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European Union as a Unique Foundation

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Abstract: European Union is not a state and is becoming more than just one intergovernmental actor. Its formal commitment to promote democracy has grown. European Union has had a strong dynamic of its own; the increase in membership potentially helped it to become a more powerful actor. Democracy is a core European Union value and through our analysis we will try to find out how much of this value is promoted by its institutions. The hypothesis that led us to this research was that 'European Union is not a state'. In order to find what it is, if not a state, we reviewed the development of the European Union, its basic principles and values and analyzed them thorough the confederate state lens. The aim of this paper is to discuss arguments that may develop into a study answering a haunting question: "Is European Union a state, a federation, a confederation or what?" The answer seems to be spinning round the concept of "sovereignty" and since European Union is in a dynamic evolution we will not use labels but only discuss arguments. By summing up the comparative studies and based on qualitative methods we tried to establish what kind of foundation European Union has and if democracy is really its core value. And the conclusion is that result, European Union is a political system which cannot (yet) be analyzed as a state, but rather as a distinctive hybrid.

Keywords: political system; state; confederation; democracy

1. Not a State – because of the Impact of its Formation

European Union is built on political values that demonstrate and share democracy in a process defined by 'partnership' and ideological acceptance. European Union (EU) managed alone to pass over a century marked by two 'world wars' and one 'cold war'. It had a distinctive contribution to democratization of the Central and Eastern Europe, an effective proof of how democracy can be peacefully established when the will of the people exists. That it is why we consider European Union as a model of political harmony both within and among its states.

Even if modern social science (M. Weber) emphasized that only a state can have a democratic and effective government EU proved that the power can be split between different actors and levels of governments. EU has a constitutional framework with a balance of powers between EU and the Member States (MS) and its policies have significant implications on the economy and in the European society. Based on voluntary cooperation of the MS and without any force of coercion on them, but with 'incentives of compliance', EU should be understood and analysed as a distinctive political system. EU is a political system, as we will see, with a unique foundation and which was not tailored by any known type of state.

The atmosphere that governed post-war Europe in the early 50's proved favourable to start the reconstruction of Europe on a new foundation. In the spring of 1950, Europe was on the edge of an abyss: although five years had passed since the end of World War II, reconciling former enemies

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seemed far. The crucial problem facing the European continent was that it was trying to avoid the mistakes of the past and laying the basis for a lasting peace among the emerging nations from the war. The key problem seems to represent the forwarding relations between France and Germany. The closer links between the two countries would be given to other countries in Europe, free to build a common destiny.

Federalist euphoria that marked the end of the Second World War, captured the interest of more and more leading politicians: from the famous 'United States of Europe' (Winston Churchill, 1946) to the pseudo-vote organized by Altiero Spinelli (the Union of a European Hyper-centralized Federation). This effervescence created a favourable climate for integration. In the given context, the emphasis was on the political integration called to solve the security of the area, to avoid the emergence of a new European conflagration. Because of the failure of the political integration, the attempts focused on the economic integration.

The initial steps belonged to Jean Monnet, who, with a rich experience as a negotiator and peacemaker, suggested an ambitious plan to the French Foreign Minister, Robert Schuman and the German Chancellor, Konrad Adenauer. His idea was to put the coal and steel market under an independent authority, creating a common sphere of interests between the two countries. So, by removing the two industries from the weapon production, a new war between them will be impossible. France agreed and thus, by his foreign minister's statement made on 9 May 1950, proposed that the coal and steel production of France and Germany would be administered by a supranational authority.

The Treaty establishing the European Economic Community (EEC) was the beginning of a new phase in the European integration process. Once the two communities were created, the institutions and the decision-making process were guided to common goals raised from the national interests of the MS. The EEC treaty stated: the free movement of goods and persons between MS, the free movement of labor force, services and capital, the legislative harmonization, the development of common policies for agriculture, transport, regional development etc.

A new era in the history of the Community was inaugurated in 1970, when the financial contributions from Member States were replaced by the Community's own resources. The community has become, to some extent, financially independent and through certain budgetary provisions the Parliament got budgetary powers.

European Communities have shown that the economic cooperation is possible and the MS are committed to invest in order to achieve it. As a result, economic integration has strengthened the common market, which has become a project in itself, and starting with the 80's, the European states have adopted an action program (the so-called 'The White Paper, Completing the Internal Market', June 1985) that established a single European market.

