

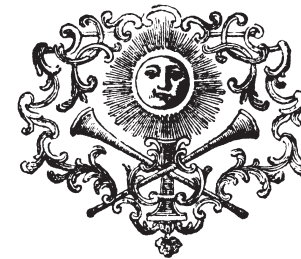
# THE FEDERALIST

a political review

THE FEDERALIST, YEAR LIV, 2012

*To look for a continuation of harmony between a number of independent unconnected sovereignties situated in the same neighbourhood, would be to disregard the uniform course of human events and to set at defiance the accumulated experience of ages.*

Hamilton, The Federalist



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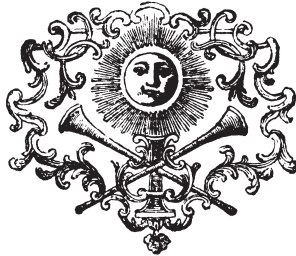
YEAR LIV, 2012

# THE FEDERALIST

a political review

— Editor — Giulia Rossolillo

*The Federalist* was founded in 1959 by Mario Albertini together with a group of members of the Movimento Federalista Europeo and is now published in English and Italian. The review is based on the principles of federalism, on the rejection of any exclusive concept of the nation and on the hypothesis that the supranational era of the history of mankind has begun. The primary value *The Federalist* aims to serve is peace.



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# Time to Transfer National Sovereignities

We have decided to make this year's issue of *The Federalist* a special issue devoted entirely to reflections on the institutional reforms that are necessary in order to prepare for the birth of the United States of Europe. Accordingly, the "Documents" section contains two of the landmark contributions to this debate over the past 25 years (two essays by Francesco Rossolillo, one from 1986 and the other from 2003); the issue also includes two new essays, one by Giulia Rossolillo and the other by Domenico Moro.

It would probably be useful to begin by trying to explain why we have chosen this particular moment to devote an entire issue to this topic. As Francesco Rossolillo's two essays show, the federalist movement (and, with it, our journal) has always spearheaded efforts to work out and indicate the political-institutional conditions that will allow Europe to advance towards federation. Indeed, throughout the process of European unification, the role of the European Federalist Movement (MFE) has always been, on the one hand, to clarify the nature of the power situation created in the wake of each step towards integration and, on the other, to identify the institutional objectives to be reached and the critical points that needed to be (or ought to have been) exploited in order to move the process forward. Driven by the pressure of the current political and economic crisis, Europe is today on the threshold of a real opportunity to complete the process of its own unification and, in so doing, save the entire European edifice from collapse. At this critical historical juncture it is clearly imperative to make the federalist voice heard in the debate, drawing on the experience that federalists have acquired during long years spent reckoning with the problems and impasses that, still today, prevent Europe from taking the road to political unity.

Essentially, we analyse two aspects: the framework that has been created within the European Union and the decisive points on which to focus in order to advance. The starting point for the first of these analyses is the observation that political unification of the eurozone is fast becoming a prominent issue in the debate, and that this is down to Ger-

many, which has realised — in this sense it is ahead of the other European countries — that the instruments Europe needs in order to find a way out of the crisis are not so much financial and economic as political and institutional. That said, it has to be noted that, for the moment, Germany is alone in adopting this stance and has yet to translate it into clear, concrete proposals; therefore, it still has to try and win the consensus of its European partners and develop appropriate institutional formulas.

This realisation on the part of Germany, prompted by the worsening crisis, has been extremely rapid. Until just two years ago, before the first bailout of Greece, Germany (like all the other EU member states) saw the European Union, with its 27-member single market and “Community method” of operating, as an adequate and stable framework. For Germans, monetary union had ceased to be a political question (a question of peace or war, and therefore a step towards the European Federation), as it had been under Kohl, and was merely seen a necessary technical transition enabling the European market to function efficiently; as such, it needed nothing more than the rules of the Stability Pact to govern it. But, as has already been shown on numerous occasions, also in *The Federalist*, the explosion of the debt crisis forced the European governments to acknowledge the inadequacy of the community method; within the space of just a few months, it also became clear that the framework of monetary union (restored to its status as a political enterprise) had to be distinguished from that of the broader single market, thereby paving the way for a break with Great Britain and with the other countries that do not want to join the euro. But none of this has lessened the danger for the single currency. Indeed, the intergovernmental method, until now used to compensate for the structural weaknesses of the community method (for a detailed analysis of these weaknesses, see the essay by Giulia Rossolillo in this issue) and recently also as the basis of a break with the old framework, has now too gone as far as it can go and — inevitably — reached an impasse. The crucial steps discussed in the run-up to the European Council summit of June 28-29, 2012, i.e. the creation of a banking union and a fiscal and economic union, cannot be tackled using this method; in short, the intergovernmental method is not capable of resolving the decisive issues, namely, solidarity, political credibility, and democratic legitimacy.

On the solidarity front, the current examination of possible new European instruments, like the ones just mentioned, has been prompted precisely by the realisation that measures like the granting of financial

aid to countries at risk of bankruptcy and the creation of “firewalls” against financial speculation (the first form of solidarity imposed by the crisis) are no longer enough, and that what is needed is a way of “mutualising the debt”; but such a solution, in the current institutional framework, would spell disaster: the markets are the first to doubt — precisely because of the current framework — Germany’s capacity to guarantee the debts of the entire eurozone and they would be bound to react to this solution with a speculative attack of unprecedented severity. Hence, there arises the problem, highlighted by German chancellor Angela Merkel, of ensuring that joint liability and joint control always go hand in hand, but it is a problem that neither the fiscal compact Treaty nor the Treaty establishing the European Stability Mechanism can resolve. Furthermore, in the current setting, no-one, neither the markets nor the non-European powers, would trust in the soundness of a “common European debt,” mainly because “the present Europe” has absolutely no political credibility: it lacks the capacity to envisage a new (desperately needed) cycle of development (which it would in any case be incapable of initiating using the current, still exclusively national, instruments). Furthermore, with no foreign policy and no international negotiating power, Europe has ceased to be a responsible force in the world. Finally, the issue of Europe’s democratic legitimacy is becoming dramatic. The citizens are growing increasingly disaffected with a system that is not working and that, perceived as extraneous, seems to be constantly imposing sacrifices on them; in addition, there are the intolerable delays and contradictions caused by the fact that democratic control is exercised at national level, albeit now more in form than in substance, while decisions are taken at European level.

In this setting, no intergovernmental solution (unless it is clearly intended as a startup stage in a process destined to lead to radically new institutional balances) will ever be acceptable, let alone workable. And this is why Germany, adopting a new and significant choice of terminology, has begun to draw its partners’ attention to the need for a new step: that of transferring sovereignty.

In politics, this expression is never used casually: sovereignty is the source of power and in democracies it lies in the hands of the people. Therefore, to propose transferring sovereignty to European level is to raise the possibility of superseding the national framework, not only from the power point of view, but also in terms of democratic guarantees and the identity of the sovereign people. This solution is an alternative to the traditional one, which is to give Europe new competences and create

mechanisms (sometimes competing ones) for managing the relative powers; indeed, it is a truly radical proposal whose message is that Europe can survive if, and only if, it becomes a state. This, today, is no longer the “federalists’ slogan”: it is also the design of Germany, a country that, strengthened by a keen awareness of its own recent history and federal structure (and thus able to conceive of the existence of a federal European people, united but comprising different identities and retaining the capacity for self-government at national level), as well as by the vigorous internal constitutional debate that has always accompanied the European integration process, does not fear incorporation into a federal European framework. Obviously, this does not mean that the United States of Europe can be brought into being simply through a single sensational decision at the next European summit, or at the ones after that. When the economic crisis erupted, Germany and France proved able to initiate only a gradual strengthening of European cohesion (this is partly because of the nature of the crisis which, being financial and economic, did not constitute the immediate threat to security that, according to Francesco Rossolillo, is what it will take for governments to make the radical decision to enter into a federal pact, and partly because it caught the eurozone countries unprepared, both politically and culturally); but, as shown by the acceleration of the debate in Germany, the time has now come, even within the context of a gradual building of political unity, to indicate clearly the institutional model that is required and to set out the steps necessary in order to reach it. This has now become the essential condition for any further progress; in the words of Mario Draghi: “The eurozone member governments must together and irreversibly define their vision of the economic and political construction which will sustain the single currency.”

From this perspective, the interventions of the EU institutions contribute little. The entire work of the Commission and the European Parliament, even though these organs should be developing proposals for the eurozone alone, is conditioned by the idea of preserving the Community method and the Community framework. Their proposals are always underpinned by a desire for the eurozone to remain a subgroup within the Union, governed by ad hoc rules, but controlled by the institutions of the 27-member EU, and they make no provision for transfers of sovereignty. The European institutions, in short, are failing to recognise that the choice to break with Great Britain is definitive and that there is now an urgent need to redefine the functioning of EU institutions so that they can play a role in the new “concentric circles”

framework already outlined by the new Treaties; at the same time, they are also failing to appreciate the urgent need to re-establish the foundations of coexistence in Europe, which can no longer be based on relations between sovereign member states (acting as their citizens' intermediaries), but must instead be directly legitimated by the citizens of Europe, even though the latter continue to be organised (also) into nation-states.

This inertia on the part of the Commission and the European Parliament is serving only to strengthen the intergovernmental front (currently led by France with the support, among others, of Italy, even though Italy, by tradition, should, and could, play a decisive role in favour of federal unity) and encourage proposals whose aim, ultimately, is the creation of specific, but still intergovernmental, institutions for the eurozone (e.g. giving the Council, in restricted composition, executive powers and creating a chamber comprising representatives from the eurozone's national parliaments which would have monitoring functions and also serve to impart democratic legitimacy — proposals that actually date back a long time: in this regard, it is very useful to reread Giscard d'Estaing's 1995 manifesto, but also, for a more recent perspective, Joschka Fischer's latest considerations). However, it must be stressed that such intergovernmental-type solutions cannot work, unless they serve as initial steps and are clearly part of the broad political design under discussion, because attempting to build European democracy by strengthening national control over common decisions actually serves only to impede the formation of a common European will and encourage a return to nationalism. Moreover, on analysing the current framework it is clear that the only possible source of democratic guarantees, in this initial phase, is a European Parliament capable of functioning according to a variable geometry approach and thus of operating in restricted composition (i.e. at the level of the MEPs of the core group of eurozone countries prepared to relinquish sovereignty). This is why it is essential that the MEPs of these countries realise how crucial it is for them to endeavour, within the setting of the European Parliament, to outline a new institutional framework for a concentric circles Europe, with a fully democratic federal eurozone as its core — a framework that could be proposed in support of the German appeal to transfer sovereignty to European level. It is, in fact, difficult to imagine that a European democracy can be built without the political forces and their representatives in the European and national institutions really realising the nature of the struggle it will take to accomplish this end



and the challenges that will arise, and without them helping to raise public awareness in this regard. And this is precisely why the current debate, hinging on economic policy choices but failing to consider the political and institutional conditions that would make them possible, or prevent them, is such a sterile one.

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Many dangers and obstacles still lie on the path towards the construction of a United States of Europe, and they must be addressed and overcome without delay. As indicated, our main intention, in putting together these key federalist analyses, is to contribute to the ongoing debate by highlighting several points that provide essential pointers as regards the choices that need to be made and the way in which to frame the necessary institutional reforms. In this latter respect, the proposals so far advanced by Germany are still very confused and ambiguous. Even though there is now greater awareness of the need to build political unity within the eurozone, it remains difficult to work out whether the new political framework, defined by membership of the single currency, should coincide with a core group within the broader European Union (which, in turn, would continue to coincide with the single market), or whether, conversely, the EU itself should shrink to encompass only the countries participating in monetary union. In the latter scenario, those not wanting to adopt the euro or relinquish political sovereignty, being excluded from the framework, would have to renegotiate, from the outside, the terms of their membership of the single market. It is, of course, still too early to say which of the two alternatives will ultimately become reality. It is also obvious that the two options, whichever prevails, prefigure very different types of institutional system. In the second case, the current EU institutions could become, after major reform, the institutions of the new federation; in the first case, on the other hand, institutions working with variable geometry mechanisms would coexist alongside separate institutions for the two areas. In particular — and this is the issue considered by Giulia Rossolillo in her essay and also the point made in the above reflections —, whereas the European Parliament (which it is hard to imagine duplicating, in the sense that it is difficult to imagine the election by universal suffrage of another, alternative chamber) is certainly an organ that could work on a variable geometry basis, it is unfeasible to think of creating an executive body or government that could serve both the federal core and the

community-intergovernmental framework of the single market; therefore, the Commission could either evolve into the government of the federal core, in which case it would have to include only members from eurozone countries and be directly elected and legitimated by the European Parliament in restricted composition, or it could continue to be the institution that it is now and not play an executive role within the federal core. It is, indeed, the role of Commission and the proposals for an institution responsible for governing the eurozone that are causing the most confusion and ambiguity. This is shown by the various proposals currently being aired: some in favour of a stronger role for a restricted Council within the EMU framework, and others advocating direct election of the president of the Commission. Clearly the latter, intended to politicise and “democratize” the Commission, are, in the 27-member framework in which they have been conceived, contradictory and, for the moment, incapable of paving the way for a narrower EU, insofar as they do not seek to influence the composition of this organ.

It is therefore important to stress, first of all, that however the Europe of concentric circles is eventually structured, the framework within which institutional advances can today be made is that of the (enlarged) eurozone defined by the EMS and fiscal compact Treaties and, presumably, by the decisions that will be taken at forthcoming summits. Second, as highlighted by Domenico Moro in his essay, effective progress may be measured only in relation to the questions of a European power of taxation (and the institutions that will be entrusted with exercising this power) and the management of the European own resources generated as a result of its introduction.

In short, the need to start moving along the path that will lead the eurozone countries to the transfer of sovereignty is now unavoidable, given that this is the only context in which measures in the financial and economic fields (such as, respectively, the creation of the so-called banking union or euro-bills and France’s Pact for growth in Europe) can have any real meaning. The first evidence of the existence of a real political will in this sense will be provided by the establishment of an independent European power of taxation within the eurozone; but this will be possible only by developing innovative institutional solutions appropriate for this purpose and also, with a view to creating the first forms of democratic control and legitimacy, by starting to involve the MEPs of the eurozone countries in the endeavour.

