



# federal union now

Andrew Duff

**THE FEDERAL TRUST**  
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enlightening the debate on good governance

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**Andrew Duff**

**FEDERAL TRUST**

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ISBN 978-1-903403-90-7

The Federal Trust is a Registered Charity No. 272241

31 Jewry Street  
London EC3N 2EY  
United Kingdom

Company Limited by Guarantee No.1269848

Printed in the European Union by John Drewe Graphic Design,  
26 Aldeburgh Way, Chelmsford, CM1 7PD

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## ***Acknowledgment***

Warm thanks are due to the many people who have provoked me into writing this tract. Most of them know who they are.

Brendan Donnelly and his team at the Federal Trust have swung into action to produce this publication with all the speed which a polemic on the present febrile state of the Union requires.

We are grateful for the support and collaboration of the Union of European Federalists (UEF).

Responsibility for the content, however, lies with its author. I hope this pamphlet will contribute to enriching the debate about the economic governance and political legitimacy of the European Union. Comments and queries are welcome to me via: [andrew.duff@europarl.europa.eu](mailto:andrew.duff@europarl.europa.eu).

*Andrew Duff  
Cambridge  
August 2011*

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He was a member of the Convention on the Charter of Fundamental Rights and of the constitutional Convention on the Future of Europe. He was one of Parliament's representatives at the drafting of the Treaty of Lisbon, and is now its rapporteur on electoral reform. He is a member of the European Council on Foreign Relations.

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*Post-national democracy and the reform of the European Parliament* (2010)

*Making the Difference - Essays in honour of Shirley Williams* (2010)

*Saving the European Union - The Logic of the Lisbon Treaty* (2009)

*The Struggle for Europe's Constitution* (2005)

# FEDERAL UNION NOW

Andrew Duff

“What then is federalism? Its essence consists, I think, in this: that in a federal system, the functions of government are divided in such a way that the relationship between the legislature which has authority over the whole territory and those legislatures which have authority over parts of the territory is not the relationship of superior to subordinates ... but is the relationship of co-ordinate partners in the governmental process”.

Kenneth C. Wheare *What Federal Government Is* (1943)

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Europe is in trouble. Its individual states are too weak to get out of trouble by themselves and on their own account. The European Union, which has been Europe’s preferred system of collective government since 1950, is too weak to resolve the large complex of common problems which now besets its states and citizens.

Given Europe’s history, the European Union has been remarkably successful at promoting justice, harmony and prosperity. Yet it was always unwise to believe that the European Union was condemned to succeed. The EU was and still is experimental: disintegration is always possible, and never more so than today when Europeans find themselves in the middle of a grave financial and economic crisis and are seemingly unable to complete the integration process upon which they have embarked.

Reactions to the present difficulties are mixed. While enemies of the Union, at home and abroad, may be gratified, too many of those who wish Europe well have lost their way. Incisive action has not been forthcoming either at the Union or state level. The governments of the member states of the Union have been slow to realise they are no longer in control of events. Their lacklustre

performance has not been compensated for by an impressive show of unity of purpose on behalf of the EU institutions.

The one distinguishing feature of this crisis is the almost universal call for more and better government.

People want somebody to do something before the financial collapse leads to an even deeper recession and its almost inevitable consequence, social disorder and political extremism. The public also ask, quite reasonably, to know who's in charge. Who is responsible for the mess, who is best placed to lead Europe out of the crisis and to see that it never happens again?

This pamphlet argues that only a decisive move to European federal government can provide decent answers to these questions. Others will disagree, and they must make their own case for less radical solutions. Here I take the categorical view that the EU has stumbled because it has not followed with sufficient vigour or clarity the federalist logic of its foundation.

### ***Some history***

In and after the Second World War many leading thinkers in the United Kingdom, like Wheare cited above, were forthright in spelling out what they meant by European federal union. Their views were informed, of course, by the experience of how Great Britain ruled and then managed retreat from its global Empire. Winston Churchill promoted the idea of a federal Europe, calling as early as 1946 for 'a kind of United States of Europe'. In 1948 Churchill spoke to a Congress of Europe in The Hague over which he presided:

'We must proclaim the mission and design of a United Europe whose moral conception will win the respect and gratitude of mankind, and whose physical strength will be such that none will dare molest her tranquil sway ..... I hope to see a Europe where men and women of every country will think of being European as of belonging to their native land, and wherever they go in this wide domain will truly feel "Here I am at home".'

Both Jean Monnet and Altiero Spinelli, the two pre-eminent founding fathers of the European Community, were much influenced by this British intellectual contribution which being based on practical experience was so useful in developing the ideas which led to the Treaties of Paris (1951) and Rome (1957). When Monnet persuaded French foreign minister Robert Schuman to launch the integration of the coal and steel industries of France and Germany, both men were entirely explicit about their longer term aims. The Schuman Plan was nothing less than 'a first step in the federation of Europe'.

'In this way there will be realised simply and speedily that fusion of interests which is indispensable to the establishment of a common economic system; it may be the leaven from which may grow a wider and deeper community between countries long opposed to one another by bloody divisions. By pooling basic production and by instituting a new higher authority, whose decisions will bind France, Germany, and other member countries, this proposal will lead to the realisation of the first concrete foundation of a European federation indispensable to the preservation of peace.'

Monnet hoped that the British would provide leadership in a federal Europe. But he was to be disappointed, first by the British themselves and then by General de Gaulle, who vetoed UK accession to the European Economic Community. De Gaulle also pitched himself against what had become known as the 'Community method' whose essence is the pooling of national sovereignty in certain defined respects and the empowerment of supranational institutions to advance and give effect to joint solutions to shared problems. But the Community method outlived De Gaulle and was eventually reinforced in the European Single Act (1986), which initiated the single market, and in the Treaty of Maastricht (1992), which laid the foundations for the single currency and changed the name from Community to Union. By that stage, too, other distinctly federal steps had been taken, notably the introduction of direct elections by universal suffrage to the

European Parliament, and the steady development of the concept of the primacy and direct effect of EU law.