On September 20, 1976, the representatives of MS in the Council agreed on the conditions for direct elections and signed the Act concerning the election of the Assembly by direct universal suffrage. The act was later ratified by the national parliaments of that time. The first elections were held in June 1979, giving the European Communities their own democratic legitimacy.

In April 1977, the Community's institutions have developed a joint Declaration on Fundamental Rights, a document that has been associated by the heads of states and governments with its Declaration on Democracy. They declared that the principles of representative democracy, the rule of law, social justice and respect for human rights are the characteristics of a political system specific to pluralistic democracy.

The Single Act constituted a bridge between the single market and economy and social solidarity, treating them as independent objectives. Structural policy measures were introduced to help poor regions and weak areas in technological change as well as industrial restructuring.

Although the term *union* appeared in the Preamble of the Treaty of Rome, it was first officially used by the Maastricht Treaty. Member States aim was to grow together and form, after all, the European Union.

The challenge of the European Constitution, rose since the conclusion of the Treaty of Maastricht, which was often called a "Constitution". But it became a reality for the Union and the Member States with the "observer" status. At the Intergovernmental Conference, held in Thessaloniki (Porto Caras) - Greece, Valerie Giscard d'Estaing presented to the heads of state and government the draft of the European Constitution which on 25th October 2004 was adopted as the EU future Basic Treaty. Unfortunately, the failure in accepting the unifying treaty in France (May 29, 2005) and in the Netherlands (June 1st, 2005) led to new regulations outlining the social reality of the Union and not the need of a constitutional sovereignty.

The new reforming treaty was signed on 13 December 2007 in Lisbon (ToL) and brought several new elements among which the legal personality of the European Union and its powers. The new Treaty changes previous EU treaties and the European Community, and also the Treaty establishing the European Community of Atomic Energy. This "reforming" treaty enshrines the general framework of collaboration and citizen participation in European affairs, confirming, among other mechanisms, the role of national parliaments in EU decision-making process. Moreover, the Charter of Fundamental Rights received a higher legal force, equal to a treaty. Once inside the EU legal order, the new treaty supersedes the European Union to the European Communities.

Now, we can affirm that European Union holds all four characteristics of all democratic political systems, as they were identified by Almond in 1956:

1. there is a clearly defined set of institutions (European Council, European Parliament, EU Council, the Commission, the European Central Bank, the EU Court of Justice, the Court of Auditors);
2. the citizens are participating in the existence of the EU political system (e.g. directly through European Citizens Initiative and Parliamentary elections or indirectly in the European Council and EU Council);
3. the decisions on the economic resources (and other resources, see art. 2-6 of Treaty on the Functioning of the European Union) are collective and politically taken. The EU decision-making process is one of the most formalized and complete among the other international organizations processes.
4. there are continuous interactions with the political, administrative, and social life of the member states/nations.

Even if, on paper, EU is a democratic political system, the declining public support for the EU project is a key problem which EU is facing and on which we will pay attention in further analyses.

All things considered, it is obvious that EU cannot be considered "a state" in the traditional meaning of the words.

2. Not a Federation – because of the Intergovernmental Elements

The concept of integration assigns a vertical dimension to the relations between EU member states, thus exceeding the traditional concept of national state holder of an indivisible sovereignty. An integrated union assigns new values to sovereignty, which does not belong only to the state, but also to a supranational entity. Each member state of this entity retains its identity and national peculiarities and takes part in the European unification process by harmonizing their national interests.

After a long process, subject to continuing reforms, the EU is recognized to be the result of integration. Even so, the MS have not given up the fight for recognition of the indivisibility of sovereignty. A negative example was given by the two referendums (France and the Netherlands) which rejected the Treaty establishing a Constitution for Europe.

The Member States have agreed on a temporary cede of sovereignty to the EU, which gave the latter a more con-federal character than a federal one. Abandoning the national solitude of states in the economic arena - through the establishment of the European Communities - and later in the political arena led ultimately to the abandonment, even if only temporary, of the dogma of sovereignty.

The process of European integration has gradually evolved. Thus initially specific competences were attributed in areas such as coal mining and steel or atomic energy; subsequently this lead to the establishment of an economic community and a common market. We can observe that, in fact, the transfer of sovereignty is only a transfer of competence, so the states, by integration, actually agree on a 'joint exercise of powers'.

