Peace of Westphalia (1648).

On the other hand, some conditions are unfavorable for such a kind of strong integration, albeit limited. The mutual distrust between old enemies, now quite weak in the West, still exists in the East. Federalism is built on trust required to act as a federal whole externally, and also to cooperate within the federation. Now, some federations in Europe failed, e.g. Czechoslovakia and Yugoslavia. Thereby the federal ideology became less attractive: in a number of cases federations turn out not to work – in Europe and elsewhere in the world. Finally, the EU continues to accept the military dominance of the USA.

A specific model of European integration is also recommendable because, besides the favorable data for integration, facts and opinions are in favor of the survival of the Member States as autonomous functioning organizations. The Member States are very different from one another in terms of history, religion, language and culture. They have a strong sense of identity. However, that is no objection.

With those two basic attitudes, the spirit of solidarity through the federation and the will to preserve the identity of the constituent units of the federation, the Member States, a European Union can be created in a federal way. The modalities can be developed that take into account the need for solidarity, the preservation of the identities and the distrust of political institutions. After all, there are as many tangible federal models as federations. A specific model for Europe can be designed.

The development of a stable Federation is also recommendable for the sake of continuity, because the road to a federal establishment of Western Europe was already chosen, 60 years ago. Yet, the EU exhibits weak federal characteristics. The present Union works slightly federal, but it is just not formally recognized. How?

The EU is somehow federally organized in this sense:

- a power sharing between the whole (Communities) and its units (the States)
- the whole is represented through its own institutions (Parliament, Commission)
- the Member States are represented at the level of the whole (Councils of Ministers)
- a redistribution of resources by the whole in the whole (funds)
- a dispute resolution at the level of the whole (Courts in Luxembourg).

The EU is organized in an intergovernmental or confederal way (League of States):

- the integration is based on treaties between the Member States
- the Member State Governments dominate EU regulation, formally and informally
- the States are unequally powerful (unequal number of votes in the Councils)
- the elections of the European Parliament are organized in and by the States
- the European regulation is largely enforced by the Member States.

It is obvious that the decision-making power of the EU core institutions, Commission and Parliament, is weak compared to that of the Member States, the Councils of national Ministers. Moreover, the EU Parliament is not elected in one European constituency, but in (sub-) national constituencies. To end with the overview of the EU labyrinth, it is involved in four different procedures of decision-making. Two of them, 'consultation' and 'cooperation', are not binding; they are only opinions, although compulsory. The two other kinds of procedure are binding: the Parliament does have a right to amend regulation proposals from a Council of Ministers (called 'co-decision procedure'; i.e. institutions can deliberate and negotiate) or it can only approve or reject a proposal of a Council (no parliament power to amend it, it is called 'consent procedure').

The Commission members are appointed by the Member States, although their appointment must be ratified by the Parliament. Each State is represented by at least one Commissioner. Intergovernmentalism (confederalism) strikes again.

The Commission has formally the right of regulation initiative and it can and must change proposals, at the request of a Council of Ministers and the Parliament. It represents the whole EU vis-à-vis third parties. However, the Commission is not decisive in the decision-making process: it has not the last word on regulations. Therefore, it has no leading role, but rather a role of arbitrator between the different Councils of national Ministers and between the Councils and the Parliament.

As already pointed out, the Court of Justice in Luxembourg is the federalist exception on European confederalism: from the start of the EU, it has supported the integration extremely, through a large interpretation of the Treaties. Its jurisprudence uses constantly a so-called teleological basis (i.e. the so-called functionalism, cf. above). In other words: when the purpose and the result of the EU regulation is (more) European integration, it is compatible with the Treaties and therefore legal...

To conclude, the EU system is built on the Member States, not on the European citizens as such. They determine the political agenda of the EU. Hence, only the State citizenships count, not the common European citizenship.

2. Organization of the 'double' EU

a. European Constitution

For the federal EU a basic Act should be drafted, confirming the fully mutual commitment. Such document is not redundant because it promotes the political and legal certainty for the Member States and for the Union as a whole. In principle, this Act seems to be a viable political project, because it would only strengthen what already exists, i.e. the institutional weak Federation and strong Confederation. Besides the formal establishment of an EU under the federal and intergovernmental conditions, the Act would describe the institutions of the double Union.

The 'Constitution of the Union' would acquire an extra added value, of course, if it would not only confirm what already exists, but also lift the institutional bottlenecks and uncertainties. The Constitution should enhance the federal institutions (present Parliament and Commission) and those of the Member States (now the Councils, to become a House of the new Parliament). It would determine the federal powers, also in the area of representativeness. In an integrating process or, better, in a process of 'federalization', especially in the European case, it is acknowledged that the initial sovereignty undoubtedly lies with the Member States – a 'bottom up' process.