The size of the Union continued to enlarge from the original six countries. Croatia, due to join in 2013, will be the twenty-eighth member state, bringing the total EU population to over 506 million with a GDP of €12.5 trillion. The Union's system of governance has evolved, not least through the experiment of the constitutional Convention on the Future of Europe which sat in 2002-03, although most national governments showed a continuing predilection for methods which were more confederal than federal. Tension between the Community method on the one hand and intergovernmental cooperation on the other continues to render the Union less effective than it might and should otherwise be. Progress in forging a common foreign and security policy has been particularly slow, despite the provocative challenges thrown up by international events, for example in the Balkans and Middle East. None of the Union's founding fathers, and none of us today, can be more than partly satisfied in what has been achieved. As the EU's opponents are eager to attest, the Union we have built so far already has many federal characteristics. In my view, however, the weakness of the European Union in this present crisis is attributable in large measure to the lack of a thoroughly federal character. Only a Union which is decisively more federal in its structures will work convincingly in the interests of European people and of Europe's interests in the wider world.

### ***Defining federalism***

So what is federalism? And, indeed, what is it not? It is not the ogre of the centralised superstate which so fixates those 'eurosceptic' sovereignists who cling to the nation state (and now pepper the European Parliament). Nor has true federalism anything to do with the so-called federations of the former communist bloc which were sustained only by military force.

The European federal union of the future will be a complex multi-level parliamentary democracy. No one legislature will be

subordinate to another but 'co-ordinate partners in the governmental process'. The delimitation of competences between the Union and its states along with the powers of the institutions will be set out in a written constitution which will have legal supremacy. The EU will not be able to interfere in the exercise of state powers, and vice versa. A more federal European Union will not have and will not seek to have the power of general competence to do anything it wants. Arbitration of disputes among states or between states and the EU institutions will be the job of a supreme court. No amendment of the constitution will be possible by the unilateral decision of the states or the EU but only by joint agreement. Each level of government will have unfettered financial autonomy.

If federalism is not centralisation, nor is it decentralisation. A more federal union will enjoy only the competences conferred on it in the constitution by its member states, some of which will be autonomous or exclusive to the federal level. In areas of non-exclusive competences – that is, competences shared between the EU and its states – all parties will respect the federalist principle of subsidiarity whereby 'the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level' (Article 5(3) Treaty on European Union). In other words, decisions will be taken at the most rational level but as close as possible to the local communities they affect.

It is obvious that the new European federal constitution will be based largely on the existing EU treaties, as most recently revised by the Treaty of Lisbon (2007). The federal legislature is bicameral and comprises the Council of Ministers, representing the states, and the European Parliament, representing the citizens. The supreme court will be a more powerful version of the European Court of Justice in Luxembourg. The more difficult construction is that of the federal government whose powers are at present shared somewhat uncomfortably between the European

Commission, headed by José Manuel Barroso, and the European Council of heads of government, chaired by Herman Van Rompuy.

The precise nature of the substantive changes which will be needed to turn the Lisbon treaty into a federal constitution requires careful drafting and the formation of a large consensus through the deliberations of a new Convention. Nobody should underplay the significance of the shift from being a pre-federal treaty-based international organisation into a fully fledged constitutional federation. It was that qualitative step in integration which was tried so ambivalently in the Constitutional Treaty (2004) and then abandoned in 2005 in the teeth of public opposition in only two states (France and the Netherlands). The EU must at all costs avoid making another half-hearted stab at reaching a constitutional settlement on a federal basis. The time has come to drop the nervous obscurantism which marked the protracted controversies surrounding the drafting and ratification of the Treaty of Lisbon.

### ***Beyond Lisbon***

Yet Lisbon is a good starting point as well as an inevitable one. The Lisbon treaty confers more authority on the European Union, whose institutions now enjoy greater powers and new instruments. The European Council of heads of government becomes grounded as a formal institution of the Union, with its own rules of procedure. President Van Rompuy's job is to oblige each prime minister to accept individual responsibility for the economic policy and foreign affairs decisions they take collectively at meetings of the European Council. The Community method, whereby the European Commission initiates policy on the basis of the common interest of all the states, is extended into the areas of justice and interior affairs. Important changes have been made in common foreign, security and defence policy. The Council of Ministers of Foreign Affairs is chaired by the new High Representative for foreign and security policy and Vice-President of the Commission, Catherine Ashton; and she runs a new unified diplomatic service made up of civil servants from the Commission,

the states and the Council secretariat. The European Parliament extends its powers in terms of scrutiny, international treaties, constitutional affairs, law making and the budget. The Council of Ministers has to meet in public, like the Parliament, when it passes law. The Charter of Fundamental Rights becomes binding. Much else happens besides as a result of the new treaty to advance the cause of good governance of the European polity.

The renegotiation of the Lisbon treaty required to take the decisive next step to federal union will be complex not least because the current economic crisis compels the Union to rethink the arrangements for economic and monetary union which, first delivered at Maastricht, were left alone by Lisbon. Yet even if economic conditions had been serene, the EU would still have had to face up to the big challenge of renegotiating its financial system and budgetary settlement. From 2014 a new multi-annual financial framework (MFF) is supposed to be in place. This medium term plan establishes the parameters inside which the annual budgetary round between Council and Parliament takes place. Negotiations will be difficult. The present system is opaque and exhausted. Lisbon has enlarged the scope of EU spending into important fresh areas, such as renewable energy, space, immigration and foreign policy. So, inescapably, the time has come for a radical overhaul of the whole financial system of the Union.

