



The Federalist, Year LI, n. 1

**A “FEDERAL CORE”  
IN A WIDER EUROPEAN UNION.  
HOW COULD THE CORE BE FOUNDED?  
HOW COULD THE INSTITUTIONS OF THE CORE  
BE STRUCTURED?  
HOW TO STRUCTURE ITS RELATIONS WITH  
THE INSTITUTIONS OF THE WIDER UNION? (\*)**

*Giulia Rossolillo*

When addressing the discussion about a multi-speed Europe or flexibility within the European Union, it is very important to assume a political perspective on the issue. This perspective is crucial for the answering of all the questions included in the title of this speech: how could the core be founded, how could the institutions of the core be structured and how to structure its relations with the institutions of the wider Union. And above all it is crucial to understand why what we need is a federal core, and not a different form of differentiated integration. Only keeping in mind very clearly the political goal we want to achieve, we can in fact find an appropriate institutional solution.

We all agree that the challenges that Europe has to face today are the creation of a European foreign and security policy, so that Europe can speak with one voice in the international arena and provide for its own defence; and the building of a single economic and fiscal policy to complete the monetary union. These challenges require a European democratically elected government: it is just through a democratic government that decisions about economic policy and taxation (no taxation without representation) or about peace and war can actually be taken.

A European government responsible for defence, foreign policy and economic and fiscal policy means a European federal State. And, as some member States don't want to go ahead in the integration process that far to build a European State, the problem we are facing now is how to build a federal State between the European member States that want to move this step, i.e. how to create a sovereign entity that would replace some of the existing member States

of the European Union (as the Member States entering this new entity would lose their sovereignty to become members of a Federation).

This being the goal we want to achieve, it becomes clear why all the forms of flexibility existing in the European Treaties are not satisfactory. And the reason is that none of these forms of differentiated integration put in question member States' sovereignty or has been conceived with the aim to create a new sovereign entity, a new State.

And here again the importance of the political aspect, of the political goal to achieve, must be pointed out. In fact, every time that the proposal to create a multi speed Europe or some forms of differentiated integration has been taken through complicated negotiations in absence of a clear political goal and will, the result has been unsatisfactory. Let's take as example the Schäuble and Lamers proposal of creating a core Europe in 1994. Under this proposal there was a strong political will to allow those member States that wanted to do it to create a core around the European Monetary Union, that is to create a European government even outside the existing Treaties and against the will of the less-integrationist States. But, when the idea of introducing different speeds in the European integration process lost this political perspective and was discussed by the States representatives during the negotiations of the Amsterdam and Nice Treaties, the original idea of an avant-garde turned into a complicated flexibility formula - the enhanced cooperation - that was unlikely to be of much use to those wishing to establish a core Europe.

When sovereignty of the member States is not put in question, it is possible to find forms of differentiated integration within the Treaties to try to conciliate the interests of participants and non-participants member States, but these provisions, because they have been adopted by all the member States, including those that didn't want to pursue deeper forms of integration, are the result of a compromise and are then unhelpful to solve the problems that the European integration process is facing.

This is evident in the case of enhanced cooperation, a mechanism subject to a set of conditions (the so-called "ten commandments") aimed to guarantee that it remains within the limits of the Union or of the Community and that it is compatible with the institutional framework of the Union itself. Therefore, the Commission can oppose any proposal for enhanced cooperation, the enhanced cooperation has to be authorized by the Council by a qualified majority, and each single Member State has the faculty to request that the question be referred to the European Council.

Something similar can be said about the monetary union. When the monetary union was decided in the '90's, States like the United Kingdom and Denmark were already members of the European Community, and therefore, as this decision was taken in the framework of the Treaty provisions during the negotiations of the Maastricht Treaty, following the procedure of the intergovernmental conference and ratification by all the member States, the only possible solution was a compromise: the creation of a single currency without a common economic and fiscal policy. The creation of a common economic and fiscal policy between the States wishing to adopt the single currency would have led in fact to the creation of a government and therefore to the building of a core Europe inside the European Union, decision that, for example, the United Kingdom would have never allowed.

The lessons we can learn from this experience are two. The first one is that, if the goal we want to achieve is the creation of an entity able to speak with one voice, the creation of a core inside the European Union, this result cannot be achieved through the mechanisms provided by the existing Treaties. As the European institutions represent all the Member States of Union, it would not be in their interest to allow some States to create a new sovereign entity, a more advanced form of integration, that could undermine the Community structure. Any decision on a multi-speed Europe taken by the European institutions, would thus inevitably lead to an unsatisfactory compromise and not to the building of a federal core. The decision to create a vanguard can therefore be taken only outside the framework of the existing Treaties, by breaking the procedures envisaged by the Union and the Community Treaties.

