

# FEDERALISM IN THE EUROPEAN UNION

**Masterthesis European Studies**

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AUGUST 2019



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## ABSTRACT

The European Union is a unique institution, combining both intergovernmental and supranational features. Since its foundation, it has become increasingly integrated, leading to the question of how much alike has it become to a state already? The paper answers the question to what extent the European Union can be compared to a federal state.

In order to answer the question, criteria have been developed based on theories of federalism. The criteria will then be applied to the European Union. Additionally, the criteria will be tested on Australia, Argentina and Canada, which are all federal states. This serves the purpose of providing a real-world reference in order to ensure that the European Union is not held to unrealistically high standards imposed on it by the theory.

Half of the criteria match equally well to the European Union as to the federal states that have been used as reference. Especially in matters of structure or institutional setup, the Union could meet the criteria. However, in concerns of high sensitivity such as foreign policy, borders and citizenship do still belong to the competences of the European Member States, whereas in federal states, the central government has the authority. The European Union also does not fully meet the criteria related to language, religion and a sense of national identity. Notwithstanding, it should be noted that Argentina, Australia and Canada also not necessarily fulfill all those criteria.

The European Union can compare to a federal state in structural and institutional shape as well as in more normative criteria such as national identity to some extent. On the other hand, it lacks key features of a federal state in sensitive matters and high politics. The Union cannot qualify as a federal state, but it cannot be denied that the Union shares some similar key features with a federal state.

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# 1 INTRODUCTION

The European Union has been created by its founders with the intent of being “an ever-closer union among the peoples of Europe” (Treaty on the European Union, Preamble) and with the aim of continuously advancing European integration (Treaty on the European Union, Preamble). Currently, the European Union is not a federal state (Opinion 2/13, The Court of Justice of the European Union). Nonetheless, it is pieced together out of supranational and intergovernmental components (e.g. Art. 2-6, TFEU) of which especially the latter hint at more than a simple international organization. However, the final shape of the European Union has been left – maybe intentionally - unclear throughout the Treaties.

To shed some light on its current state, the integration process and history has to be taken into account. During its existence, the European Union has been through different phases of integration and stages of development (Jones & Menon, 2019), the most important ones being intergovernmentalism and supranationalism (Schimmelfinger & Rittberger, 2006). It was created as a measure to ensure peace after the Second World War through binding countries together economically, culminating in the founding of the European Coal and Steel Community (ECSC) (Dinan, 2014). Soon after, the Member States did not only pool their sovereignty regarding coal and steel into one organization, but it also spilled over into the other economic areas, establishing the European Economic Community and Euratom with the Treaties of Rome (The European Union, n.d.b). The integration only deepened in the following decades to both political and financial matters, especially during the Maastricht Treaty in the early 1990s, proclaiming the European Union (Dinan, 2014, The European Union, n.d.b) and introduction of the Monetary Union. The European Union has made efforts to implement a constitution in 2004. However, these efforts failed due to referenda against a constitution in France and the Netherlands, through which the constitutional treaty was not ratified (The European Parliament, n.d.). The latest Treaty, the Treaty of Lisbon, is claimed to have similar aims to the Treaty establishing a constitution for Europe (the European Union, n.d.b) and clearly specifies which competences lie with whom within the Union (The European Union, n.d.b). The Treaties have been referred to as a constitutional charter by the European Court of Justice several times (Piris, 2000). However, renaming and recognizing the Treaties as constitutions or constitutional charters could be perceived as a political move and favoring a federal or confederal European Union (Piris, 2000). Nonetheless, it should be stressed that the European Union currently is not a federal state, although it carries certain characteristics of a nation state (Piris, 2000).

To assess how many of these characteristics are actually existent within the European Union, it is common research practice to put the European Union in comparison with a variety of actual federal states. Tavares Lanceiro (2018) has recently compared the administrative process of applying federal law in Germany and the United States of America to the application of European Union law in its member states. In both nations, the states or Bundesländer have decision-making powers in certain policy areas, which could be similar to the Member States within the European Union. Tavares Lanceiro (2018) pointed out that the European

Union relies on the national administrations to implement its policies, which turns them into actors crucial to the process. Furthermore, the European Union acts according to the principle of subsidiarity after which the national administrations are the lowest possible unit that could execute the task of implementing EU law. In this respect, the European Union system is more similar to the German than to the system of the United States. The research of Tavares Lanceiro (2018) makes up a certain piece of the bigger picture. Being able to issue and enforce rules within its territory belong to two of the four main characteristics defined to constitute a state: population, territory, government and sovereignty (Bundeszentrale für politische Bildung, n.d.). The enforcement of rules within its territory legally and legitimately is an important point in the comparison of the legal frameworks of the federal states and the European Union. Another piece of the puzzle can be found in the journal article of Czaputowicz and Kleinowski (2018) who compare the Council of the European Union to the German Bundesrat, the first chamber in the bicameral system in Germany which represents the federal states of Germany in the decision-making process. The comparison is made between the Bundesrat and the Council of the European Union, because the Council represents the heads of states and governments of member states of the European Union, which could be translated to the state legislatures in a federal state. This covers other important features of democratic states which are participation and representation. Both are important to have legitimate power and to be able to govern within the territory of the state. Wood and Verdun (2011) have compared the European Union to Canada, looking into social, economic and environmental policy, multilevel governance and democratic participation in both. From the literature derives that the European Union is almost exclusively compared to federal states (Wood & Verdun, 2011). Due to its structure with the Member States and principles like subsidiarity, the European Union is more likely to resemble a federal state than a unitary state.

## 1.1 Structure and Research Question

The aim of this paper is to determine to what extent the European Union has become close to a federation.

An answer is beneficial towards:

- Understanding political actors as they refer to unitary or federal aspects of the Union
- Informing the debate about the future orientation of the Union
- Analyzing possible causes of political turmoil caused by the refugee crisis or Brexit
- Counter emotional Euroscepticism with factual information
- Provide a framework for further, more detailed academic research

To explore the research question, certain criteria will be detected through theories of federalism and statehood. Those criteria will be applied to the European Union throughout the analysis. Other federal states will be brought in as case studies to discover if those criteria also apply to actual federal states. Basing this connection on real states instead of only theory will provide a more realistic view of how federalism is applied within the European Union. This comparison will be made with the states of Argentina, Australia

and Canada. Those countries bring added value to the current scholarly debates and distinguish this work from previous research. New information could be derived from setting the European Union in relation to other countries than the United States of America and Germany, as has been done frequently in the past (Tavares Lanceiro, 2018; Czaputowicz & Kleinowski, 2018). As can be seen in the work of Verdun (Wood & Verdun, 2011; Wood, 2016), currently, Canada is an object of interest for comparisons. Furthermore, Argentina has a younger democracy than Germany or the United States of America, which could bring up a different angle. A younger democracy might have developed differently due to modern influences and the example that older democracies might have already provided to countries that are just discovering their democratic identity. Furthermore, it seems as if Brazil has attracted most attention to Latin America due to its size and aspiring economic power. Therefore, Argentina is an underrepresented object of study in this context. A shift in view could benefit the research done already. Australia is still in the Commonwealth of Nations as former territory of British Colonialization (The Australian Government – Department of Foreign Affairs and Trade, n.d.), which could be of particular interest due to the northern European roots in the country, compared to the rather Southern European influences in Argentina. Furthermore, although not being the first federal state, it is one of the first four (Levi, 2016a). Using those countries as a point of comparison could shed new light on the debate of federalism within the European Union. The research question of this paper will therefore be the following:

*To what extent does the European Union compare to a federal state?*

In order to answer the research question, a set of sub-questions will be needed. First, the criteria with which need to be established through theories of federalism need to be developed. Following, the main characteristics of the European Union have to be carved out. Those two sub-questions will be layered through applying the criteria to the features of the European Union in Chapter four. In the following three chapters, the criteria will be applied to the case studies of Argentina, Australia and Canada in order to provide a real-world reference in the fifth Chapter. Later, possible similarities and differences will be discussed. During the conclusion, the aim of the paper which is determining the extent to which the European Union compares to a federal state, will be examined.

## 1.2 Research Design and Methodology

### 1.2.1 RESEARCH DESIGN

In order to answer the research question, it needs to be determined how many characteristics of a federation can be found in the European Union. This will be done through collecting facts and features from different theories on federalism and influences of constitutionalism. From these collections, certain criteria need to be developed to be able to measure how much federalism there is in the European Union. Those criteria are a selection of different authors' opinions on federalism. Together, they form a full set of federal features. After the assemblage of the criteria, the European Union, its structure, institutions, their functions

and certain principles have been explained. They have been selected based on what could be of importance in the process of determining its federal features after carefully examining the literature. Both parts combined form the theory, which functions as a basis for the analysis. The criteria on how to measure federalism will be applied to the facts that have been gathered about the European Union during the analysis section. The results of this analysis will be comprehensively given in a table, of which the beginnings have been made in the theoretical framework session already. After this, the same criteria will be applied to three different cases: Australia, Argentina and Canada. This will serve as a real-world reference in order to prevent that the European Union will be held to unrealistically high theoretical standards in comparison to other officially recognized federal states.

### *1.2.1.1 Research question*

This work will aim to answer the research question *“To what extent does the European Union compare to a federal state?”*. In order to assess how much federalism there is in the European Union, this research will focus on the European Union’s multilevel structure and the competences, which is crucial to federalism. Furthermore, the institutions and their functions, as well as general standards and principles of the appliance and enforcement of European law.

The question specifically aims to determine how much federalism can currently be found in the European Union. Due to constant changes through different treaties and the inclusion of different policy areas, the Union has changed shape multiple times since its founding after the Second World War. The research could provide clarity to fears of the European Union turning into a super state or the “United States of Europe” through offering a transparent, clear and objective assessment and picture of the federal elements in the European Union. This could help to combat an anti-European sentiment by objectively laying out facts and providing an academic analysis. Especially in the light of current Euroscepticism in order to support credible and realistic results, the cases of Argentina, Australia and Canada will be used. Additionally, this research could support the Member States, the European Union and even possible future Member States to decide on their future, such as further integration or, in the last case, if accession would be desirable. These federal states shall serve as a point of reference to ensure that the European Union is not held to unrealistic theoretical standards imposed on it by the literature while determining if and how many federal elements can be found in the European Union. The degree of federalism in the Union also is an important reference point for analyzing the political debate: Proposed solutions to the aforementioned matters often target a federal or in contrast unitary understanding of the union in order to gain voter support. Objective data on where the Union currently is on the spectrum between a unitary system and Federalism can improve projections on the success of political action. In matters like Brexit or the Refugee crisis, it is crucial to assign rights and responsibilities correctly, so the member states are treated fairly. Federalism is a distinct flavor of this distribution of rights and responsibilities, and an incoherent application of this distribution can lead to conflict and separation.