# **The Fiscal Compact, The European Stability Mechanism and a Two-Speed Europe: Institutional Proposals for a Government of the Eurozone**

*GIULIA ROSSOLILLO*

The signing of two treaties — the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (also known as the fiscal compact) and the Treaty establishing the European Stability Mechanism (ESM) — has opened up a new phase in the process of European integration that sets the stage for the creation of a two-speed Europe. Indeed, for the first time ever in this process, a treaty reached between only some EU member states will come into force without having to be ratified by all the countries that signed it: the fiscal compact was signed by 25 of the 27<sup>1</sup> EU member states and will become effective following its ratification by just twelve eurozone countries. Moreover, under the Treaty establishing the European Stability Mechanism, which is a treaty that has been signed and will also be ratified only by states belonging to the euro area, new institutions for governing the eurozone (e.g. a Board of Governors able in some circumstances to take majority decisions) are starting to take shape.

These developments provide a clear demonstration of the will of some states to push ahead towards closer forms of integration even without the consent of the states that are opposed to such advances; at the same time it adds a new piece to the gradually emerging picture of

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<sup>1</sup> The treaty was not signed by Great Britain and the Czech Republic.

the eurozone as the framework in which to create forms of political integration in Europe. It should not be forgotten, of course, that the two treaties are closely interlinked, given that only states that have ratified the fiscal compact will be eligible for aid from the ESM.

*Criticisms of the Fiscal Compact Based on Comparison of the Community Method and the Intergovernmental Method.*

Leaving aside the content of the fiscal compact (whose ratification implies acceptance of considerable restrictions on national budgetary sovereignty), it is, in the main, the method used by the states that signed the treaty that has prompted widespread criticism, both from those who think the community method should always be used, and from those who see the non-participation of two member states and the possibility of bringing the treaty into force through its ratification by only twelve eurozone countries as a clear indication of the desire of some member states to exclude others from the integration process.<sup>2</sup>

Criticisms of this kind hinge on the often highlighted distinction between the community method, seen as truly supranational, democratic and able to ensure that the common interest prevails over that of the member states, and the intergovernmental method, considered to be founded on the states' pursuit of their own, sometimes conflicting, interests and designed to exclude the participation of supranational institutions. This distinction is, however, rather artificial and not supported by the text of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), or by the real workings of the Union. In truth, the so-called community method is not so much the antithesis as a refinement of the intergovernmental method:<sup>3</sup> the extension of qualified majority voting within the Council, the Com-

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<sup>2</sup> On this point, see J-C. Piris, *The Future of Europe. Towards a Two-Speed EU?*, Cambridge, Cambridge University Press, 2012, p. 6 and 66, in which the difference between a "two-speed Europe" and a "two-class Europe" is underlined. The Treaty establishing the European Stability Mechanism did not cause such controversy since it was, in a way, "authorised" by the recently amended art. 136 TFEU, which states that "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."

<sup>3</sup> In this regard, see P. Magnette, *Le régime politique de l'Union européenne*, 3. éd., Paris, Presses de Sciences Po, 2009, p. 38.

mission's role as a mediator, and the existence of a European Court of Justice (ECJ) are all factors that favour the reaching of forms of compromise between the member states; and compromise indeed continues to be an essential component in the functioning of the Union.<sup>4</sup> The Treaty revision mechanism itself provides a clear demonstration of this. Indeed, art. 48 TEU states that Treaty amendment, whether by means of the ordinary or the simplified revision procedures, requires the unanimous consent of the states, expressed by ratification procedures or by a unanimous decision of the European Council.<sup>5</sup>

Therefore, had the procedure laid down in art. 48 TEU been used in order to adopt the provisions contained in the fiscal compact, it would have been essential to secure the agreement of all the member states, and the revision procedure would, essentially, have been intergovernmental in nature.

The crux of the matter — and the difference between the procedure laid down by art. 48 and the establishment of a treaty outside the framework of the mechanisms provided for in EU law — lies in the fact that whereas the procedure set out in art. 48 TEU would have required the agreement of all the member states, the reaching of an international agreement outside the Treaties has made it possible to arrive at a text signed only by the states that shared its principles and also a determination to find more advanced forms of mutual cooperation. This is a significant difference, given that the need to reconcile widely divergent views, and in particular to reach a compromise with Great Britain's strongly anti-European stance, would, under the terms of art. 48 TEU, undoubtedly have resulted in the adoption of a text without any real substance, or even in the failure to reach an agreement at all.

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<sup>4</sup> As underlined by P. Magnette, *Le régime politique...*, *op. cit.*, p. 109 onwards, "ainsi conçue, la supranationalité n'est pas destinée à remplacer la coopération intergouvernementale, elle vise au contraire à la rendre possible." Also on this point, see J-P. Jacqué, *Le nouveau discours sur la méthode*, Notre Europe, September 2011.

<sup>5</sup> Par. 5 of art. 48 TEU states that "If, two years after the signature of a treaty amending the Treaties, four fifths of the member states have ratified it and one or more member states have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council." However, not only does this provision delay the decision on the entry into force of the amended Treaty, it actually does not appear to substantially change anything, given that the decision of the European Council will be taken unanimously or by consensus, and it is hard to imagine that the states that have not ratified the Treaty will agree to its entry into force only in those that have proceeded with its ratification.

*The Fiscal Compact, European Stability Mechanism and Institutional Balance of the EU.*

There is nothing in international law to prohibit some of the states parties to a treaty from together entering into another treaty that modifies the relations between themselves as established by the first treaty. In particular, according to art. 41 of the Vienna Convention on the Law of Treaties, “Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if: a) the possibility of such a modification is provided for by the treaty; or b) the modification in question is not prohibited by the treaty and: i) does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations; ii) does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.”<sup>6</sup>

What this provision means, applied to the concrete case of a treaty agreed between some EU member states outside the mechanisms laid down by the founding Treaties, is that the agreement reached must not affect the rights and obligations, stemming from their EU membership, that are vested in the states that are not parties to the said treaty. Therefore, in order to ensure that the fiscal compact treaty, the ESM treaty and any future developments of these agreements do not create problems of compatibility with EU law, the institutional structure of the Union and the *acquis* need to remain basically unchanged.<sup>7</sup>

A similar principle, albeit referring to relations between EU law and

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<sup>6</sup> With regard to this provision, see N. Quoc Dinh, “Evolution de la jurisprudence de la Cour internationale de La Haye relative au problème de la hiérarchie des normes conventionnelles”, in *Mélanges offerts à Marcel Waline*, Paris, LGDJ, 1974, p. 215 onwards; M. Zuleeg, “Vertragskonkurrenz im Völkerrecht. Teil I: Verträge zwischen souveränen Staaten”, in *German Yearbook of International Law*, 1977, p. 246 onwards. As noted by E. Roucouas, *Engagements parallèles et contradictoires, Recueil des Cours*, 1987-VI, vol. 206, p. 21 onwards, in particular p. 227 onwards, some international treaties, such as the United Nations Convention on the Law of the Sea (Montego Bay, 1982), expressly stipulate that some of the states parties to the treaty may change or suspend the treaty provisions in their relations with each other. Similarly, according to the statute of the ILO, a number of member states may together enter into an agreement pertaining to matters within the competence of the organisation.

<sup>7</sup> Referring to the Vienna Convention on the Law of Treaties, J-C. Piris (*The Future of Europe...*, *op cit.*, p. 137) notes that “an additional treaty would not require the consent of other EU member states, on condition that their interests are not harmed and that the EU treaties as well as the EU law adopted on their basis remain fully applicable.”

international agreements reached between EU and third-party states or international organisations, has been reiterated repeatedly by the ECJ,<sup>8</sup> which on various occasions has ruled draft agreements with third-party states to be incompatible with EU law precisely because they would have changed the institutional balance of the EU. In the ECJ's Opinion 1/76<sup>9</sup> it is, in fact, already stated that "the conclusion of an international agreement by the Community cannot have the effect of surrendering the independence of action of the Community in its external relations and changing its internal constitution by the alteration of essential elements of the Community structure as regards the prerogatives of the institutions, the decision-making procedure within the latter and the position of the member states vis-à-vis one another."

Under this premise, in Opinion 1/91,<sup>10</sup> the ECJ, called upon to advise on the draft agreement on a European Economic Area, concluded that the creation of a judicial institution responsible for interpreting the provisions of the said agreement could potentially have affected the allocation of responsibilities as defined in the Treaties and the autonomy of the Community legal order, given that it would have implied a violation, by the EU member states, of their undertaking "not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein."

On the basis of similar arguments, in Opinion 1/09, the ECJ concluded that a draft agreement on the creation of a European and Com-

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<sup>8</sup> Art. 218 (11) TFEU states that "A member state, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised."

<sup>9</sup> Opinion of 26 April 1977, 1/76.

<sup>10</sup> Opinion of 14 December 1991, 1/91. Following changes to the EEA draft agreement, in particular modification of the system of judicial supervision, the Court, again called upon to assess its compatibility with the Treaties, ruled that it was indeed compatible with Community law, thereby allowing it to be concluded (Opinion of 10 April 1992, 1/92). As remarked by the Court in this Opinion, guaranteeing the autonomy of the Community legal order means not changing the nature of its competences or those of its institutions. This in turn implies that the mechanisms designed to ensure uniform interpretation of the rules of an international agreement to which the EU is party must not have the effect of obliging the EU and its institutions to interpret in a given way the provisions of EU law touched on by the said agreement. On the concept of autonomy of the Community legal order, see T. Lock, "Walking on a Tightrope: the Draft ECHR Accession Agreement and the Autonomy of the EU Legal Order", in *Common Market Law Review*, 2011, p. 1025 onwards, especially p. 1028 onwards.

munity Patents Court (PC)<sup>11</sup> could not be considered compatible with the provisions of the Treaties given that the PC would, within the sphere of its exclusive competences, effectively have replaced the national judges and thereby altered the preliminary ruling procedure provided for in art. 267 TFEU.

The crucial importance attached, in EU law, to safeguarding the Union's institutional structure, competences and institutions also emerges in the provisions on enhanced cooperations. Indeed, according to art. 326 TFEU, these must comply with the Treaties and with EU law and must respect the competences, rights and obligations of the member states not participating in them.

*The Schengen Agreement, Enhanced Cooperations and Benelux Union: Points for Reflection on a Two-Speed Europe.*

The pressing need to find a solution able to reconcile the necessary advance of some states towards true political integration with the safeguarding of the EU's institutional balance makes it necessary to reflect upon the forms of differentiated integration developed within the European Union setting to date, or at least those that might provide useful insights to this end: enhanced cooperations, the Schengen Agreement and the Benelux Union.

These are, in fact, three very different phenomena: whereas enhanced cooperations are envisaged by the Treaties, the Schengen Agreement was conceived outside the Treaties and only later incorporated into the EU legal framework. The Benelux customs union, on the other hand, was an earlier form of integration.

As regards the first two phenomena, it must be emphasised that, from a substantive point of view, neither enhanced cooperations nor the Schengen Agreement are comparable to a hypothetical government of the euro area because they are forms of differentiated integration that concern very specific aspects of integration. Nevertheless, for the purposes of our analysis there are some useful insights to be drawn from the debate triggered by the incorporation of the enhanced cooperation formula into the Treaties, and from the different cooperation arrangements that were reached between the Schengen and EU institutions.

In the case of enhanced cooperations, which are a form of differen-

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<sup>11</sup> Opinion of 8 March 2011, 1/09.



tiated integration expressly envisaged by the Treaties, the EU legislator has, of course, taken care to ensure that they do not affect the institutional balance of the Union. Indeed, before an enhanced cooperation can be established it must be verified that the objectives it intends to pursue cannot be achieved by the Union as a whole, that it falls within the framework of the Union's non-exclusive competences, that it complies with the Treaties and with Union law, and that it has been authorised by the Council.

Therefore, whereas the fiscal compact is an international agreement that has been reached between some EU member states outside the framework of the institutional mechanisms provided for in the Treaties, the enhanced cooperation formula has been fully incorporated into these Treaties, meaning that these cooperations have to respect the mechanisms provided for therein.

Despite this fundamental difference, there is an aspect worth reflecting upon, and it concerns the role of the EU institutions within an enhanced cooperation. Indeed, according to the Treaties, an enhanced cooperation, once established, does not need its own autonomous institutional structure, but is required, rather, to make use of the Union's institutions. However, since an enhanced cooperation, by definition, involves only some of the member states, the Treaty makes provision for voting by only part of the Council: "All members of the Council may participate in its deliberations, but only members of the Council representing the member states participating in an enhanced cooperation shall take part in the vote." (art. 330 TFEU).

No such provisions are, instead, in place for the European Parliament and Commission, both of which intervene, in their full composition, in decisions on enhanced cooperations, a solution that — at least as far as the European Parliament is concerned — was hardly the obvious one to adopt. In fact, the possibility (currently discussed in relation to the idea of a two-speed Europe) that the European Parliament could, in some cases, operate with a restricted composition entered the debate back in the 1990s, leading some commentators<sup>12</sup> to point out that a solution like the one adopted for the Council would have been more log-

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<sup>12</sup> In this sense, see H. Bribosia, "Différenciation et avant-gardes au sein de l'Union européenne", in *Cahiers de droit européen*, 2000, p. 57 onwards, especially p. 72. Bribosia maintains that in the creation of a true federal core it would be inevitable to think in terms of a Council and European Parliament with a variable composition (p. 75). On this point, also see C. Guillard, *L'intégration différenciée dans l'Union européenne*, Brussels, Bruylant, 2006, p. 150.

ical for the Parliament, too. In fact, whereas the Parliament has an only marginal role in the setting up of an enhanced cooperation, it can play an important role in its subsequent implementation: this point is illustrated by the fact that the implementation of enhanced cooperations can require acts adopted according to the ordinary legislative procedure, in other words according to a procedure that involves the participation, on an equal footing, of both the European Parliament and the Council. The fact that the whole Commission intervenes in decisions on enhanced cooperations has, instead, met with less objection,<sup>13</sup> as the nature and configuration of this institution seem to make it impossible for it to operate in restricted composition. However, whereas it is perhaps possible to accept the absence of provision for intervention of the Commission in restricted composition in relation to enhanced cooperations, on the basis that these are forms of cooperation that generally involve very specific, sectoral aspects of EU law, this lack of provision becomes much more questionable in the context of efforts to institutionalise the eurozone as a vanguard group within the EU. Indeed, even though the Commission, in theory, represents the interests of the Union as a whole, the nature of its relationship with the states emerges clearly from the states' reluctance to accept being deprived of the power to appoint a commissioner: in fact, the European Council of December 2008 shelved the provision whereby the number of Commissioners making up the Commission should, as from 2014, be smaller than the number of member states.<sup>14</sup> Furthermore, were the eurozone to be given its own institutional structure, it is quite unthinkable that it could then be governed by a Commission appointed by a European Council, Council and European Parliament composed of representatives of all the member states. This would, in fact, fly in the face of the most fundamental principles of democratic representation.