For the rest, the 'Constitution of the Union' does not need to resemble to a mainland State Constitution model including the description of individual rights and liberties. This is (still) not appropriate for two reasons: such a model is redundant in terms of

content and it is not politically expedient. All EU countries and the current 12 applicant countries are already a member of the Council of Europe and a party in the Convention on Human Rights (ECHR) endorsing its judicial procedure. So now, it is amply sufficient that the recent EU Charter of Fundamental Rights starts to be an important reference in the jurisprudence of the EU Court of Justice.

Moreover, let us remember that the detailed constitution model was created in the States on the European mainland for fear of a repeat of political power abuse. If a similar fear of European power would exist, it would not lean on experience, but on projection: Europe never existed as a State, nor as a superpower.

In accordance with classic federal principles, any amendment of the Constitution should be approved by a majority of representatives in the EU legislature. A new allocation of powers to the federal EU, i.e. extending the federal sphere, would be determined at unanimity among Member States, as the source of sovereignty lies with them, so also the partial cession of it. Yet, as the federal EU is sovereign too, in its own competences, the federal legislature has to accept the new powers too.

b. EU Institutions

Political actors, parties on the first place, are created along religious and social cleavages. They organize themselves along the institutional lines. It does not happen otherwise: the political actors do not create randomly provisional institutions in relation to public actions. Parties and pressure groups want to conquer influence and power in formal centers of power, i.e. political institutions, such as parliaments and governments. For the EU, it is therefore very important that its institutions are organized and equipped with competences in such a way, that they promote the creation of European parties and pressure groups.

There is more: the EU should operate permanently independent from the State institutions. Now, the functioning of the current EU institutions is disturbed by political situations in the Member States, e.g. by their own elections. Each time this occurs the EU stops working properly, due to the absence of a State representative. The accumulation of European and State mandates is the cause. At the moment, referring to State Parliament elections, this is the case with Portugal that organizes elections in March 2002, with the Netherlands in May, with France in May (parliament) and June (president) and with Germany in the autumn for its parliamentary elections too. So we can continue endlessly.

This interference between the federal functioning and the functioning of the Member States must stop. How? The federal institutions par excellence, the Parliament and the Commission, should be composed in such a way that they can function continuously, independent from the Member State institutions. That means that the personal connections between the national institutions and the European, especially the dual mandate in a State Government and in a European Council of Ministers should be limited and, if possible, even excluded. The argument that the dual mandate creates a bond between the Member States and the Union would be more

efficient and more democratic through a chamber of the federal EU Parliament, namely the House of the Member States, described below.

i. Legislative Branch 1: the House of the Federal Union

The current European Parliament will become the first House, the one of the federal Union, henceforth elected in a supranational constituency by a supranational electorate. One constituency and one electorate for the entire EU are technically possible. If several constituencies and electorates would be organized, then they should still include a large number of Member States. By all means, there should be no more than three constituencies and electoral colleges in the EU-15, perhaps four or five in the EU-27. The tricky question is where and who will draw the constituency limits!?

The only conditions to vote and to be elected must exist in the possession of a State citizenship and of political rights in accordance with its legislation. Voters and candidates can exercise their rights anywhere in the EU, irrespective of their nationality. The Members of European Parliament elected in this way, would identify themselves less with the policies of the Member State of their nationality and they would have more legitimacy for the EU as a whole. Such elections will promote the formation of political parties at European level and strengthen their organization.

This House of the Union must obtain full power to regulate. That means that it must decide on its own initiative or on that of the Commission and of the second House (below) about all EU regulations, including the right to amend the legal drafts.

To prevent that all the representatives from the four major cultural communities beyond the boundaries of the constituencies and groups may form a majority for the adoption of many laws, it is appropriate to require a stronger majority, agreed in the Constitution. One may assume that all constituents will vote for the candidates of their own nationality. One may assume too that most elected candidates will give priority to their own national identity and to the national interests over the values and interests of their political group or party. Such assumptions are unlikely because of the supranational organized elections, separated from the State elections and from the nationality of the candidates – their residence, for example, will determine their eligibility in a constituency if there is more than one.

A two-thirds majority in the first House seems to be a good start for the federal Union, on a continuous way to function with respect to the demographic, economic and cultural diversity. Moreover, a majority in the second House, that of the Member States, is also necessary to regulate. Yet, this House should make decisions ultimately through simple majorities.

