

HOW FAR IS THE EU FROM THE ‘UNITED STATES OF EUROPE’?

¿QUÉ LEJOS ESTÁ LA UNIÓN EUROPEA DE LOS ‘ESTADOS UNIDOS DE EUROPA’?

Emilia Kijanka (Escuela Superior de Economía y Derecho (WSiEP) *

Katarzyna Lipska (Escuela Superior de Economía y Derecho (WSiEP) **

Federalism is "very comfortable and more popular and always ambiguous"

J. Bulpitt

ABSTRACT

The European Union was an attempt to concentrate the economic resources of politically and socially independent countries in order to meet the challenges that could arise in case of confrontation with stronger players. From the very beginning, the creators of the idea of integration put the goal: the unification of Europe must be done in the form of a federal structure, and it has been demonstrated by the fact that further reforms reflected the influence of the idea of federalism during the unification process. From a functional perspective, the European countries are today as integrated as the North American states were in the 19th century, but with the difference that the formal statehood of the European Union is still divided in 27 Member States. For the makers of the European Union, federalism was not so much a method of building a united Europe, but the result of its creation process in the form of concrete steps. Steps that have to rely on giving back sector by sector of public activity under the control of transnational bodies. The concept of a clear division of competences between the EU and the Member States seems real, while the proposal of formation of a European government or the creation of the category of "European nation" is still a difficult issue to implement. From this point of view, it seems that the perspectives for the creation of the United States of Europe are still relatively distant.

Key words: European Union, federalism, governance. **JEL:** F15, F59.

RESUMEN

La Unión Europea fue un intento de concentración de recursos económicos de países social y políticamente individuales para afrontar los retos que se plantean en caso de confrontación con jugadores más fuertes. Desde el inicio los creadores de la idea de integración establecieron el objetivo: la unificación de Europa ha de ser bajo la forma de una estructura federal, hecho que viene demostrado por las reformas que se han dado durante el proceso de integración. Desde una perspectiva funcional, los países europeos están ahora igual de

* Facultad de Ciencias Políticas, Calle Jagiellonska 109 A, 25-734, Kielce (Polska/Polonia). e-m-i@o2.pl

** Facultad de Ciencias Políticas, Calle Jagiellonska 109 A, 25-734, Kielce (Polska/Polonia). lipskak@wseip.edu.pl

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integrados que los estados de América del Norte del siglo XIX, pero la principal diferencia radica en el hecho de que la condición formal de Estado de la UE sigue independiente en los 27 Estados miembros. Para los fundadores de la Unión Europea, el federalismo no era tanto un método de construcción de una Europa unida, sino que surgió en todo el proceso de su creación bajo la forma de medidas concretas. Pasos que tienen que ver con la cesión de soberanía nacional en beneficio del control de organismos transnacionales. Real parece ser la clara división de competencias entre la UE y los Estados miembros, mientras que es un asunto difícil aplicar la propuesta de la formación de un gobierno europeo o la creación de la categoría de "nación europea". Desde este punto de vista, parece que la perspectiva de la creación de los Estados Unidos de Europa está aún relativamente lejana.

Palabras clave: Unión Europea, federalismo, gobierno. **JEL:** F15, F59.

1. INTRODUCTION

The European Union was an attempt to concentrate the economic resources of politically and socially independent countries in order to meet the challenges that can arise in case of confrontation with stronger players. The EU was treated by some as a remedy for the risk of invasion threats of globalization, islamization and expansionist policies of China, and it was supposed not only by the factor that EU compensates the weakness of individual countries but also because EU was the condition of maintaining the subjectivity in a world far from European domination. "Problems without Borders" had to be solved by supranational and transnational forms of cooperation.

A detailed analysis of the processes of European integration allows us to affirm that, initially, at the foreground were the economic aspects of cooperation, but with the passing of time, the process put into question the shape of the political dimension. In the concepts of the final form on integration, the two strands collide, setting the two poles of development of the Community. The dispute about where is integration going – about a federal or a loose cooperation between the states- has been for years the subject of discussion on the future of Europe.