Moving on to the Schengen Agreement, this is an international treaty signed outside the framework of EU law between only a few member states. It was established with the dual purpose of abolishing border controls between Schengen states, to allow free movement of people within this area, and of introducing uniform rules on external border controls, and it resulted in the creation of specific Schengen

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<sup>13</sup> See, however, J-C. Piris, *The Future of Europe...*, *op. cit.*, p. 57 and p. 117 onwards.

<sup>14</sup> U. Draetta, *Elementi di diritto dell'Unione europea, Parte istituzionale*, V ed., Milano, Giuffrè, 2009, p. 125.

bodies. However, prior to its incorporation into the Treaties — and this is the interesting point — various kinds of links were set up between Schengen and the European institutions. In particular, the Commission and the General Secretariat of the Council sent observers to participate in the Schengen Executive Committee and various working groups. And the European Parliament had regular meetings with the various Schengen presidencies.<sup>15</sup> In short, Schengen amounted to a sort of co-operation agreement between several states that was created outside the Treaties but was somehow connected with the EU institutions, which, however, were neither changed by it nor assigned new competences.

While the two experiences described above provide some suggestions on how the eurozone might be given an institutional structure, the solution that perhaps comes closest to what might be envisaged is that of the Benelux Union which, despite constituting a form of differentiated integration that predated the EEC Treaty, emerges as particularly interesting for the purposes of the present analysis. Indeed, art. 350 TFEU states that “The provisions of the Treaties shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the Treaties.” As pointed out by the ECJ,<sup>16</sup> this provision allows the Benelux member states to apply the rules in force within their union, derogating from those of the EU, whenever these rules are more advanced than the common market ones. In the Court’s view, the principle of uniformity of application and interpretation of EU law does not preclude the existence of this closer cooperation. It requires that common rules be attributed equal importance, but it does not prevent the creation of new rules for application in a smaller group of states.

The Benelux Union, furthermore, created its own Court of Justice, which is composed of the judges of the supreme courts of the participating states and empowered to seek preliminary rulings from the ECJ; at the same time, of course, the Benelux member states continue to be represented individually in the EU institutions.

It should be noted that although the ECJ has never extended the principles applied to the existence and operation of the Benelux Union

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<sup>15</sup> On this point, see C. Guillard, *L’intégration différenciée...*, *op. cit.*, p. 165 onwards.

<sup>16</sup> Judgment of 16 May 1984, 105/83, *Pakvries BV*.

to any other entity, it has never actually stated that they cannot be. In theory, therefore, it is not possible to rule out the formation, within the EU, of unions of states that have institutions of their own, and therefore do not need to use the EU institutions in order to function, and whose members are represented individually in the Union's institutions.

*The Transition towards a Federal Core within the Union.*

The examples of differentiated integration here illustrated offer some useful points for reflection with regard to the crucial problem now facing European integration, in other words the need to find formulas able, on the one hand, to provide effective responses to the clear crisis in which the integration process is now mired, and on the other, to overcome the states' reluctance to take the federal leap forwards, and thus relinquish their sovereignty to a democratically legitimate European government. Even the governments in which there is greater awareness of the risks implicit in the current crisis of European integration find themselves in the difficult position of having to reconcile the need to provide the quick answers demanded by public opinion, rocked by the economic crisis, with the need to introduce austerity measures to prevent the crisis itself from resulting in the collapse of the single currency.

In this setting, with its rapid and constant developments, it is extremely difficult to predict how the situation will evolve and what future scenarios will emerge. It is possible to imagine that the EU might shrink to encompass only the eurozone countries, with the area outside it (the member states that do not use the euro) becoming a sort of free-trade area. Were this to happen, today's EU institutions would become the institutions of the new federal European Union and it would make sense to introduce direct election of the President of the Commission, an idea already advocated in several quarters. If, indeed, the EU and the eurozone were to become one and the same, it would be necessary to address the problem of giving the institutional structure of the new Union a democratically legitimate government, and the direct election of the president of this government (the Commission) would be the first step in this direction.

However, such a scenario still seems a long way off, and to propose, in today's 27-member EU, direct election of the President of the Commission, in the hope that this might prove to be an antidote to the crisis, is simply unrealistic. The pressing problem at the moment is how

to give the eurozone a government, thereby resolving the paradox of having economic policy decided at national level while monetary policy is decided at supranational level. As long as this paradox remains unresolved, direct election of the President of the Commission by the citizens of the 27 member states would not constitute a step towards institutionalisation and democratisation of the eurozone, given that a government of this area could, by definition, be democratically legitimated only by the citizens of the countries that belonged to it.

The need to equip the eurozone with the instruments that will allow it to tackle the crisis and start evolving into an entity of a federal nature could be met by creating — as a first step, not a definitive solution — an independent agency for sustainable development;<sup>17</sup> this Agency, designed to fund growth projects and capable of finding the financial resources necessary for its own activity, would be independent of the national governments and thus unconditioned by electoral constraints and considerations.

It is thus a matter of understanding, in the light of past experiences of differentiated integration, how to ensure that this Agency really does constitute a step in the direction of the creation of a federal government and how best to frame its relations with the EU institutions.

As regards the first of these aspects, the main question concerns the framework in which to set the Agency, and it is a question closely tied up with that of the mechanism through which a body of this kind should be brought into being. If the Agency is conceived as an instrument to help those member states wanting to resolve the structural problems of the eurozone to escape from the mere imposition of budget constraints and move towards a real solution to the crisis, then the obvious framework for its creation is that of the fiscal compact and European Stability Mechanism, and the states that have ratified or will ratify these treaties. In other words, the Agency would serve to complete the ESM and the fiscal compact: whereas the latter contains only constraints and budgetary discipline measures, the Agency would look after the question of growth. Indeed, even though art. 1 of the fiscal com-

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<sup>17</sup> See D. Moro, “The Eurozone and an Independent Agency for Sustainable Development. How to Reconcile a Development Policy for the Eurozone with EU Budgetary Policy”, in this issue of *The Federalist*, p. 23. In the sense that the creation of an agency independent of the national governments could provide a solution, temporarily at least, also see M. Devoluy, *L'Euro est-il un échec?*, Paris, La Documentation française, 2011, p. 52.

pact talks of sustainable growth, employment, competitiveness and social cohesion, these are all objectives that are merely set out in this treaty, but not achievable through its provisions.

In the abstract, the same result could be obtained by setting up an enhanced cooperation between the states that have signed up to the ESM and fiscal compact. A solution of this kind, however, would have several drawbacks.

First of all, there is the fact that an enhanced cooperation can be authorised only after it has been established that its objectives cannot be achieved by the Union as a whole. In addition, it must be supported by a majority of 14 Commissioners, approved by an absolute majority by the European Parliament, and authorised through a qualified majority vote in the Council. All these are difficult objectives, given that a qualified majority in the Council can be reached only through the agreement of most of the states (it takes just four states to provide the blocking minority of 91 votes<sup>18</sup>) and the Commission is traditionally rather hostile to forms of differentiated integration.<sup>19</sup>

The second drawback is the fact, already pointed out, that only the Council has the faculty to intervene in enhanced cooperations in restricted composition, whereas both the European Parliament and the Commission each act as a whole. This effectively means that Commissioners and MEPs from states not involved in the enhanced cooperation would be able to intervene in its functioning.

These circumstances could complicate the mechanism for creating the Agency and also make it a weak and ineffective body.

These limits could instead be overcome if the Agency were based, like the fiscal compact and the ESM, on a treaty concluded outside the institutional mechanisms of the European Union, in other words, if it were born of an international treaty between the states parties to these two agreements.

In this setting, the European Parliament (or more precisely the MEPs of the states parties to the treaty establishing the agency) would play a key role. First of all, to prevent the Agency from becoming a per-

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<sup>18</sup> As laid down by art. 16.4 TEU, as from 1 November 2014, qualified majorities will be calculated using a different method, no longer using the weighting of votes. However, the reaching of a majority will still depend on the agreement of a large number of states; indeed, the provision specifies that the blocking minority must include at least four member states.

<sup>19</sup> On this point, see J-C. Piris, *The Future of Europe...*, *op. cit.*, p. 81.

manent body, rather than a transitional entity serving to advance towards the creation of a true political government of the eurozone, its founding treaty might be made to incorporate a provision — along the lines of the one included in the EEC Treaty (1957) which allowed the European Parliament to draw up proposals for its own election by direct universal suffrage<sup>20</sup> — that gives the European Parliament in restricted composition (i.e. the MEPs of the states ratifying the fiscal compact treaty, the ESM treaty and the treaty establishing the agency) the power to call a convention for the purpose of giving the eurozone a true executive body, and thus lays out the procedures for appointing a democratically legitimate government.

Furthermore, since the Agency would manage its own resources, this would inevitably throw up the question of its democratic control, which in this case too could be exercised by the MEPs of the States that ratified its founding treaty.<sup>21</sup>

As regards the relations between an Agency conceived along these lines and the EU institutions, it would be useful, precisely in order to ensure the preservation of the Union's existing institutional structure (a need already underlined), to envisage, as with the Schengen Treaty, some form of coordination with the EU institutions.

The Agency would obviously be a provisional solution as the creation of this body would not lead to a federal government of the eurozone. Its value, however, lies in the fact that it could turn out to be not just an instrument for responding to the (urgent) need to accompany austerity with growth, but also a sort of test bench for trying out new institutional solutions with a view to transforming the eurozone into a true federal state.

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<sup>20</sup> Art. 138 TEEC.

<sup>21</sup> J-P. Piris, *The Future of Europe....*, *op. cit.*, p. 128 onwards, suggests, as a third avenue, the direct election of a smaller European Parliament.

# **The Eurozone and an Independent Agency for Sustainable Development. How to Reconcile a Development Policy for the Eurozone with EU Budgetary Policy\***

*DOMENICO MORO*

## **1. Introduction.**

When, in 2008, the subprime financial crisis exploded in the USA, it was presented as a “global crisis.” After a while, it was scaled down to a “crisis of the developed world.” Today, the financial crisis, which in the meantime has also become an economic crisis, in fact affects only the European Union and the eurozone in particular. Even though the financial situation of the countries using the euro is, overall, better than that of the USA — America’s credit rating has been downgraded by rating agencies —, the market seems to reserve its harsh treatment solely for the eurozone, and this has brought us to a point at which the survival of monetary union is under threat. The difference between the American situation and the European one, as the federalists keep pointing out, is political, not economic: the USA has a federal government and a federal treasury that ensure unity and solidarity between the states and the citizens; the EU, on the other hand, has a market and a currency, but no government and no fiscal union. This working paper,

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\* This paper is the written version of a lecture given at the Milan section of the European Federalist Movement (MFE) on 17 January, 2012. The proposal set out herein aims to involve primarily the eurozone countries and ultimately the EU member states that signed the fiscal compact treaty (i.e. all the EU member states except the UK and the Czech Republic).



which proposes the creation of an *agency for sustainable development* funded by a European tax and promoted by the eurozone countries, but open to any countries that wish to participate, is intended to be a contribution to the debate on the *phase of transition* towards the federal completion of the process of European unification.<sup>1</sup>

## 2. The Structural Aspects of the Current Economic and Financial Crisis.

In a book-length interview published several years ago, Tommaso Padoa-Schioppa listed the structural causes of the American subprime crisis, a crisis that today, in a manner only seemingly paradoxical, is substantially affecting only the European Union. The causes he cited were: “the United States’ growing external debt, the progress of parts of Asia (a third of mankind) towards wellbeing, the consequent increase in energy and food prices [driving] millions of people into extreme poverty, the return to an economy of scarcity, the shortage of natural resources.”<sup>2</sup> These are structural imbalances that, despite being denounced by Padoa-Schioppa within the most important institutions for global cooperation, still await corrective measures. Padoa-Schioppa highlighted, in particular, a basic imbalance that broadly links all the structural factors just listed, namely the unsustainable American model of development, based on “consumer credit.”<sup>3</sup> For a period of thirty years, the US economy, driven by consumer spending, grew at a rapid rate: once the process of forming domestic savings had been exhausted, the United States resorted to external savings, accumulating a large foreign debt. In more recent years, consumer spending was underpinned by private debt, with loans secured by the (constantly increasing) value of houses, which in turn was buoyed up by an accommodative monetary policy. All this led to inflation of stock market and investment goods prices, termed *asset inflation*, which had the effect of further boosting consumption. Indeed, unlike inflation of consumer prices, which (all other conditions being equal) makes us poorer, *asset*

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<sup>1</sup> The agency proposal can, indeed, be set only within the framework of the structural powers of a true federal government.

<sup>2</sup> Tommaso Padoa-Schioppa, *La veduta corta (conversazione con Beda Romano sul Grande Crollo della finanza)*, Bologna, Il Mulino, 2009.

<sup>3</sup> Padoa-Schioppa is referring explicitly to the American model of development, but the book as a whole is actually a broad criticism of a development model based on credit.