EU thesis 'unity in diversity' recognizes the pluralism of the countries, regions and European cultures, and that it is why the Union is a viable project to the extent that this diversity is conserved. Cornerstone of this thesis is the principle of subsidiarity, according to which the EU has exclusive competence to act out only when solutions at EU level are superior in efficiency to those of the Member States (article 5 TEU par. 3).

European integration is not and should not be understood as a process that, once started, would undermine state sovereignty. This, as the theory of neo-functionalism mentions, offers the MS' governments the possibility to interact and establish, through a pluralistic process, transnational common interests. The states were maintained in this process as fundamental units, because the state actors' preferences have been established at national level and after that were used as basis in the EU intergovernmental negotiations. With the supranational governance approach, the need to create a European identity was emphasized, an identity in which the EU action should find support as a global actor. EU complexity is given by integrative elements, intergovernmental and supranational elements, even federal ones; therefore, the European integration process is characterized, mostly, by the federal - intergovernmental debate.

The European construction which exists today is a synthesis of the two extremes, the federal and the intergovernmental one. From a theoretical perspective, many formulas were imagined and most of them combined these extremes, such as intergovernmental federalism of Croisat and Quemonne (Criosat, 1999 *apud* Bărbulescu, 2005, p. 38) or Federation of Nation States of Jacques Delors (Delors, 1992 *apud* Bărbulescu, 2005, p. 38). It is the intergovernmental element which makes analysts decide against a federation.

3. A Possible Confederation after the Lisbon Treaty

The confederation is the most common form of a union in the states' history. It is known since antiquity (Athenian League, Macedonian League), although now it has fallen into disuse.

A *confederation* of states is virtually a permanent state association established by a treaty, which has a common body - diplomatic assembly, that takes decisions unanimously and exercise sovereignty on the behalf of the confederation at international level.

Amendments to the constitution of the confederation entail revision of the Treaty by all signatories. Each confederate state retains its sovereignty over domestic constitutional framework. Although they are pursuing the same objectives, particularly in the matters of international relations and defense, and there are reciprocal arrangements, the confederation powers are limited on the states, but not on their citizens.

The representatives of States are united in intergovernmental structures to make important decisions unanimously by consensus, but they are not the representative body of the people of the MS. These decisions are not directly applicable in the territories of the confederation; they must first be ratified by them to be applied. Given the subsequent ratification of the confederation and that these decisions must be approved unanimously by the MS, the confederation is, to some extent, unstable, which emphasizes the exercise of the right of withdrawal from the confederation. Once it is abolished, the component states resume their sovereignty.

Great confederations, like the German Confederation - which was born at the Congress of Vienna in 1815 by the association of 40 states, no longer exists. Also, the Swiss Confederation is actually from 1848, a federal state. Thus, we see how a confederation turns or evolves into a federal state, as did the United States, Germany and Switzerland.

With the adoption of the Lisbon Treaty, the doctrine discusses (Hazak, 2012: 63 and Sbragia, 2004) accentuated the transformation of the European Union into a confederation. The European constitutional road is still subject to debate, although the EU has entered into the next chapter of its evolutionary process. Understanding the EU after the Lisbon reform cannot be done without understanding the process of transforming it into a confederacy with federation's valences. Arguments that support the existence of confederation could be: the possibility to change the treaties regressively, the so-called negative integration possibility (art. 48 par. 2 TEU), the express regulation of the right of Member States to withdraw unilaterally from the EU (art. 50 TEU) and the introduction of the states' rights to initiate negative legislative activity about secondary legislation (Declaration no. 18 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon), all are leading to the establishment of national mechanisms of control over the EU's ambition to become a federation.

David McKay (2001) in one of its articles assumed that the post-Maastricht European Union has developed into a kind of federal state. The federalist vision of the EU is often seen in opposition to the 'intergovernmental' perspective institutionalized by the European Council and the Council of ministers. The intergovernmental concept is supported by the intergovernmental conferences for the revision of the EU treaties, by the EU institutions which represent the Member States or their dismemberments (e.g. regions), by the role of the MS in decision-making, and the by policy issues that are falling under justice and home affairs and foreign and security policy. A confederation? Probably? A hybrid? Most certainly.

4. Instead of Conclusion

Due to its dynamism which always takes into account the needs and requirements of the Members States, due to the fact that EU building is in full swing, we cannot really limit it to an old, well known state matrix. For what we may know EU may be the model of a future way of organization in which democracy, flexibility and people's welfare may reign supreme.

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