The European Union is the first such experiment in the field of exercising authority in a world that, from a dimension defined in terms of geography, passes to a global dimension. The ambitious plans of the "Founding Fathers" of the European Union, involving the creation of supranational institutions for which its member states renounced to a part of their competence (sovereignty), have been incompatible not only with the political situation, but also with the maturity of the political leaders and societies of the time. However, the bold idea of building the unity of Europe was not completely inhibited, as evidenced by the inclusion of further areas of integration, which follow parallel with political changes, which are necessary to increase the effectiveness of cooperation. The more or less formal objection of politicians and the society towards creating consciously a "European federation" does not change the fact that this process does not take place only at a high level of abstraction. A further institutional reform, entailing the extension of scope of voting in the EU Council by a qualified majority, increasing the importance of the European Parliament as the representative body of the Member States, and the European Council, which set out the direction of the Union's political developments, indicate the evolution of the integration structure in the direction of federal solutions. Europe is closer to the vision of Jean Monnet, who wanted to create a European federation. Now remains an open question: in what direction is the organizational pattern of the Union aiming nowadays, to extend or to deepen their political influence? Is the concept of

Pan-Europe a utopian vision or the forward-looking vision of the realization of the dreams of the British Prime Minister Winston Churchill in the 40's of the 20th century?

2. THE EUROPEAN UNION AS ENTITY IN INTERNATIONAL RELATIONS

The European Union is a structure difficult to classify. The specificity of the status of the EU is particularly evident when trying to apply its research using the standard analysis tools of the international relations theory, introducing the distinction between state actors and non-state actors.

In terms of participation in the international relations The European Union it is not a state. This thesis is confirmed by a number of legal and political science related arguments. Firstly, the Union does not meet the classic criteria of statehood, nor fulfills the traditional functions of the states because it lacks a basic attribute of the state, that is sovereignty (Zacker & Wernicke, 2001). Secondly, the EU is not equipped with the ability to define its own competences (Pechstein, 1997). Thirdly, it does not have a territorial nature, but only functional, as the population is not a "national community" (Caporaso, 1996). Furthermore, the EU does not have the attributes of sovereignty, not only in the form of its own autonomous system of primary law, that is the machinery of power and coercion, but also in the monopoly of power and competence in the field of legislation, finance and defence still vested to the Member States. Besides, the institutional system of the Community does not meet the criteria ascribed to a state system of governance. The institutions and authorities of the EU do not have exclusive and well-defined competences of the legislative, executive and judicial powers. For example, the Council and the Commission have both legislative and executive functions.

The hybrid -both transnational and inter-governmental- nature of the European Union makes also difficult to qualify itself as a classic international organization. According to some scholars, as the EU does not have own competences, and its objectives can be realized only by the actions of the Communities and the Member States and it does not have its own sources of financing (the budget is depending of the EC and Member States), this is an international organization in the traditional sense of the term (Lenaerts & van Nuffel. 1995).

All this leads us to define the status of the European Union in international relations. Neither the model of a traditional country, nor the model of a traditional international organization is appropriate because "the Union is more than an international organization and something less than the state" (White, 1999).

The question is: what is exactly the European Union? The sociologist Ulrich Beck argues that it is "the negotiations' state", which organizes the scene and dialogues, and directs a spectacle (Beck, 1994).

According to Jacques Delors, the European construction is the "unidentified political object" (Croisat, Quermonne & Montchrestien, 1999). Although the EU has many of the physical attributes of the statehood –flag, passport, authorities- it is not a state in the classical sense. It is a process rather than a place. In contrast to the traditional nation-state, whose role is, *inter alia*, integrating and assimilating the various interests within its borders, the role of the European Union is rather the opposite. In the political dimension, it is characterized by its efforts to facilitate and regulate the flow of competition and conflicting activities and interests. The government is decentralized, in opposition to the traditional government, exercising authority in a particular territory. A polycentric style of governance in the integrated Europe is a bargaining game played between the interests of all stakeholders (a negotiated game of interests). Finding a common ground between all the participants,

developing a dialogue and making arrangements for enable them to cooperate as a community, while maintaining the separate identity is the *raison d'être* of the European Union.