*inflation* gives us the illusion that we are becoming richer and thus encourages us to continue along the consumer credit route. In the same years, consumer purchasing power was defended, if not actually boosted, by the low prices of goods and services produced in and imported from developing countries. The latter, furthermore, invested the resulting trade surplus earnings in *Treasury bonds*, and thus also helped to fund America's unsustainable model of development. The start of the present economic and financial crisis came when, eventually, this crazy cycle of development was interrupted by an internal hiccup: home owners started to become unable to pay their mortgages. This crisis, which, as we have seen, broke out in the United States, has now moved to continental Europe, where it is threatening the survival of the euro. However, public opinion, and above all the governments called upon to remedy the situation, have lost sight of the fact that the structural imbalances cited by Padoa-Schioppa have remained unaddressed. This paradoxical situation is summed up by the following data: at the outbreak of the subprime crisis in 2008 (and thus in a phase of development sustained by the global economy), the average price of an OPEC barrel of oil was 94 dollars; it dropped to 60 dollars the following year, after which it progressively rose again. At the start of 2012,<sup>4</sup> a period in which the American economy is said to be showing only a partial recovery, and the European economy is in recession, it stood at almost 112 dollars.

One might very well wonder why it was that, in the presence of such clear structural imbalances, the outbreak of the financial crisis in the USA came as such a surprise, and why it is that, even now, corrective measures are not being adopted. Tommaso Padoa-Schioppa provides an explanation that is also the assumption underlying his whole "conversation": in his view, one of the main reasons is the "excessive shortening of time horizons in the conducting of private and public affairs,"<sup>5</sup> which makes it impossible to see problems and, above all, to introduce, promptly, the necessary measures. The crisis we are currently going through, according to Padoa-Schioppa, is structural, and its clearest manifestation, the sovereign debt crisis, is not something that has arisen over the past few years; rather, it is a result of changes that have taken place in the global economy over several decades, leading to public finance management policies that favour the use of debt as a

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<sup>4</sup> OPEC, *Monthly Oil Market Report*, February 2012.

<sup>5</sup> Tommaso Padoa-Schioppa, *La veduta corta ...*, *op. cit.*, p. 61.

means of meeting the needs of the developed economies. These policies have been accompanied, again because of the shortening of time horizons in the conducting of private and public affairs, by questionable decisions from the perspective of sound fiscal policy.

The structural nature of the ongoing financial and economic crisis can be looked at in many ways. For example, a French Senate report on Europe's energy policy, commenting on the predictable evolution of the geographical distribution of energy consumption, remarks that "basically, it can be said that we are moving from a world in which a quarter of the population consumed three quarters of the energy, to one in which energy consumption will increasingly be determined by the size of a country's population."<sup>6</sup> For its part, the UN, in a recent report, points out that the "vast consumption gap between the rich and the poor is expressed through a widely known measure: 'roughly 80 percent of the natural resources used each year are consumed by about 20 percent of the world's population'."<sup>7</sup> Given that these global inequalities in the consumption of natural resources seem to parallel the difference, in terms of public debt, that exist between the industrialised countries and the developing world — with the latter, therefore, seeming to support the former — it is perhaps worth trying to understand their origin.

In a recent article on France's national debt — even though the trend described is actually common to all industrialised countries —, it was remarked that France has had a structural deficit ever since 1974.<sup>8</sup> World Bank figures show that, in 2009, against a global GDP of 58,000 billion dollars, world public debt stood at 63,100 billion dollars, over two thirds of which (42,800 billion) was generated by members of the OECD, the umbrella organisation of countries having the highest per capita income. Therefore, if we look at the distribution of public debt on a global scale, we see that 68 per cent of this debt belongs to 18 per cent of the world's population — the 18 per cent with the highest per

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<sup>6</sup> Aymeri de Montesquiou, *Rapport d'information fait au nom de la délégation pour l'Union européenne sur la politique européenne de l'énergie*, French Senate Report no. 259, 15 March 2006; Jean-Marie Colombani, "Une nouvelle donne", *Le Monde*, 30 December 2006.

<sup>7</sup> John Drexhage and Deborah Murphy, *Sustainable Development: From Brundtland to Rio 2012*, UN High Level Panel on Global Sustainability, September 2010. [http://www.un.org/wcm/webdav/site/climatechange/shared/gsp/docs/GSP1-6\\_Background%20on%20Sustainable%20Devt.pdf](http://www.un.org/wcm/webdav/site/climatechange/shared/gsp/docs/GSP1-6_Background%20on%20Sustainable%20Devt.pdf)

<sup>8</sup> Michel Ternisien, Michel Tudel, "De 1974 à 2011, l'indiscipline budgétaire a conduit la France à s'endetter", *Le Monde*, 2 December 2011.

capita income. In fact, in these countries, with very few exceptions, public debt has grown more rapidly than GDP and this is a process that was triggered when the oil-producing countries, increasing the price of oil, tried to alter the terms of trade to their own advantage. However, what actually made oil price increases possible was America's decision to suspend the convertibility of the dollar into gold, a "modification of the global monetary constitution [that] had perverse effects."<sup>9</sup> In the era before August 1971, China would have wanted its dollars converted into gold, and the USA would have been obliged to consolidate its public finances and devalue the dollar. But with its 1971 decision, the United States gave the market a clear message: it (and subsequently other industrialised countries) could consume more than it produced.<sup>10</sup> The fact that the world's most industrialised countries consume most of our planet's resources, and are also the most indebted, seems to prompt the conclusion that the control of resources, albeit indirectly, is financed by debt.

This tendency and the current inequalities in the distribution of the use of natural resources have political implications that Tommaso Padoa-Schioppa clearly grasped. In an interview with the *Financial Times*, he remarked that "we know how the global economy works and what can happen when 15 per cent of the world's seven billion people has a high standard of living; what we do not know is what might happen if that 15 per cent becomes 50 per cent."<sup>11</sup> For the sake of the world's future, an answer to this conundrum must be found, and the European Union must be capable of playing its part, as of now.

### **3. The Fiscal Policy Crisis and Sustainable Development as a New Budgetary Policy Objective.**

Literature on the fiscal policy crisis starts from the premise that, from the 1970s on, the countries of the industrialised world recorded growing budget deficits and growing levels of public debt due to the in-

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<sup>9</sup> Tommaso Padoa-Schioppa, *La veduta corta ...*, *op. cit.*, p. 38.

<sup>10</sup> Gianni Ruta, militant federalist from the Rome section of the MFE, when he was financial director of Stet (Stet SpA, an Italian state-owned company that operated in the telecommunications sector), intervening in a debate of the MFE central committee in the second half of the 1970s, pointed out that any increases in the price of oil could be financed by suspending the convertibility of the dollar into gold.

<sup>11</sup> Tommaso Padoa-Schioppa, *Due anni di governo dell'economia (maggio 2006-maggio 2008)*, Bologna, Il Mulino, 2011, p. 502.

clination of governments, of all political orientations, to engage in deficit spending during economic downturns and favour procyclical policies during booms.<sup>12</sup> According to this current of thought, the fiscal policymakers, driven by specific incentives (including the desire for re-election) that lead them to cater to the short-term interests of pressure groups and of voters, are deemed to act quite rationally. Today, however, a growing awareness, as well as growing evidence, of the inconsistencies created by fiscal indiscipline and procyclical policies has made it possible to open a debate on the distortions created by these behaviours and on effective ways of correcting them in order to move, instead, towards an objective compatible with the interests of all citizens, that of *sustainable development*.

In an ideal world, fiscal policy should be consistent with the objective of government solvency (i.e. it should guarantee the sustainability of the debt); second, it should be able to respond effectively to unforeseen shocks (limited taxation risks against an unexpected increase in public expenditures); third, it should contribute to macroeconomic stabilisation, or at least not undermine it (countercyclical measures). If all these aspects of fiscal policy enjoyed the full support of the electorate, a rational and democratic government would have no incentive to deviate from them. In practice, however, fiscal policy has not been coherent with the objective of macroeconomic stability in the broad sense; on the contrary, it has tended to feed the structural public deficit and, therefore, increase the level of public indebtedness, causing it to grow at a faster rate than GDP. A possible explanation for this is that voters, apparently unable to accept the macroeconomic constraints that are associated with virtuous fiscal policies, want to see the provision of additional public goods and, therefore, the spending of any financial resources accumulated during economic boom years. Second, they do not

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<sup>12</sup> See, for example: X. Debrun, D. Hauner, M.S. Kumar, "Independent fiscal agencies", *Journal of Economic Surveys*, n. 1/23 (2009); Manmohan S. Kumar, Teresa Ter-Minassian (editors), *Promoting Fiscal Discipline*, Washington, IMF, 2007. The problem of the compatibility between Keynesian policies, democratic institutions and sound financial policies was addressed mainly by the public choice school of economics. In particular, according to public choice theorist James Buchanan, Keynes provided the ideological justification for abandoning the balanced budget objective, and Keynesian policies, in the absence of adequate constitutional constraints, lead structurally to the pursuit of deficit policies and the gradual increase of public debt (See James M. Buchanan, Richard E. Wagner, *Democracy in Deficit: the Political Legacy of Lord Keynes*, Indianapolis, Liberty Fund, 1977).

fully appreciate the nature of intertemporal budget constraints, whereby deficits today will inevitably mean higher taxes tomorrow. These voter attitudes may have a dual effect: the rational policymaker may seek to gain leverage from tax incentives in order to secure his own re-election, while the shortsightedness of voters and the desire, on the part of those elected, to stay in office may lead to delays in the adoption of the measures that should be taken to tackle a critical situation for public finances.

One key distortion underlying inadequate fiscal discipline stems from the fact that governments tend to have even shorter time horizons than the electorate do, a myopia linked to the electoral uncertainty that is inherent in the democratic decision-making process. Since those in office are concerned mainly with the consequences of their own discretionary actions, the risk of losing the next elections means that they have little interest in forward-looking policies. Another explanation for the tendency to pursue lax fiscal policies lies in what economists call “time inconsistency”: whereas governments should save windfall revenues accrued during favourable economic periods against the prospect of future budget difficulties, they are, in fact, more likely to bow to pressure from voters and spend them immediately.

In theory, in the presence of permissive public policies, it would be logical to expect the market to respond in a way that might induce economic policymakers to pursue fiscal discipline; in other words, to raise interest rates in response to growing public deficits, to increase country credit risks (and, therefore, spreads on interest rates), and, finally, to impose limits on access to credit when public debt exceeds a certain threshold. In truth, however, both the literature and experience suggest that market discipline does not effectively curb lax fiscal policies, usually intervening, if at all, only in the final stages of these policies, when it is too late to introduce measures able to prevent, or limit, the damage. Therefore, market discipline, alone, is not seen as a sufficient incentive for pursuing virtuous financial policies.<sup>13</sup>

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<sup>13</sup> This argument was conceived, in particular, with the governments of sovereign and independent states in mind. Indeed, the absolute sovereignty requirement acts as an incentive to investors, who believe that a sovereign state, in the event of a severe fiscal crisis, will guarantee public debt securities. Experience shows, however, that the market, in the absence of rules, instead causes financial disasters (See Carmen M. Reinhart, Kenneth S. Rogoff, *This time is Different: Eight Centuries of Financial Folly*, Princeton University Press, Princeton, 2009). Conversely, in the case of governments of states that belong to a federation, like the USA, if the federal government makes it clear to the mar-

The answer being offered as a means of overcoming the limits of current fiscal policies is inspired by the monetary policy already implemented by central banks that are independent of political power, like the European Central Bank, and it takes two forms: a) the establishment of independent fiscal councils, required to pronounce, publicly, on the robustness and reliability of the economic policies to be pursued; b) the establishment of true independent fiscal agencies with the power to modify, within certain limits, the rates of certain taxes, so as to ensure the meeting of a given government's budgetary balance objectives or projected fiscal balances. The Congressional Budget Office in the USA and other similar offices in the UK and Scandinavia provide examples of the first of these two types of fiscal institution, even though they proved to be inadequate; instead, there are no examples of the second type, which in theory ought to be more effective. Indeed, it has been impossible to introduce institutions of this kind into public life as the democratic legitimacy issues raised by this solution, as well as the likelihood that governments sanctioned under such a system would subsequently pay the price at election time, have made it impossible to generate the necessary consent.

However, leaving aside their nature and evident weaknesses, the aim of the various proposals advanced in relation to the institution of these fiscal agencies is ultimately to remove the constraints of sectional interests and short-term electoral deadlines, so as to create the conditions for the pursuit of virtuous budgetary policies in the long term. It cannot, therefore, be denied that they attempt to solve an objective problem. This is true not only at national, but also at European level. Indeed, the reluctance to give Europe autonomous fiscal and spending powers probably masks concerns about introducing a further institutional layer entailing a fiscal policy in the same permissive mould as that experienced at national level. However, such concerns are actually more relevant to stability policy than distribution and allocation poli-

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ket that it will not intervene to support states in financial difficulties, and if this attitude on the part of the federal government is accompanied, at state level, by constitutional constraints on excessive indebtedness, the market will give out timely signals (usually raising interest rates) of the worsening state of public finances, forcing a readjustment of public finances. In federal states where there exist constitutional constraints that impose solidarity between the different levels of government, as in the Federal Republic of Germany, for example, the need to ensure compatibility between the bond of solidarity and the objective of sound government finances has made it necessary to introduce constitutional constraints on public deficit and debt that apply to all the levels of government.

cies, given that the latter, in principle, should achieve budget balance. The fiscal compact treaty, which was approved by the European Council on 1-2 March 2012 and overcomes the limitations of the Stability and Growth Pact, regulates stability policy, paving the way for it to become, in time, European.<sup>14</sup> Furthermore, insofar as it demands broadly balanced budgets, it introduces the institutional adjustments necessary to turn Keynesian-style policies back into measures able to deal with temporary insufficiencies of aggregate demand. Therefore, under the terms of the fiscal compact, public deficits that are incurred to boost demand must be followed by surpluses during economic upturns.