### ***A federal budget***

At present the size of the EU budget confounds the claim of the sovereignists that the Union is already a federal superstate. In 2011 the Union's budget will be little over €143 billion, or 1 per cent of total EU GNI. This amounts to one fiftieth of the total spending of the 27 member states. Moreover, the EU budget has grown consistently less rapidly than the national budgets of its states.

That said, the EU budget is ripe for reform. It has grown up over the years in a higgledy-piggledy way, an aggregation of numerous but uncoordinated spending programmes, the largest of which is the Common Agricultural Policy. While the Treaty says that the EU should be 'financed wholly from own resources' that is far from the case in practice (Article 311 Treaty on the Functioning of the

European Union). Today 85 per cent of EU spending is financed by direct contributions from national treasuries, on either a VAT or a GNI basis. This means that national governments have an overriding vested interest in maximising the net return on their own contribution. A large number of complicated and untransparent corrective rebates for individual states has had to be introduced to reduce quarrelling over what is fair and unfair, the famous UK rebate being the largest. Consequently, finance ministers pay scant regard for the principles which should shape a federal budget – cohesion, solidarity, added value, cost efficiency, economies of scale. Another problem is that, whereas the Treaty says that all revenue and expenditure should be included in the EU budget, a poor practice has grown up of putting some important items off limits from the financial framework – such as, the European Development Fund (which is a critical instrument of the Union’s overseas policy), the Galileo satellite project and the ITER programme on nuclear fusion.

In June 2011 the European Commission published its proposals for the reform of the budget and the own resources system. These go a long way in the right direction. The Commission proposes a modest growth in the total EU spending to 1.11 per cent GNI (estimated as an annual spend of €150 billion in 2020). It proposes to introduce a financial transactions tax and a new, simpler and more direct VAT resource for the Union which together will reduce (but not eliminate) the scale of the states’ GNI contributions and the size of corrective rebates. Explaining the principles behind its proposals the Commission says:

‘The EU budget is not like national budgets. The EU does not fund direct healthcare or education. It does not fund the police or defence forces as national budgets do. It has a pan-European, not a national, logic. Its comparatively small size allows it to be concentrated where it delivers high EU added value. The EU budget does not seek to fund interventions that the Member States could finance by themselves. It exists because there are activities that need to be funded to enable the

EU to function or because they can be done more economically and effectively through the collective funding of the EU budget.'

The new approach is designed to increase simplicity and accountability, as well as to tie EU spending to an agreed programme of economic recovery (Europe 2020), and to leverage investment from the private sector, notably through the European Investment Bank (EIB). The Commission proposes to spend more, in particular, on science research and technology development, and to mainstream policies designed to combat climate change. In a reflection of national austerity programmes, the Commission proposes to cut staffing in all EU institutions by 5 per cent over the 2014-2020 period.

The Commission's proposals will now be negotiated with the European Parliament and the Council. Agreement is necessary in good time if the new financial perspective is to take effect in 2014. At the insistence of the states during the Lisbon treaty negotiations, agreement in the Council on both the MFF and the reform of the own resources system has to be by unanimity. Parliament has the power only to give its consent to the final package – although on past experience it can be expected to use that power to open up an effective process of co-decision. MEPs would be wise to recruit their colleagues from national parliaments to engage in the debate, drawing into the process national MPs from spending committees and not merely budgetary control or EU scrutiny committees.

On the present basis, however, the financial reform negotiations are unlikely to go far enough towards producing what is really needed: a larger federal budget dedicated to supporting strategies which have long since outgrown the national state dimension in terms of scale and complexity, namely climate change, financial stability and economic recovery.

How large does a federal budget have to be in order to produce the optimum results? At present, the EU's budget bears little comparison to the importance of the federal budget of the (less populous) USA, which is thirty times the size. As far back as 1977

the influential McDougall Report recommended even a pre-federal EU budget (without defence) of 2.5 per cent of GDP. Today we might look for a doubling of the size of the present budget over a fifteen year period - that is, over three five-year multi-annual financial framework agreements. This would imply a targeted increase in the size of the 2020 annual EU budget to 1.5 per cent GNI from the current 1 per cent.

The federalisation of EU finance will help to save national governments money. Indeed, if the political will is there it is perfectly possible to abolish entirely direct contributions from the state exchequers. We have noted above how the Commission has already proposed two new sources of revenue which would accrue directly to the EU budget, namely, a specific tranche of VAT and a financial transactions tax. One may doubt whether two fiscal instruments are enough to have a broadly neutral effect across the territory of the Union as a whole. Other options may be needed to spread the load, and these may include an EU energy tax, an aviation tax, the proceeds of auctioning greenhouse gas emission allowances, a levy on the carbon content of imports, and a slice of corporation tax reconstructed on a common basis. Fiscal innovation of this sort would not only liberate EU finance from the control of the state governments but also make a direct fiscal and democratic connection between the EU level of government, citizens and business. No future election to the European Parliament would be dull. Arguments between EU-level political parties about how much to tax and where to spend will make MEPs more recognisable political animals.

A proper federal budget of the European Union will serve to reduce fiscal pressure by lowering costs. It will be much more transparent and accountable than the present hybrid system, aiming at a high degree of buoyancy to allow for changing social and economic conditions. EU taxation of certain activities with a European dimension will help to ease distortions in the internal market and re-orientate the budget debate towards true EU added value in accordance with the principle of subsidiarity. A federal budget would also be more obviously 'fair' because there will be no intergovernmental bartering process involved. Instead the concept

of European public goods will be allowed to emerge as the primary objective of the budgetary process. National rebates and the plethora of corrective mechanisms will be immediately reduced and in the long run eliminated.