3. FEDERALISM AS A SYSTEM OF GOVERNMENT

The idea of the functioning of federalism is based on the assumption that the powers are divided between different levels of state authority structures, and each level has its own proper scope of duties and responsibilities in decision-making system. At the over-country level are concentrated all the necessary competences to preserve the unity of the federation, such as: foreign policy, defence, treasury, security and the key sectors of the economy. Among the lower-level units we can find areas such as environment, education, culture, public utilities and space.

The relations between local and federal levels are based on four principles (Kinsky & Krákov, 1999):

- Autonomy,
- Cooperation,
- Subsidiarity,
- Participation.

The principle of autonomy means that the components of the federation have the right to act under the competences which are independent of the competences at federal level. The principle of cooperation defines the relationship between the federal authority and the local authorities, and also between the different lower-level elements. The principle of subsidiarity indicates the division of competences between the over-country level and the regional level and, according to the principle, if possible, decisions should be made at the elementary level. The principle of participation determines the share of the components of the federation in the decision making process, both by the legislative and the executive authority. Authority at the state level is exercised by a bicameral parliament, with two chambers, the representative body of the constituent units of the federation and of the federal government. With the development of international relations has evolved the concept of federalism. Nowadays this concept can be used to define the European integration processes, aiming to optimize the division of competences between the Community and the Member States taking into account the respect for the autonomy of the states in the implementation of the interests of the Community.

A complement to the considerations explained above can be the answer to the question of what features serve federal rules and what implies such political structure and not another one. Two main functions are determining the vertical distribution of power and responsibilities between the respective levels of management and the integration of heterogeneous communities while preserving their diversity and autonomy (Borzel, Risse & San Domenico, 2000). Federalization provides both the necessary level of unity and the maximum respect for diversity.

Federalism is as set of political ideas – legally formed much earlier than any other thought of European integration in the modern sense of the world. This means that it was not modelled "around" Europe, but rather that it is a European construction which, with more or less success, was injected in the pre-existing framework. It seems that the often quoted statement of purpose and essence of the Union as "unity in diversity" can be a special and kind invitation to apply for federal solutions.

4. HOW FAR IS EUROPEAN UNION FROM THE “UNITED STATES OF EUROPE”?

The mechanisms of action of the Union's institutional system, and further attempts to deepen the political integration have given a hybrid character to the Union, which rose under the influence of the current processes of the European integration tradition of federalism. However, it does not change the fact that, in the background of centralist tendencies existing in Europe from the 17th to the 19th century, this federal experience is rather an exception. The event which gave an important impetus for the development of the federal movement was World War II.

For the makers of the European Union, federalism was not so much a method of building a united Europe, but the result of its creation process in the form of concrete steps. Steps, that relied on giving back sector by sector of public activity under the control of transnational bodies. Jean Monnet was the main author of the famous Schuman Declaration; the Declaration became the basis for establishing European Coal and proposed a transfer of competences to the Community level, where they would be executed independently from country institutions. An entity federal model was created, although limited to a narrow sector. A deviation from the classical idea was that the power had been entrusted to experts and not to elected candidates, thus depriving the centre of power at the European level of democratic legitimacy. Contained in the method of Monnet, the assumption that the integration will be extended and deepened (neo-functional spill-over), stemmed from the existence of supranational bodies, equipped with significant competences. These were to promote further integration, in the future culminating into European federation. A decision about the division of competence between itself and the components (each one of the European countries), has resulted from the economic effectiveness and efficiency. Till the present day, the Community method is opposed to the intergovernmental structure, and from this structure come the federal elements of European construction.