The assent procedure, i.e. amendments excluded, could be maintained for external issues such as accessions to the EU and treaties. The House of the Union should give its consent for external matters, before negotiations start. A procedure of monitoring and adjusting the negotiations is also recommendable, seeking to reduce the democratic deficit. Making a parallel: in a large Federation as the USA, Congress

usually monitors and adjusts the progress of international negotiations, through the evaluation of periodic reports by the Government. To negotiate and to sign a treaty, the Government needs an authorization from the Congress. It rarely gives such a preliminary mandate to the Government; if so, it is called the 'fast track' procedure.

ii. Legislative Branch 2: the House of the Member States, for the Federal Union and for the intergovernmental Union

Organization

A second House, with a similar regulatory power as the first House, is composed of representatives of the Member States. This House would be an institution for both Unions. The current Councils of EU Ministers would be replaced by this standing House, which members would be elected by each Member State. In principle, each Member State is one constituency. A mandate in this second House is incompatible with one in a State Government or State Parliament.

According to the classic federalist principle, each Member State should have an equal number of votes in this second House. Yet, the vast differences in size and weight in economy, demography etc. between Member States oppose this equality of power. On the other hand, a proportional representation and number of votes according to the population could lead to the domination of the five, later six, largest States in the EU.

When looking for an alternative to the equal representation and the equal weight of votes between the Member States, the complicated majority stipulated in the Treaty of Nice could be inspiring, without taking over this arrangement. One should not continue to build on the negative focus, i.e. using vetoes. Vetoes weaken democracy, for democracy means debate, as vetoes stop the debate or even obstruct it. Blocking minorities, provided in the Nice Treaty, are more difficult to buy out than a veto of one Member State. In an enlarged and more diverse double Union, blocking minorities will be easy to organize. Is it acceptable that one State, even the biggest, blocks the whole EU?

The Nice Treaty contains three conditions to reach a majority: the number of votes, the majority of the Member States and the 62% of the Union population. The third, demographic, criterion must be excluded for the second House, because it would duplicate the first House composition of, the one of the citizens.

The criterion to determine the number of representatives and votes could be the economic weight per capita of each Member State, as the core of the federal EU is one economic and monetary market. An economic criterion could be the GDP per capita. The ratio between the GDP's can be combined with other criteria, e.g. with the expenditure for internal and external security, because the second House also represents the intergovernmental Union. Of course, such variable criteria should be periodically reviewed in order to determine correctly the number of seats and votes per State in this second House.

The table below shows each EU Member State's GDP in 2000. The 12 candidate Member States together have a GDP average per capita, which is less than a fifth of the value of the GDP average per capita of the current 15 EU Member States.

States listed acc. to dropping GDP value	GDP in 2000 (billion euro)	Population number in millions	GDP in euro x 1000 per capita	Sequence State acc. GDP size per capita
Germany	2.026	82,19	24,65	9
Great Britain	1.534	59,83	25,64	5
France	1.405	59,04	23,80	11
Italy	1.166	57,84	20,16	12
Spain	606	39,49	15,35	13
Netherlands	401	15,98	25,09	8
Sweden	247	8,88	27,82	3
Belgium	246	10,24	24,02	10
Austria	206	8,12	25,37	7
Denmark	176	5,35	32,40	2
Finland	132	5,18	25,48	6
Greece	122	10,56	11,55	14
Portugal	114	10,02	11,38	15
Ireland	104	3,82	27,23	4
Luxembourg	20	0,44	45,45	1
12 candidate countries	ca. 21,62	105,74	(av.) 4,89	---

Source: European Commission / Eurostat

The number of votes does not need to be equal to the number of representatives. To help the debate itself and its preparation and follow-up about this issue, the size and importance of the Member States should be somehow detached. For this House it is arguable to allow a relatively larger delegation with staff to the smaller Member States, i.e. to all current and future Member States, except the current five largest Member States, with Poland the six largest States.

The House of the Member States is elected by and from the members of the national parliaments, according to the model of the Austrian Federation. Thus, the national parliaments can only elect their own members, for the sake of representativeness. The candidates in national elections make it public whether or not they are willing to accept an EU mandate. Once elected and sworn in as a member of the second House, he or she gives up the national mandate. Both mandates are strictly incompatible: the political agenda of the Federal Union must be exclusive for the House members, to avoid the mixture of interests.

The current rotating Presidency of the Ministerial Councils with a representative function abroad, is abolished. The Member States may no longer represent the EU externally on a regular basis. The rotating presidency of a Member State has little or no added value for the EU; on the contrary, one can argue that it prevents an effective external policy. This presidency method arose three problems: lack of continuity, poor external communication and inadequate credibility. In an enlarged

EU these problems would increase, because the EU will be more complex then ever, in terms of composition, and its weight would be internationally even greater.