Enlarging the size of the EU budget on this scale can be achieved by transferring some items of expenditure from the national to the EU level, thereby saving national treasuries money. An analysis is needed in all policy sectors consistent with EU competences to identify items which, according to the principle of subsidiarity, can be more efficiently costed and economically designed by being paid for through the EU budget. The potential economies of scale in avoiding duplication and even contradiction when EU states are left to their own devices, or in correcting market failure by taking action at the EU level, are larger than the European Commission dare admit. The work of the European Defence Agency, for example, is beginning to show what can be achieved by pooling arms procurement.

A more fully integrated approach to solving the problems of Europe's higher education will win many dividends, both intellectual and financial. European R&D will hardly compete in terms of scale with that of the USA, but the salience of research for Europe's cultural and economic development should be properly reflected in the EU budget. Some national R&D programmes deserve to be dropped completely in favour of a pooled European effort, putting an end to costly duplication and leading to better science.

Europe's super-grid for electricity or high-speed railways and tram systems are unlikely to be built, or their cross-border externalities managed, without much larger direct investment from the EU budget.

The EU is the world's largest donor in terms of overseas development aid, but its effect is blunted by incoherence and even rivalry between the EU and its states, as well as by the lack of proper parliamentary accountability. As part of the reforms leading to a proper federal budget for the EU, the financing of the EDF should be normalised.

These are only some of many possible examples of how the federalisation of the Union will bring good practical results in terms of public policy, at home and overseas.

### ***Economic government***

The financial crash in 2007-08, its return in 2011, and the accompanying economic downturn have inevitably changed the context in which the financial reform of the Union will take place. The survival of the euro is at risk. Europe's economy has virtually stopped growing. National exit strategies from various levels of unsustainable public debt are largely uncoordinated. Pensions and savings are slashed. Unemployment rises sharply in the least competitive states and regions. Social unrest spreads, and governments fall. Were the eurozone to fall apart, Europe would inevitably return to the fierce national protectionism and beggar-my-neighbour policies that scarred the 1920s and '30s.

Faced with the length and depth of the crisis, the leadership of the European Union has struggled to reassure either the financial markets or the democratic electorate. Indeed, it has struggled even to avoid cacophony between leading actors within the European Commission, European Council, Ecofin, Eurogroup, European Central Bank and International Monetary Fund. There were at first dangerous signs that President Sarkozy and Chancellor Merkel were preparing to ignore the collective disciplines which follow from their membership of the European Council. The perennial weakness of Italy and the increasing detachment of the UK are at risk of being used as an excuse by Paris and Berlin to form a *directoire*. Such a development would be the antithesis of a federal Europe.

After a bumpy start, therefore, it is good that one or two obvious conclusions have been reached by all. First, unbridled market forces no longer serve the interests of Europe, or indeed, of the West more generally. So the markets must be dealt with by a combination of tough regulation and sound common economic policies, which will include fiscal measures. Second, the present institutional arrangements of the EU established by the Treaty of Maastricht and confirmed by Lisbon are no longer working.

In 2008-09 the EU moved swiftly to strengthen cross-border supervision of the financial sector. Three micro-economic EU supervisors have been set up (in different cities) for the banking, insurance and securities markets; a macro-financial surveillance body, the European Systemic Risk Board, chaired by the President of the European Central Bank, will undertake prudential oversight of the whole financial system. But partly because of the over-zealous safeguarding of national sovereignty, the proposed EU structure is disjointed and has proved too weak to boost confidence in Europe's banks and prevent the onset of another financial storm. Even the second round of (improved) stress tests of the banks in 2011 failed to convince the sceptical markets of the robustness of EU level regulation. The better policy – and a federal one – would have been to create one fully integrated EU regulatory authority responsible for systemic risk assessment and for the supervision of transnational banking, securities and insurance.

In September 2010 the Commission put forward a package of six draft laws – colloquially dubbed the 'Six Pack' – which aim to strengthen the economic governance of the Union as a whole and especially of the 17-member eurozone. The Commission proposes to extend the scope of the excessive deficit procedure and to strengthen the Stability and Growth Pact, revising procedures at both the preventive and corrective stage of the process. A scoreboard of indicators will be set up and budgetary surveillance enhanced. Sanctions will be applied in cases of persistent breaches of agreed macro-economic discipline, and fines levied in cases of fraud. In the legislative negotiations on the Six Pack within and between the Parliament and Council, a number of issues have proven particularly controversial. These concern the application of symmetry at all phases of the economic cycle (in other words, obliging states in surplus to pay back debt); the powers that should be given to the Commission to intervene in times of risk to the stability of the euro; the issuance of eurobonds to cover sovereign debt; the legal force of the European semester (in which budgets are submitted to peer review); the role of the European Parliament in holding national finance ministers to account; the level of fines and their appropriation; and, above all, the decision-making

procedure in the Council where the Commission proposes a preventive measure for a particular state. This last turns on the question of coercion: whether a qualified majority of the Council will need to be constructed only in order to block or, by contrast, actually to approve, the proposed measure. Needless to add (and much encouraged by the President of the ECB, Jean-Claude Trichet), the Parliament has been taking a maximalist position against the minimalist position of the Council. Can the rating agencies be blamed for harbouring suspicions against the motivation of any government (in this case, France) which sought to avoid a certain automaticity in the application of disciplinary measures? One recalls that it was France and Germany, not Ireland or Portugal, which first broke the conditions of the original Stability and Growth Pact in 2002-03 and caused them to be weakened.

In parallel to this critical legislative work, the European Council has been fire-fighting in order to save Greece, Ireland, Portugal, Cyprus, Spain and Italy from going bust. The heads of government keep protesting their willingness to 'do whatever it takes' to save the euro. A series of (steadily improving) bail-out decisions from 10 May 2010 to 21 July 2011 have struggled to convince the markets that the EU really has the capacity and competence to save the euro and to install firm economic government backed up by a credible budgetary policy at the EU level. The IMF warns:

'National policy makers in the euro area need to move away from the illusion that a national approach to fiscal, financial and structural issues, preserves sovereignty in a monetary union. Instead they should focus on the fact that interconnectedness requires more common thinking from an area wide perspective.'

