

Federalising Europe through Article 20 of the Lisbon Treaty

The Federal Alliance of European Federalists (FAEF) is in favour of a United States of Europe. If that is not possible at once, it is possible to do it in stages via Article 20 of the Treaty on European Union, one of the two partial treaties that make up the Treaty of Lisbon. I will first show you Article 20. Then I will explain what the FAEF is, why the federalisation of Europe is useful and necessary and that this is only possible if the fragmented federal and pro-European movements join together in the federation FAEF.

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Article 20 of the Treaty on European Union

Article 20 reads:

- "1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union.
Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with Article 328 of the Treaty on the Functioning of the European Union.
2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it. The Council shall act in accordance with the procedure laid down in Article 329 of the Treaty on the Functioning of the European Union.
3. All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. The voting rules are set out in Article 330 of the Treaty on the Functioning of the European Union.
4. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as part of the *acquis* which has to be accepted by candidate States for accession to the Union."

It says here that a group of at least nine Member States is empowered to enter into an enhanced form of cooperation. The strongest form is that of a federation.

Moreover, a federation ideally fulfils the requirement formulated by Article 20 in paragraph 1 with the words: "Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process."

Article 20 has so far never been used for the purpose of federating within the EU a group of at least nine member states. But nine countries can first leave the EU individually and then join the Union as a joint federation on the basis of Article 20. Just as the federal states of Belgium, Austria and Germany are members of the EU. In that way, that federation can, step by step, convince other Member States of the need to join it.

Why do we still not have a federal Europe?

The federation of the United States of America came into being in the period from 1787 to 1789. It started with thirteen states, but slowly grew to fifty. It proved to be an example for other parts of the world. Today, there are twenty-seven federal states that together accommodate just over 42% of the world's population.

Since 1800, civil movements have often tried to federalize Europe. They have always failed. Until the Second World War, these failures were mainly due to the inability of these movements to sufficiently convince political leaders of European countries of the usefulness and necessity of establishing a federal Europe. But immediately after WWII, between 1945 and 1950, there was overwhelming support for such federalisation. Even in politics.

In 1950, however, a serious methodological error was made. In his famous Schuman Declaration of 9 May, the French foreign minister, Robert Schuman, strongly emphasized the need for a federal Europe, but also said that this would have to be done by means of a treaty. A very serious mistake that was carried out a year later with the Treaty of the European Coal and Steel Community of six countries, including Germany. Why Germany agreed to a treaty for the ECSC is remarkable since it had itself adopted a federal constitution in 1949.

Why was Schuman - incidentally advised by Jean Monnet, who should have known better because of his stay in the USA - wrong to say that a federal Europe had to rest on a treaty? As is the case with most politicians, Schuman did not understand constitutional law. To the words "public federation" belong the word "state". To the word "state" belongs the word "democracy". With the word "democracy" goes the word "constitution". The word "constitution" is accompanied by the words "representation of the people through elections, political accountability to the people's representatives, trias politica and checks and balances", and to these words belong the words "federal body for the protection of common interests" and "sovereignty of Member States".

What started in 1951 with the ECSC and developed into the European Union is not a federation, but a so-called intergovernmental operating system: an accumulation of countries that only cooperate with each other as long as everything goes well. As soon as 'Brussels' - because of the EU's hierarchy of top-down measures - encroaches on the sovereignty of Member States, they refuse to accept those measures and threaten to veto them in the European Council. Nowhere in the world is there such a thing as the unelected, undemocratic, and illegal European Council. But it does hold the final power of EU decision-making. Until the EU collapses under the burden of its systemic failures.

What is the current situation?

It is hard to deny that Germany's federal form of government has been instrumental in the rapid reconstruction and the 'Wirtschaftswunder' led by the Minister of Economic Affairs, Ludwig Erhard. It made Germany the strongest Member State in the European Union. It is also hard to deny that the internally conflictual and geopolitically meaningless European Union can be traced back to its flawed legal

basis of a constantly changing system of treaties. That made the EU a brain-dead organisation. Only its heart still beats.

Everything now points to a collapse of the EU. It is meaningless in a geopolitical context and runs internally - because of the many systemic errors of the intergovernmental system - from one conflict to another. A small trigger can cause the EU to implode. The conflict of jurisdiction between the European Court of Justice and the Federal Constitutional Court of Germany may well turn into a major conflict. With a fatal outcome for the EU.