The second House must also be composed of delegates of constitutional Units of Member States, with regulatory power, elected by and from the members of the Unit Parliament. EU Member States organizing themselves in a federal or regional way, on a constitutional basis, prove that the autonomy of these Units is an important element. This is certainly the case with Austria, Belgium, Germany and Spain. In order not to upset relations with the other Member States, the House members from the Units in those Member States, take part in the representation of the Member State concerned. Moreover, each Member State remains a whole in relation to the EU. The current Committee of the Regions is abolished.

Powers

In the federal Union, the House of the Member States would have the same powers as the first House. The second House would have an extra function: it is the only competent institution for the general regulation of the intergovernmental Union. It would also take the other powers of a parliament, such as the control on the implementation of the regulations by the executive branch (below).

Within the intergovernmental EU sphere, it should be possible that a certain number (majority) of Member States is deciding and implementing for some policy projects, to which other Member States may accede – what is now in the EU usually called the ‘enhanced cooperation’. The non-participating (minority) States cannot obstruct such projects, but is not forced to join them. They may join a project later. The Schengen Area and the Monetary Union are strong examples. Such method offers the advantage that no veto of a minority is possible and that the successful projects encourage the non-participant States to step in.

A classical organized federation does not allow such a method, because the decisions on that level of the whole are made through the federal institutions, such as the two parliamentary chambers. Although representatives of the federated units, in this case the EU Member States, constitute one chamber, this chamber too is involved in the policies on behalf of the whole federation. Moreover, the other chamber is composed of representatives of the people without distinction of (sub-) nationality. So, the federal decision-making cannot fully be analyzed through the votes of the federated units.

The intergovernmental Union is an interstate organization, which can make regulations, like any other public institution. This form of integration cannot be undone unilaterally. In some international organizations, like the WTO, it is called the ‘stand still clause’: once an integrating decision has been taken, there is no way back, unless by unanimity. Moreover, the unilateral termination of membership is impossible. Only a lifting of the organization could be decided unanimously.

Thus, such an integration between the States is an ‘acquis intergouvernemental’ and membership is a shared good which can be ended only by consensus. Therefore

this kind of integration does not meet the concept of confederalism. It is a stronger bond than a confederation between States, but it is neither a federal bond as the co-deciding institutions do not represent the whole, without distinction between the Member States, like is the case with the planned House of the federal Union (above).

This intergovernmental Union would exist on the basis of a treaty, i.e. corresponding to a confederation. Yet, the derived commitments, e.g. the compelling regulations, cannot be lifted by one Member State, nor by a (simple) majority of Member States, only by unanimity – this is the scope of a radical ‘stand still clause’. Thus, the intergovernmental EU would create a strong bond between the Member States.

The institutions for this interstate Union work according to the intergovernmental principle: all its Member States are equal in voting, for they are all sovereign. In principle, decisions on regulations are made by consensus. If the search for a consensus does not make it possible to decide in due time, then it is sufficient that a qualified majority asks for and obtains a qualified majority voting.

So a qualified voting is possible. This does not mean federalism, because the Union institutions do not function apart from the national ones, yet it has a supranational power. A similar decision making system exists in the WTO for compelling commitments to liberalization of international trade.

iii. Executive Branch 1: the Commission, Government of the Federal Union

One can persist the federal thinking for the Commission: it will no longer be appointed by the Governments of the Member States or even nominated by them or by political groups according to their nationality. Only the political majorities in the two Houses of the EU will periodically entrust the investiture to the Commission. Qualified majority voting is recommended, to make the Commission strong enough vis-à-vis the Member States. There is no nationality requirement for the composition of the Commission, except that each Commissioner-designate will have a nationality of one of the EU Member States.

The Houses can dismiss the entire Commission or its members individually, also for a political reason. This needs a majority voting in both Houses, which will be qualified when the reasons of the dismissal are purely political. The Houses appoint a new Commission or new Commissioners immediately. The Commission cannot dissolve the Houses.

Each year the Commissioners elect their President, who is not a Head of State with his or her personal power, like in some Member States and in the USA. Such an office, whether or not in a presidential system, is not appropriate for the EU, because of the current power of the States and their differences in identity and history. This proposal is inspired by the appointment of the Swiss Head of State: he or she is not in office through an election by another authority, but holds it after an annual voting by the fellow ministers in the State Council (federal Government). In the Malaysian Federation, the office of federal Head of State rotates between the prime ministers of the federated States. Both Heads of State have a limited power.

The Commission decides in conference and by consensus. It takes full part in legislative decision-making, together with the Houses. The Commission takes positions and defends its own points of view, but it gets not the final word – that belongs to the Houses. The Commission or any of its members does not have to resign, if a House overrules its position in a specific case.