The fiscal compact, in the way it was conceived, presents limitations; first, it does not solve the problem of the democratic legitimacy that must necessarily underpin a European budgetary policy; second, it fails to identify an adequate instrument for pursuing the only policy with the capacity to assert a new model of growth suitable for the new global framework: that of *sustainable development*. It is thus necessary to provide Europe with institutions that not only have autonomous fiscal and spending powers, but also address the concerns that have been highlighted by the relevant literature and confirmed by violations of the Stability and Growth Pact. This paper supports the proposal to create a *European agency for sustainable development*, which could be autonomously funded through the levying of a European tax and would respect the balanced budget requirement.

#### **4. An Independent European Agency for Sustainable Development and the ECSC as a Precedent.**

The establishment of an *agency for sustainable development* is proposed on the grounds that pursuit of sustainable development, which is a long-term objective, demands an ad hoc instrument; it is not simply a question of proposing a cyclical economic policy, but rather of setting

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<sup>14</sup> The budget balance requirement would also address the problem highlighted by Tommaso Padoa-Schioppa in relation to the subverting of the global monetary constitution through suspension of the convertibility of the dollar into gold. This was a decision that definitively cut the dollar's ties with gold (which had implied almost "automatic" adjustments of a state's public finances and balance of payments) and the transition to a system based solely on paper money (V.R. Triffin, *Our International Monetary System: Yesterday, Today and Tomorrow*, Random House, New York, 1968). It goes without saying that the latter, if inflationary effects are to be avoided, requires the adoption of constitutional constraints to ensure correct management of monetary policy and public finances.



the direction of travel of the European (and global) economic system for at least a generation, if not more. In other words, it is a question of finding a way of leading public institutions to design sound, long-term policies. Padoa-Schioppa, at a certain point in his “conversation”, cited earlier, recalls that “to politics and public institutions falls the task of providing guidance and education [and] there is much they can do to correct the myopic trend. In many ways *time is a public good that must have institutional safeguards* [our italics].”<sup>15</sup> The creation of an agency for sustainable development would be a step in this direction.

What is needed is an institution that outlasts the term of a normal electoral mandate, given that, considering the tasks that would fall to the Agency proposed herein, it would have to have continuity: in short, it could not be established by one political party only to run the risk of later being dismantled by a majority with opposing political views. As Barbara Wootton, in her time, pointed out, there are policies that cannot be called into question from one parliamentary term to the next and that therefore have to be approved by all the political parties, or at least by the vast majority of them.<sup>16</sup> In the case in hand, in the absence of a specific, specially created institution, it is hard to imagine sustainable development becoming a *structural* policy of governments, with agreement routinely being reached on individual initiatives: indeed, agreement, both between the European political forces and between the European Union’s members, would have to be actively sought each time. It can therefore be assumed that the parliamentary votes that would be required to approve the establishment of the Agency, its management structure, and the development plan that it would subsequently present, would have to be taken in joint sessions of the national parliaments and the European Parliament, the latter in a composition representing the countries in favour of the establishment of the Agency. To ensure that the viewpoint of the rest of the world is taken into account, a representative of the United Nations, entitled to speak but not to vote, would also be present. The Agency, for its part, would present a plan broadly outlining the development policy it intends to follow. For the reasons just mentioned, the parliamentary debate on this plan would concern the establishment of priorities, time frames and ways of implementing

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<sup>15</sup> Tommaso Padoa-Schioppa, *La veduta corta ...*, *op. cit.*, p. 77.

<sup>16</sup> Barbara Wootton, *Freedom Under Planning*, New York, The University of North Carolina Press, 1945. Wootton cites, as examples, the establishment of the London Passenger Transport Board, the Central Electricity Board, and the BBC.

the lines of development, but not the individual proposals. The Agency's management structure, on the other hand, could be based on the Ecofin Council and be composed of those countries in favour of the initiative;<sup>17</sup> were the initiative to be taken up by the eurozone countries, the management structure could, ideally, be provided by the Board of Governors envisaged by the Treaty establishing the European Stability Mechanism.<sup>18</sup>

However, before looking in more depth at issues relating to the Agency's structure and *modus operandi*, it is still necessary to dwell briefly on the concept of "sustainable development." The term is generally used in accordance with the definition given in the 1987 Brundtland report, which states that "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."<sup>19</sup> The debate triggered by the publication of that report, which brought out its limits and contradictions, allows us to make two points. First of all, since it refers to the meeting of *needs*, it is necessary to recall the distinction drawn by Luigi Einaudi between *demand* and *needs*, and thus the difference between the role of the market and that of the state in providing an optimal mix of private and public goods and services. According to Einaudi "in recognising that the market is the right tool for directing producers, in the sense of encouraging them to produce goods and services that, in quantity and quality terms, correspond exactly to man's needs, aren't we also saying that the market directs producers to produce goods and services in the quantities and of the quality *desired* by men [...]? The market meets demands not needs."<sup>20</sup> Einaudi wanted to make the point that whereas the market satisfies monetary demand, there exist needs, such as domestic and foreign security, justice, education, health, and so on, that do not translate into monetary demand and must therefore be met by the state. Economic growth and environmental protection, which have proved to be somewhat conflicting

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<sup>17</sup> The Ecofin Council is referred to because every year it, together with the European Parliament, prepares and adopts the EU budget.

<sup>18</sup> See European Council, *Treaty establishing the European Stability Mechanism*, T/ESM 2012/en, <http://www.european-council.europa.eu/media/582311/05-tesm2.en12.pdf>

<sup>19</sup> Report of the World Commission on Environment and Development, *Our Common Future*, Milan, Bompiani, 1988.

<sup>20</sup> Luigi Einaudi, *Lezioni di politica sociale*, Turin, Einaudi, 1964, p. 23.

objectives, have created the need for “sustainable development,” a need that is not met by the market and can only be met through the action of the public sector. The second observation concerns the conclusions reached following the debate started by the Brundtland Report, whose definition of “sustainable development” was intended to facilitate translation of this concept into economic policy measures. The debate showed that priority should be given to policies supporting *investments*, not *consumption*, and this is the approach endorsed herein.

The following reflections differ from the many European development plan proposals not so much in the assessment of the volume of financial resources and investments needed, as in the type of approach suggested. Accordingly, the first two aspects are here discussed with reference to documents already drawn up on these matters: with regard to the resources that the Agency should have at its disposal and the investments it should be required to finance, reference is made, respectively, to a document drawn up by several MEPs<sup>21</sup> and to *Europe 2020*, a communication from the European Commission.<sup>22</sup>

#### *a) The Agency's Own Resources.*

In order to pursue sustainable development as well as affirm the principle of solidarity between European states and citizens, the Agency should be able to count on financial resources deriving from European taxes, resources which would also attest to the European citizens' willingness to support the Union directly. These taxes could, pending the final definition of a European federal institutional system, be levied by the Agency itself; alternatively, given the powers conferred upon it by its establishing treaty, they could, once it came into effect, be levied by the European Stability Mechanism (ESM), whose Board of Governors includes the finance ministers of the eurozone countries and which may be seen as a sort of European treasury under construction.<sup>23</sup> In the latter case, a substantially definitive institutional

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<sup>21</sup> Jutta Haug, Alain Lamassoure, Guy Verhofstadt, Daniel Gros, Paul De Grauwe, Gaëtane Ricard-Nihoul, Eulalia Rubio, *Europe for Growth. For a Radical Change in Financing the EU*. 2011. <http://www.ceps.eu/book/europe-growth-radical-change-financing-eu>.

<sup>22</sup> Communication from the Commission, *Europe 2020 – a Strategy for Intelligent, Sustainable and Inclusive Growth*, Brussels, 3.3.2010 COM(2010) 2020.

<sup>23</sup> The need to ensure that the European Stability Mechanism, established to pursue

system could subsequently be reached should the ESM, probably on the basis of revision of the existing Treaties or of a new treaty, be set within a federal-type constitutional framework and brought under the joint control of the national parliaments and the composition of the European Parliament representing the countries that have agreed to the transfer of sovereignty (preferably these would be the eurozone countries, including those countries that, despite still preparing to adopt the single currency, already wish to take part in the initiative, possibly on the basis of provisional clauses).

The idea of a European tax levied by the Agency or by the ESM is not novel; indeed, the ECSC operated using its own resources. These derived from “levies” (a term used in the founding treaty in preference to “tax”) on coal and steel production at a maximum rate of 1 per cent of their average value, with the proviso that increases beyond that limit could be approved by the High Authority (the present European Commission) by a two-thirds majority. Thus, this would not be the first time that the European states had agreed to surrender fiscal powers to an independent community for the purpose of fulfilling a specific task. Since, in this instance, we are talking about creating an agency for sustainable development, the carbon tax would seem to be the ideal tax for funding it. As regards the resources that could be mobilised in this way, the Haug, Lamassoure and Verhofstadt Report estimates that revenue from a carbon tax would amount to around 38-48 billion euros. This

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a policy of budgetary discipline, is accompanied by mechanisms designed to promote the sustainable development of the European economy is underlined in the European Parliament resolution of 23 March 2011, which approves the amendment of art. 136 and the establishment of the EMS (see P7\_TA(2011)0103 and, in particular, par. 10, which “calls on the Commission to look for other mechanisms to ensure the financial stability and sustainable and adequate economic growth of the euro area, and to make the necessary legislative proposals; underlines the need for the European stability mechanism to include measures used to reduce risks to financial, economic and social stability, including effective regulation of financial markets, revision of the SGP and better economic coordination, the introduction of instruments for the reduction of macroeconomic imbalances inside the euro area and measures directed at ecological reconstruction”). Instead, as regards the attribution to the ESM of the power to collect the proceeds of the two taxes which, it is here suggested, might be used to finance the activity of the Agency (i.e. a carbon tax and a tax on financial transactions), a problem could arise. Whereas, given its role, the Agency could justifiably be funded by the proceeds of the carbon tax, it would be more logical to assign the proceeds of the tax on financial transactions to the ESM directly, enabling it to fulfil its functions (intervening to support the sovereign debt of a member state subjected to a speculative attack by the markets). This is, therefore, a point that needs to be analysed in greater depth.

could be summed with revenue deriving from the introduction of a European tax on financial transactions which, according to the European Commission, would amount to about 57 billion euros.<sup>24</sup> Together, these resources would double the size of the present EU budget. Moreover, the total financial resources activated could, potentially, be much greater than this, as the Agency could help to boost them by issuing project bonds (i.e. debt instruments used to fund projects whose economic returns allow them, totally or in part, to service the debt) and thus without incurring debt directly. Indeed, the Haug, Lamassoure and Verhofstadt Report points out that the financial requirement for *project bonds* aimed at supporting investments in infrastructures would amount to around 1,800 billion euros (in the case of projects able to service the debt only partially, the tax on financial transactions would cover the difference). The expansion of the production and employment base resulting from the investment policy would be further strengthened by a carbon tax, which would also be levied on imported goods and would be likely to prompt a partial relocation of production activities to continental Europe.

*b) The “Joint Undertaking” as an Instrument Allowing the Agency to Finance and Implement Investments in Material Goods.*

The European Commission’s communication of March 3 2010 underlined three priorities, which include “smart growth — developing an economy based on knowledge and innovation” and “sustainable growth — promoting a more resource efficient, greener and more competitive economy.”<sup>25</sup> The first priority includes an initiative called the “digital agenda for Europe” which aims to increase the spread of high-speed Internet across Europe and to ensure that 50 per cent of European families have access to it by 2020. The second seeks to promote the transition to a more efficient economy, based on the use of low carbon natural resources, to decouple economic growth from the use of natural resources and energy, to reduce CO<sub>2</sub> emissions, and to help increase energy security. It includes a series of initiatives covering a number of

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<sup>24</sup> European Commission, *Proposal for a Council Directive on a Common System of Financial Transaction Tax and Amending Directive 2008/7/EC*, COM(2011) 594 final, 28 September 2011. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0594:EN:NOT>

<sup>25</sup> Communication from the Commission, *Europe 20... , op. cit.*

areas: a European “green” car initiative; an initiative to upgrade Europe’s networks, including trans-European energy networks, towards a European supergrid, “smart grids” and interconnections in particular of renewable energy sources to the grid; infrastructural projects in the Baltic, Balkan, Mediterranean and Eurasian regions; space policy, in particular aiming to deliver Galileo and GMES. In the energy sector, the harnessing of solar energy in North Africa could constitute a concrete initiative, as envisaged by the Desertec project.<sup>26</sup>

If the Agency were required to fund investment projects that offer economic returns, it could opt, for example, to use the “joint undertaking” instrument envisaged by the existing Treaties, the most famous example of which is the “Galileo Joint Undertaking,” set up to create a European satellite navigation system.<sup>27</sup> In such cases, the Agency could invest its own capital and become a shareholder, or it could use long-term debt capital, along the lines of the *Tennessee Valley Authority* solution: established in 1933, in the framework of America’s New Deal, this authority, in 1936, took out a loan to finance its investments. The loan was repaid seventy years later, in 2006. The stakes acquired in the “joint undertakings” that may, from time to time, be set up would, over time, become part of the assets passed by present to future generations.

*c) The Financing of Investments in Intangible Assets: R&D, Education and Training.*

The Commission aims to increase EU spending on R&D, which currently stands at less than 2 per cent of GDP, as against 2.6 per cent in the US and 3.4 per cent in Japan, a discrepancy due mainly to lower levels of private investment in Europe; it also aims to increase levels of education, given that in Europe less than one person in three aged 25-34 years has a degree, as against 40 per cent in the US and over 50 per cent in Japan. Although these were objectives included in the Lisbon

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<sup>26</sup> Information on the promoters of this initiative and the content of the proposal can be found at: <http://www.desertec.org/>.

<sup>27</sup> Were the Agency to have recourse to the establishment of “joint undertakings” the problem would arise of how to control them. One possible scenario, in this case, is that of equal participation of the Agency and the states contributing to the creation of the Agency, but with the casting vote held by the representative of the Agency, so as to overcome the governance limitations that emerged in the case of the Galileo joint undertaking, which, hostage to national interests, was unable to represent the European interest.