Even Mr Barroso vents his frustration at the 'undisciplined communication and the complexity and incompleteness' of the 21 July package. The transitional European Financial Stability Fund and its successor the permanent European Stability Mechanism are in the course of being set up, on purpose, as intergovernmental and not Union mechanisms according to the Community method.

This means that every legal decision has to be ratified by all national parliaments and every executive decision – actually to deploy the funds for their intended purpose – has to be agreed unanimously by every state government. Rapid and incisive crisis management this is not.

So more needs to be done, and soon, including the enlargement of the EFSF to meet all likely contingencies. It is at least encouraging that the European Council has invited Messrs Barroso, Juncker and Van Rompuy to come up with concrete proposals by October 2011 'to improve working methods and enhance crisis management in the euro area'. Essential is the transformation of the intergovernmental EFSF/ESM into a genuine European Monetary Fund of a federal type, brought fully within the ambit of the EU Treaties, to verify sound national budgetary policies and to facilitate transfers to help the structural adjustment of the weaker countries. Debt restructuring will be a precondition for access to the ESM.

The latest review must also question whether the Stability and Growth Pact, even in its refurbished and more coercive form, can really continue in the long term as a substitute for a federal budget and a federal economic government. The evident danger of continuing through a prolonged financial crisis with the mere coordination by national governments of their economic and fiscal policies is that the coordination will have to be drawn ever tighter. There is a real risk of excessive centralisation of national policies along German lines with punitive consequences for the recovery of the weaker eurozone economies. The euro was not meant to turn those countries which tried it into German satellites. The fact is that mere economic policy coordination is not a federal solution and will hardly generate the necessarily tough and inevitably unpopular measures which the deteriorating situation requires. Nor will over-centralised intergovernmentalism enjoy a democratic mandate.

### ***Fiscal union***

So what should a more federal European economic government be like? It would have much greater capacity to act than the

present European Commission, and it would be more accountable to the two chambers of the legislature, Parliament and Council. In style, crispness of leadership and speed of executive acts the Union would deliver more. It would become less technocratic and more democratic. Its international profile would also be much enhanced. The Commission empowered with executive federal authority would be the sole representative of the EU at the IMF, even taking the lead in the reform of the international monetary system.

The key reform would be the decision to mutualise debt, as it was in the history of the USA when, over dinner one evening in 1790 Thomas Jefferson, James Madison and Alexander Hamilton agreed to share collateral and accept a joint guarantee for the debt of the thirteen states. Likewise today, the introduction of a sovereign eurobond market would consolidate the eurozone by equalising borrowing costs for all while producing a material incentive for the weaker economies to bring their debts and deficits into line with the Treaty convergence criteria. The operation of the eurobond market could be overseen by an EU fiscal institute similar to the European Monetary Institute which pre-figured the ECB. As with the earlier programmed delivery of monetary union, a step by step approach towards fiscal union would serve to build up confidence, especially among German taxpayers. Germany would enjoy the largest weighted vote in the new fiscal policy body.

In addition, the issuance by the European Investment Bank of project bonds (perhaps as much as €100 billion of them) would have a meaningful impact on public and private investment. There are plenty of projects on which to embark if Europe is to be made fit for the digital and low carbon age. The federal EU will surely wish to reverse Europe's long-term decline in public investment from 3.5 per cent GDP in 1980 to 2.5 per cent in 2010.

So a federal EU will have acquired a much larger capacity to lend and borrow money, to raise loans and issue bonds to invest in European public goods. This will require the creation of an EU treasury with an EU treasury secretary doubling as the

Commission Vice-President for Economic and Financial Affairs and chairing Ecofin (along the lines of the High Representative for foreign affairs). He or she will run a fiscal policy aimed at supporting green growth. We have already proposed the introduction for revenue purposes of an EU carbon tax, and, for competitive purposes, the imposition of a duty on the carbon content of imported goods: a related objective is the better regulation of the EU's carbon emission trading scheme, including the setting of a floor price. Another early step to boost competitiveness will be the harmonisation of the structure of corporation tax, while leaving to states discretion as to rates.

A strengthened Commission would be enabled to turn the (unfortunately named) 'Euro Plus Pact' recovery programme into a real action plan, including legislative elements. These might include a concerted approach to pension reform – raising retirement ages together – which would reduce the burden on the next generation of taxpayers across Europe.

The intention of the European Commission to tackle low employment and poor productivity can be applauded. Its targets are right. In meeting them, a federal economic government will be able to dispense with the unsatisfactory 'open method of coordination' which relies on peer pressure and benchmarking between national governments to deliver national recovery plans. The newly-empowered Commission will be able to insist on evidence-based analysis of national economies and on open debate about how to remove bureaucratic and political obstacles to enterprise. In return it will be able to drive the new budgetary policy of the EU which we outlined earlier. And it should launch a concerted campaign against tax evasion, corrupt public administration and international organised crime. Lastly, an economic government at the EU level will drive the single market programme to completion, along the lines of the recent report by Mario Monti. A deeper internal market, especially in the energy and services sectors, will make the EU more competitive abroad and enlarge consumer choice at home.

### ***Integrated presidency***

Inevitably, moving to a more federal union raises some issues about the present inter-institutional balance. Are there already too many actors at the top of the EU? In particular, is there really a justification for keeping a semi-permanent President of the European Council? Or would it be better to give the job of chairing the European Council to the President of the Commission (who is already a non-voting member of the body)? What becomes clear is that if Presidents Barroso and Van Rompuy disagree with each other there is a terrible difficulty. On the other hand, if they never disagree with each other, why have two of them? The possibility of an integrated presidency was raised in the first Convention. It needs to be raised again, not least in the interests of simplification.