The Commission is responsible for the daily management of the federal Union, implements its own decisions and those of the Houses and monitors the application of regulations. It has administrative and judicial means at its disposal to enforce regulations. It represents the federal Union in and out of court.

This proposal for the institutional reforms seems ambitious. Indeed, the ‘institutional’ type of Federation is preferred: the three state branches (*trias politica*), including the judicial branch, are provided at EU level and at national level as well. This involves limited interdependency between both administrated levels. The reasons to choose this kind of organization are: 1° to make the functioning of the Union autonomous from that of the Member States and 2° to point the accountability of the decisions at the level where they were taken.

iv. Executive Branch 2: the High Authority of the intergovernmental Union

The High Authority of this Union is responsible for its daily management and its representation in and out of court. It monitors the implementation of the regulations and the policy goals of the second House, described above. The Authority has the right of initiative, including proposing regulation drafts in the House, during its legislative procedure. It cannot dissolve the House.

The High Authority is, for the duration of the parliamentary term, composed of ministers of the Member States, elected by the House through qualified majority. The number of its members equals that of the Member States.

In principle, the Authority makes decisions in conference and by consensus, but it can proceed to vote. In this case, the members, who are put into the minority in decision-making, have to accept the majority decision or resign. Each member commands a number of votes. This number is proportional to the expenses of its State in the policy domain(s) concerned, according to a given reference period.

The High Authority is responsible before the second House. However, the House cannot dismiss the Authority. When the House is of the opinion, by qualified majority vote, that the Authority does not exercise its office in accordance with the positions of the House, it can substitute the Authority for that matter.

v. Judiciary Branch: the Supreme Court of Justice and Courts of Appeal

The present Court of Justice is a cornerstone of the EU Federation. The legalistic integration of Europe has proven to be very effective. European integration becomes

tangible thanks to the rule of law. The federal Supreme Court of Justice must keep the same crucial function of the current Court in Luxembourg. The new federal Supreme Court is also competent to enforce ultimately the intergovernmental regulations of the EU.

In the double EU, the European judiciary branch needs to be strengthened, compared to the one in the present EU. The new EU will have more than one court to maintain or to restore its coherence. Therefore, the judgments of the new Supreme Court of Justice will be generally binding, at least for the lower courts. Thus, its jurisprudence will constitute an important source of law.

Legal disputes in terms of interpretation of federal EU regulations, intergovernmental EU regulations and national ones are unavoidable and can lead to conflicts between these three types of regulations. Therefore, a rebuttable legal hierarchy exists in favor of European regulations above the national. When a legal conflict arises within the EU, the federal regulations overrule the intergovernmental ones.

The Supreme Court of Justice ends such disputes, at the request of anyone. The Supreme Court also resolves definitely conflicts of competence between the three levels of administration. In case of a contradiction between the three legal orders, the Court assumes that the highest legal level, i.e. the federal one, did not exceed its powers. The Supreme Court considers that the regulation prevails, which belongs to the most integrated legal order. This applies, until the Court is convinced by the rebuttal of a party. The expressed intention, the objective, of each regulation is a guide in the search for its interpretation, but integration itself is not sufficient. Thus, the present functionalist ideology of the EU institutions, enforced by jurisprudence of the Court of Justice in Luxembourg, will be rejected.

Conflicts between rules of the federal Union and the intergovernmental one or within these two legal orders will be definitely settled by the Supreme Court after checking the laws. The Supreme Court would work as a High Law Checking Court, competent to reverse – to quash – judgments pronounced in appeal by a lower EU Court and to remit the case to another Court for a new procedure and a new judgment.

European Courts of Appeal will be organized per policy domain or a group of related policy domains. There would be at least one in each of the four/six largest Member States. They will only use a limited number of official languages of the EU. The plaintiff can be anyone; the choice of the Court of Appeal for submitting the claim, is free. The Courts can submit to the Supreme Court questions for a preliminary ruling. The Courts themselves will implement and possibly enforce their judgments.

When judging initially, all national courts will continue to guarantee the application of EU regulations. When national regulations come into conflict, during proceedings, with a EU regulation, a federal and/or an intergovernmental one, the jurisdictions of the EU Member States are initially competent to judge. They can submit questions for preliminary ruling to the EU Courts of Appeal.

3. Distribution of Competences

a. Principles and Modalities

Listing of the assigned Competences

Still politically harder to decide than the horizontal distribution of power between the three branches of government, is the vertical distribution of competences among the three or more levels of public administration. It is about drawing functional borders, politically perhaps just as hard as drawing geographical borders. Both issues are creating areas to exercise power.