Since 1999, summons to construct a form of federation were issued by Jacques Delors (federation of nation states), Valery Giscard d'Estaing and Helmut Schmidt (Euro-Europe), and Giuliano Amato (federal "heart of Europe") (Amato & San Domenico, 2000).

The answer to the question about the role of federalism in the contemporary debate about the shape of the EU and its future is ambiguous. For an illustration of the problem with the "F-word" let serve a statement from German researchers: "The EU today, basically looks like a federal system, acts as the federal system, so why do not call it is "a forming federation?" (Borsel, Risse & San Domenico, 2000).

Despite fairly widespread aversion of many countries and policy options to create a federation of European states, no one can deny that, existing in its present form, the European Union itself is a federal structure in many senses. They are strong and dominant in the framework of the European Communities, but weak and moved away into the background in the other policies and forms of cooperation co-creating the Union. The European Union is not a political organism, which can be defined by using the name of the federation. However, many mechanisms of action of various organs, as well as their structure itself, contain elements similar to a federation.

In this respect, Draus (1999) indicates the following:

- Possession of political subjectivity in the sense of international law, representation by the Community of Member States on the outside, the conclusion of trade and economic agreements,
- Fixing the Community's legislative competences,

- Collecting duties on a joint account,
- Importance of the principle of subsidiarity,
- The role of policies that express a common group's interest,
- The existence of the European Parliament, elected through direct elections,
- A legal Appropriate for Community System, including the special role of the Court of Justice.

Assuming that the criterion for the existence of the federal system is the division of powers and the joint exercise of sovereignty, it cannot be denied, that we have to deal with this phenomenon within the EU (Leben, 2000). The emphasis is rather on the latter aspect -the joint implementing- because till today there are no clear rules on the division of competences between the EC and the Member States, (Mik, 2000) and the ECJ formulated the doctrine of a number of assertions regarding the competitive competence, regulated in practice the problems of overlapping competences (Leben, 2000).

First of all, replacing the federal elements of the EU should be a system of Community law, often underestimated in the analysis of political science, as well as the over-country Community institutions, the common currency -euro- and the European Union citizenship, along with the concept of fundamental rights.

Community law takes absolute precedence over national law, and simultaneously may be issued only through the existence of the competence of the Community to legislate (Biernat, 2006). The second systemic principle of Community law is a direct effect of many of his rules in relation to natural and legal people because it creates for them the rights and duties directly, without the need to transpose it into national legal systems. It is a clear analogy to the federal laws. In practice, in EU Member States there are two legal systems, the Community system and the national system, which are combined by numerous connections, but with a predominance of European standards. This advantage derives, *inter alia*, of the primacy of Community law even before the constitutional norms of the Member States, priority of use and the possibility of relying on them before national courts. The doctrinal principles of Community law make from it an instrument of integration in a spirit without a doubt the federal (Haltern, 2009).

Existing within the framework of Community, transnational institutions are another federal element, although the limitation of Monnet's formula should be born in mind. In particular, the European Parliament (EP), dating since 1979 from the general election and by the Treaty, and its subsequent amendments, endowed the new legislative competences and can be regarded as a classic institution in possession of a democratic mandate. The selection of MPs in the individual EU Member States and their association according to the ideological options, rather than a national membership, points directly to the implementation of the federal model. However, please note the limitations: even today, the competences the EP cannot be compared with the national parliaments of democratic states. Political groups present in it should not be recognized as an equivalent to political parties at European level. In practice, political life is always focused on the national level and in this light, and we are still before the EU within the meaning of constitutionalisation, according to Spinelli. It is worth noting that the issue of support or opposition to plans for further integration now becomes the criterion of identification of political parties, coexisting with the traditional spectrum of right wing - left wing.

