



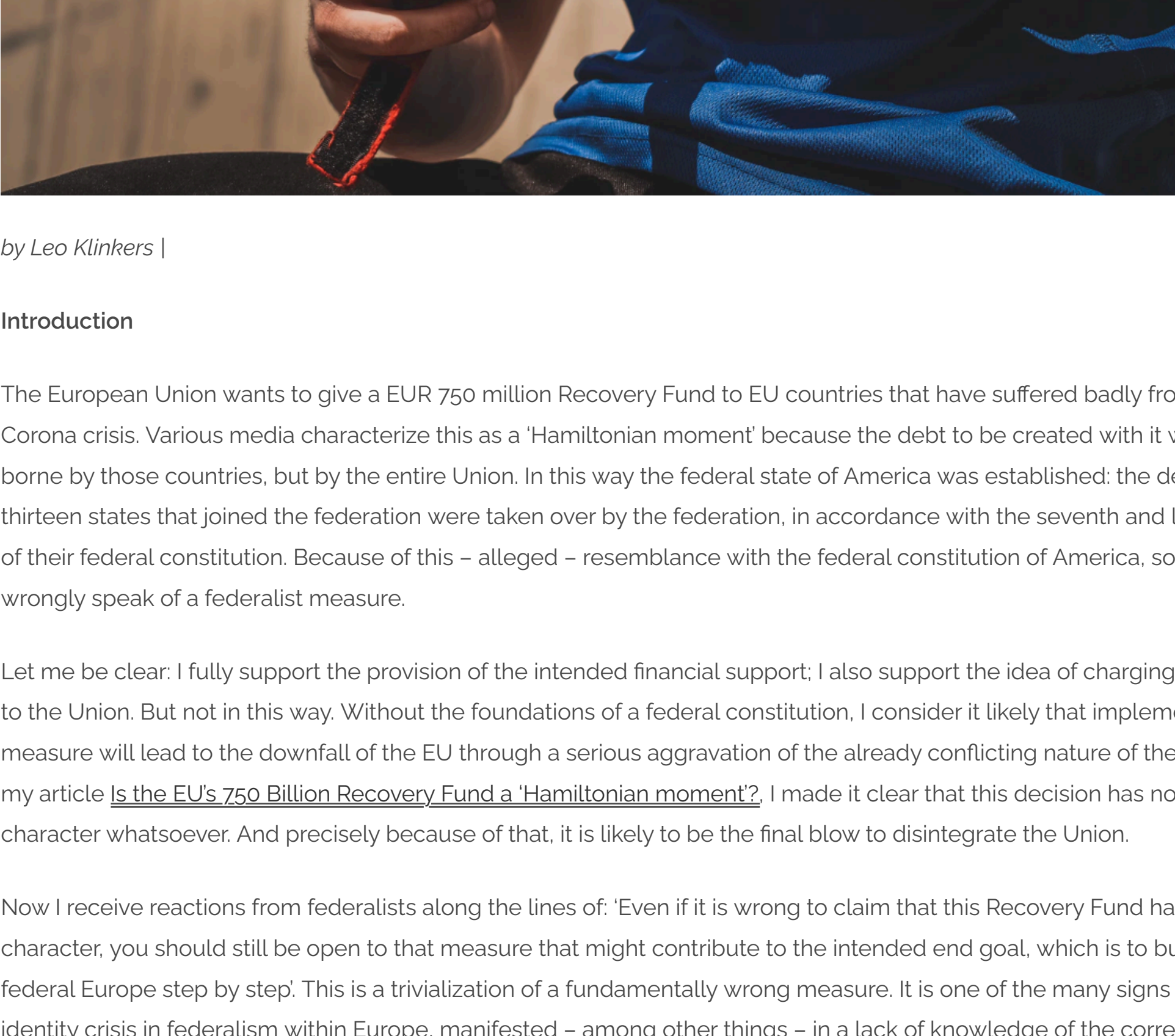
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Fighting the identity crisis of federalism in Europe