Due to the federalization process, meaning that sovereign powers are transferred from the Member States to the EU, its competences will be exhaustively described. The Member States retain the powers not explicitly assigned, the so-called residual powers. Indisputable since Aristotle more than 2000 years ago, sovereignty rests with the citizens and emanates from them, in the case of the EU all those of the Member States. The EU has therefore from the European citizens assigned powers.

To propose a limitative list of EU powers is sometimes considered to be a threat to the dynamic integration. Well, the functioning of other federations, e.g. Canada, shows that an explicit distribution of powers is not static. Although the Canadian provinces, the federated units, are responsible for economic policy, the federal Government is increasingly exercising this power instead of the provinces. This appears to be acceptable for the Supreme Court of Canada. Texts of a constitution or other laws, on the one hand, and legal and political practice, on the other, are two different things. And provincial inertia seems to be intolerable in Canada.

Assigned and competitive competences

Assigned competences of the federal Union are listed in the federal Constitution. This list of exclusive powers can only be changed, in any sense, by unanimity of the EU Member States and the first House. The competences of the intergovernmental Union are exhaustively listed in the Treaty constituting and organizing this Union.

Because of the size of the EU and the described resistance against certain forms of European integration, especially functionalism and federalism, it is recommendable to have a sort of 'competitive relationship' between the State administration level and the European one. This will be organized as follows: if competent authorities, whether a State or the EU, leave a policy domain uncovered, i.e. the competent authority stays inert for that matter, the non competent one may regulate provisionally in that domain. This regulation stands until the competent authority regulates. This competitive or supplying regulatory system, in case of political inertia, would be a mitigation of the priority of the European regulations over the national ones, in order to ensure the coherence of the EU.

Acceptable EU competences

The EU holds only jurisdiction for those matters which are of interest to all European inhabitants in a given situation or relationship, regardless their cultural identity. Therefore, the EU will not be competent for policy domains related to language or tradition. That is obviously the case for basic education, arts and heritage. Yet, welfare and social assistance are also culturally determined. The local or regional concept of social life is the key in these matters. In Germany, Italy and Portugal for example, it is not decent for parents to put their children under the supervision of others while they work. Elsewhere in the EU it is socially accepted: in (parts of) other Member States, parents use external services to take care of their children during working hours.

Hence, the second premise of the distribution of competences comes into the picture. The present EU is based on the principle of the single market; that market presupposes a free movement of goods, services, capital and... persons. The first three elements are or become very mobile. The fourth element is not. People in the common market of the EU are not eager to move and to live in another State – unlike in federations as the USA. The very limited migration movements show it, even after the accessions of Ireland, Greece, Portugal and Spain. In the first place, cultural differences, in particular linguistic barriers, explain this. Second, people have relatives and relations. Relationships suffer under the physical distance between persons, anyway. In Europe, apparently, relationships are more important than benefits. Third, some labor markets are less flexible in the EU than in the USA.

Therefore, social security and other socially and culturally driven services will remain largely the policy domains of the EU Member States. The quite immobile EU citizens are directly and individually concerned in these matters.

b. Federal EU Competences

The federal EU will be competent in those domains concerning the citizens in their 'universal' situation as a resident with fundamental rights, as a legal subject, as an employee, as a consumer and as a patient. The cultural differences between the EU citizens are rather irrelevant in those matters. Therefore, the first objectives of the federal EU will be justice, police, work, wealth and health.

Two strong arguments plead in favor of the federalization of justice and police, i.e. the general need for all residents of the Union and the support of the public opinion, strengthened since the assaults of last September on the USA. The free movement of persons within the EU requires an integrated policy to secure the safety of the EU population and to fight against border crossing crime.

This involves the transfer to the federal Union of the current internal EU cooperation in the field of police and justice on the federal, border crossing, level (PJSS, title VI, EU Treaty). These two policy domains will fall within the jurisdiction of the Supreme Court of Justice. The jurisdiction in commercial affairs is fully federal too, as it has an impact on economic or commercial activity and thus on the internal market.

The challenge of federalization of justice in criminal matters and police cooperation is feasible, because the present Council of Ministers can decide by majority vote in some affairs and the present Commission can take initiatives, besides the Member States. The Council is even obliged to consult the European Parliament before taking a regulatory action. Moreover, the European Police Office (Europol) exists already by treaty. Its Governing Board decides if needed by voting. The present Court of Justice is already entitled for the interpretation of the relevant treaties.