Agenda, they have not been achieved. This is because the Union, if no action is taken by the states, does not have the means to act directly. This is a limitation that would be overcome by the Agency proposed herein, which should probably also operate in other sectors, healthcare for example, that have long been neglected but are destined to become increasingly important with the ageing of the European population. Some may be surprised to learn that in the USA, the sector that absorbs most public funds for research and development, after defence, is that of healthcare, which thus comes ahead of the energy sector and of NASA. In 2010, America's federal government, universities and states together invested over 60 billion dollars in health-related R&D (in the same year, 81.1 billion dollars were spent on defence, 10.7 billion on energy, and 9.3 billion on NASA).<sup>28</sup> It is not known how much, in total, the EU spends on health-related R&D: all we know is the amount invested by the European Commission through the EU budget (0.6 billion euros in 2010) and the amount invested by the UK through the National Health Service and the UK Medical Research Council (a total of 1.8 billion euros in 2010).<sup>29</sup>

*d) The Connection with Traditional Budgetary Policy Objectives.*

Traditionally, budgetary policy includes an income and employment stability policy, and distribution and allocation policies. Under the fiscal compact treaty, stability policy will be a shared European competence, while competence for allocation and distribution (except as regards distribution between states) will remain at national level. The Agency would address a *further* objective: sustainable development. However, it must immediately be made clear that this objective *could not be an exclusive competence* (even a rigidly centralised regime would be unable to pursue it), but must, instead, be a *shared competence*; after all, sustainable development policies make provision for in-

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<sup>28</sup> The federal government of the USA invested 34.5 billion dollars, the universities 11.1 billion, the states 3.6 billion, and other federal public agencies 11.1 billion: Research America, *2010 U.S. Investment in Health Research*, <http://www.researchamerica.org/>; Congressional Research Service, *Federal Research and Development Funding: FY2011*, 10 June 2011. <http://www.ieceusa.org/policy/eyeonwashington/2011/documents/rdfunding.pdf>

<sup>29</sup> Mark McCarthy, "Who supports health research in Europe?", *European Journal of Public Health*, 20, n. 1 (2010).

terventions that involve different territories and thus different levels of government. From this perspective, too, the Agency underlines the need to work towards a federal reorganisation of the European institutional framework, introducing the federal system at all levels of government, from the regions to Europe. In this setting, Europe would have a new role, steering the development of the European economic system and financing and implementing projects at continental and intercontinental level.

*e) The Limits to Be Placed on the Agency's Field of Action.*

The field of action of an agency for sustainable development runs the risk of being interpreted too broadly. It is believed that this risk could be avoided through the following measures: first of all, the Agency's final budget must be balanced, in other words, the Agency cannot spend more than it receives; second, the projects financed by the Agency must refer to investments in capital goods and not in consumer goods; third, it should finance very long-term projects that are unaffected by the logic of short-term electoral reasoning; fourth, to avoid the risk of policies tending to squander public resources or to protect consolidated interests, the Agency should be flanked by an ad hoc committee responsible for assessing whether the projects to be funded are, indeed, in the interests of future generations.<sup>30</sup> This committee would fulfil the monitoring role that is played by the market in the case of debt funded projects. One might therefore imagine, along the lines of a suggestion made a few years ago by a young German philosopher, a body required to give binding opinions on the value of projects. This body, symbolically representing the interests of future generations, should be composed of "*specialists with proven expertise in the disciplines most relevant to the survival of mankind* [...]"<sup>31</sup> Similarly to what is proposed by Hösle, half of these specialists could be elected by the European Court of Justice, and half by the European Parliament.

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<sup>30</sup> One objection that could be raised is that, under this proposal, the extra European resources generated would not benefit the EU budget, but another institution. This can be countered with the argument that what should interest federalists is that they are, nevertheless, extra resources in European hands that can be used to support the creation of institutions (like the ECB) that have shown that they can work: this is the only way of convincing European public opinion that they are the answer to national problems.

<sup>31</sup> Vittorio Hösle, *Filosofia della crisi ecologica*, Turin, Einaudi, 1992, p. 152.



## 5. Federalist Proposals for Creating a Federation within the European Union.

In order to re-start the debate on how to get closer to the objective of creating a federation within the current European framework, it may be useful to go back to the very beginning of this debate, in other words to 1986 and the proposals advanced by Francesco Rossolillo and Antonio Padoa-Schioppa, also in order to see how the European situation has changed in the intervening years.<sup>32</sup> The mid-1980s was the period that saw the Spinelli draft treaty on European Union and the opposition, in this regard, from Great Britain leading the federalists to ask whether a European Union like the one proposed by Spinelli could legally be instituted within the framework of the then European Community. It is worth recalling, in particular, the political and economic terms of the technical-legal proposal put forward at that time. From a political point of view, the proposal to form a Union within the Community was designed as a means of overcoming the resistance opposed not only by Great Britain, but also by Denmark, Greece and Portugal.

The suggested procedure did not require an immediate split from those countries; rather, it envisaged the presentation of a draft Treaty/Constitution by the states in favour of the proposal and recourse to art. 236 of the EEC Treaty (which requires a unanimous vote) in the hope of being able to proceed with the consensus of all parties. Only after verifying the impossibility of reaching unanimous agreement on the Union-within-the-Community proposal would a formal break with Great Britain, and with the other countries opposed to it, have become inevitable.

Instead, as regards the strictly economic terms of this technical-legal proposal, the following conclusions were reached:

1. Own resources and budget: current resources would remain attributed to the Community, while the Union would have to find its own resources by effecting further transfers of funds;
2. Common agricultural policy: this would remain in the Community's jurisdiction;
3. Cohesion: dual jurisdiction was deemed to be conceivable and it

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<sup>32</sup> Francesco Rossolillo, "European Union and the Community", *The Federalist*, 2-3, 28 (1986), pp. 145-152. This is the essay reprinted in this issue of the journal. Antonio Padoa-Schioppa, "European Union and European Community: two incompatible institutional systems?", *The Federalist*, 3, 30 (1988), pp. 201-204.

was recommended that the Community and Union seek to harmonise, as far as possible, their regional and social policies;

4. Currency: it was held that this need not give rise to conflict, as the Union could incorporate the then EMS into its own institutional system and subsequently push ahead towards its transformation into a true monetary Union;

5. Internal market: the Union could pursue the process of unification while respecting agreements made, from time to time, between the Union and the countries outside it.

If we think of the above proposal, which was formulated in such a way as to take into account the need to overcome the opposition both of those wanting to avoid a split, and of the “legal sticklers” determined to adhere rigidly to what was laid down in the Treaties, the circumstances in which we find ourselves today can be considered more favourable, for at least two reasons: first of all, with the single currency, we already have a federal-type power at European level, and therefore already have the embryo of a federation (the eurozone) within a confederation (the EU); second, as a result of the decision of the European Council on 9 December last year, the split with Great Britain has effectively already taken place. As for the economic terms of the proposal advanced in the mid-1980s, no particular adjustments would be required.

## **6. The Procedure for Establishing a Eurozone Sustainable Development Policy within the Framework of EU Budgetary Policy.**

The present proposal to create an agency for sustainable development with the capacity to decide and act autonomously is completely the reverse of the approach to date adopted by the European Commission, which is merely to request the European Council to encourage and coordinate national initiatives. The states in favour of the proposal, by helping to bring about the creation of a body that would have a statute similar to that of the ECB and governing bodies that would remain in office longer than the duration of a political legislature, would be putting in place an instrument that could be used to intervene directly in the territory of the participating countries in order to implement a sustainable development policy.

The first step in its creation could be accomplished, if the political conditions were right, by exploiting the provisions contained in the Lisbon Treaty. Therefore, it could initially be proposed as an enhanced co-

operation, in which case it would be useful if it could be supported by a European Citizens' Initiative, organised in accordance with art. 11.4 of the Lisbon Treaty. The enhanced cooperation proposal should be submitted to the European Commission by one or more of the states wanting to proceed with it. Should this route prove unproductive,<sup>33</sup> the countries in favour of the proposal could press ahead outside the framework of the Treaties, following the precedent set in the case of the ESM and fiscal compact treaties. Moreover, if in the meantime, efforts had been made to collect the million signatures necessary to present a European Citizens' Initiative, these countries would also have the popular support needed in order to do so. The initiative, set outside the Treaties, should be supported by the votes not only of the national parliaments involved, but also of the European Parliament, which could approve it using the same formula used to approve the fiscal compact treaty, i.e. requesting that, within the space of the subsequent five years, the treaty establishing the Agency be incorporated into the existing Treaties.

As regards the functioning of the EU organs in relation to the Agency, the idea that these would not be duplicated but would carry out their functions as organs of both the eurozone and the Union<sup>34</sup> would actually apply only to the European Parliament. The Agency, as mentioned, in fulfilling its institutional role, would answer to the Ecofin Council/ESM Board of Governors. Instead, as regards the Court of Justice, the members of the countries not taking part in the initiative "would be empowered, like the others, to rule on matters relating to the [Union] and the relationships between the [Union and the eurozone]."<sup>35</sup>

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<sup>33</sup> On this point, see Giulia Rossolillo, "The Fiscal Compact, the European Stability Mechanism and a Two-Speed Europe: Institutional Proposals for a Government of the Eurozone", *The Federalist*, LIV, (2012) p. 10.

<sup>34</sup> Francesco Rossolillo, "European Union and the Community", *op. cit.* Given the objective of creating a European Union within the then European Community, it made sense to suggest that the Commission should not be duplicated. In the case of the Agency, on the other hand, it is a case of creating a new body with a clearly defined task.

<sup>35</sup> Francesco Rossolillo, "European Union and the Community", *op. cit.* The sharing of the running costs of the existing institutions would naturally be a problem. In the case of enhanced cooperations the Treaties stipulate that the European budget should bear the administrative costs only. Were it necessary to resort to an initiative outside the framework of the Treaties, the attribution of costs, including administrative costs, would have to be the subject of an agreement reached with the European Union.

Finally, as regards its relationship with the current European budget, the fact that it is called an Agency would leave the way open for an eventual fusion of the two institutions. In short, the Agency, retaining its original structure, could become the budgetary section of a future European sustainable development ministry. In any event, from the outset provision could be made, as in the case of the European Development Fund in 1993, to insert the Agency budget in an ad hoc section of the EU budget, until the time is ripe for the two to merge.

## Documents

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### EUROPEAN UNION AND THE COMMUNITY\*

Any plan to relaunch the European Union must come to grips with a basic fact (which was the cause of the Luxemburg failure) that some Community countries, i.e. Great Britain, Greece and Denmark (and perhaps Portugal in the future), on the one hand, do not wish to proceed down the road to Union (and say so openly) but, on the other hand, have no intention of renouncing the advantages they derive from Community membership. Thus any initiative designed to relaunch the Union involving these countries is unquestionably doomed to failure. This obstacle must be faced and we must work from the assumption that the only realistic hypothesis currently possible is a Treaty-Constitution establishing a European Union agreed by *some* countries and not *all* the countries in the current Community. (This is, of course, true only initially, since, in all probability, if a realistic project did make headway, then the attitude of Great Britain — and hence Greece, and Denmark and possibly even Portugal — would rapidly change).

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Naturally, this does not mean that the enemies of the Union are to be found only in Great Britain, Greece and Denmark (and possibly Portugal). Clearly, the attitude of these governments is most convenient for many politicians in the other member states, who are against the Union but who, in the light of public opinion in their respective countries, cannot say so openly and are only too happy that somebody else does their dirty work. But the very first task of a realistic project to relaunch the

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\* This document was presented to the institutional commission of the International European Movement on July 12th, 1986.

Union based on countries in favour would be precisely to unmask this convenient alibi and see who is really *for* and who is really *against* in a crystal-clear way.

The objective of the Union based only on those in favour can be achieved in two ways: either by a break with those who are against or by means of an agreement with them. The history of the Luxemburg "Single Act" has shown that the first possibility is not practicable. The events that have taken place during the interval between the definitive approval by the European Parliament of the Draft Treaty and the "Single Act" have revealed that in certain countries there has been a genuine willingness (of both government and parliament) to proceed down the road to Union. But no country (except, perhaps, Italy) has been willing to do so at the price of a split with Great Britain (the other two countries who were against Union may be considered to all effects and purposes as *entités négligeables*). It should be pointed out at this stage that the "split" in Milan, however symbolically significant, was contradictory because it led to a *majority* decision to call a diplomatic conference required to reach a *unanimous* decision. Sir Geoffrey Howe had no difficulty in these circumstances to appear as the champion of common sense when he said that the Milan decision would merely delay the realization that agreement on the European Parliament's Draft Treaty was impossible.

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The second possibility. This consists in proceeding down the road to Union with the agreement of those countries who are not willing to take part. Since a few countries are unwilling to go ahead but, at the same time, do not want to lose the advantages deriving from Community membership as it is at present, there is no logical reason why they should object to the others signing a Treaty-Constitution, the contents of which follow the same lines as the Draft Treaty approved by the European Parliament, provided, of course, this Treaty-Constitution protects the rights and interests as members of the Community of those not willing to join.

The new text of the Treaty-Constitution, rather than the bland statement in Art. 82 of the Draft Treaty of February 14<sup>th</sup>, 1984 which asserts that at a certain moment the problem of the relationships between the states who have ratified the Treaty with those who have not ratified it will arise, should from the very start contain a series of measures making the provisions of the Treaty-Constitution compatible with those of

the Treaties of Rome. This would make it possible to present the proposal not as an initiative designed to provoke a split, but as an attempt to reconcile the interests of those who want a greater degree of supranationality with the interests of those who do not want this to happen but who at the same time wish to preserve the *acquis communautaire*. This proposal ought then to be presented to all the Community member states who would be asked to decide, in full compliance with Art. 236 of the EEC Treaty, on the establishment of a European Union *within the Community*.