10 June 2020 - 0 Comments

A reexamination of basic federalist elements to prevent the EU collapsing



by Leo Klinkers |

Introduction

The European Union wants to give a EUR 750 million Recovery Fund to EU countries that have suffered badly from the Corona crisis. Various media characterize this as a 'Hamiltonian moment' because the debt to be created with it will not be borne by those countries, but by the entire Union. In this way the federal state of America was established: the debts of the thirteen states that joined the federation were taken over by the federation, in accordance with the seventh and last article of their federal constitution. Because of this – alleged – resemblance with the federal constitution of America, some media wrongly speak of a federalist measure.

Let me be clear: I fully support the provision of the intended financial support; I also support the idea of charging this debt to the Union. But not in this way. Without the foundations of a federal constitution, I consider it likely that implementing this measure will lead to the downfall of the EU through a serious aggravation of the already conflicting nature of the Union. In my article [Is the EU's 750 Billion Recovery Fund a 'Hamiltonian moment'?](#) I made it clear that this decision has no federal character whatsoever. And precisely because of that, it is likely to be the final blow to disintegrate the Union.

Now I receive reactions from federalists along the lines of: 'Even if it is wrong to claim that this Recovery Fund has a federal character, you should still be open to that measure that might contribute to the intended end goal, which is to build a federal Europe step by step'. This is a trivialization of a fundamentally wrong measure. It is one of the many signs of an identity crisis in federalism within Europe, manifested – among other things – in a lack of knowledge of the correct application of the conceptual framework of federalism.

It regularly occurs – even in federal circles – that aspects of the EU's intergovernmental operating system are attributed a federalist character. Often along the lines of: 'The EU is a bit of a federation, isn't it?' And now this incorrect view reappears at this Recovery Fund. Behind it lies the reasoning: if you often adapt the treaty with institutions, procedures and measures that 'resemble' something federalist, then a constitution will automatically come into being. In the above-mentioned article I compare this with the assumption of alchemists that one can turn iron into gold.

After two hundred years of amateurish tampering in the pursuit of a federal Europe, we are faced with the task of re-examining the foundations of federalism. Below a start, derived from the federal characteristics of 'the mother' of all federal states, the USA.

The main elements of federalism

In the period 1787-1789, the 55 participants of the Philadelphia Convention designed the world's first federal constitution. They ignored the order of the Confederate Congress to repair the errors of the confederal treaty 'The Articles of Federation'. They trashed the treaty because it had no binding force – on the contrary – and devised a constitution based on the political-philosophical writings of European philosophers. They knew their classics.

And what happened next in Europe? From 1800 onwards, dozens of movements, often even under British leadership, tried to establish a federal Europe. Always failed. Cause: the nation-state anarchy. Why: due to political mismanagement. Consequence: bloody wars. Action after WWII: the Schuman Declaration of May 1950, an urgent call to finally make a federal Europe. Error: Robert Schuman ordered European heads of government to base that federal state on a treaty. Why is that wrong? You cannot base a state on a treaty. The foundation of a state requires a constitution. For Robert Schuman's mistake, directed by Jean Monnet, I refer to

[To err is human but to persevere in error is diabolical. Observations on the Conference on the Future of Europe 2020-2022 in Europe Today.](#)

What makes the American Federation unique?

In 1776, the thirteen English colonies had declared their Declaration of Independence. In 1783 their struggle for freedom ended with the peace treaty of Versailles: England recognised the independence. The thirteen states sought cooperation in a confederate treaty, but that worked like a divisive element. Because they quarrelled more and more among themselves instead of strengthening togetherness – compare the current situation within the European Union – threatened by three powerful countries on their borders (England, France, Russia) James Madison organised the Philadelphia Convention in 1787 with the approval of George Washington.