To conclude, it must be stressed that the EU lives in a specific situation and holds a unique opinion in the world. Specific interests and values require a specific policy. Due to its cultural diversity and the violent past of Europe, the EU has a different perception of the world than, say, the USA. Violence, for instance, is in the EU less acceptable than in the USA. Last but not least, the Union has other geopolitical interests than the USA: it counts indigenous Muslims and has Arabs as neighbors, with whom it shares the Mediterranean Sea.

The policy domains belonging to the exclusive competences of the federal EU are proposed below – only amendable, in any way, after agreement between the two federal Houses and those of the Member States:

- macro-economy (growth, stock capacity, prices, monetary policy and trade)
- economic use of the maritime area (the Exclusive Economic Zone)
- energy, including nuclear energy, but excluding commodities
- investments
- product standards, i.e. quality of products (industrial products and other)
- consumer protection
- commercial law, e.g. bank system, competition
- freight transport, limited to air & inland water navigation and road traffic
- telecommunication facilities (note: i.e. the instruments, not the content)
- air quality, i.e. environmental policy for air sector
- supply of State policies by financing training, infrastructure, etc.
- working conditions and internal migration
- supranational organization of police forces
- crimes, i.e. currency, finances & tax fraud and drugs & migrants trafficking
- justice in commercial matters and criminal matters for federal crimes
- research and technological development (RTD) concerning federal domains
- taxes on legal persons and on imports of goods & services
- foreign policy concerning these federal domains.

c. Intergovernmental EU Competences

The intergovernmental EU will be qualified in the policy domains related to external security, in internal legal relations, as well as in health care and water policy. The EU regulates the conflicts between national regulations, substantive rules as well as procedure ones. The same goes for the implementation of judgments in civil matters and non-federal criminal matters. It aims at the best match between those rules.

This confederal EU will also be responsible for external security, in other words for a common defense policy. This policy contains assistance and rescue missions, crisis management and peacekeeping, based on integrated fully-fledged military forces.

The EU defense policy may be different from the NATO policy and yet remain compatible with it. The policy difference may exist in the content of the tasks of both alliances, as well as in their geographical operations area. In that sense they would be complementary. For example, the EU can have an exclusive power for the policy on its territory and in the Baltic Sea, the Mediterranean Sea and those coastal States of the EU. NATO could stay competent in the (rest of the) Atlantic Ocean.

A full participation of Turkey in the EU defense policy in the Mediterranean can be justified, since that country is associated to the EU. This can be useful to dodge the Turkish resistance in NATO and the Greek one in the EU against this shift in common defense. It is also useful to convince the four current EU Member States, which actually are neither a member of the disappearing West European Union (WEU), nor of NATO (i.e. Austria, Ireland, Finland and Sweden).

This involves that these four EU members do renounce their 'neutrality'. One can convince them to do that with strong arguments: a neutrality of a small country with big neighbors, such as Russia, has had little success in history – what Belgium, for instance, all too often experienced. Neutrality supposes an antagonism between at least two opponents, between which a third party does not want to choose. But what would that mean when one of the 'antagonists' assaults the third party? This attitude of so-called neutrality is for such countries no longer relevant in the complex world relations of today. Apparently some stick to outdated political patterns.

On the operational level, this means that the already existing 'Eurocorps' under EU command, will be extended to all EU Member States. Now, the EU has made up a budget from compulsory contributions of the present Member States. The State charges are proportionally divided according to their economic capacity (GNP).

The complement of defense policy is foreign policy. What not can be arranged on the federal level, will be on the intergovernmental one. Only culturally determining policy domains are not within the external EU policy.

The whole asylum and migration policy, in and out of the EU, will be a domain of the intergovernmental Union. This part of the Union will regulate every movement of non-EU nationals, including (aspects of) asylum and visa. These policy domains do not remain with the Member States for the same reason as the defense policy: the EU needs some protection against abuses of the freedom of internal movement.

This kind of intergovernmental integration is already a challenge, because the asylum and migration policies are based on a classification in terms of stability and reliability of third countries, thus on the view on the external EU security. However, the requirements of the effectiveness and legal stability of migration and of welfare in the EU, call at least for this soft form of integration.

The intergovernmental EU will develop a policy of preventive health care, especially regarding life-threatening diseases and their epidemics. The policy goal is basically not culturally different, but the approach in the Member States should be, e.g. in promotional actions.

The EU will also stand for the policy on water in an intergovernmental way. Fresh water is a vital resource. Its scarcity and its distribution are very unequal between the Member States. Hence, the same goes for its worth and quality levels.

The EU can promote integration by bringing civil national laws and treaty rules of private international law in line with one another. The aim should be to avoid legal conflicts and to apply national judicial rules extra-territorially, e.g. to implement and enforce national judgments over civil and criminal cases in other Member States.