The social relevance of this research question is that the political future of the European Union is heavily linked to economic and cultural matters as well as to the individual level, determining the future of the all 500 million European citizens. European legislation and decisions do not only affect states and companies, but also have a direct effect on citizens of the Union and are acted upon on all levels through the principle of subsidiarity and supremacy. Recent developments of e.g. Brexit might further put the solidarity and cohesion of the European Member States to the test. From the perspective of scientific relevance, the literature has so far mostly compared separate institutions of the European Union to institutions of the federal states (Tavares Lanceiro, 2018; Czaputowicz, & Kleinowski, 2018). This study could provide a broader context to the debates and comparisons and could be used as ground for comparing other elements of the European Union or any international organization to similar elements of a federal state. Furthermore, the cases are different from other research, in which cases like Germany (Czaputowicz & Kleinowski, 2018) are typically used. This could offer a new perspective and might shed light on new insights.

### 1.2.2 CASE SELECTION

The European Union has been selected as the main object of study because it has been considered to be unique in the international sphere (Schütze, 2009). As an international organization between states, it also shows state-like features which is considered uncommon (Schütze, 2009). Furthermore, the European Union has, as discussed before, been frequently compared to other federal states. However, many times only separate institutions of the EU have been examined. This could be interpreted as a general interest in the European Union's development. Additionally, the European Union has a considerable influence on all areas of the interconnected spheres of society through the determination of competences and different principle of how to apply European law, as well as on the individual European citizen. Brexit and the migration crisis in 2015 might also have (had) an influence on the interest of people in the European Union. It could be likely that the disaccord amongst the Member States regarding the handling of the migration crisis and Great Britain being the first country in the history of the European Union to leave said Union, raise questions about the future. Therefore, it could be beneficial to determine where the Union is at this point in time.

The case selection is based on the European Union rather resembling a federal state than a unitary state. Canada has been selected because it is currently on the pulse of time. Many scholars seem to be intrigued by relating the European Union to Canada (Verdun, 2016; Wood & Verdun, 2016). Furthermore, Canada is a Western nation and perceived to be rather at the center of political affairs. Both Canada and Australia belong to the first four federal states that have formed in this society (Levi, 2016a). Both have been part of and still are in the Commonwealth, meaning that they have been greatly influenced by their Northern European roots. As mentioned already, Australia has similar qualities to Canada. However, it might glide of the radar more often due to its geographical location and due to not being as present in the Western international sphere. Within South America, Brazil seems to be in focus through its economic power and political aspirations such as a permanent seat in the United Nations Security Council. Therefore, looking



past the shadow to include Argentina as one of the very few other federal states apart from Brazil in South America could be an enrichment to the current academic discussion. Additionally, Argentina could reflect the Southern European influences through its history as being colonized by the Spanish.

### 1.2.3 MEASUREMENT OF THEORETICAL CONCEPTS

The data used in this paper will be collected through comparative desk research. The research will focus on quantitative research in order to obtain a deeper understanding of the federal characteristics of the European Union and to what extent they exist within the Union.

In order to be able to apply and measure the selected criteria to the Union and the other federal states and to later appropriately compare the results of the European Union to the other federal states, one needs to define how to measure the criteria exactly. This varies and depends on the specific criterion.

Results of criteria related to the structure of a federal state, such as having at least two levels of government, de jure and de facto sovereignty, division of authority and competences, subordination of the people to multiple levels of government or the approval of constitutional changes can be discovered easily. For this, the European Union Treaties and secondary law will help determine the basics. Articles and books from scholars will be used to further deepen the analysis of the criteria. For the rather normative criteria, such as a sense of national identity and a shared citizenry, language and religion there is room for discussion. The data to the appliance of those criteria will need to be collected from desk research, so scholarly articles and scientific findings of other scholars to attempt to get a grasp. The amount of levels of government should be described in the constitution of the state or, in the case of the European Union, the treaties. A shared territory and citizenry should be based on common borders and nationals. For already established and officially recognized federal states, these criteria should be rather clear and easily fulfilled. For the European Union, these criteria could prove more difficult due to the Member States still being sovereign states themselves. Similar hurdles can be found with the criteria of a shared language, religion and in particular, a sense of national identity. Again, through the different sovereign states in the European Union, its citizens are rather heterogenous, which could influence especially the sense of national identity. For the analysis, one would need to rely on already existing literature on this topic. Regarding criterion of where sovereignty is preserved can also be found in the constitutional documents of the other federal states and the European Treaties. The division of authority between the two levels of government will also be found in similar documents. For the European Union, this division can mainly be found in the competences in the Treaties, which relates directly to the next criterion: the division of authority needs to be laid down in a constitution or secured otherwise. The interference of one level of government into the sovereign spheres of the other could on a theoretical basis be determined by primary and secondary law. However, this also needs to be assessed from a practical perspective: if the various levels of government adhere to what is written down in law. All levels combined should form the state. This criterion needs to be put in relation to basic principles of statehood in order to be able to evaluate this. Relying on academic

literature could help complete the assessment of the criterion. The subordination of the people to several levels of government can be determined rather simply by looking at the structure of the governments, the principles of law making and enforcement. If democracy is existing at the lowest level can be investigated party through the possibility to democratic participation. A bottom up approach of sovereignty passing through each of level of government can only be discovered if one explores the structure and the constitutional documents of a state, or the European Union Treaties. The inspection of equality between the federal states in strength could benefit from a better definition and context of strength. Depending on economic, political or military strength, one would need to focus on different ways to measure it. De jure and de fact sovereignty should be defined in primary and secondary legislation. The sovereign authority in external matters should also be defined in the primary legislation, in the European Union as competences. To see whether the federal states are appropriately represented within the central government through an essential body with proportionate voting powers, the institutions and their tasks need to be under closer examination. For the last criterion, the approval of constitutional changes by representatives of the federal state and the people, the constitutional documents should be considered.

Each criterion can be measured, although some depend and build on the research of other academics and scholars because the results cannot be found in primary or secondary legislation of the states or organizations concerned.

### *1.2.3.1 Possible limitations of research*

Limits of this research could be found especially in the answering of the normative criteria. It could be possible that there has been no research on those questions that could be used in this paper. The conducting of these studies, for example about the national identity of each of the countries and the European Union will be extensive and too detailed for this paper. Other limitations could be found in the choice of the federal states of Argentina, Australia and Canada, which are used to ensure that the European Union is not held to unrealistic theoretical standard when determining federal characteristics within the Union. Using different federal states as references could lead to slightly differing results. The selection of criteria and the evaluation of those could also lead to other results than similar research with varying criteria. However, those findings are equally valuable, but need to be taken with caution and critical thinking.

The data that has been collected to answer the sub-questions as well as the main research question varies in data of release. The books and academic articles related to the topic tend to be older and from the last decade. This could limit the research because there is few analyzed information on changes that manifested with the establishing of a new Treaty. Newer theories developed on federalism might not be dealt with in books released earlier, which could be giving the paper a rather classic and traditional approach to federalism.

The possible limitations are not irrelevant, but limit the scope of the research, providing it with a more focused and in-depth analysis of the topic.

## 2 THEORETICAL FRAMEWORK

The theoretical framework will answer the first sub-question of what are the criteria that will be applied to the European Union in chapter 2.1. Chapter 2.2 will provide the necessary information on the European Union that will be needed to perform the analysis.

### 2.1 Theories of Federalism

In order to measure the extent of federalism in the European Union, one first needs to determine criteria that later will be applied to the European Union's characteristics. To collect valid and viable criteria, a look at theories on federalism will be taken.

Law (2013) notes that in reality, it can prove difficult to determine whether a state is federal. Some states, such as the United Kingdom or Spain, can be considered "de facto federations" (Law, 2013, p. 91) and non-institutional federal states due to their in-practice arrangements, even though they are technically unitary states. The author blames these unclarities on a missing transparent and coherent definition of the term federalism (Law, 2013). The difficulties in defining whether a state in reality is federal or not hints at the complications of determining whether certain elements of the European Union can be considered federal. Especially in relation to a confederation, scholars do not seem to share consent (Law, 2013; Cuyvers, 2013). For Burgess (2006), one of the hurdles in theorizing federalism is the plurality of areas touched by federalism. Federalism does not only include the political sphere: due to the interconnectedness of the topics, it also involves the economy, culture, fiscal aspects and many more.

A federation can be (structurally) located between a confederation and a unitary state. In contrast to a unitary state, in which a centralized government is the key, both a confederation and a federation involve sovereignty preserved within the member states, although in different dimensions (Cuyvers, 2013). In a confederation, the common government is subordinate to the sovereign states, whereas in federalism, the government and the constituent states both have constitutionally determined powers over the people. Within those determined powers, the assigned instance alone has final decision-making powers (Cuyvers, 2013; Law, 2013). Only combined, the two equals form a state (Law, 2013). However, there are authors that stress a distinction between federalism and a federation, with the latter referring rather to institutions than to a theoretical concept (Verdun, 2016; Burgess, 2006). Levi (2016a) stressed that the citizens of a federal state are subordinate to multiple entities and decision-making on several levels, that - due to acting in different spheres - do not interfere with one another. This would enable democracy even on the lowest level by offering an accessible platform for participation (Levi, 2010). Furthermore, federalism can extend

both upwards and downwards from the national level, spreading to the local/ regional level and to a higher international level (Levi, 2010).

Burgess (2006) names several preconditions and characteristics that different authors have collected through the history of the development of federalism. The most basic features could be seen as a two-level government governing the same territory and citizenry with a minimum of one policy sphere of sovereignty that has to be secured somehow (Burgess, 2006). The authority of the central government should derive from the sovereignty of the people living within the territory of the states, forming a bottom up approach, passing through each level: the individual, the local government, the state, to the central government. The acknowledgement of the power of the people has been referred to as the social condition (Burgess, 2006). Other authors identified a shared language and religion as a precondition. The size of the territory plays a considerable role when assessing if federalism could be a fruitful way of organizing a government. Furthermore, within a federation, states should be of equal strength compared to each other. However, it is not specifically defined what kind of strength is referred to in this context. Compared to the central government however, they should not be able to function completely independent, because this might lead to the perception that there is no merit in partaking (Burgess, 2006). However, the states should have ample control over themselves. In line with considering the costs and the benefits for the states, a federation can be considered a compromise between two extremes, intending to combine advantages of small states with those of larger ones within any political system (Burgess, 2006). Furthermore, a sense of national identity, in this case referring to speech, literature and historic memories, is a pre-requisite for a federation. However, to be more specific, the citizens should aim for a union, instead of unity among each other (Burgess, 2006). Within a federal state, the *de jure* sovereignty, which is laid down in law, is always with the people, whereas the *de facto* sovereignty usually lies with the states or the central government, depending on the topic area and the division of spheres (Burgess, 2006). Typically, internal matters are divided between the states and the central government, whereas foreign matters are reserved for the central government. As Burgess (2006) points out, representation is a key characteristic in federalism. The states should be represented in the central government through an election into an essential body with proportionate voting powers, speaking for the interests of the states' government. Moreover, any constitutional changes have to be approved by the representatives of both the people and their sovereignty, and the federal states.