The European Commission is indeed a transnational institution, composed of officials, international and independent of the will of states; however it represents a factor of

technocracy and thus does not fit the classic model of the federal. Performing a part in of the functions in practice of the government (administration, initiating and formulating policy, ensuring compliance with legislation, and issuing executive acts) should not obscure the significant differences. The Commission has no democratic mandate, correlating its term with the term PE is technical in nature and not due to the nature of their inter-relationships. The mode of its establishment is a complex process of interaction between national governments and the EP. Without a doubt, the existence of executive power at European level is part of the federal structure, but the Commission remains a structure so thoroughly involved in Europe, which the least effective fit into a classic of its model (Sidjalski, 2001).

A very important element of the European Communities is the existence of the criminal justice system. In the classical model of the confederation, they serve only as a center for settlement of disputes between states. The European Court of Justice and The Court of First Instance have been bestowed with much broader powers. The Tribunal was the main promoter of deepening integration. It formulated the basic principles of constitutional autonomy that constitute the Community legal system, confirmed the responsibility of the state for violating Community law in relation to their citizens, and derived from the objectives of the Treaty the principle of the presumption of competence necessary to achieve them. The Tribunal uses repeatedly an argument about the need to ensure a uniform application of law throughout the Community.

Justice authorities have a monopoly on the making of judicial interpretation of Community law and through the procedure of prejudicial questions, and other forms of cooperation with national jurisdictions are uphold on the guardian of Community law, in particular by the authorities of the Member States.

One of the most important elements of the exercise of sovereignty is money. The creation of the monetary union on January 1st, 1999, and its introduction three years later, into the circulation of the single currency - the euro-, and the transfer of competences to the ECB in the conduct of monetary policy means the actual realization of one of the typical elements of the federation. (Haas & Schmitter, 1964). There is no doubt that the implementation of monetary union is a vital part of joining together European states (Kołodziejczyk, 2000).

Potentially, the greatest implications for the emergence of the federal system may be the introduction of the European Union citizenship, which will entail the real rights and obligations. Ensuring the rights and freedoms were so far the domain of the state. Nineteenth-century liberalism has set this feature in the centre of the state's tasks, which was indeed the condition of forming a nation politically. Determining a catalogue of rights, which took place in 2000 by assuming the Charter of Fundamental Rights (CFR), was an expression of willingness to strengthen the protection of human and civil rights in the EU, but also the ambition to extend its functions. The consequences of the choice of this road can be very significant. The inclusion of the CPP to the draft of Constitutional Treaty means, firstly, to conform it to the constitution of democratic nations, secondly, opening a debate on the axiological attitudes of EU, which will require determination of identity in the dimension of civilization. At the same time, establish a directory of rights of EU citizens can make that a previous conception of European citizenship, will lose its random and apparent character, and will establish a real relationship between citizens and the Union (Trzeciński, 2006).

The institution of European citizenship introduced by the Maastricht Treaty was to be a form of alternative European nation, considered by some as a necessary element of a future federation. Undoubtedly, it represents a symbol of European identity, providing a willingness to cooperate and a function to the European nations in the Community; however, citizens of EU Member States are further than closer to a total identification with European interests and

transnational projects. It is worth considering whether the action for the evolution of social attitudes towards the increasing awareness of the integration processes and responsibility for the "common good" is really a *sine qua non* condition for the federalization of Europe, because the example of Switzerland has shown that it is possible to have a federal government even in a multiethnic, multilingual and multi-denominational country and simultaneously do not undermine the autonomy of individual communities. Therefore, the existence of a European nation, is not - as claimed by General de Gaulle - a precondition to the creation of some form of federation.

In contrast to it, there is a slightly different approach to the federal elements of European construction prepared by researchers from Germany. They list the following (Borzel, Risse & San Domenico, 2000):

1. The system of governance in the EU is composed of at least two levels, each of which has its own rules and directly affect the situation of the citizen;
2. The European treaties divided the jurisdiction and resources into these two levels of governance;
3. There are rules specifying the areas of shared management, where the jurisdiction of the EU and Member States shall be imposed;
4. Derivatives of Community law is increasingly being created by qualified majority voting;
5. The procedures and the composition of the European institutions are based not only on the simple principle of representation, but also ensure to take into account the minority opinion;
6. ETS is a judge in the case of conflicts between European institutions and Member States;
7. The EU has a parliament from the general election.