Whereas all legislative power in the federal union is to be shared equally between Parliament and Council, so executive power in matters of fiscal and economic policy as well as in foreign and security policy will be shared between Council and Commission. Unifying the chairmanship of the three relevant bodies – European Council, Ecofin and Council of Foreign Affairs Ministers – in the persons of the President and two Vice-Presidents of the Commission (respectively, Treasury Secretary and Foreign Minister) would seem eminently sensible: 'co-ordinate partners in the governmental process', indeed.

### ***A new Convention***

At their meeting in mid-August 2011, Angela Merkel and Nicolas Sarkozy agreed that stronger economic government of the eurozone was essential, and that this could be achieved by twice yearly meetings of the eurozone heads of government chaired by Mr Van Rompuy outside the normal Treaty framework. The markets were unmoved: once again, the markets were right. Apart from anything else, the EU's heads of government already meet regularly: since the collapse of Lehman Brothers in September 2008, there have been as many as 19 meetings of the European Council plus three of the eurozone leaders. It would be cheering, instead of more summitry, if the German and French leaders were

minded to accept three things: first, that mere coordination of national policies is not European federal government; second, that substantive improvement to the economic governance of the Union can only be brought about by carefully honed revision of the EU Treaties; and, third, that the best way of revising the Treaties and of enhancing the constitutional character of the Union's basic statute is by the calling of another constitutional Convention.

Long before and ever since the entry into force of the Lisbon treaty many people who should know better have been moaning about their 'treaty fatigue'. One assumes that the economic storm will have blown away such cobwebs, and that few will wish to be identified with chronic exhaustion at the outset of the treaty revision exercise. In any case, a simple majority in the European Council can decide to kick off the process of treaty amendment at the request of the Commission, the Parliament or any single state. MEPs can insist on the holding of a Convention; and will. The Convention will be made up of representatives of the European Council, the Commission, the European Parliament and national parliaments. The task of the Convention will be to prepare by consensus (and in public) a text for unanimous agreement by an Intergovernmental Conference. The Convention would be wise to pay more attention than last time to its own representative capability and to work harder to win wide public comprehension of its work and sympathy for its outcome.

We have already discussed several of the necessary items on the agenda of the Convention. In the field of economic government, these include:

- Introducing reverse QMV for all relevant decisions on economic and monetary union;
- Establishing an EU treasury;
- Creating a European Fiscal Institute and European Monetary Fund;
- Giving a Commission Vice-President responsible for economic and financial affairs the job of chairing the Council of finance ministers (Ecofin).

Moreover, it is inevitable that the necessary reforms to the system of own resources and the Multi-Annual Financial Framework will require a shift in the relevant Council decision-making procedures away from unanimity. Here it may be wise to introduce a super-QMV – for instance, 75 per cent of the states representing at least 85 per cent of the total population of the Union (as against the normal threshold, to be operational in 2014, of 55 per cent of the states representing 65 per cent of the population).

The apparent attachment of Paris and Berlin to neo-Gaullist initiatives which would ignore or, worse, subordinate the EU Treaties will have to be countered directly by the Convention. It would seem necessary, first, to issue an aide-mémoire about the scope and force of the current law. Without going into too much detail here, it is worth recalling that the Treaties establish institutions to ensure the consistency, effectiveness and continuity of EU policies and actions. In particular, member states commit themselves to regarding their economic policies as a matter of common concern and to coordinating them within the Council. For any group of (nine or more) states which wish to reinforce their cooperation in any particular area, the Treaties provide ample provision for them to do so. Secondly, the Convention should upgrade and transform the official Eurogroup (of eurozone state governments) into a formal institution of the Union, bound by and answerable to the normal inter-institutional disciplines.

Among those disciplines is the European Court of Justice, whose job is, quite simply, to 'ensure that in the interpretation and application of the Treaties the law is observed' (Article 19(1) TEU). The European Commission oversees the application of EU law under the control of the Court. The European Parliament also has the power to take to the Court any member state or states, or for that matter the whole European Council, on the 'grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers' (Article 263 TFEU). To go outside the Treaties is not an easy option – even for France and Germany.

### ***Electoral reform***

The installation of EU economic government laying down measures which impinge directly on the citizen as taxpayer accentuates the need to address the problem of the failing popular legitimacy of the EU institutions, and especially that of the European Parliament. Unfortunately, the dismal British experience is the worst, but only one example of how national political parties have long since failed to sustain European integration in an efficient or democratic manner. Until now, the conduct of the elections to the European Parliament has been left entirely to national political parties which treat the European campaign as of secondary importance. The public are rightly disillusioned: overall turnout at the elections has declined from 63 per cent in 1979 to 43 per cent in 2009.

National parties are largely ignorant of or jealous about EU affairs, and if left unchallenged to their own devices, will never be able properly to address in front of the electorate the EU dimension of politics. As the gentlemen in the first US Congress quickly discovered, more federal union demands a shift in party politics, too. In the democratic age, political parties are a vital sinew of government. To be well governed, a more federal union badly requires the stimulus of campaigning parties at the European level to challenge that lazy, narrow comfort zone of national politics. Competition in Europe's emerging single political forum is as necessary as competition in the single market. The vigorous party politics of the European Parliament itself should be projected forth in a wider public arena. Meaningful choices must be put before the electorate during European Parliamentary elections so that voters will know that their vote makes a difference to what will happen next. It must no longer be kept a secret that a shift in the balance of power among MEPs in the chamber changes the direction of key common policies, or the size or shape of the EU budget, or the pace or direction of enlargement. As in the US Congress, the relative number of federalists and nationalists in the European Parliament is a determinant of the speed of

integration and even to the choice of leadership in the next Commission.