In the meantime, federalist movements are trying to gather courage and strength for a peaceful revolution: to exchange the European Union for a federation under the name of United States of Europe. The chances that the EU itself would be willing and able to realise this paradigm shift are nil. The EU insists on its treaty base regardless of the consequences and in the knowledge that it is supported in this by the Union of European Federalists (UEF). Since its foundation in 1946, the UEF has opted for constitutional federalisation through changing the treaties. As long as the EU remains in the process of changing treaties, the UEF has no reason to complain that there is still no federal Europe. But the view that you can make a federal constitution out of treaty changes is constitutionally impossible. That is trying to turn lead into gold. The product of the 'Convention of the future of Europe' (2001-2003) under the leadership of Valéry Giscard d'Estaing may have been named 'Constitutional Treaty', but that is the same as a pregnant man. That does not exist.

That Convention, by the way, was expressly intended to make Europe a federation. But it failed because of (a) extremely poor organisation and (b) by having the outcome - the 'Constitutional Treaty' - tested by intergovernmental consultation and (c) by placing the final decision in the hands of the European Council. It could not be more wrong. Result: the intergovernmental Lisbon Treaty (2007/2009), as far away from a federal constitution as the distance between Earth and Mars.

Of course, people in 'Brussels' realise that twenty years after the Giscard d'Estaing Convention, the future of the EU is at stake again, and on 9 May 2021 they are launching the Conference on the Future of the European Union (postponed due to corona). In the design of this conference, any reference to federalisation has been deleted. The aim is to strengthen the treaty system with new and amended treaties. The failure is predictable. Also, because twelve Member States have already indicated that they will not accept new treaties and new measures. Yet the UEF supports this conference.

What next?

The Federal Alliance of European Federalists (FAEF) - founded in June 2020 - is committed to the creation of the United States of Europe. With two strategies: 'federating the federalists' and 'educating the federalists'. 'Federating' is necessary to increase the degree of organisation of federalist movements and thus the possibility of acquiring authority and influence. 'Educating' is necessary because the vast majority of people who call themselves federalists do not know the standards of federal statehood.

The FAEF is therefore not a federalist movement but a federation of federalist and pro-European movements. It has no individual members, but only organisations as members. Compare it with the federal Deutscher Fussball-Bund (DFB). Its members are Bayern Munich, Borussia Dortmund, FC Schalke 04, VfB Stuttgart, and so on. The FAEF is seeking members such as Volt, Diem25, European Federalist Party, Pulse of Europe, Federalist Connection, piùEuropa, Europaenmarcha, European Sardines Group, Our country? Europe, Young European Federalists, Union of European Federalists, and many others. As is the case with the private federal system of football, each member organisation remains independent and sovereign.

The current fragmentation of federal movements has no power. It is even incomprehensible that organisations with federalist motives have never founded a federation of federal movements since 1800. The UEF is not a federation either. Organizationally, it is a decentralized unitary movement consisting of three layers, UEF-Europe, UEF-countries, and UEF-cities. Each layer is UEF, and each layer has individual members. With UEF's support for the aforementioned Conference on the Future of the European Union we even have to doubt that UEF is a federal movement. That Conference is entirely geared - as is evident from its set-up - to the permanent strengthening of the intergovernmental system. No true federal movement can support that.

FAEF's Alternative Citizens' Convention

The FAEF has a federal constitution for Europe. Parallel to the 'Conference on the future of the European Union' we are going to organise an 'Alternative Citizens' Convention' to test our draft of the federal constitution against the insights of federal movements and citizens from all over Europe. The result of that alternative convention - namely an improved draft of our federal constitution for the whole EU, or for at least nine Article 20 countries - we will submit for ratification to the participants of our convention. This is not yet the Citizens' Convention that we envisage for the creation of the United States of Europe. We are using the Alternative Citizens' Convention in parallel with the 'Conference on the future of the European Union' to gain experience. For more information on the way the Federal Alliance of European Federalists thinks and works, I refer you to the 'Constitutional and Institutional Toolkit for Establishing the United States of Europe': <https://www.faeu.eu/request-for-toolkit/>.

I do not know how far we will get with our Alternative Citizens' Convention. We will undoubtedly meet resistance as well as approval. But it is conceivable that it could meet with approval from France if Michel Barnier and not Emmanuel Macron becomes president in the 2022 elections. Barnier wrote in the Flemish magazine De Tijd on 4 August 2012: "Europe will be a Federation or will not be."