The intergovernmental EU powers are listed below:

- defense in a particular territory
- asylum and external migration
- preventive health care
- water policy, i.e. fresh water quality and water management
- nature policy (e.g. forests, wild life ...)
- cross-border infrastructure of roads, railways and waterways
- research and technological development (RTD) in intergovernmental domains
- taxes on water consumption and transport, e.g. tickets for motorways
- coordination of private international law
- foreign policy for the intergovernmental affairs.

Conclusion

I try to contribute with this text to the debate on the reform of the EU in the prospect of a new enlargement. Since 2000, the European Heads of Government and other politicians conduct the public debate on this subject.

In my proposal I tried to incorporate the will for integration, on the one hand, and the resistance against this, on the other. Both opinions are not contrary to the federalist ideology. In any federal system, whether it is a State Federation or another private or public organization, one operates at least on two levels of government, separate from each other. Layered thinking and acting is exactly the fundamental feature of federalism. That is why the EU is eligible to be organized as a federation.

For the basic organization of the federal EU, a constitutional act is inevitable. That act will bind the Member States and their citizens more than a treaty, which is in principle terminable unilaterally. At this point, the constitutional EU act would be the legal confirmation of the present situation – the present European Treaties do not contain a termination clause and their goal is an increasing integration...

It should be avoided that the Act looks like a continental constitution with a detailed description of individual rights and freedoms. That would disturb the British partners and others. Moreover, it would be redundant: Europe has never been a threat to such rights and freedoms, the nation States have been. Therefore, it is sufficient that the Constitutional Act is limited to the institutional organization of the federal Union.

The type of federation that I propose now for the first part of the double EU, holds three features. The EU would be an *institutional* Federation, i.e. a federation with institutions for the three branches of public power, the '*trias politica*'. For it is crucial that the federal EU can operate completely independent from its Member States.

The regulatory power, the Parliament of two Houses, should reduce the democratic deficit. Therefore, the first EU would also be a Federation of the *intra level* type: the second House, the one of the Member States, is a federal institution. This feature is chosen for its efficiency when the federal whole, represented by the first House, and the second House, being the emanation of the States, must deliberate and cooperate about a two levels issue. An *inter level* organization of the Federation, i.e. where such issues are treated in conferences between a federal institution and a federated one, would be less centripetal and efficient in an enlarged Europe.

The Commission should be more than an initially proposing institution and a purely implementing one. It must be a Government controlled by the Parliament. It needs no directly elected president; that proposal could be politically counterproductive. In the present 'state of the Union', such an institutional organization of the EU would resemble too much a Super State of the presidential type – this would spread panic in the most Member States and candidate countries.

The third power, the judicial one, is not the least important. The EU is a community of law par excellence. Coercion is mainly of a legal nature. The Supreme Court of Justice and the new lower Courts of the EU must respond to the conflicts between the legal systems. It has to bridge, for example, the gap between the British system and the legal systems in the other Member States.

Concerning the competences, I prefer a slightly *competitive* type of Federation to a pure exclusive type. First of all, the Constitutional Act will list the federal powers, transferred from the Member States to the federal level. A list of federal domains is inevitable to stop lasting centralization, which is breaking down the present EU. Second, the right of a non competent authority, whether federal or federated, to regulate in an uncovered domain, which belongs to another, inert, administration level, would lead to a more dynamic federation than the one with only exclusive powers. Yet, the regulation of the competent authority can overrule that of the non competent one, ending its inertia. This type of federation may increase the risks of conflicts of competence and of the weakening of the federal center, but such legal disputes will be solved in court thanks to the primacy of the federal regulations over the national ones and the vertical division of powers.

The federal EU must restrict its range to those domains, which are neutral towards cultural determined views. That is the case with security, economy, work and health. This thesis is sustained by the "European Values Survey" at the end of 2001: the last two decades, little has changed in terms of culture, say in views on social relations. The concept of 'family' in Sweden is still completely different from the one in Sicily. In the short run, social Europe will only deal with the working conditions and the legal status of employees in the event of business restructuring or bankruptcy – Commissioner Diamantopoulou will not contradict me.

Of course, the independence of the federal EU in terms of resources should be increased. Hence, the introduction of federal taxes is sound, linked to substantive powers of the Federation.

I propose an intergovernmental EU, which is not so different from the current one. It would be an organization stronger than a confederation: the basic Act cannot be terminated unilaterally. On the other hand, it is weaker than a federation: this Union does not command independent functioning institutions. Anyway, substantially this intergovernmental Union is not less ambitious than the federal one: it would deal with external safety, external migration, health and some infrastructure.

"Salus populi suprema lex esto!"

Cicero in 'De Legibus', III, 3.8