With the United States of America as the first governmental structure that combined several compounds or a central level of government and single states on an equal level (Law, 2013), Schütze (2009) derived two theories of federalism from the history and the development of federalism in the United States of America, which distinguish themselves from one another by the relation between the two levels of government. The two theories are Dual Federalism and Cooperative Federalism. Within Dual Federalism, the areas which each governmental level can operate in are clearly defined. The federal governments and the central government are expected to, although as equals, work separately in each of their domains, creating two

sovereignties within one state, a “dual sovereignty” (Schütze, 2009, p. 5). In Cooperative Federalism, both levels of government have a shared sovereignty in all areas, meaning that neither their powers nor their functions are separate from each other (Schütze, 2009). The approaches to the allocation of sovereignty are different and, consequently, each structure is lined out within the constitution to its own needs. To separate Cooperative Federalism in the single federal states from dependent administrations in unitary states, Schütze (2009) lays the focus on the legislative function within the federal state: if, according to federal law, legislative choices can be made where they will be implemented, one can think of Cooperative Federalism. Taking a step back and looking at a wider scope, the American federalism can be separated from European Federalism (Schütze, 2009; Schütze, 2010). As Schütze (2010) points out, the main difference lies within the executive powers. Within American federalism, the executive powers are aligned with legislative powers. This is specifically described in the constitution. According to Schütze (2010), the states can voluntarily implement federal standards and execute federal law. However, in American Federalism, executive competences are not exclusive competences to either one level of government, therefore, the central government has own executive powers (Schütze, 2010). This guarantees that the federal states are to a certain extent independent from the central government and do not act as a branch office of the central government, while at the same time its legislation is subordinate to the federal legislation (Schütze, 2010).

The European federalism, which has been shaped and is characterized by the German federal ideas (Schütze, 2009; Schütze, 2010). It is laid down in the constitution that generally, the federal states own the executive powers for federal law, contrasting the American federalism. Nonetheless, the (German) constitution does not rule out exceptions. The central government has the right to monitor and control the states in their execution of federal law and might even act on implementation by the states that does not meet its expectations and requirements (Schütze, 2010). Where the American federalism works with what Schütze (2010) calls a principle of “non-commandeering” (p. 1388), the German federalism is given this authority which undermines the states sovereignty in executive powers and showcases the inferiority of the state to the central government. It is also pointed out that the administration on the state level is integrated into the federal administration, which almost demonstrates a unitary character to some extent (Schütze, 2010). Schütze (2010) refers to this as executive federalism.

Due to all federal principles having to be secured in writing, usually in a constitution, one could argue a strong relation between federalism and constitutionalism. Through a constitution, the governed can establish the government and thus confer a legal basis and legitimacy to the government’s power and authority (McIlwain, 2005). It has also been discussed that a constitution should be created and formed before the government is established in order to provide limits to its power (McIlwain, 2005). Craig (2001) defines four angles to determine constitutionalism. The first one deals with constitutionalism as a form of interpreting the constitution and what it does. Secondly, constitutionalism can be seen as a movement towards implementing constitutional features. Furthermore, it can be seen as the basis for state

institutions, establishing their authority and limits but ensuring that lawful power is assigned by the people through elections. Lastly, constitutionalism can be regarded as determining whether there are constitutional features within the legal system of a state, but also examining the amount of good governance of a state. These angles could be of importance when determining whether the European Union has sufficiently secured both the institution's and the people's powers in writing.

In order to provide an easy overview for the results chapter of this paper, the characteristics of federalism will be put into a comprehensive table to easily determine if the characteristics apply to the European Union and each of the selected federal states. In this compact shape, a comparison can be drawn quickly.

**Table 1: Criteria for federal states**

<b>Abbreviation</b>	<b>Criterion</b>	<b>Main source</b>
F1	at least two levels of government	Burgess, 2006
F2	shared territory and citizenry	Burgess, 2006
F3	shared language and religion	Burgess, 2006
F4	sense of national identity (literature, historic memories)	Burgess, 2006
F5	sovereignty preserved within the member states	Cuyvers, 2013
F6	division of authority in at least one policy area between the two levels of government, independence in that area	Law, 2013 Cuyvers, 2013
F7	division of authority laid down in the constitution or secured otherwise	McIlwain, 2005
F8	no interference of one level of government into the sovereign spheres of the other	Cuyvers, 2013 Law, 2013
F9	federal states have independence, but should not be able to function completely independent from the central government	Burgess, 2006
F10	combined, both levels form the state	Law, 2013
F11	people are subordinate to several levels of government	Levi, 2016a
F12	democracy on the lowest level	Levi, 2016a
F13	extending from the national level towards the top and towards the bottom (regional and international)	Levi, 2010
F14	bottom up approach: sovereignty invested into the central government by the people, passing through each level of government.	Burgess, 2006
F15	Equality of the federal states (strength)	Burgess, 2006
F16	People have de jure sovereignty	Burgess, 2006
F17	Sovereignty regarding internal matters divided between federal states and central government	Burgess, 2006
F18	Sovereignty regarding external matters with central government	Burgess, 2006
F19	Representation of federal states through an essential body in central government, with proportionate voting powers	Burgess, 2006
F20	Constitutional changes need approval of representation of federal states and people	Burgess, 2006

Characteristics of particular importance could be considered the ones regarding the state's structure and organization due to federalism being a form of organizing the government. Structural features, such as in the criteria F1, F5, F6 and F17/18, determine the basics of the federal arrangements. Furthermore, all of

them are rather factual attributes that are definitely determinable. These types of criteria could be seen to be obligatory criteria that a federal state must meet. Other criteria could be considered additional criteria that do not have priority and do not display the essence of a federal state. These criteria include for example F2, F3, F8, F11 and F15. Especially criterion F8 depends on the type of federalism used (dual vs. cooperative) and can therefore not be seen as an essential feature of federalism in general.

## 2.2 The European Union

The European Union is a unique project with an outstanding development of both legal and institutional structure (Schütze, 2012). The Treaties that have been implemented over time create the foundation of the European Union through giving a detailed explanation of all actors and their rights, privileges and duties. The Treaties currently in effect are the Treaty on the European Union, the Treaty on the Functioning of the European Union, the Treaty establishing the European Atomic Energy Community and the Charter of Fundamental Rights of the European Union. The Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) will be the treaties mainly used during this research, because they go in depth on the role of each actor, how the EU operates, its structure and the EU policy fields. The TEU defines the set-up of the European Union and its institutions, its general ways of working and the areas regarding the Common Foreign and Security Policy. The TFEU describes the functions of the different institutions and their coordination and relations.

### 2.2.1 INSTITUTIONS

The European Union has four main institutions: The European Parliament, the Council of the European Union, the European Commission and the Court of Justice of the European Union (Art. 13, TEU; Schütze, 2012). Those four main institutions will be dealt with in this chapter. The other three institutions, being the European Council, the European Central Bank and the Court of Auditors will be given less attention in this context due to their relevance. The separation of powers, which seems to be a necessity in every modern democracy, also plays an important role in the division of tasks within the European Union. The Commission functions as an executive player (Mussa, 2019), whereas both the Council of the European Union and the European Parliament exercise legislative powers (Schütze, 2012, Art. 14 TEU). The Court of Justice of the European Union is vested with the judiciary (Schütze, 2012).

The EU institutions consist of representatives of different actors within the political sphere. The European Parliament is the only body within the European Union that is regularly voted on directly by the citizens of the European Union, securing their involvement into the democratic decision-making process and making their voices heard, although the amount of involvement depends on the legislative procedure used (Schütze, 2012). A total of 751 seats are available, which are degressively proportionally assigned to each country (Art. 14, TEU), according to their population numbers (Schütze, 2012). However, there is no uniform voting procedure in all Member States, elections are performed under guiding principles that are valid in

all Member States. Furthermore, the Parliament can, after the implementation of the Lisbon Treaty, partake in the decision-making regarding external relations (Schütze, 2012) through the right to stay informed on Common Foreign and Security Policy (CFSP) and the right to be consulted on main issues (Art. 36 TEU). In addition to its legislative powers, the Parliament also holds supervisory powers. Within those powers, it can debate with the executive body and possibly even investigate into conflicts and tensions of implementing European law (Schütze, 2012). Schütze (2012) describes the European Union as semi-parliamentary due to the involvement of the Parliament into the appointment process of the president of the executive and the commissioners. It is also within its authority for the Parliament to have a motion of censure or a “no confidence vote” regarding the Commission (Art. 17(8) TEU, Art. 234 TFEU).

The Council of the European Union represents the governments of all Member States. More specifically, it consists in representatives that come from the ministerial level. Which representative it shall be depends on the policy area concerned (Schütze, 2012). Therefore, the composition of the Council as such is under constant change. However, the COREPER (Comité des représentants permanents, Committee of permanent representatives) which is the permanent committee within the Council, executes daily tasks (Art. 240, TFEU). The presidency of the Council is rotated along the Member States (Pavy, 2018). Regarding legislation, the Council will have to use the unanimity procedure in order to decide on sensitive matters, such as foreign affairs (Schütze, 2012). For decisions of a lower profile, majority voting is deemed sufficient (Art. 238 (1) TFEU). As Schütze (2012) points out, simple majority voting is possible, though exceptional. The Treaty (Art. 16(3) TEU) indicates similarly that the usual majority voting procedure will be qualified majority voting with weighted votes according to the size of the country’s population in addition to the votes casted having to cover both 62 percent of the population and come from a majority of states (Schütze, 2012). The Council has been, from a historical perspective, the “main” legislative body, before the European Parliament gained more authority in this regard (Schütze, 2012). A highly significant field in which the Council holds consulting powers is the area of Common Foreign and Security Policy (Pavy, 2018).