Undoubtedly, the process of European integration draws its inspiration from federated solutions, but there are significant barriers to the implementation of the Pan-Europe idea:

- The specific institutional structure, devoid of the federal government and a bicameral parliament.

- The fact that, regardless of the of the Union's subjectivity, states can retain their own sovereignty in the sense of international law and can of the Union conclude international agreements independently.

- Lack of a clear directory of competence and its division between the Community and Member States.

Moreover, a strong attachment of the nation-state idea could exist in many Member States, characterized by an inalienable attribute: the sovereignty in political decision-making, and -among societies- the fear of losing national identity.

Over the past 50 years, European political elites have worked hard to determine the limits of power vested in the European Union. Two options, which wanted to shift the center of gravity of power either as close as to national states as possible, or outside their territorial boundaries, were crystallized. The supporters of the federal model argued in favor of granting greater powers to the Union and the supporters of confederation postulated for a polycentric governance model and opted for leaving the power in the hands of Member States. The Union treated it as an intergovernmental forum for the coordination of national objectives and for the promotion of the interests of individual Member States. The result of a dispute between the

two options is the existence of multilevel governance. The example of compromise is, for example, the principle of subsidiarity, which became a pillar of governance in the European Union. For many Member States, European integration was associated with the need to redefine political identity. Making the EU the United States of Europe would require extreme changes both in the institutional structure and in the mentality of political leaders and societies. Such a process certainly would be a long-term one.

The European integration should be considered as a process, not a condition, thus avoiding the need of a dichotomous division between federal and confederation model. Therefore, the definition that "the European Union is moving in the general direction of both: classical Confederation (federal union of states) and federal (union of states and citizens) (Burgess, 2000)," is true. According to Peterson, the conclusion is: "In the final analysis the Union is a collection of sovereign nation states and no nation-state" (Peterson, 1995).

5. CONCLUSIONS

The European Union came into the world with a vertical organization and a centralized control. The answer to the question whether it should focus on integration and harmonization of the following areas of state activity, or to integrate into their ranks as the one with the largest number of new countries, depends on how the final desired form is defined. The opponents to the federalization of the EU are focused on the donation, on the transfer of competences at a European level and on the loss of competences and the erosion of sovereignty. Its supporters say that absolute sovereignty in the world is today already a myth and an outdated construction, with or without a federation, and say that is rather a common exercise of sovereignty, supporting and complementing the national and European level.

From the very beginning, the creators of the idea of integration put the goal: the unification of Europe in the form of a federal structure. Further reforms reflected the influence of the idea of federalism as the running process of the unification. In functional terms, the European countries are today at least as integrated as the North American states were in the 19th century, but the major difference lies in the fact that the formal statehood of the Union is still divided between the 27 Member States. An example of the power of the United States is the control of its territory and the enforcement of rights by the citizens. The legitimacy of the European Union's authority refers to the rules of behaviour, based on a permanent trust, goodwill and promise to comply with the Community law. The compliance principles and the methods of operation of the European countries offer a real chance to get a successful « political project », that is the European Union, and it does not change the fact that its development is a constant balance between the promotion of the common interests of the European countries and the realization of the particular interests of the individual Member States. The paradox of the formation of the Community lies in the fact that the architects of the new political entity were the nation states, whose primary objective is to maintain exclusive control over a defined territory. The discussion on the superiority of the concept of transnational and international is still a recurrent question, and there is no consensus on a final formula for a political European Union.

Of course, you cannot prejudge whether this process of federalization in Europe will be achieved in a near future, but the problem of a federal future will return with even more actuality. The concept of a clear division of competences between the Community and the Member States seems real, while the proposal of formation of a European government or the creation of the category of "European nation" is still a difficult issue to implement. From this point of view, it seems that the prospect of the creation of the United States of Europe is still relatively distant.

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