It wouldn't be the first time that some member States participate in deeper integration outside the framework of the Treaties within a separate integrative unit. Let's think for example to the Schengen agreements before the Treaty of Amsterdam. In 1985 the Agreement was signed by France, Germany and the Benelux countries outside the framework of the European Community Treaty. The difference is that the building of a federal core outside the mechanism provided by the Treaties would have a much stronger impact because it would create a new sovereign entity, and not only a closer cooperation between sovereign States in a defined policy field.

The second lesson is that at the beginning of the process of building a new entity composed by the Member States wishing to relinquish their sovereignty, the political goal and the basic elements of the structure of this new entity must be clearly defined and agreed. What I mean is that, if the task of defining the basic elements of this closer integration between some member States is entrusted to a subsequent constituent assembly or to an intergovernmental conference opened to all States willing to go forward in the integration process, without a prior acceptance and definition of the purpose of founding a federal core responsible for foreign policy and defence and for the economic and fiscal policy, the risk is to end into a compromise that could undermine the federal aim of the initial project and therefore to produce just a form of flexibility like those contained in the existing Treaties.

This is the reason why the building of a federal core requires a strong political will of some States that should take the initiative of creating such new entity, draw up a federal pact defining above all the transfer of sovereignty from the Member States to the new federal entity, and thereafter convene a Constituent Assembly charged to draw the Constitution of the new Federal State. The decision to join and create the core and, on the other hand, the drafting of a federal Constitution are in fact two different steps, and the first is necessary to achieve the second.

And here we come to the definition of the basic elements of the European federal core. To face this issue it seems useful to refer to the Draft Treaty defining the Statute of the European Community adopted by the ad hoc Assembly charged to create a European Political Community in March 1953 and aimed to complete the European Defence Community Treaty. Treaty that, of course, never entered into force.

Even if ambiguous on certain issues, this Treaty contains many interesting elements and represents the most federal Treaty in the history of the process of European integration.

As far as the institutions are concerned, the Draft Treaty establishes that the legislative power will be exercised by a Parliament composed of two Chambers: the peoples' Chamber consisting of deputies representing the peoples united in the Community and the Senate, consisting of senators representing the people of each State. The first one shall be elected directly by the citizens, on the basis of a uniform electoral system, the second one by the national Parliaments in accordance with the procedure determined by each Member State. Legislation requires the assent of each of the two chambers by simple majority.

The executive power is conferred to the European Executive Council, which President shall be elected by the Senate and shall appoint the other members of the European Executive Council. To assume its functions, the Council shall need the Peoples' Chamber and the Senate's vote of confidence, which shall be given by each Chamber by majority vote of its members.

That means that the draft Treaty provided the creation of a European government appointed by a Parliament directly elected by the European citizens.

These institutions, according to the Draft Treaty, shall be responsible for the European defence and shall have the power of taxation.

As far as the judicial power is concerned, the Draft Treaty confers it to a Court of Justice that shall ensure the rule of law in the interpretation and application of Community Law.

The institutional structure foreseen by the Draft Treaty contains some elements of ambiguity: the most important are the existence of a Council of National Ministers composed by representatives of the member States that must approve by unanimity the amendments to the

most important provisions of the Treaty (on the contrary, in a federal State the amendments to the Constitution should be approved by a majority of the parliament and of the States), and the fact that the foreign policy of the member States are simply coordinated. It is nevertheless evident that it outlines the structure of a Federal State (government appointed by a two-chambers parliament and a Court of Justice ensuring the rule of law in the interpretation and application of Community law) and could be a very useful example for the creation of a future federal core.

In fact, also in the federal core the legislative power should be entrusted to a two-chamber parliament, one representing the citizens and the other the member States. The government should be elected by citizens or by the parliament and should be democratically answerable before them. And the judicial power should be entrusted to a Court of justice, responsible in declaring void any legal provision in conflict with the Constitution.

As far as federal competences are concerned, the institutions of the federal core should be responsible basically for foreign policy and defence (and this implies a European army under the command of a European general Staff, whose chief should be answerable to the defence ministry of the federal core) and for economic policy (and thus should be equipped with the power to levy taxes), but it should be probably necessary to transfer to the federal level also competences concerning scientific research, technological development and environment.