The Court of Justice performs the important role of the judiciary in a democratic institution. It consists of different courts on different levels. On the lowest level acts the specialized court. Then, the General Court rules on “proceedings brought against decisions of the specialized courts” (Art. 256(2) TFEU). Lastly, there is the Court of Justice as the overarching court. The jurisdiction of the Court of Justice is defined and limited in Article 19(3) of the TFEU. Member States, institutions or natural or legal persons can bring a case to the court. It can provide preliminary rulings at request to interpret primary or secondary EU law. Finally, other cases in which the Court could rule have to be set out in the Treaties (Schütze, 2012).

As the last institution, the European Commission will be discussed. The Commission embodies and performs according to the interests of the European Union, and being the so-called motor of integration (Schütze, 2012). Together with the Parliament and the Court, the Commission forms the main supranational body in the European Union. The number of Commissioners should be equal to the number of Member States. Additionally, the Commissioners should act without any national interest in mind, solely focusing on the



general interest of the Union (Mussa, 2019). The Commission is accountable to the European Parliament, who can force the Commission's president to re-select his or her Commissioners or even dismiss the Commission through a motion of censure (Mussa, 2019). In addition, the European Parliament votes on the president, who is proposed to the Parliament by the European Council (Art. 17(7) TEU). Apart from its executive task, the Commission is supposed to function as a managing and coordinating instance. Moreover, the Commission has the essential function as guardian of the Treaties. Article 17 of the TEU specifically calls for the Commission to ensure the application of the Treaties and other European law. Furthermore, the European Commission has, as the only institution, the legal right to initiate the legislative process, giving it a monopoly on that action (Schütze, 2012, Mussa, 2019). Lastly, the Commission shall represent the European Union in external matters, with one important exception: The Common Foreign and Security Policy (Mussa, 2019).

## 2.2.2 COMPETENCES

Article 3(6) of the TEU establishes that the European Union may act within the competences conferred on it via the Treaties in order to achieve its aims and enforce its principles. Competences that are not conferred on the European Union explicitly shall continue to lie within the authority of the Member States themselves (Art. 4(1) TEU). Article 5(2) of the TEU specifies that this so-called principle of conferral enables the European Union to legislate within the areas it has competences in, and that those competences are conferred upon the Union by the Member States, meaning that they voluntarily decided to transfer their sovereignty and authority regarding those areas to the European Union (Schütze, 2012).

In order to implement those articles accordingly, exclusive and shared competences have been determined. The competences in which the European Union can exclusively conclude (binding) legislation are decided on in Article 3 of the TFEU and include: the customs union, establishing competition rules necessary for the functioning of the internal market, the monetary policy for Member States using the Euro, the conservation of marine biological resources under the Common fisheries policy, the common commercial policy, and lastly the conclusion of international agreements if provided for in a Union's legislative act, if necessary to exercise its internal competences or if it could affect common rules. Within their shared competences, both the Member States and the European Union are allowed to conclude (binding) legislation and neither one of the two actors is privileged. The shared competences are listed in Article 4 of the TFEU: the internal market, certain aspects of social policy, economic, social and territorial cohesion, agriculture and fisheries (except conservation of marine biological resources), environment, consumer protection, transport, trans-European networks, energy, the area of freedom, security and justice, certain aspects of common safety concerns in public health matters, research, technological development and space, and finally development cooperation and humanitarian aid.

Lastly, there are supportive competences which are explained in Article 6 of the TFEU: Support, coordination and supplementation by the European Union in areas such as culture, tourism and civil protection are within the Union's competences.

According to Schütze (2012), there are two more competences apart from the ones referring to specific policy fields. The harmonization competence is not mentioned as such in the corresponding Treaty article (Art. 114, TFEU), but rather called harmonization measures. Those harmonization measures can be used to approximate national laws in order to ensure and safeguard the internal market. However, Schütze (2012) seems to be concerned about the scope of this competence. The Article 114 TFEU cannot establish new rights but can only harmonize what has already been created. Nonetheless, it is not specifically defined in the Treaties when national laws are sufficiently dissonant for the European Union to exercise their right to harmonize. The courts limited the European Union's competence by restricting it to future obstacles to free trade and potential disintegration of the internal market, simple variations of national laws are inadequate reasons for harmonization measures (Schütze, 2012). This has been an effort to restrict the scope of this competence because it can touch upon an array of different policy areas that are not directly an exclusive competence of the European Union as laid out in Article 3 of the TFEU. Schütze (2012) also identifies a residual competence, which is again not explicitly called a competence in the article referred to (Art. 352 TFEU). Rather broadly phrased, it provides the opportunity to the Union to conclude legislation where it is necessary, while adhering to the Treaties, in order to pursue objectives determined in the Treaties in situations where the European Union has not been conferred the powers upon that would be needed (Schütze, 2012). One more time, the author raises concern regarding the reach of this article and the amplitude of its appliance (Schütze, 2012). It could be used to deepen the competences within a sphere in which the Union already holds competences, but that are not enough to fulfil the intention. From another angle, it could be used to develop and expand its competences to a new policy area not yet included in the Treaties (Schütze, 2012). However, the Article specifically excludes harmonization measures as in Article 114 TFEU and Common Foreign and Security Policy.

There are some controversies regarding the competences and how they are assigned. As mentioned above already, Schütze (2012) diagnosed that the current understanding of the competences could lead to a "spill-over" (Schütze, 2012, p. 60), meaning that, depending on how a competence is interpreted, it could give legislative power to the Union in an area in which it does not currently have competences. This would undermine the principle of conferral determined in Article 5(2) TEU, because the Member States do not voluntarily transfer their sovereignty of the "spill-over policy fields" to the Union. Generally, a rather flexible approach to the interpretation of the Union's competences has been taken in rulings by the Court, not only due to the impracticality of a strict application of the principle of conferral, but also to achieve the general objective (Schütze, 2012). As mentioned above already, especially Article 114 TFEU and Article 352 TFEU provide room for a more lenient understanding of the Union's competences.

The implied external powers also leave room for discussion regarding the competences. The Union's powers to conclude a treaty or international agreement are restricted, causing the Member States to be the central actors (Schütze, 2012). However, the Court of Justice has repeatedly decided in favor of the European Union, supporting increasing authority of the Union regarding treaty-making (Schütze, 2012). In its main ruling, the Court set grounds that the Union will be allowed, within its internal powers, to adopt appropriate provisions to achieve its objectives, even concluding an international agreement (Schütze, 2012). The situations in which the European Union has the competences to conclude international agreements are briefly touched on in Article 3 TFEU and explained in more detail in Article 216 TFEU. Agreements with one or more third party may be concluded if the Treaty or a legally binding Union act offers the legal grounds, if they are necessary to pursue the Union's goals, or if it may affect common rules. The Treaty Article (216(2) TFEU) specifically states that the agreements the Union concludes are binding upon institutions and Member States. Areas in which the Treaties provide ground for the conclusion of international agreements are e.g. the accession of new members to the Union and the Common Foreign and Security Policy (Mohay, 2017). However, there are mixed agreements in which both the European Union and the Member States appear as signatory actors, making them one party (Mohay, 2017). This type of agreement is usually taken advantage of in policy areas in which the competences of both the Member States and the Union are associated with one another or even intertwined. Mixed agreements are – just as other international agreements concluded by the Union – binding on Member States, but on a dual level: through its character as an international agreement and through EU law as such (Mohay, 2017).

### 2.2.3 FOREIGN POLICY

The Union's foreign policy has been highly debated with articles (Lehne, 2017, Torna & Christiansen, 2004a) and events (Centre for European Policy Studies, 2019) due to its controversial stance in the European Union opposed to its position in the national state. As Torna and Christiansen (2004b) point out that specifically the policy area of a foreign policy is of tremendous significance regarding the constitutional foundation of the Union, especially during the constitutional debate around 2005 which will be discussed in a later section. Even though the European Union's foreign policy is still of intergovernmental nature in an attempt to not override the Member States sovereignty in this respect, it is intended to find a common understanding and common approach to problems concerning the Member States (Aggestam, 2004). This development posed fundamental questions to the nature of the European Union and the role of its Member States in their own national political territory. Aggestam (2004) questions whether the nation state still hold the most crucial role in foreign policy. The intention to give a united voice to the European Union in those matters could prove difficult considering its intergovernmental character. Sjørusen and Smith (2004) explain different manners through which foreign policy can attain legitimacy: utility, values and rights. Utility refers to efficiently resolving concrete conflicts and issues. According to the logic of values, legitimacy is achieved rather normatively, through the decision considered appropriate by the community. Lastly, the logic of rights refers to just principles. In scholarly debates, the CFSP is frequently only reduced to the efficiency of

its output, making it practically non-existent (Sjursen & Smith, 2004). However, the foreign policy of a state is not treated the same: it might be inefficient but is still thought to be present.

#### 2.2.4 THE TREATIES

The Treaties play a fundamental role in the organization of the European Union, not only as a framework to the implementation of the Union's secondary law (Schütze, 2012). Considering the supranational elements in the structure of the Union and the scope and broadness of the Treaties, it seems to be natural consequence to discuss a constitution for the European Union. This has been done in 2004 and leading up to it (The European Parliament, n.d, Craig, 2001). As Craig (2001) pointed out, the European Union developed from a purely intergovernmental organization binding together states to an "integrated legal order that confers rights and obligations on private parties" (Craig, 2001, p. 138) and resembles a national state in the regulation of public power. This development has mainly taken place due to decisions made by the Court of Justice through its interpretation of principles such as direct effect, supremacy and pre-emption in the appliance of European law. Furthermore, the Court interpreted other principles in the Treaties, such as proportionality, that can also be found at the national level (Craig, 2001). However, the Treaty establishing a constitution for Europe could not succeed due to national referenda in both the Netherlands and France (The European Parliament, n.d.). There are plenty arguments against a constitution, also before the referenda (Craig, 2001). Those arguments include: inter alia a heterogenous population that is not able to form an appropriate demos for a constitution, a democratic deficit within the European Union, fear of a European super state, and unclear separation of powers or the expectations of how detailed the constitution should be (Craig, 2001, Podolnjak, 2007). As Podolnjak (2007) points out, those are some of the reasons why people voted against the constitution in the referenda. However, Podolnjak (2007) analyzed the failure of the constitution in retrospective and concluded that its failure should not have been unexpected. The process of constitution making started in an inappropriate moment in time with several flaws and concerns surrounding the document itself. It was not formulated in an accessible fashion for citizens, lacked vision and ambition, and unclear language, meaning it read like a treaty instead of constitution. The constitution and its implementation were not only badly managed and marketed, there also was no strategy for constitutional ratification. Lastly, Podonjak (2007) argues that it was a mistake to directly involve the European citizens into accepting the constitution, because it was supposed to be an international treaty. Eliminating one of those points could have influenced the ratification process positively (Podonjak, 2007). Concluding, the Treaties could be perceived as a constitution, but the realization and implementation is posing problems.