The Philadelphia Convention faced a major dilemma. Its members' interest was dedicated to only one concept: freedom. Whatever would be conceived in the Convention: never again a legal framework that would allow a king or some other kind of autocrat to subjugate them again. On the other hand, they knew that offering security, commonality and prosperity to the people of the thirteen states could not be organised any other way than through a representation of the people. But that could once again offer the path to an autocrat. So, their work was dominated by only one question: how do we devise a system of representation that would never give the chance to yet another autocrat?

They answered this question with their knowledge of the writings of Aristotle, Jean-Jacques Rousseau and Montesquieu. The first two because of their rich thoughts on popular sovereignty. The third because of his doctrine of the trias politica: divide state power between three branches, the legislative, the executive and the judiciary. But to this they added the thinking of a fourth philosopher. They drew on the Political Method of John Althusius ('Politica methodice digesta, atque exemplis sacris et profanis illustrata, 1603). It was precisely his work that provided the answer to their question: how do we make a representation of the people without creating an autocrat out of it?

Based on the ideas of Aristotle and Rousseau, they thus concluded that having a representation of the people would be indispensable: a parliament. From the failure of the confederal treaty they understood that the basis of that parliament could not be a treaty, but a constitution of, for and by the people. In every possible way they interspersed their legal production with signals that the people were in control. That also explains why the constitution begins with the words 'We the people'...

But why a constitution? Because only a constitution has a fully-fledged system of powers and responsibilities to force administrative decision-makers to be accountable to the representatives of the people. No treaty has a fully-fledged parliament. Fully-fledged in the sense that administrators are fully accountable for their decisions. In a system based on a treaty, administrators are in charge, not the representatives of the people. If there is one. And – as Rousseau had already explained – parliaments always tend towards an elective aristocracy and then further tend towards an oligarchy of administrators. From that point of view, the General Assembly of the United Nations and the European Parliament – because of both their treaty basis – are pathetic displays of the powerlessness of the peoples under the regime of those treaties. After all, within the UN, five non-elected permanent members of the Security Council have absolute oligarchic power on the basis of unanimity. As is the case in the EU system with the oligarchy of the European Council of the unelected twenty-seven heads of government and state, within which Germany and France form another oligarchy of two countries to which the other twenty-five resign. Once again: it is an oligarchy within the EU that decides on the Recovery Fund without giving account to a fully-fledged parliament that is lulled to sleep with the claim that the Fund is for a good cause and even resembles a federalist measure: 'You can't be against that, can you?'

Based on Montesquieu's thinking, the Convention decided to give the trias politica a foundation in the form of unbreakable checks and balances. After all, it is one thing to say that the three powers should not enter each other's territory with the danger that one power will usurp that of the other. But ensuring that they actually remain separate is something else entirely. To that end, they designed an ingenious system of checks and balances. Where it was inevitable that one of the three powers would have to move into the territory of another power, that other power was given powers to push that one back into its own territory.

By the way, The checks and balances of the U.S. Federal Constitution are going to prove that President Trump is only busy organizing his own 'Waterloo'.

The finishing touch was given to the Convention by Althusius. Its building blocks, of what later became known as federalism, have a fundamentally bottom-up character. So, building a state from the basis of society. Exactly what the Convention was looking for. With the publication of his Political Method Althusius broke with the established doctrine that the King or Prince was the Sovereign. Sovereignty at that time coincided with the person of the Ruler. Althusius explained that sovereignty rested with the people, but that it could be shared with a representation of the people. And in such a way that an autocrat had no chance of taking power.

This ended the period in which the Sovereign embodied sovereignty in himself. But it took a few centuries before the Philadelphia Convention took the unique step of enshrining this philosopher's thoughts in binding law. With a preamble plus seven articles, the Convention codified something that had never been enshrined in law before, namely a federal state, based on a constitution, with an unshakeable trias politica and the also unshakeable adage 'all sovereignty rests with the people'.