But if we look to the Draft Treaty of 1953, there's another point that could be interesting for our purpose. The Draft Treaty provides actually that the Community created by the Treaty itself shall progressively exercise the powers and competences of the European Coal and Steel Community and of the European Defence Community and replace these two organizations. During the transitional period, the Draft treaty envisages some forms of provisional government of the whole structure composed by the new European Community, the European Coal and Steel Community and of the European Defence Community. Something similar should happen after the signing of a federal pact by the member States wishing to create a federal core. Before the election of a Constituent Assembly charged of drawing up the Constitution of the federal core, a provisional government should actually be created. As far as, at this stage, federal institutions and procedures to appoint them won't exist yet, this provisional government would still have an intergovernmental character. It could be for example composed of members chosen by the heads of state and government of the signatory countries and submitted to a parliamentary control exercised by the members of the European Parliament belonging to the signatory States of the federal Pact.

#### *The relationship between the federal core and the Union.*

First of all it must be stressed that the decision of a Union Member State that has initially not entered into the federal pact to subsequently become a member State of the core should not depend on the fulfilment of technical standards, but only on the will of that State to relinquish its sovereignty and accept to become a member State of a Federation. So, the federal core would exclude only the States that don't want to become part of it, and not the States lacking some technical or economic requirement to enter into the core itself. This could be an answer to those people saying that the creation of a federal core would be a form of exclusion and isolation of the poorest or new Member States.

The second element to point out is that a provision already exists in the Treaty establishing the European Community, article 306, aimed to allow the existence and the completion of regional unions inside the European Union. According to article 306 "the provisions of this treaty 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 this Treaty". The existence of such a provision could demonstrate that the existing Treaties don't prevent in principle the creation of Unions of States inside the European Union. One shouldn't nevertheless forget that the building of a federal core between some member States of the European Union would be very different from the specific experiences (regional unions between

Belgium, Luxembourg and the Netherlands) this provision refers to. Especially because if this core includes - as it should be - at least three big member States of the Union, its weight inside the institutional framework of the Union and in comparison with the other member States would be considerable.

And this is exactly the crucial problem when one tries to face the issue of coordinating the core with an enlarged European Union. In theory, one could refer to international law and apply the rules on succession of States in international treaties, according to which any State born of a fusion between two or more States is automatically granted entry into an international organization of which these States are already members. Following this solution, the federal core would replace its member States in the Treaty on European Union and in the Treaty establishing the European Community (and thus in the Council and in the Commission, for example, the core would have a single representative taking the place of those of its member States) and would be submitted to all the forms of cooperation and to all the restrictions of sovereignty imposed by those treaties.

This is possible from a juridical point of view, but, if one looks at the political side of the issue, it is evident that on one side the creation of a federal core would upset the institutional equilibrium of the Union, because this new State would carry far more economic and political weight than the other members of the Union, and on the other side the core wouldn't accept all the limitations of sovereignty coming from the existing Treaties.

This last point deserves a last consideration. Once created, the federal core, like all new States, and like the experience of the building of the American Federation shows, will need some time to consolidate and to withstand the attempt of the Member States to reaffirm their sovereignty. Now, it is natural that a State that is trying to consolidate and to affirm its new sovereignty doesn't accept to limit this sovereignty just after having gained it. This is the reason why some of the new Member States of the European Union that were part of the communist block, once regained possession of their sovereignty in 1989 don't want now to limit it in favour of the European Union institutions. It is for example difficult to imagine that the federal core accepts to submit to the restrictions imposed by the Stability Pact, instead of fully exercising its sovereignty in the field of the economic policy.

Therefore, a form of renegotiation of the relations between the federal core and the EU will be needed. It is nevertheless difficult to foresee what could be the result of these renegotiations.

The first point to stress is that it is important that the core is represented in a unitary way even in its relations with the European Union Member States and institutions. The core should thus replace its members in the European institutions themselves.

The second point is that all the States that are not particularly well disposed to the forms of integration other than the strictly economic ones should remain out of the core. It is thus possible that the bonds between the States that are not members of the core will weaken progressively, till the Union becomes a free trade area.

But many other issues are still open. For example, if we imagine that not all the States part of the European currency become members of the core, how should the relation between the economic policies of these States and the economic policy of the core be regulated?

(\*) This article is based on the speech delivered by Giulia Rossolillo on the occasion of the 10<sup>th</sup> International seminar held in Desenzano (April 25<sup>th</sup>-26<sup>th</sup>, 2009) on "Europe and the World in Crisis: Dangers of Division and Chances for a European Avant-Guard". The seminar was organized by the Lombardy Regional sections of the Movimento Federalista Europeo and Gioventù Federalista Europea, in collaboration with the Committee for a European Federal State and the Fondazione Mario e Valeria Albertini.