#### 2.2.5 DIRECT EFFECT AND SUPREMACY

Two essential features in European law need to be illuminated: the direct effect and the principle of supremacy. The direct effect can also be found federal systems such as Switzerland (Beyeler, 2014). European citizens are individually subject to rights and obligations that are imposed onto them by European

law directly, which has been determined by the Court of Justice in the case *Vand Gend en Loos*, which has laid the grounds for the direct effect. With this ruling, the Court of Justice established the direct effect and showed preference for a monist system, in which international law is treated as domestic law and applicable on individuals, contrary to a dualist system, in which international law first needs to be translated into domestic law to be used on individuals (Schütze, 2012). European law has to be enforced in the national courts of the Member States if it is justiciable and executable (Schütze, 2012). The direct effect is only applicable when a European provision is a clear, absolute and unconditional prohibition. Furthermore, the direct effect can take action horizontally and vertically. The vertical direct effect is applicable for situations in which individuals invoke European law against a state. If European law is invoked between two equal individuals on the same level it is considered to be a horizontal direct effect (Schütze, 2012). The direct effect posed a problem regarding the compatibility of applying European and domestic law, because there might be conflicts arising. According to the European Union, the European law always has supremacy over the national law. The Court of Justice ruled in *Costa vs. ENEL* that the European law is seen to be separate from ordinary international law and that both secondary and primary legislation prevailed over national law (Schütze, 2012). However, the Member States perceive this differently (Schütze, 2012). The Member States want to keep some national law separated from the supremacy of European law. The Member States will respect the supremacy of European law as long as it safeguards similar fundamental rights (Schütze, 2012). Both principles shaped paths regarding a new legal order and carved out how EU primary and secondary law should be applied.

Lastly, Article 1 of the Treaty of the European Union mentions to create “an ever closer union among the peoples of Europe, in which decisions are taken as openly as closely as possible to the citizen” (Art. 1 TEU). It is noticeable, that the Member States are not mentioned in this Article, but the citizens of the Union, clearly establishing a link between the European Union and the individual.

### 3 FEDERALISM IN THE EUROPEAN UNION

To be able to analyze the amount of federalism within the European Union, the predetermined criteria have to be applied to the European Union.

The first criterion states that federal states have at least two different levels of government, being the central government and the federal governments (Burgess, 2006). The multilevel nature of the European Union is reflected in the structures of the institutions, in European law and policy making as well as in the division of competences. The Commission and the Council represent different levels of government. The European Commission represents the interests of the European Union, representing the supranational European level, while the Council of the European Union embodies the governments of the Member States (Schütze, 2012). The division of competences is also a manifestation of the multilevel governance of the European Union. Both levels of government are assigned their space for decision and policy making (Art. 3, 4, 6 TFEU). Additionally, the different forms of European legislation, being Regulations, Directives,

Decisions, Recommendations and Opinions (European Commission, n.d.) showcase the levels of government through different methods of enforcement and leaving the national level of government space to act, depending on the legislative act. It can be said that the European Union clearly has more than one level of government: the national and the European. The existence of regional governments depends on the way the government of the Member State organizes itself.

According to Burgess (2006), a shared territory and citizenry are more criteria that federal states fulfill. The European Union has shared external borders, which are the national borders of the external Member States of the Union. Article 67 of the TFEU constitutes that the Union is to ensure that there do not exist internal borders. Within those external borders, an area of freedom, security and justice shall be established (Art. 61 TFEU). Article 77 of the TFEU lays out further conditions on the European external borders. Through the OLP procedure, legislative acts on the management of the external borders shall be made. Especially the absence of controls at internal borders is pointed out (Art. 77(2e) TFEU). It is important to notice that the Treaty specifically guarantees the Member States sovereignty in deciding on the location of their borders (Art. 77 (4) TFEU), showing that the Union does not have any influence on the location of its external borders. Regarding the criterion of shared citizenry, the people that are nationals to one of the Member States are European Union citizens (Art. 9 TEU). However, Article 9 TEU also states that the Union citizenship is subordinate to the Member State citizenship, which will not be replaced by the Union citizenship. Furthermore, Article 10 of the TEU ensures that citizen of the European Union have the right to participate in the European democracy and strengthens their importance in the Union through the representation in the European Parliament. However, with all the rights and obligations that the European Union imposes upon its citizens, it is impossible to become a European citizen without simultaneously becoming the citizen of one of the Member States (Maas, 2016). This illustrates the little power the Union has over the awarding of its own citizenship. Maas (2016) states that there are practical difficulties in limiting the Member States ability to regulate their nationality acquisition. The initiation of a European citizenship has doubtlessly supported the European integration process (Maas, 2016). However, the Member States continuously withstood the harmonization of law regarding this matter, because it is an integral part of the nation state's sovereignty. Maas (2016) refers to this as multilevel citizenship. The criterion is only partly fulfilled. The Union has a shared territory and citizenry. Nonetheless, it has no actual power over the regulations regarding any of both and is dependent on the decision that each Member State makes for itself. On the surface, the European Union fulfills the criterion, but from a more detailed perspective, it does not.

A shared language is, as Burgess (2006) suggests, also a criterion of a federal state. The European Union has 24 official languages (European Union, n.d.a). The citizens of the Union have the right to use any of those languages when in contact with the Union. However, there are over 60 languages spoken within the Union, such as Catalan or Welsh. The Union actively supports and intends to protect its linguistic diversity (The European Union, n.d.a). The European Commission uses three procedural or working languages in which it operates. Those languages are English, French and German (The European Commission, 2013). Even

through the Commission uses those three languages as working languages, this does not apply to the whole Union. The linguistic diversity within the Union is encouraged, therefore it does not have a shared language or one official language. Regarding a shared religion, one can also refer to the Charter of Fundamental Rights of the European Union. Article 21 of the Charter states non-discrimination, theoretically eliminating discrimination based on religion, race and many more. In theory, every religion has the right to be exercised freely within the Union. In practice, the majority of the EU citizens are Christian (66.1%), followed by 28.9% that do not identify with any religion. Only a small percentage of EU citizens is Muslim, and even less belong to a different religion (Bundeszentrale für politische Bildung, 2019). In practice, the majority of the European citizens seem to share a religion. This criterion is also only partly fulfilled, but with many restrictions. There is no shared language within the Union, since all European languages are encouraged and treated as official languages used in all institutions. Lastly, in practice there is Christianity as the religion shared by the majority of the European Union citizens. However, many citizens identify as non-religious, and a low percentage has other beliefs. Depending on the point of view taken, the criterion is not fulfilled.

European citizens have both the national and the European citizenship simultaneously. As the Political Capital Policy Research and Consulting Institute (2013) lays out in its study, approximately half of the population feels similar regarding national and European identity and identify as both national and European. The number of people that identify as European and a national of their own country is, according to the study (Political Capital Policy Research & Consulting Institute (2013), increasing continuously since 2010, whereas the number identifying as only a national of their own country is decreasing steadily. The institute further mentions that the current sense of European identity is not comparable to that of national identity and will not be achieved by further integration of the European Union. Verhaegen, Hooghe and Quintelier (2015) claim that further integration could lead to an increased sense of European identity. However, the integration has to be encouraged in a bottom up approach by the people, instead of being imposed on the citizens by the institutions (Verhaegen, Hooghe and Quintelier, 2017). The data suggests that there is a trend towards a growing European identity (Political Capital Policy Research & Consulting Institute, 2013). Historic memories, as Burgess (2006) attaches to national identity, are shared within the European Union through for example the Holy Roman Empire, whose territory spread through Northeastern Europe, and the influence of Roman and Greek philosophers on today's societies. It could be said that the base for this criterion is given, and if the sense of European identity is increasing, one can be positive that the criterion could be fulfilled soon.

As the fifth criterion, Cuyvers (2013) argues that the sovereignty of a federal state should be preserved in the member states/federal states. Article 3, Paragraph 6 of the TEU clearly states that the Union can only act to achieve the objectives laid out in the Treaty through the authority that is awarded to it by the Member States. This is referred to as the principle of conferral (Art. 5, TEU). The European Union can theoretically not seize competences. However, as mentioned in the chapter before, there is a harmonization competence (Art. 114, TFEU) which could lead to the Union taking over competences not assigned to it through intending

to harmonize national legislation (Schütze, 2012). Article 352 of the TFEU also provides room for the European Union to possibly act in areas in which it does not have competences (Schütze, 2012). For the sake of achieving the objectives of the Union, it may conclude legislation according to the provisions of the Treaties (Schütze, 2012). Schütze (2012) also refers to a spillover of competences into areas in which the Union does not yet have competences. The criterion of sovereignty preserved within the member states is preserved is clearly fulfilled within the European Union. The Member States hold the sovereignty over the Union, although there is room in certain phrasings of the Treaty for the Union to appropriate sovereignty that has not been transferred by the principle of conferral.

In a federal state, the authority in at least one policy area should be divided between the two levels of government. Additionally, the entity having the authority in this area should be able to act independently within it (Law, 2013; Cuyvers, 2013). The competences in which the European Union has exclusive authority are laid out in Article 3 of the TFEU. In those policy areas, the only European Union can act as a legislator. Article 4 of the TFEU highlights the shared competences. Both the Union and the Member States have to cooperate in the decision-making process and can only legislate together. Other policy areas are solely under the authority of the national Member State level. This criterion is fulfilled, because the competences of each entity extent to more than just one. Furthermore, both have the authority to exercise independently in the assigned area.

According to McIlwain (2005), the division of authority needs to be laid down in the constitution or secured otherwise. As mentioned above, the division of competences in the European Union is very specifically laid out in the Treaty on the Functioning of the European Union (Articles 3, 4 & 6). Consequently, the criterion is fulfilled.

The eighth criterion has already partly been applied simultaneously with the sixth criterion of the division of authority in at least one policy area. The eighth criterion specifies that there should not be any interference of one level of government into the sovereign spheres of the other (Cuyvers, 2013; Law, 2013). This has been secured through the corresponding Treaty articles (Article 3,4 and 6, TFEU). However, the concerns raised by Schütze (2012) regarding the harmonization and residual competences (Art. 114 & 352 TFEU), as well as spillover of competences should be considered again in this context. These competences could undermine the independency of the assigned entity and its authority. The criterion is fulfilled but might be compromised by lenient interpretations of the competences in Article 114 and 352 of the TFEU.