Accordingly, the European Parliament is now considering a bold package of electoral reform which deserves its place in the federal union treaty. The key proposal is to introduce for the 2014 elections a new pan-European constituency which would elect 25 MEPs from transnational lists drawn up by the European political parties. Those European parties (like the European People's Party, Socialists, Liberals and Greens) already exist, and have done so for years, but they have never developed into proper campaigning party organisations competing with each other for ideas, policies, votes and seats. Their absence from the fray is the missing link of EU parliamentary democracy.

It is always too easy, for one reason or another, to put off electoral reform. Yet today, when the political legitimacy of the EU is weak is precisely the right time to take whatever action is necessary to strengthen the trust and interaction between governors and governed. Indeed, unless the EU system becomes more responsive to democratic pressure the whole European project is at risk. Surely there is an emerging post-national electorate which, long despairing of the narrow confines of the nation state and traditional politics, deserves to be listened to and which will take to the new system with vitality. As will the media.

In addition, from the pan-European MEPs might well come Mr Barroso's successor as President of the Commission, thereby strengthening the parliamentary character of the Commission.

### ***Constitutional settlement***

Even a preliminary assessment of the strengths and weaknesses of the Lisbon treaty in practice suggests that other matters will be laid before a new Convention.

Catherine Ashton, as High Representative for foreign and security affairs and first Vice-President of the Commission has been handed an improbably difficult job. She badly needs and deserves one or two political deputies who can represent her on missions

abroad and at meetings with the European Parliament. This question was hotly disputed at the time the External Action Service was set up. With the benefit of experience, it is to be hoped that France and the UK will commit themselves both more fully and pragmatically to the forging of common foreign, security and defence policies of the Union.

With the exception of fiscal policy, the Lisbon treaty almost settled the question of the conferral on the Union of all the competences it needs to have to act effectively as a modest federal government. Almost, but not quite. The area in which the EU needs more power to make common policy is energy supply where, at the moment, state governments are left free to determine which energy sources to exploit and how. In an age when energy policy is a key driver of the fight against global warming, when the energy market in Europe remains fractured, and when one state's decisions about nuclear energy can be made without reference to its neighbours, the Convention would be wise to revisit the issue of whether the balance between EU and state competence is right. An important related question concerns the Euratom treaty (1957) on nuclear energy and nuclear safety which, with economic and monetary policy, was left out of the treaty reform process in the last decade. The incorporation of Euratom into the modern and more federal framework of the Union is overdue.

Two further enhancements could be made to the institutional provisions of the Treaties. One concerns the seat of the European Parliament. Without entering into the question of location, the Convention might very well be minded to give to the Parliament itself the right to organise its own work.

The other issue concerns the further enhancement of instruments of direct democracy available to the Union. Lisbon introduced the European Citizens' Initiative whereby one million signatories can appeal to the Commission to propose a new draft law. Another step could be to provide for the possibility of promoting an EU-wide referendum. At the very least, the existence of such a

facility would be a fitting federal counterweight to the over-use of unilateral state referendums.

Lastly, the constitutional settlement of the federal union will have to install two new cardinal features. The first important novelty must concern the Treaties' entry into force provisions. At present, any treaty revision however minor has to be agreed unanimously by all member state governments and ratified by them all according to their own constitutional requirements before the new statute comes into force. This is an improbably high barrier in an EU of twenty-eight and more states.

No other international treaty organisation has imposed upon itself such unyielding constraints. The Council of Europe, International Labour Organisation, World Health Organisation and World Trade Organisation bring their amendments into force once two thirds of the signatory states have ratified them. Even amendments to the United Nations treaty enter into force once two thirds of the states have ratified along with all permanent members of the Security Council. At the IMF the rule is three fifths of the states representing 85 per cent of the weighted votes. As far as federal states are concerned, amendments to the US Constitution apply once ratified by three quarters of the states: indeed the USA would never have moved from its confederal to federal constitution in 1787 if all its thirteen states had had to ratify it. In Germany and Belgium, two thirds of both Houses of Parliament is enough to ratify a constitutional amendment. Canada needs two thirds of the provinces representing more than half the population. Australia needs a simple majority of both states and a simple majority in a referendum. India, that other large multilingual federal polity, needs a simple majority in both Houses if two thirds of Members vote. And so on.

The constitutional amendment rules of the European Union are therefore uniquely rigid, doubly so because they require unanimity at the drafting conference as well as at ratification. One would not presume to alter the first constitutive process. But the lengthy difficulties in bringing the signed Lisbon treaty into force, with costly delays caused by a botched referendum in Ireland and then

by the quirky behaviour of heads of state in the Czech Republic and Poland, should be ample warning in themselves that more flexibility over ratification is badly needed. An appropriate change, therefore, would be to set a high threshold for the entry into force of the revised treaty – say, once four fifths of the states had completed their own national ratification procedures. Other variations on that theme are possible: the installation of a new category of organic law of the Union, also with high thresholds short of unanimity, should also be considered by the new Convention.

The second important constitutional change involves the introduction of a formal associate membership of the Union for either an existing member state which wishes to loosen the ties that bind or for a non-member state which for one reason or another prefers association to full membership.