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The advantages of this approach are clear. Apart from the fact that it unmask the false friends of Europe and removes their most credible alibi, which we have already mentioned above, others include the following:

a) It is certainly possible, and indeed probable, that the British government will remain strongly opposed to any plan of this kind. But equally its position would most certainly be weakened by such a plan. It would become much more difficult for Mrs. Thatcher to justify a blanket refusal to public opinion. A section of British public opinion and the British political class, while opposing Great Britain's participation in a democratic European supranational Union, would however be in favour of an agreement that left the relationships between the United Kingdom and other countries in the Community as they are at present but permitted the others to proceed.

b) The mere fact of placing the plan on the negotiating table would encourage the creation and expression of a European political will in many potentially favourable circles. It is undeniable that the British obstacle — as well as supplying an alibi for the false friends of Europe — has so far been a real deterrent for its true friends. Very often a genuine political European will has not arisen where it might well have done so precisely because Great Britain's expected blanket refusal was sufficient to kill any desire to act or any ability to plan stone dead.

c) The position of those in favour would be greatly strengthened by the fact that such a plan would make it possible to appear at the negotiating table as the defenders of legality whereas any other possibility of action presupposes a split. The unlikelihood of a split reinforces the skepticism of the "realists" as well as the aversion of the legalitarians.

d) This does not mean that the possibility of a split should be ruled out *a priori*. It may well be, as we mentioned above, that Great Britain,

in the belief that it is confined by such an agreement (albeit one which respects its rights and economic interests) into a politically marginal position, will oppose any form of agreement and will cause the negotiations to fail. But in this case it would be clear to everybody that the split was caused by those governments who want to block the process and not by those who want to encourage it. The latter could legitimately claim that they had done everything in their power to reach a negotiated agreement which was in everybody's interests while it would become increasingly difficult for those opposing such an agreement to justify their position. This would create a situation, favouring the growth of a European drive in public opinion — both in the countries who are for and in the countries who are against. Ultimately it would make it clear that a split is inevitable and not the result of an arbitrary decision. It would thus make the relative decision acceptable to even the most lukewarm governments.

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This leaves the technical problem of demonstrating that a solution of this type is possible. This can be done by drawing up a Draft Treaty which complies with the previously mentioned need. We should not conceal the fact that drafting presents serious difficulties — even though we should not overstate the difficulties. The history of European integration has experienced very complex institutional solutions, such as the co-existence of the three Communities and the co-existence of the Community with the EMS. The federalists are, however, committed to resolving these problems, and have retained leading experts on Community law to study these problems.

The basic outline of the Draft Treaty should be as follows:

1) a European Union is established *within* the European Economic Community.

2) The countries which constitute the Union shall proceed to strengthen and democratize common policies and institutions while complying, in dealings with non-Union Community members, with Community regulations and procedures.

3) The Union is open to those members of the Community who do not join at the time when the Union is established. They shall be admitted to the Union as soon as they express the desire to do so, without the need for any negotiation, provided they accept the Union's rules.

4) The Union's member states shall decide on the basis of the procedures which are from time to time in force, whether they will act *uti*



*singuli* or through common institutions, regarding intergovernmental relationships within the Community. Whatever the case may be, in the majority votes of the Council of Ministers and in the establishment of the number of Commission members for each country, the Union will always count in proportion to the number of its member states.

5) Other states will not be able to participate in the Union without previously passing through the Community, so as to ensure that no change in Community membership can occur without the agreement of all the member states.

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The Draft Treaty will have to define the relationships between the Union and the Community and will have to come to grips with the problems that arise in all major sectors, the following in particular:

1) The institutions. These would not be duplicated but would carry out their functions for both the Union and the Community. The Parliament and the Commission in particular could maintain their current structure but, when they acted as Union institutions, the British, Danish and Greek members would be present as observers with the right to speak but not to vote.

The British, Danish, Greek members etc. of the Court of Justice would be empowered, like the others, to rule on matters relating to the Community and the relationships between the Community and the Union.

2) Own resources and budget. Current resources would remain attributed to the Community. The Union should find its own resources by effecting further transfers of funds.

3) Common agricultural policy. This would remain in the Community's jurisdiction. The Union could, however, be empowered to take on responsibilities in the guidance sector.

4) The internal market. The Union could give a stronger impetus to the process while respecting agreements made from time to time with Great Britain, Greece, Denmark, etc.

5) Cohesion. Dual jurisdiction would seem to be conceivable. Both Community and Union could carry out their own regional and social policies while attempting to harmonize them as far as possible.

6) Currency. No conflict need arise. The Union could incorporate the EMS in its own institutional system and push ahead towards its transformation into a true monetary Union.

7) Revision procedures for the Union Treaty. No conflict need arise

provided the integrity of Community institutions is safeguarded in the relationships with non-Union Community members.

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The International European Movement in its efforts to relaunch the Union has adopted the proposals Spinelli presented to the institutional commission of the European Parliament. The proposals are part of a plan with the following objectives: a) the calling of a Convention of states favouring the Union to draft a constituent mandate to be given to the European Parliament before the next elections, subject to a prior referendum on the content of the mandate. This Convention should directly submit the text to be approved by the European Parliament for ratification to the national Parliaments or to the other competent bodies of the member states; b) the drafting by the European Parliament after the next elections of a Treaty-Constitution on the basis of the mandate received; c) the direct transmission of the constitution to the national parliaments or other bodies constitutionally entrusted with ratification without the Draft Treaty being submitted to any intergovernmental conference.

The proposal contained in this document falls in line with Spinelli's plan but articulates one of its steps more clearly.

One point in Spinelli's proposals remains obscure. This concerns the convening of the Convention. Since this only concerns countries in favour, it would automatically fall outside the scope of the current treaties and assume that a split has already taken place with countries who are against. What is not foreseen is *how* this split, which did not occur in the phase ending with the Luxemburg "Single Act" (a phase which in many ways was particularly propitious), could take place *rebus sic stantibus* in the next eighteen months. Certainly the unpredictable is not infrequent in history. And if the climate of relationships between the EEC member states should change radically in the light of exceptional events then we should seize any opportunity that arises. But it is equally certain that a Movement must draw up its strategy on the basis of foreseeable developments because only prospects for action based on foreseeable developments can mobilize energies.

Now the foreseeable short-term developments are: a) that the states openly contrary to the Union will continue to remain so; b) that the states favouring the Union will continue to be unwilling to follow a course which does not entail the application of Art. 236 of the EEC treaty, which lays down that a unanimous vote is necessary and c) that

the federalists' ability to apply enough pressure to strengthen the political will of governments in favour will tend to weaken rather than strengthen now that the particularly favourable phase of the Italian presidency has passed and the possibility of organizing mass demonstrations like the one in Milan has gone by. This simply means that to relaunch the Union we need to study a procedure that does not take for granted the required degree of maturity among political forces to force a split — because this degree of maturity has simply *not yet been reached*. We need a procedure that leads them to this maturity in the shortest possible time and which also makes the obstacles easier to overcome and weakens the enemy's capacity for resistance.

Concretely, Spinelli's proposals should be specified as follows: a) the Convention with which the process should start, should bring together all the Community states (and hence should coincide with a European Council meeting), with a view to finding a satisfactory solution for all; b) the mandate to be entrusted to the European Parliament should relate to the drafting of a Treaty-Constitution which, as well as defining the bases of the Union, also defines the relationships between the Union and the Community. The Community would continue to exist, guaranteeing the rights and interests of those Community members who do not intend to join the Union. (It should be made clear that if the states who oppose Union reveal their desire to weaken the Community still further, then they should promptly be allowed to achieve their goal, provided that, while watering down the Community's cohesion and weakening the binding nature of the Community's rules, they do not prevent the others from establishing a Union). As may be seen, this formulation does not in any way change the basic rationale of Spinelli's proposals, which consists in taking the task of drafting the Treaty-Constitution out of the hands of bureaucrats and diplomats.

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A few final remarks are in order at this stage.

1) No juridical solution whatsoever can create a non-existent political will. Nobody is so naïve as to claim the contrary. However, law plays an irreplaceable role in politics because it supplies the instruments needed to produce concrete decisions with which to implement an existing political will. A good juridical solution can therefore give certain forces a vital instrument by which to prevail over others. This could turn political will which currently only exists in a potential form into an actual one.

2) No plan of action, in particular in a phase of the process of European unification like the present one, can be thought of as definitive. It must on the contrary be thought of as a working hypothesis on the basis of which it is possible to draw up the forces before the battle, in full light of knowledge that subsequent events will require adjustments and will even make radical changes in direction necessary.

3) The effectiveness of a plan of action cannot be judged only on the basis of its capacity to reach the objective. For this to occur it is necessary for Machiavelli's "fortune" to intervene. It must be judged on the basis of its capacity to keep the forces on the field and to give something to do for everybody and to formulate the arguments to be used. Spinelli's plan of action, integrated with the suggestions made in this paper, would seem to present this final prerequisite (it would for example allow British federalists to become engaged in the fight for the Union and avoid them finding themselves in the embarrassing position of having to support a policy, which, if adopted, would at least initially take Great Britain out of the Community).

*Francesco Rossolillo*

## FOR A FEDERAL PACT AMONG EUROPE'S FOUNDER MEMBER STATES\*

*The Impotence of Europe and the Need for a European Foreign and Defence Policy.*

The European Union today finds itself in a situation of impasse on many fronts — political and economic. But the occupation of Iraq, by British and American troops, coming in the wake of events in the Balkans, has made it patently and dramatically clear that the unity of the continent is much more than just a question of safeguarding the wellbeing of the Europeans, and closing the technological gap that separates Europe from the United States. It is, as former German chancellor Kohl never tired of repeating in the final years of his mandate, a question of peace or war. Europe has shown itself to be quite incapable of assuming any role on the international stage. Its peoples wanted peace, but its governments have proved incapable of making their wishes count. Some governments, to avoid incurring the displeasure of the imperial power, were even willing to challenge the wave of public opinion at home. Others opposed the American position, but as a result of their impotence, were able to achieve nothing more than ensure that the preventive attack mounted by the United States and Great Britain went ahead without the approval of the Security Council.

Dating back at least to the end of the Second World War, America's hegemony over Europe is by no means a recent reality. During the Cold War, this American domination was, to an extent, masked by the common endeavour to contain the Soviet power and by the considerable convergence of European with American interests. With the end of the Cold War, however, this convergence of interests ceased to exist and

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the United States found itself faced with a new task: that of guaranteeing some form of world order, however precarious, by bringing the entire world under its hegemonic influence. In this setting, the European states' vassal-like dependence has become dramatically evident; at the same time, within the most sensitive section of public opinion, an acute awareness has developed that Europe's incapacity to act is a consequence of its division. As a result demand has grown for a Europe that speaks with a single voice.

### *The Convention.*

Many felt that this demand might be met by the European Convention, whose work has recently drawn to a close, but they were wrong. The Convention has, as expected, only delivered what the Laeken European Council asked it to deliver: a very modest dressing up of the previous treaties. Of the institutional innovations it has proposed — all, moreover, of very limited scope — the ones that appear to have something to do with foreign policy (although not defence, an area covered by the entirely anodyne measures contained in article I-40) are the regulations relating to the President of the European Council of Ministers (who cannot be a head of government in office, must devote himself entirely to his role, and will remain in office for a maximum of two two-and-a-half-year terms), and to the creation of the so-called Union Foreign Minister, who, elected by the governments, will also fulfil the role of vice-president of the Commission and incorporate the prerogatives of the High Representative for CFSP and of the EU commissioner responsible for external relations).

Clearly, in the presence of twenty-five member states whose sovereignty remains intact and who thus have both an independent foreign policy and the instruments needed to implement such a policy, these personages can have little more than a symbolic role. Obligated to interpret and represent the divergent orientations of twenty-five sovereign states, they will be bound to find themselves impotent and quite unable to act. One need only ask oneself what an EU president or foreign minister might have been able to do in the face of the contrasting positions on the war in Iraq assumed by the UK and France.

### *The Majority Rule.*

Many feel that the work of the Convention might have been viewed in an entirely different light had it proposed (and had the Intergovern-

mental Conference accepted) the application of majority voting in the areas of foreign policy and defence (as well as in that of fiscal policy). This view, too, is clearly flawed. In truth, Europe's capacity to act on foreign policy and defence matters is not a question of rules, but of *power*. Certainly, decisions relating to foreign policy and defence do indeed have to be *taken* (albeit in most cases by a government and not, except in exceptional cases, by a legislative body). But having been taken, they then have to be *implemented*. The taking and the implementing of decisions are two stages that, in the government of a state, go hand in hand, as the political majority in a state naturally has at its disposal the instruments of power needed to enact the decisions that are reached. The same cannot be said of a confederation of sovereign states, like the current European Union, where the power to implement decisions is wielded not by the Union institutions that actually take the decisions, but by the governments of the Union's member states, which reserve the right to act on them or not to act on them, in accordance with the line that their pursuit of their own interests prompts them to follow. Certainly, when the majority rule was, from 1781 to 1787, effectively applied in the thirteen ex-English colonies in North America — under the *Articles of Confederation*, whose total failure highlighted the need to unite the thirteen ex-colonies in a *more perfect union* — the states that, in each instance, found themselves in the minority, above all over decisions relating to the furnishing of military contingents for the Confederate army and the payment of their financial contributions, refused systematically to act on the decisions passed by the Congress.

It must be appreciated that the refusal of one or more states to act on a decision is, in a confederation, a disintegrating force that undermines the very existence of the union. It follows that the cohesion of the union, however weak, depends exclusively on the *consensus* of the member states, and thus on the observance, legal or effective, of the unanimity rule. Neither should it be forgotten that the governments of a confederation's member states are answerable to *their own* electorate and that, should the organs of the confederation make highly unwelcome decisions, it would be the governments of the member states that would feel the full force of popular discontent and of the protests that would be mounted by the citizens and by the different factions into which the latter are organised. In extreme cases, such a development could even jeopardise the public order that the governments themselves, and certainly not the confederation, are required to guarantee.

Today's European Union is far more solid and well organised than

the union of the thirteen ex-English colonies of 1781-1787. But this simply means that, within the EU, majority voting is not even adopted in the most important areas. And on the occasions when, in relation to non crucial matters, it is adopted, it is hardly ever applied in practice. What takes place instead is a general bartering and reaching of compromises that ensures that any sacrifice a government might make in one area is balanced out by its procurement of an advantage in some another area. Thus it is that practically all decisions reached are unanimous ones.