Burgess (2006) states that within a federal system, a federal state should have a certain amount of independence but should not be able to function completely independent from the central government. The European Union membership criteria ensure that only established states can apply as a Member State of the European Union (Article 49, TEU; Article 6(1) TEU). Thus, the Member States of the European Union are fully established nations that can function independently. However, with the accession to the European Union, they agreed – through the principle of conferral (Art.5 TEU) – to transfer sovereignty in certain areas



to the European Union. The Member State does not have the authority to act in these areas anymore. An example for this could be found in Brexit. Trade with countries outside of the European Union is an exclusive competence of the European Union, because the Member States transferred their authority to act on this topic to the European Union (The European Commission, 2018). As long as the United Kingdom is still part of the European Union, it would theoretically legally not be allowed to start negotiations regarding trade with countries outside of the European Union, because the sovereignty in trade lays with the European Union. Only on the date of the exit, negotiations could begin. From a restrictive perspective, the Member States cannot function independently, because they voluntarily transferred sovereignty to the European Union in subjects that they then no longer can act on. However, before joining and after leaving the Union, the State will retain or re-obtain its competences in this area.

In a federal state, both levels of government combined should form the state (Law, 2013). As discovered already when applying the first criterion, the European Union has two levels of government. In the paragraph above, it was discussed that the Member States of the Union cannot function completely independent if the European law is interpreted restrictively. Therefore, the two levels combined form a state, if the law is not interpreted leniently.

Levi (2016a) notes that the people of a federal state are subject to multiple levels of government. It has been determined already that the European Union has at least two levels of government, which the citizens are objected to. However, the principle of the direct effect of European law and its applicability on individuals showcases this even more clearly. The citizens of the European Union have rights and obligations imposed onto them by the European law (Schütze, 2012). This clearly highlights the relationship between the European citizens and the European Union. This criterion is fulfilled.

Article 10 of the TEU outlines how democratic principles in the European Union affect the citizen. Their representation on the European level is through the European Parliament. Paragraph 3 of Article 10 TEU states that the European citizen can take part in the democracy and promotes transparency and closeness to the citizen. The Charter of Fundamental Rights of the European Union provides each citizen of the Union with the right to vote and to candidate for a seat in the European Parliament in the Member State of his or her residence (Art. 39(1), Charter of Fundamental Rights of the European Union). Furthermore, the European citizens can, with the citizens' initiative, lead the Commission's attention to an issue that might need legislation. The Commission can then decide to act on it and make use of its right to initiate the legislative process (Art. 11, TEU). To meet the criteria of a citizens' initiative, a citizens committee with a minimum of seven European citizens from seven different Member States needs to be formed (The European Commission, 2019). The members of the citizens committee and the signatories of the initiative have to be old enough to vote in European elections. A sufficient number of signatures, which is one million, has to be collected within one year (The European Commission, 2019). The European citizens can clearly participate in the European Union's democratic life. The criterion of Levi (2016a), saying that democracy should be present on the lowest level is met.

Levi (2010) states that it is characteristic for federalism to extend from the national level both towards the bottom and towards the top. Extending from the national level to the top in the European Union would be from the national level of the Member States to the European level. The extension towards the bottom depends on each Member State. If the Member State organizes itself in a federal way, federalism extends to the regional and local level, as for example in the Federal Republic of Germany. In states that have organized themselves according to a unitary form, such as France, federalism does not extend towards the bottom. This criterion is not completely met by the European Union. It can only be guaranteed that federalism in the European Union extends from the national level towards the top/international level. If it also extends to the bottom is within the power of the Member State itself.

In a federal state, sovereignty should be invested into the central government by the people (Burgess, 2006). First signs of this can be found when discussing a country's accession to the European Union. The citizens of the state that would like to join have to consent to being part of the Union (The European Commission, 2016). This can either be done via a referendum or through the national parliament (The European Commission, 2016). However, the Treaties do not specifically say that the people of the European Union vested their sovereignty into the European Union. Indirectly through the national parliaments, this could be the case. The criterion is only partly met. A similar argumentation could be used for the de jure sovereignty, which should lay with the people. It is also only partly met.

Regarding the equality of the federal states in the system, Burgess (2006) points out that they should be equal in strength. However, as described earlier, it is not specified what kind of strength is referred to by the author. Although all Member States are to be respected as equals before the Treaties (Art. 4(2) TEU), they differ in e.g. economic strength. According to Eurostat (2018), in 2017, Germany had the largest share of the European GDP with approximately one fifth of the total. On the flip side, countries like Cyprus or Malta only have 0.1 percent of the European GDP. As long as the kind of strength is not specified in more detail, it cannot be determined if this criterion is met.

The sovereignty regarding internal matters in federal states should be divided between the federal states and the central government (Burgess, 2006). In the European Union this can be, once again, found in the articles regarding the competences of the European Union and the Member States. Most of those competences are related to internal matters, such as those regarding the establishing and functioning of the internal market, social policy, consumer protection, trans-European networks or the area of freedom, security and justice. Other competences not listed in the Treaty articles are handled within the Member States. This criterion is met by the European Union.

Regarding the sovereignty in external matters, the European Union is not having the only authority as it should have in a federal state (Burgess, 2006). Regarding the conclusion of international agreements, the European Union only has limited authority to conclude those agreements (Art. 3(2) TFEU, Art. 37 TEU). Furthermore, the European Union has exclusive competences in the common commercial policy, including

trade, and the customs union, which could be interpreted as external matters. Foreign policy is a sensitive area that many Member States will likely want to keep to themselves. The Common Foreign and Security Policy (CFSP) is laid out in Chapter 2 of the TEU. The definition and implementation of the CFSP is generally dealt with by the European Council and the Council of the European Union, which are both organs representing the governments of the Member States, either through Ministers or through the heads of state and government of the Member States. The Commission's and the Parliament's participation is restricted in both the decision-making procedure and eliminated from any legislation activity (The European Union, 2016) Article 25 of the TEU defines the actions and areas in which the European has room to maneuver: defining the general guidelines, adopting decisions defining actions and positions taken by the Union, as well as arrangements for the implementation of decisions, and the strengthening of systematic cooperation between the Member States. The Common Security and Defense Policy (CSDP) forms an essential part of the CFSP and arranges an operational capacity through civilian and military assets to be put into action in peacekeeping, conflict prevention and the strengthening of international security (Art. 42(1) TEU). The common Union defense policy will be decided on unanimously by the European Council, which can then be recommended to the Member States (Art. 42(2) TEU). Article 45 of the TEU establishes the European Defense Agency. Member States can choose to be a part of the Agency (Art. 45(2) TEU). External matters are dealt with on the European Union level only to some extent. Trade and the customs union are completely under the authority of the Union. However, it can only partly conclude international agreements, and it does not seem fully entrusted with the full scope of elements regarding Security and Defense. The Member States invested most powers into the European Council, which is the organ consisting of the heads of state and government that have to then decide mostly unanimously, showing a reluctance to confide those powers completely into the hands of the Union. Burgess (2006) suggests that the central government should have the sovereignty in external matters. This criterion is only partly fulfilled, mostly due to high politics still being reserved to the national level, although it is essential to the survival of a state.

Another criterion of a federalism is that the federal states should be represented in the central government through an essential body with proportionate voting powers (Burgess, 2006). From a European perspective, the Member States need to be represented on a European level. This takes place mainly through the Council of the European Union which consists of the representatives from the ministerial level. The European Council, consisting in the heads of state and government, is also a representation of the European Member States. However, the European Council seems to be more fitting, because through the ministerial representatives, it covers a greater variety of policy areas in more detail. Voting within the Council depends on the matter that is voted on. Foreign affairs concerns have to be voted on with unanimity. Other decisions are usually made via a qualified majority voting. The voting is proportionate due to the qualified majority voting, which means that to be accepted, a vote must cover 55 percent of the Member States that represent a minimum of 65 percent of the population.

Lastly, Burgess (2006) states that constitutional changes in a federal state need the approval of the representation of the federal states and the people. Thus, within the Union, both the European Parliament and the European Council/ the Council of the European Union would need to agree. The equivalent to constitutional changes in a federal state would be changes in the Treaties of the European Union. There are two different procedures to amend the Treaties: the ordinary revision procedure for key amendments, the simplified revision procedure for internal policies and actions and the Passerelle clauses, which are similar to the simplified revision procedure (The European Union, 2015). In the last case, amendments can be made unanimously by the European Council after the European Parliament has given its consent. For the ordinary revision procedure, either a Member State's government, the Parliament or the Commission will submit their proposal to the Council of the European Union, who forwards it to the European Council. After the affirmation of the European Council, the amendment has to pass through a convention and a conference, in which all Member States have to ratify the amendments (The European Union, 2015). In the simplified revision procedure, the European Council has to consider the Commission, the Parliament and – depending on the nature of the amendment – the European Central Bank before unanimously deciding. Lastly, there is the residual competence (Art. 352, TFEU), allowing the European Union to develop new competences, which also inherently means that the Treaties will be amended (The European Union, 2015). Except for the scenario of the residual competences, changes in the Treaties have to be approved by both the European Parliament and the European Council. The criterion is therefore mostly met.

## 4 CASE STUDIES

All three countries have specifically laid out in their constitution that they are a federal state or wish to be federally united into a state with the signing of the document. However, apart from the statement in the constitution, the criteria developed in this work will be applied to each of the countries to provide a real-world reference for determining which federal characteristics can be found in the European Union.

### 4.1 Federalism in Argentina

The most recent form of the Argentine constitution from 1994 already establishes in its first article that the Argentine nation is organized in a representative, republican and federal way.

The second title of the constitution provides the legal grounds for the governments of the provinces, which together form the federal states of Argentina. The title as a whole demonstrates that there are two levels of government in Argentina, which is a characteristic feature of a federal state (Burgess, 2006). Article 122 (Argentine constitution) specifically establishes local governments and institutions and guaranteeing their functioning without the intervention of the central government.

All citizens of the province enjoy the same rights in every province of the country (Art. 8). Furthermore, every inhabitant of the nation is subject to the same rights that apply to everyone under the constitution

(Art. 14). Regarding a shared territory, the third Article of the constitution settles that the territory of the province will be federalized and become part of the territory of the federal state. This shows that both a shared citizenry and a shared territory is given, meaning that the criterion (Burgess, 2006) is met.