### ***The British problem***

When, in the 1960s, economic and political circumstances eventually drove the UK to seek membership of the European Communities, the federal question remained a difficult obstacle around which to negotiate. Since joining the European Union in 1973, the UK has been fighting an almost constant rearguard action against the furtherance of the federal project. A conceit, widely shared but mostly false, has grown up among the British that they joined the common market under false pretences only to find themselves hoodwinked into a dastardly federalist plot. Successive treaty negotiations about new competences to be conferred on the Union and new powers to be granted the EU institutions have all struggled to cope with the British obsession with 'red lines'. As a general rule, the British provocation has led to minimalist results which are then heavily disguised in order to evade the ferocious hostility of the British tabloid press. The British phobia with federalism has had some strange unintended consequences - none more so than when the refusal of John Major (prime minister 1990-97) at Maastricht to accept the F-word in the new treaty led inevitably to having to carry on, as we do to this day, with the perpetually centralising (and therefore non-federal) 'ever closer

union of states and peoples'. Recently Sir John summarized the position: 'By choice, and with majority public approval, we are semi-detached members of the EU'.

In the last elections to the European Parliament in Britain (2009), the nationalist UK Independence Party pushed Labour into third place (and the ostensibly pro-European Liberal Democrats into fourth). While the official policy of the Conservative party is to maintain British membership of the EU, many of their MEPs, MPs and activists would prefer to withdraw. Even Labour and the Liberal Democrats are highly reticent about the need for 'more Europe' - and, like Gordon Brown at the treaty signing in Lisbon, tardy in their reaction to EU events. As a general rule, British politicians have not wished to vest the EU with sufficient authority to enable it to govern effectively within its given areas of competence. Nor have they acted as a fluent conduit to connect the supranational politics of the EU with domestic politics at home. From time to time, Tony Blair (prime minister 1997-2007) would speak eloquently about the purpose of European integration as a response to the challenges of globalisation. But while willing the ends, he was ever reluctant to grant the means - and, like his predecessor, refused to accept the term 'on a federal basis' in the preamble to the 2004 Constitutional Treaty. His own presidency of the European Council in 2005 failed to tackle effectively the overhaul of EU finances. (Since his fall, Mr Blair has apparently become a convert to the idea of the direct election of an EU president - a proposal which lies even beyond the horizon of this tract.)

The coalition government of Conservatives and Liberal Democrats has gone one step further than Labour in trying (and failing) to placate nationalist opinion. A new European Union Act (July 2011) has effectively transformed the terms of British EU membership by installing popular referendums on all major EU treaty amendments as well as on 56 more minor changes to Union decision-making procedures. The red lines are now entrenched in the British constitution. As neither the Tories nor the Lib Dems have the slightest idea how any of these referendums can possibly

be won, they have effectively imposed a unilateral British veto against the constitutional evolution of the Union. This imposition is rightly regarded by Britain's European partners as intolerable: treaty change is a normal, regular and in the present critical circumstances vital means of European integration.

The new UK law has made it inevitable that as part of the next major treaty revision something drastic will have to be done to avoid the British veto on constitutional change. Thanks to the Lisbon treaty, there is already a provision that allows an EU state to secede from membership. That same federalist logic should be applied in the new treaty to introduce a new intermediate membership category, in which semi-detached states will enjoy the main elements of economic integration but evade the political vocation and withdraw more or less graciously from the institutional participation which is inherent in full membership. A formal second-class membership must be created for the UK and any other state which wishes to retreat from the federalist imperative which will now drive forward the core member states of the Union.

Fall-out from the British coalition's lamentable EU Act coupled with the need for the monetary union to be complemented by an economic government brings on the inevitable parting of the ways between the EU and the UK. This realisation even seems to have dawned on the current Conservative leadership who, with John Major, appears now to be calling for the eurozone to be turned into a fiscal union. That is, of course, the patriotic thing to do: a failure of the eurozone would ruin Britain too, not least because of the vast exposure of the institutions of the City of London to Europe's sovereign and private indebtedness.

No British federalist can welcome the risk that a greater political gap may now arise between the UK and mainland Europe. But the greater prize in the longer term is the formation of a strong, stable and successful core at the heart of the European Union around which other states will in the end be bound to coalesce. One day, perhaps many years hence, when the UK is convinced of the

success of federal union, and sees it working powerfully in world affairs, it is likely to change its mind and want to jump in.

There is a link, of course, between bringing into force a constitutional amendment before all states agree to it and the proposal to create, by way of a safety valve, an associate membership for states which are not, or not yet, drawn to the federalist goal. No existing member state can be forced against its will to join a more federal union: a contingency plan is therefore useful. Equally, no existing member state should be prepared to block the emergence of a more federal union if that is desired by a large majority of its partners. In London the coalition government ought to be wondering whether it has either the moral authority or the political will to stop the rest of the EU from doing 'whatever it takes'. Even the British Tories, who have always wanted *l'Europe à la carte*, can hardly complain when they eventually get it.

For the rest, the prospect of raising the game of the governance of the European Union is a prize very much worth having, not least because it will bring financial stability and the basis for economic recovery. The federal European Union proposed here is what Joschka Fischer has called 'a lean federation': it is not a federal state; it is not a substitute for Europe's existing states but a supplement to them; it is more democratic than what we have now; and it will give a more united Europe a greater capacity to act to do good in the world.

The time for it is now.

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The European Union is in deep trouble. Europe's leaders and the EU institutions have shown themselves to be inadequate to the task.

In this hard-hitting pamphlet Andrew Duff argues that only a decisive move to a federal economic government of a fiscal union, backed up by an appropriate budget, will save the euro and help economic recovery. The author defines what he means by federal union, and suggests some of the changes which must be made to the Lisbon treaty in order to achieve it. These include the creation of an EU treasury, the issuance of sovereign eurobonds and financial self-sufficiency. Measures are also proposed to boost the political legitimacy of the European Parliament.

Andrew Duff, who is one of the European Parliament's leading federalists, says that the best way to revise the treaties is through a democratic Convention. He argues that the new constitutional settlement should enter into force before all member states have ratified it – and that a special category of associate membership should be created for the United Kingdom if it chooses not to be part of the European federation.

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978-1-903403-90-7