### *The Need for a European State.*

It is clear therefore that the whole decision-making process conditions both the way in which decisions are taken and their very content. Decisions reached by a union of sovereign states are compromises based on the interests of all the governments. And the greater in number and the more diverse the states taking part in the decision-making process are, the lower the profile and the smaller the impact their ultimate compromise will have. No confederation can have an effective foreign policy, and clearly a confederation embracing as many as twenty-five states, with, in some cases, diametrically opposed geopolitical positions, cannot hope to have even the semblance of one. It must therefore be realised that if Europe is to make its voice heard in the world and to give expression to its people's will for peace, what is needed is not a President of the Council with an extended mandate, a European "Foreign Minister," or the introduction of the majority rule in the areas of foreign policy and defence (or even in the more technical sphere of fiscal policy). It is, rather, a question of *sovereignty*, that is to say the creation of an out-and-out *federal state* — decentralised certainly, being federal, but within which the capacity to make decisions is not divorced from the power to implement them. And the term state implies a monopoly on physical force, in other words, the disarmament of the member states and the exclusive control, by a European government, of a single European army. Certainly, it implies much more than the creation of a so-called "rapid reaction force" made up of 60,000 men, with a commander answerable to, and required to act upon the instructions of twenty-five heads of state and of government. It can be remarked, in passing, that were an out-and-out federal state to be formed, the question of whether or not it would be opportune to preserve institutional ties between Europe and the United States of America would



be irrelevant. A European federal state would be able, independently, to provide for its own defence. It would certainly draw up agreements and enter into alliances, but the policies it would follow would be determined, in each instance, by the nature of the interests at stake, and would not necessarily always coincide with those of the United States.

### *The Federal Core.*

A European state cannot be founded within the framework of the current institutions, which is not to say that this framework might not be re-introduced after its foundation. Indeed, even to think of founding a European state on the basis of the consensus of the governments of twenty-five different countries, in most of which public opinion is openly hostile to any move towards political union of any kind, and which differ from one another vastly in terms of their level of integration and their foreign policy and defence traditions, would be pure folly. The founding of a European federal state can come about only upon the initiative of a group of countries that are highly homogeneous, closely interdependent economically and socially, and in which the European ideal is strongly rooted in public opinion. These requisites can be met only by Europe's founder nations — the six countries that formed the first European Community. In spite of the ambiguous signals being given out by the Italian government, this grouping has already emerged, albeit in an embryonic form, on a number of occasions. What must be patently clear, however, is that the initiative required of these countries must be more than a general mounting of pressure, or the proposing of a design to be negotiated with the Union's other member states. Instead, it must involve the creation of a *federal core* that, without further negotiation and once its Constitution has been definitively approved, will be open to any other members of the Union that wish to sign up to it.

It must be reiterated that this step must be taken *outside* the sphere of the EU institutions. To imagine that a federal core might be established within it, through the instrument of enhanced (now "structured") cooperation, would be to attempt, hypocritically, to neutralise the initiative to set it on a different, dead-end track. Structured cooperation is nothing more than an updated version of the old *Europe à la carte* idea. The mechanism behind it is the formation of different groups of states according to the objectives being pursued; besides, this form of cooperation has to be authorised by *all* the EU member states. Were this pro-

cedure to be followed, the birth of the federal core would depend on the consensus even of those countries opposed to the idea, and it would be an entity compatible with the institutional structure and the laws of the union. This is clearly impossible. The birth of a federal core must inevitably be the expression of the strong and unanimous political will of the countries wishing to be part of it, and must inevitably involve a breakaway action — the kind of split that led to Germany's reunification. In the latter instance, all that the other member states could do was witness the emergence of the new reality and, when the dust had settled, adapt the Community rules to it.

### *The Objections.*

The federal core design is usually met with two main objections. The first is that it is divisive, as it excludes from the outset the majority of the EU member states. Nothing could be further from the truth. The idea of the federal core was born precisely of the realisation that political union is, in the presence of a line-up of twenty-five states, an impossible objective. The idea of asking the British or Spanish government, or the governments of the eastern European states, to join Europe's founder nations in this groundbreaking initiative and to unite under a binding federal agreement, is quite simply ludicrous. But many of these countries, and in the mid-term all of them, would be unable to resist the pull of a federal state that already existed. It must therefore be appreciated that the federal core would serve as a driving force of unity and that it is the *only* instrument with the capacity to give meaning and a political outlet to European enlargement, and to prevent the EU from becoming totally ungovernable, with rules that are impossible to apply, and destined, following its transformation into a free trade area, ultimately to disintegrate. The federal core would thus be a decisive factor in the promotion of that unity of Europe as a whole that the current EU is completely unable to guarantee.

The second objection is that the strong political will needed to establish a federal core does not, as yet, exist in any of Europe's six original member states. This is true, and it is a truth rendered all the more stark by the fact that the government of one of them is led by a person like Berlusconi and has a cabinet comprising three Northern League members. But while the will to form a federal core is yet to be formed, it is certainly realistic to imagine that it *can* be formed, given the right conditions. The creation of these conditions will, in turn, depend on the

framework within which the problem of reforming the Community institutions is broached, because it is only in the framework of a small and cohesive group of countries that the crises, increasingly frequent and increasingly severe, that are besetting Europe might be allowed — as to an extent they already are doing — to give rise to uniform and prompt reactions on the part of public opinion. This is why the group of founder member states is the only one within which it currently makes sense, and indeed is possible, to battle for the founding of a European federal state.

*The Difficulty of the Choice and the Alternative.*

The fact remains that it is an extremely difficult battle. The idea of national sovereignty took root in Europe over many centuries. It conditions the behaviour of governments, political parties, the media and public opinion. But the problem is now a desperately urgent one. And it is important to realise that failure to solve it will result in the transformation of Europe into a group of states entirely subservient to the hegemonic power, condemned to a future of impotence and impoverishment and, in the final analysis, condemned to exit definitively the historical stage. This is the fate that has unfailingly befallen those world regions that have not been able, quickly enough, to adapt the dimensions of the state to changing circumstances: we might cite, as examples, Greece at the time of the Macedonian and subsequently Roman conquests, and Renaissance Italy. Unless it proves able to change course drastically, Europe is heading towards its own “South Americanisation”. It needs to decide whether it intends to resign itself to its decline, opting for the easy course, that of inertia and subordination, or to fight it, choosing the more arduous course of political unification.

*The Federal Pact.*

The story of European unification is a story of corruption of words. In recent times particularly, the attempt to delude public opinion into seeing a process that is running out of steam as a process that is, on the contrary, advancing and moving towards progressive goals, has resulted in a twisting and minimisation of the significance of terms such as “federation” and “constitution”. It is thus important to stress that a federation is a state, which enjoys the prerogative of sovereignty and thus has a monopoly on physical strength, and that there is no such thing as a constitution that is not the constitution of a state. But it is equally im-

portant to guard against corruption of the very word “state”, which would lose all its essential connotations were credence to be given to the falsehood that “state” corresponds to the extension of the majority principle to the areas of foreign policy and defence (as well as fiscal policy).

Similarly, it is important to clarify that the union of a number of nation-states in a single European federal state, quite apart from the problems relating to the size of the framework within which this is achieved, can never come about as a result of decisions reached by an assembly. The protagonists in the creation of a federal state can only be those agents that are invested with the highest political responsibility, in other words the governments. These are the subjects that exercise real power, and that are thus in a position to transfer real power to another entity, even though it must be granted that such an initiative could come about only in exceptional circumstances, with the backing of a strong wave of public feeling — since constituent power rests ultimately with the people — and in a climate of openness and political debate involving the entire political class. A quite different matter will be the drawing up of its constitution, in other words the formulation of the rules that will govern the life of this new entity, once it has been created: the *pactum unionis* is not the same as the *pactum constitutionis*. And this is reflected in the sequence of events that, in the wake of the Second World War and in a non federal setting, characterised the rebuilding of the republican states of France and Italy, where the republican government was *first* formed, and *subsequently* given a constitution.

The initial core of a European state must therefore be born of a *federal pact* that, entered into by the governments of the founding nations, transfers their sovereignty to the new state. It will create a provisional government, which will control the European army and subsequently convene a Constituent Assembly.

### *The Terms of the Federal Pact.*

Clearly it is neither appropriate nor possible, here, to give anything more than a brief indication of the content of the federal pact, whose completion, refinement and correction clearly falls to individuals who possess the necessary technical expertise. An initial drafting is, however, necessary in order to highlight the nature of the problems that will be encountered; in other words, in order to clarify what the creation of a federal state really means and to prevent the ambiguity of expressions

like “federation of nation-states” from being exploited. It also allows us to see, in a harsh light, just how difficult an objective this is. The design will in fact be judged, by many, as a dream or as a purely theoretical exercise. The fact remains that, if the Europeans really do want to achieve European political unity — the objective that has guided the whole course of European integration — then *these*, and not others, are the problems that they must tackle and solve, because there is no other way to re-launch the process and prevent Europe from falling into a rapid and inexorable decline. To argue, on the other hand, that the federal core design is purely utopian, and that public opinion in Europe’s founder member states, as well as the politicians that represent it, is not and is not in the foreseeable future likely to be able to give expression to the energy and the will needed to realise it, is tantamount to resigning oneself right now to a sorry end to the adventure of European unification and consequently to a crisis of the democratic institutions and to the degeneration of civil cohabitation in the continent. Europe is drawing closer and closer to a radical crisis, and radical crises demand radical answers. History, to be sure, is one long alternation of periods of slow evolution with periods of rapid and profound change. In the latter, it becomes possible to achieve things that, in normal periods, seemed utopian. We are thus faced with a difficult battle, but it is the only one that, today, it is worth fighting.

Here, then, are the fundamental points that the federal pact should contain:

1. The governments of the founder countries agree to unite their states in a federal pact, thereby creating a federal state that will be called “The United States of Europe”.

2. The United States of Europe will be ruled by a provisional government made up of the heads of state and of government of the signatory nations.

3. The provisional government of the United States of Europe will comprise a president, a vice-president and four ministers who will be responsible, respectively, for foreign affairs, defence, the economy and finance, and relations with both the EU and the states that subscribed to the pact.

4. Foreign affairs and defence will be the exclusive responsibility of the provisional government of the United States of Europe, which will have full powers in these spheres; the economy and finance will be managed concurrently and in collaboration with the relevant national

and European institutions; relations with the European Union and with the member states will be managed in ways dictated by the nature of the problems to be solved.

5. The pact will name the president of the provisional government of the United States of Europe and assign the vice-presidency and ministries to the other government members.

6. The provisional government of the United States of Europe, by a process of co-optation and in the shortest time possible, will increase its number to twelve, appointing to each of the ministers, as well as to the president and vice-president, an undersecretary, to be chosen in each of the member countries, preferably from the ranks of the opposition. Each of these must be assigned to a ministry other than that run by the head of his/her respective national government.

7. The selection of the successors to the heads of state or of government who have become members of the provisional government of the United States of Europe will be subject to the procedures in force in each individual country.

8. The national armies, navies and air forces, as well as the gendarmeries, will form a single European army whose supreme commander will be the President of the provisional government of the United States of Europe. The European army will come under the command of a European General Staff, which will be made up of the Chiefs of the General Staff and of other high-ranking officials from each of the countries that have entered into the pact. The Chief of the General Staff will be answerable to the defence ministry of the provisional government of the United States of Europe and will be appointed in the pact.

9. The foreign and defence ministries of the countries that have entered into the pact will automatically be abolished and their budgets will be pooled in the budget of the provisional government of the United States of Europe.

10. The diplomatic and consular staff of the states that have entered into the pact will, in the shortest time possible, be amalgamated. Until this occurs, each embassy and consulate will cease to represent a single member state, and instead represent the United States of Europe.

11. The economy and finance minister can issue public loans, in accordance with procedures defined by the provisional government upon the proposal of the same economy and finance minister.

12. Until the first general election is held — and this will be held

upon completion of the work of the Constituent Assembly mentioned in the next paragraph — parliamentary control of the activities of the provisional government of the United States of Europe will be exercised, in an consultative capacity, by the MEPs belonging to the states that have entered into the federal pact.

13. Within two months of the completion of the process of ratifying the federal pact, the provisional government of the United States of Europe will call the election, through a uniform electoral system, of a Constituent Assembly, whose mandate will be to draw up the constitution of the United States of Europe. The latter must take the form of a federal state, founded on the principle of subsidiarity, in which the European institutions will have responsibility, at least, for foreign policy and defence, for the general guidelines of economic policy and the policy of infrastructures, and for policies on scientific research and technological development; the head of government or the government in its entirety must be democratically answerable before the electorate or before the parliament (or a branch of the parliament) and must, accordingly, be elected by the citizens or by the parliament; legislative power will be entrusted to a two-chamber parliament in which one chamber will represent, proportionally, the citizens and the other will represent the states; the highest expression of judicial power will be the Court of Justice, which will be responsible for interpreting the constitution, declaring void any legal provisions that are in conflict with it; the Constitution must be open to amendment through a procedure that does not require the unanimous consensus of the member states; the right of secession will be excluded; the European institutions will be equipped with a power to levy taxes that is exercised independently or in concert with that of the member states, the regional and local authorities; the constitution will contain a provisional regulation that will allow any EU member state that has not entered into the federal pact to become a member state of the United States of Europe, accepting the constitution and the obligations it imposes. The constitution drawn up by the Constituent Assembly will be put to a public referendum.

14. The United States of Europe will continue to be part of the European Union and of the European Monetary Union, providing the relevant EU institutions agree. The United States of Europe minister responsible for relations with the EU will, without delay, begin negotiating with the EU authorities the conditions that will allow this participation to continue.

15. The pact will be submitted for ratification to the states whose

representatives have signed it, in accordance with the procedures provided for by the constitutions of each of them, and it will come into force in the countries that ratify it on condition that these countries represent at least five-sixths of the states that signed the pact and three-quarters of the overall population of the latter.

*Francesco Rossolillo*



## ABOUT THE AUTHORS

DOMENICO MORO, member of the Federal Committee of the Union of European Federalists and of the National Committee of the Movimento Federalista Europeo.

FRANCESCO ROSSOLILLO, former President of the Union of European Federalists.

GIULIA ROSSOLILLO, Professor in European Law at the University of Pavia, member of the Central Committee of the Movimento Federalista Europeo.