It would be going too far to explain all this in detail. It suffices to mention the formula of a federal state. It reads: 'One recognizes a federation by the vertical separation of powers, leading to shared sovereignty between member states and a federal body. It is not only the opponents of federal state formation who should make this knowledge their own. It also and especially applies to federalists.

By the way, this formula implies that a federal constitution should not include a specific article on subsidiarity. Indeed, the federal status (due to the vertical separation of powers) coincides entirely with the essence of subsidiarity.

Because all attempts to federalize Europe through political input have failed and Europe has embarked on the path of intergovernmental governance on the basis of Schuman's mistake, European federalists have completely lost their way. They are amid a serious identity crisis. Because the view of the conceptual framework has eroded, but the need for a united federal Europe is growing by the day, dozens of pro-European and federal movements are shooting up. But they walk around like headless chickens, not knowing where to go. Let alone being aware of the historical value of their existence. A value in the sense of leading a revolution in the way Europe is governed. The intergovernmental operating system will have to make way for a federal form of state. But this will not succeed with the current proliferation of federal and pro-European movements.

Why not? They don't read, they don't learn. They lose themselves in endless series of posts on social media. They are sincere, indeed, but (a) they don't know what they're talking about and (b) they're not able to organize themselves in a federal context. It is a sour aspect of this identity crisis that after the Second World War a federation for federal movements was only founded in 2018: the Federal Alliance of European Federalists (FAEF). By means of 'federating the federalists' and 'educating the federalists', this federation aims (a) to massify for that one goal, after two hundred years, to finally establish a federal Europe, and (b) to teach federalists to read and learn to master the idiom of federalism.

Let me finish this part with 'It don't mean a federal state, if it ain't got a constitutional slate' (free after Duke Ellington's 'It don't mean a thing, if it ain't got that swing').

Can we make federations within the European Union?

I see only one way to fight the disintegration of the European Union, namely by fighting the identity crisis of federalism in Europe. How can we do that? By focusing heavily on 'federating the federalists' and 'educating the federalists' as the FAEF's two strategic actions with the goal of finally making a federal Europe. Only a federal Europe connects, while preserving the sovereignty of the member states. Only federalizing Europe can save Europe.

It will not succeed – like the Philadelphia Convention did – to decide in a few weeks to replace the perverse Lisbon Treaty with a decent federal constitution of the United States of Europe. What can be done, however, is to create several federations within the European Union, which will then be – as a federation – members of the intergovernmental EU, just like the federal states Germany, Belgium and Austria.

There are two types of federations: intra-state, for example Germany, Belgium and Austria. Or inter-state, for example the USA, Canada, Australia, India, et cetera. Although it is obvious to federalize countries such as Italy, Spain and England internally, I would now like to draw attention to the second form: the inter-state federation.

It is not really difficult, for example, to elevate the regional union of the Benelux to the level of a federal union. The constitutions of these three countries – as well as Article 350 of the Lisbon Treaty – do not prevent this. See Paper 13 of the European Federalist Papers:

<http://www.europeanfederalistpapers.eu/phocadownload/European%20Federalist%20Papers.pdf>

Furthermore, with the use of Article 20 of one of the sub-treaties of the Lisbon Treaty, we can make an enhanced form of cooperation of at least nine EU Member States in the form of a federation. In view of Russia's threat on the EU's eastern border, a federation of nine countries in the east – partly to strengthen NATO – would be entirely reasonable. However, the nine Member States that were severely affected by the Corona crisis would also and above all be eligible. For that reason, I repeat that the Recovery Fund of EUR 750 million earmarked for those countries can only go ahead if those nine countries first close a federation. The Federal Alliance of European Federalists has all the knowledge to help them do so.

But it should be done in a much more principled way. Which countries are primarily responsible for preventing the collapse of the EU? Well, those are the six countries that have laid the foundations of the intergovernmental operating system that is now pushing the Union to the abyss: Germany, France, Italy, Belgium, Luxembourg and the Netherlands, based on the error of the Schuman Declaration of May 1950 – with the establishment of the European Coal and Steel Community (1951).