Burgess, (2006) claims that a shared language and religion is needed in a federal state. Article 2 of the constitution states the intuition of the federal government to being roman catholic. The constitution is written in Spanish, which shows that Spanish could be an official language in Argentina. This is confirmed by Steward (1999). Despite that, the constitution does not name one language specifically. This confirms the criterion of Burgess, because Argentina has both a shared language and religion.

Arkenbout (2015) claims that the country has many common aspects as to language, territory, religion and history, but points out that it is culturally and territorially too diverse to have just one shared national identity. This criterion is only partly fulfilled (Burgess, 2006).

The sovereignty of the Argentine nation is preserved within the provinces. Article 121 of the Argentine constitution states that the provinces have delegated their sovereignty to the central government in certain policy areas. The criterion of Cuyvers (2013) is met.

Article 126 of the constitution explains what policy areas the provinces are not supposed to interfere into because of the transferal of authority. The central government can act in areas such as commerce and political agreements. Other areas are still under the authority of the provinces' governments; therefore, the criteria F7 and F8 are fulfilled. Due to the article in the constitution, the criterion of McIlwain (2005) is also met, because the division of authority is laid down in the constitution.

According to Burgess (2006), the federal states should have independence, but should not function completely on their own. Due to the division of authority, the Member States will not be able to function on their own while they are still part of the central government, especially due to foreign relations being in the hands of the central government (Art. 126, Argentine constitution). However, if they decide to leave the central government, they would most likely re-obtain their powers and be able to function independently. This also underlines that only both levels together can form a state. Otherwise, they would be missing important competences of a functioning state.

Both the central government and the provinces grant rights and obligations to their citizens and inhabitants (Art. 8 & 14, Argentine constitution). This could be interpreted as the citizens being subordinate to both levels of government, which is as Levi (2016a) points out, a characteristic of a federal government. The citizens are able to directly participate in elections through the presidential elections (Art. 94, Argentine constitution). Enabling individual citizens to participate fulfills the criterion of democracy on the lowest level (Levi, 2016a).

According to Levi (2010), federalism is supposed to extend from the national level both towards the top and towards the bottom. In Argentina, it extends towards the bottom to a regional level through the

establishing of the provinces and their governments. Argentina is a member of several international organizations, such as the MERCOSUR or the United Nations. Nonetheless, the international level is not as intensely linked to the national level as the national and regional levels are linked. Due to the imbalance, the criterion is only partly fulfilled.

Article 33 of the constitution states that all declarations, rights and obligations within the constitution derive from the sovereignty of the people. This clearly demonstrates that the people invested their power into the government, meeting criterion F14 (Burgess, 2006).

The equality of the federal states in Argentina is difficult to determine, because their strength has not been determined. They vary greatly in both population and surface (Ministerio de Defensa, n.d.). The autonomous city of Buenos Aires is populated by approximately 2.8 million people but only has a surface of 200km<sup>2</sup>, whereas the province of Chaco for example covers an area of almost 100.000km<sup>2</sup> but has only approximately 1.05 million inhabitants. However, this cannot determine the strength of a federal state without more specific indications as to the kind of strength.

The sovereignty of the people is established in Article 33 of the constitution, securing the de jure sovereignty with the people.

The powers of decision making in certain policy areas between the federal states and the central governments are divided by external and internal matters. The provinces cannot interact on political matters, commerce and especially war and military action (Art. 126, Argentine constitution). The authority regarding other competences is withheld in the provinces (Art. 121, Argentine constitution). Political matters, commerce and war/military belong into the realm of external affairs. The criteria F17 and F18 should be fulfilled.

The provinces are represented in the Argentine central government by the Cámara de Diputados de la Nación. The seats in the Chamber of Deputies are given out proportionally to each of the 14 provinces (Art. 46, Argentine constitution). The criterion is fulfilled because the provinces are represented and can vote proportionally due to the proportional distribution of seats.

Procedures for constitutional amendments or changes are not stipulated in the constitution of Argentina. Other sources of information were not available.

## 4.2 Federalism in Australia

Clause three of the Australian constitution states that the colonies of New South Wales, Victoria, South Australia, Queensland, Tasmania and West Australia will form the Federal Commonwealth of Australia.

Chapter V of the constitution is dedicated to the federal states of Australia, establishing that each state keeps its regional government (Section 106 & 107, Australian constitution) and respecting the states' laws

if they are in harmony with the Commonwealth's laws (Section 108, Australian constitution). This highlights that there are several levels of government.

Australia has a shared territory, because it incorporated the territories of the colonies when forming the state. It has a shared citizenry through the citizens of the states. However, Section 127 of the constitution, which has been rendered ineffective in 1967 (Table of Amendments, Australian Constitution), ruled that the aboriginal population of Australia should not be counted when determining the population in the Commonwealth, clearly separating them from the rest of the citizens. Section 51 (xxvi) of the constitution has also been amended (Table of Amendments, Australian Constitution) to extent the powers of the parliament to aboriginal people, for whom there needed to be special laws before. Since these changes, there is no difference in citizens in the constitution anymore. This indicates that there is a shared citizenry.

Section 116 of the constitution specifically points out that the Commonwealth is not to determine a common religion for its citizens, establishing a freedom of worship. The constitution itself does not dictate an official language. However, the constitution is written in English, implying that English is the most commonly spoken and understood language of the country. The Australian Bureau of Statistics (2018) states that more than 70 percent of Australians speak English only at home, followed by mandarin, Arabic, Cantonese and Vietnamese. There is no shared religion, but due to the majority speaking English, there is a shared language in Australia.

Regarding a shared identity, the federal states have all been British colonies before, meaning they shared a certain historic and cultural background. However, Australia is uniting a variety of different cultures, which could cause difficulties in forming one single national identity (Ng & Metz, 2015). Ng and Metz (2015) claim that Australia uses this multiculturalism as a part of its national identity, embracing it instead of viewing it as a threat to unity. It can be said that Australia has a shared national identity.

The Australian constitution does not say as explicitly as the Australian constitution that the sovereignty is preserved within the Member States. However, it is constantly noted that the people of each of the states have agreed to have their states united into a Federal Commonwealth (Section 3, Australian constitution). This already confirms criterion F16 of the people having de jure sovereignty and criterion F14 of sovereignty invested by the people into the central government (Burgess, 2006). It could indicate that the criterion F5 of sovereignty preserved within the federal states (Cuyvers, 2013) is also fulfilled through the bottom-up approach described by Cuyvers (2013).

There is a division of authority in certain policy areas in Australia. Those include inter alia customs, excise and bounties (Section 86 - 90, Australian constitution) which are exclusive to the Commonwealth. Furthermore, the federal states are not legally allowed to take military actions of any kind (Section 114, Australian constitution). In case of attacks, the Commonwealth has the responsibility to protect its states (Section 119, Australian constitution). The Commonwealth has independent authority in the area of e.g. military actions, fulfilling criterion F8. The division regarding those two areas is secured in the constitution,

however, other areas are not mentioned. Therefore, the criterion is fulfilled as well. Additionally, both commerce and military action are external matters, which should be, according to Burgess (2006), within the authority of the central government. It is not specified which policy areas are exclusive to the states.

The federal states in Australia have their own governments and parliaments. However, due to the competences transferred to the Commonwealth, they are not able to function by themselves. This inherently means that they have to be combined to form a fully functioning state. The people are also part subordinate to two levels of government. The constitution puts rights and obligations on the citizens from the level of the Commonwealth. From the level of the state, the federal states' parliaments can still legislate on their level of government (Section 107, Australian constitution).

The Australian people are involved in the democracy of the country through elections. They can elect the senators for the senate (Section 7, Australian Constitution) and the House of Representatives (Section 24, Australian constitution) on a national level. On the federal level, the citizens can vote for the parliament of the state (e.g. Section 10, Constitution of Queensland). The citizens are involved in democracy on the lowest level.

Federalism in Australia extends from the national to the regional level through the governments of the federal states. However, the extension to the international level seems to be not as strong. Australia is part of several international organizations or associations, such as the Commonwealth of Nations or the United Nations. Similar to Argentina, the federalism extends stronger to the bottom regional level than it does to the top international level, because the link between the federal states and the central government is stronger than the link between the organizations and the central government.

Similar to Argentina, the Australian federal states differ in size and population, although the largest states do not necessarily have the largest population, meaning that they are not equally strong in population and surface (The Australian Government – Geoscience Australia, n.d.; The Australian Bureau of Statistics, 2019). Again, these data cannot determine the equality in strength of the federal states, because the strength is not explained further.

The regional governments are represented within the central government in the Senate (Section 7, Australian constitution). At the basis, there are six seats per state, however, the Parliament can decide to increase the number of seats to more than six (Section 7, Australian constitution). This implies that only the Parliament can ensure that there is proportional voting in the body representing the federal governments, not guaranteeing proportional voting.

Chapter VIII of the Australian constitution is solely dedicated to alterations of the constitution, with Section 128 specifically explaining the procedure. Each House of Parliament has to pass the proposal with an absolute majority. Therefore, the involvement of the representation of federal governments is a given, just as the inclusion of the representation of the people through the House of Representatives.



## 4.3 Federalism in Canada

The introducing paragraphs before the Preliminary state that the some of the provinces (now federal states) have desired to be federally united. Section 5 of the Constitution Act 1867 states that those provinces will be Ontario, Quebec, Nova Scotia and New Brunswick.

Canada has several levels of government: the national level with the central government and the provinces. However, there are several more provinces than the four established through the Constitution Act 1867 which provides the possibility to admit new states in Section 146 (The Government of Canada, 2018). Between 1870 and 1993, six new provinces have been added to Canada, simultaneous to three territories. Territories are, contrary to provinces, not sovereign and have authority conferred into them by the Parliament of Canada (The Government of Canada, 2018).

Canada has a shared territory through the areas covered by the provinces and territories. Regarding a shared citizenry, the citizens of the provinces automatically became the citizens of the central government as well, which inflicts rights and obligations onto them (e.g. Section 2 & 3, Constitution Act 1982). Regarding a shared language, both English and French are recognized as official languages of Canada with equal status and, rights and privileges (Section 16, Constitution Act 1982). Section 2(a) of the Constitution Act form 1982 establishes the fundamental freedom of religion. However, the introductory sentence to Part I of the Constitution Act of 1982 states that Canada is “founded on upon the principles that recognize the supremacy of God and the rule of law”, indicating that there is a religion that is shared. Nevertheless, the religion is not mentioned.