I may assume that the political leaders in these six countries see that the EU is falling apart. The question now is: how can we make it clear to them that this serious matter is fundamentally caused by their mistake in 1951 – based on Schuman's mistake in 1950? And then the second question: how can we make it clear to them that they can and must correct this mistake by making it possible for the peoples of EU member states to take the lead in processes of federalizing groups of EU member states, ultimately leading to a federal Europe? Should we address the leaders of those countries for this? No, then we would make the same mistake that has led to the failure of every attempt to federalize Europe for two hundred years. Administrators can't do this. Should we hold the representatives of those six countries to account for this? They are scared out of their wits because in these six democracies, the representatives of the people have become imitators of the executive: these parliaments have become administrative bodies, not representatives of the people. Perhaps we should approach for this the Members of the European Parliament? How much sense would it make knowing that the federalists in the EP are deeply embedded in the intergovernmental thinking that you can make a federal constitution by amending the treaty? A way of thinking that disappeared into the wastebasket within two weeks in 1787. If there is one thing that we should have learned from the past two hundred years it is the fact that any attempt to federalize Europe through political channels failed, time and again.

Only one way remains open: to inform and activate the people themselves as an engine that could lead to a few federations within the EU, and then to make the entire EU federal. With the strategy of federating and educating the federalists – and with the FAEF scenario of a true Citizens' Convention plus the draft of a decent federal constitution for Europe – we are going to activate that engine.

I want to underline the need for a federal and thus unifying Europe by pointing out that in 2023 it will be one hundred years since Hitler placed his failed Bierkellerputch. But when ten years later, in 1933, the Reichstag was on fire, as Chancellor, he gained total power through an emergency ordinance from President von Hindenburg under Article 48 of the Weimar Constitution. With this ordinance Hitler was able to suspend all civil rights. The rest is history. If the current chaotic relations within the European Union persist and multiply, the adage that the path of a dictator is paved by bad governance will once again apply. The path of wrong decisions is the path to ruin: in this case, the revival of nation-state anarchy and thus wars again.

I am not a communist, but I understand that Karl Marx has made important statements. For example, professor emeritus Glen T. Martin, renowned world federalist, quotes in a recent essay 'Revolutionary Solidarity and Liberation for the 21st Century: Our Debt to Karl Marx and Che Guevara' the following statement by Karl Marx:

"Science must not be a selfish pleasure. Those who have the good fortune to be able to devote themselves to scientific pursuits must be the first to place their knowledge at the service of humanity" (in Fromm 1992, 222-22).

This is about integrity. Having knowledge entails the moral integrity to put it at the service of humanity. But it also obliges scientific integrity: learn the conceptual framework of federalism and do not tamper with it. The [FAEF School on Federalism](#) can be helpful in this: nothing is more practical than a good theory.

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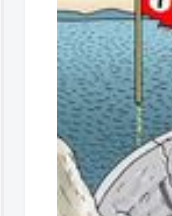
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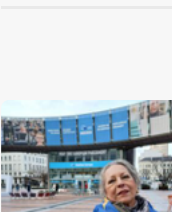
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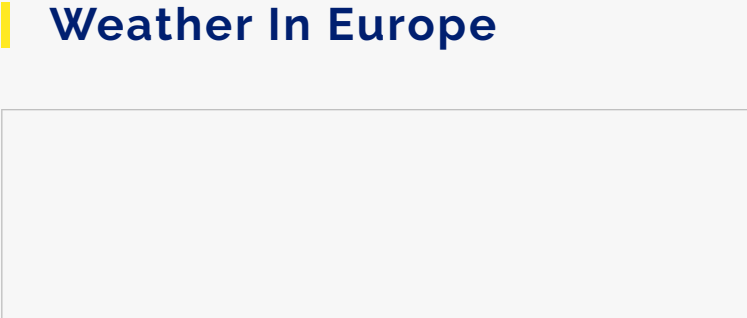
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