Canada is known as a diverse country with immigrants from all over Europe (Ng & Metz, 2015). Canada has been one of the first countries to implement policy on multiculturalism to support its national identity. Similar to Australia, the increasing diversity is not perceived as a threat to national identity, but rather as a something to foster it.

In Canada, the provinces are deemed sovereign, thus preserving their sovereignty within themselves (The Government of Canada, 2018). Only the territories are not sovereign. There is a division of powers between the provinces and the national level in certain policy areas. The provinces are not allowed to make decisions inter alia regarding matters of national defense, foreign affairs, federal taxes, fisheries, certain aspects of infrastructure and criminal law. This also showcases Burgess’ (2006) approach of a classic division of powers in which the external matters, such as national defense and foreign affairs (The Parliament of Canada, n.d.). The powers of the provinces, such as hospitals, prisons, education and marriage, are secured in written in the Section 92 of the Constitution Act of 1867, which also specifically guarantees exclusive policy-making powers to the provinces.

The provinces cannot function completely without the central government due to the transferal of authority in certain policy areas. However, the three Canadian territories exist on the same level as the provinces,

but could not function independently, because they have received their sovereignty from the Canadian parliament and do not have sovereignty vested in themselves through the people in their territory. Both levels together form a complete state because all policy areas are needed to form a completely functioning state. Through both levels imposing rights and obligations on the Canadian citizens via both the Canadian constitution and the constitutions of the provinces, the citizens are subordinate to both levels of government. The citizens can participate in the democratic life of both the provinces and the national level. Citizens vote for the House of Commons, the lower of two chambers (House of Commons, 2017), but also partake in elections on the provincial and territorial level (e.g. Legislative Assembly of British Columbia, 2016).

Federalism in Canada extends from the national level downwards to the regional level, but also towards the international level. However, just like in Australia and Argentina, the bond to the regional level is more intense than to the international level due to the division of competences. Towards the international level, Canada is part of several international organizations such as the United Nations or the G20.

The Canadian constitution itself does not mention specifically that the people vested the sovereignty into the central government, nor do some of the provincial constitutional acts (Constitution act of British Columbia, Alberta Act). This also complicates the determination if the de jure sovereignty lies with the people.

The federal states are not equal regarding population and surface. The territories cover approximately 40 percent of Canadas area, but only three percent of the population live in the territories (The Government of Canada, 2018). The unclear definition of strength proves to be difficult when applying the criterion.

The provinces of Canada are represented in the central government through the Senate (Section 22, Constitution Act 1867). A different number of seats is given out for the provinces, Ontario, Quebec, the Maritime Provinces and Prince Edward Islands and the Western Provinces are each represented by 24 seats, the last two split up for several of the other provinces (Section 22, Constitution Act 1867). Therefore, the seats are not given out proportionally, complicating proportional voting.

Part V of the Constitution Act of 1982 outlines the procedure for amending the constitution of Canada. In the general procedure, both chambers of the parliament, which represent the people and the provinces/territories have to authorize the proclamation by which an amendment can be made (Section 38(1a), Constitution Act 1982). Section 38 (1b) highlights that there is also the possibility to authorize the amendment through two thirds of the legislative assemblies of the provinces, covering at least 50 percent of the population of Canada. Situations that require other procedures than the general procedure also mostly involve the House of Commons and the Senate as the representation of people and provinces. However, there are exceptions such as described in Section 47(1) of the Constitution Act of 1982.

## 5 RESULTS

Table 2: Criteria for federal states and their application to research subjects

Abbreviation	Criterion	Main source	EU	Argentina	Australia	Canada
F1	at least two levels of government	Burgess, 2006	+	+	+	+
F2	shared territory and citizenry	Burgess, 2006	+/- On the surface yes, but no power to influence or regulate	+	+	+
F3	shared language and religion	Burgess, 2006	-	No language, but religion	-	A language, but no religion
F4	sense of national identity (literature, historic memories)	Burgess, 2006	+/-, on the rise	+/-	+	+
F5	sovereignty preserved within the member states	Cuyvers, 2013	+	+	+	+ in the provinces, - in the territories
F6	division of authority in at least one policy area between the two levels of government, independence in that area	Law, 2013 Cuyvers, 2013	+	+	+	+
F7	division of authority laid down in the constitution or secured otherwise	McIlwain, 2005	+	+	+	+ Only for the provinces, not for the federal government
F8	no interference of one level of government into the sovereign spheres of the other	Cuyvers, 2013 Law, 2013	+/-	+	+	+
F9	federal states have independence, but should not be able to function completely independent from the central government	Burgess, 2006	+/-	+	+	+ Especially the territories
F10	combined, both levels form the state	Law, 2013	+/-	+	+	+

F11	people are subordinate to several levels of government	Levi, 2016a	+	+	+	+
F12	democracy on the lowest level	Levi, 2016a	+	+	+	+
F13	extending from the national level towards the top and towards the bottom (regional and international)	Levi, 2010	+	+/-	+/-	+/-
F14	bottom up approach: sovereignty invested into the central government by the people, passing through each level of government.	Burgess, 2006	+/-	+	+	?
F15	Equality of the federal states (strength)	Burgess, 2006	-	n.a.	n.a.	n.a.
F16	People have de jure sovereignty	Burgess, 2006	+/-	+	+/-	-
F17	Sovereignty regarding internal matters divided between federal states and central government	Burgess, 2006	+	+	+	+
F18	Sovereignty regarding external matters with central government	Burgess, 2006	-	+	+	+
F19	Representation of federal states through an essential body in central government, with proportionate voting powers	Burgess, 2006	+	+	+	+
F20	Constitutional changes need approval of representation of federal states and people	Burgess, 2006	+	n.a.	+	+/-

In more than half of the criteria applied, the European Union meets the criterion equally to the states that have been used as reference. The European Union as well as Argentina, Australia and Canada had at least two levels of government, although some had more than that. The sovereignty of the states is still preserved within the federal units or Member States in the case of the European Union. Furthermore, the division of authority regarding certain areas of policy and decision-making is clear cut in all four cases, dividing internal matters between both levels. However, it seems most elaborate in the European Union Treaty. In all four instances, it is secured in written in the constitutions of the European Union and the states, also guaranteeing independence and non-interference in that area. The people living in the states or in the European Union are subordinate to more at least two levels of government, the central government and

the governments of the federal units. Lastly, in all states and the European Union, the federal units are represented in the central government through an integral organ.

However, compared to the other states, the Union also lacks a few key federal characteristics. On the surface, the Union has a shared territory and citizenry. However, the Member States retain the authority, as can be seen with the multilevel citizenship. The European Union can only determine citizenship or its territory indirectly and is exposed to the Member States' decisions, thus missing its own nationality. Accordingly, the features of statehood of having a territory and people can only be critically reflected upon in relation to the European Union. In theory, both levels are needed to form a state, meaning that the Member States cannot function independently. In practice, the limits seem to be fluid, depending on a strict or lenient interpretation of the laws and guidelines. Furthermore, the Member States of the European Union are significantly more independent than the federal units of the other states, although they confer sovereignty to the Union. However, the Member States are simultaneously recognized as nation states with democratic relations and a position in the global sphere, leaving room for discussion and interpretation. Even though the competences are clear cut and non-interference through unauthorized actors is guaranteed in the European Treaties, there are two articles that could provide grounds for the European Union to extend its competences independently, illustrating that the competences are not as clearly separated. The European Union has, in addition, no competences regarding external powers, which lay mainly in the hand of the Member States. Only under certain conditions can the European Union conclude international agreements.

In the European Union, federalism extends both towards the top and towards the bottom from the national level. However, this depends on where the national level is located. In the European Union, the national level would be the level of the Member States. In this scenario, the federalism extends to the top/ European level and, in the case of a federal Member State such as Germany, also to the bottom/ regional level. From a federal perspective, the European Union as the central government would be the national level, elevating the current terminology to a higher level. In this situation, the Member States are the regional level, meaning that, similar to the case studies, the bond between regional and national is stronger than the federal connection between the national and international level.

The criteria deemed some of the more significant (F1, F5, F6, F17/18) are generally met by the European Union and all case studies, except for criterion F18: the European Union is not responsible for external affairs. This competence is left with its Member States.

## 6 CONCLUSION

The European Union has constantly advanced its integration over the years with each Treaty. Its competences have expanded, and its structure has been amplified. The different additions of supranational and federal features have opened up the possibility to a comparison between the European Union and a

federal state. In order to follow the assumption of the European Union being similar to a federal state, the following research question has been developed:

*To what extent does the European Union compare to a federal state?*

From the criteria that have been developed out of theories on federalism, the European Union has fulfilled more than half, and generally also the ones deemed as essential. Especially the criteria regarding sensitive matters such as external policy, borders and territory, citizenship typically remain within the sovereignty of the Member States of the European Union. This is not the case for the other federal states that have been used as a reference. Regarding those criteria, it seems as if the theoretical standards are not artificially high and unreachable.

The criteria that are neither (partially) met by the European Union, nor by one or more of the states from the cases studies involve shared language, religion and a shared sense of national identity. The first two seem to be not as relevant to a federal state on closer examination. Australia has, similar to the European Union, neither a shared language nor a shared religion. Argentina and Canada have either a shared religion or a shared official language, but never both. On the other side, both Australia and Canada are said to have sense of national identity, which has been supported by policies that foster national identity through multiculturalism. Argentina is assumed to be too diverse to have just one national identity. The European Union is diverse in cultures and ethnicities, but its sense of national identity is claimed to be on the rise. However, Argentina proves that there can be more than one national identity in a functioning federal state. It could be interpreted that a shared sense of national identity is not a necessity in a federal state but can be of benefit. If there would be a sense of national identity in the European Union, it could foster and fuel further integration and solidarity along the European Union.

In the majority of criteria, the European Union is equally meeting the criteria of a federal state as the other states used as a reference. This illustrates that the European Union is akin to federal states especially in structure and institutions. However, it needs to be noted that the paper was only comparing the European Union to federal states, but is no federal state itself (Opinion 2/13, The Court of Justice of the European Union) due to sovereignty still largely contained within the Member States.

To direct back to the research question, the European Union can compare to federal states in areas such as structure, institutional setup, or concepts such as national identity, with the latter one only in comparison to examples in practice. In other areas, such as sensitive policy areas and high politics that are crucial to the survival of a state, the European Union compete with or resemble a federal state. Nonetheless it should be noted that for some criteria, the outcome can depend on a lenient or strict interpretation of the regulative framework of the European Union, such as regarding the harmonization competence. The Member States do not seem to be willing to give up their sovereignty in those areas and prefer to be autonomous.

It could be gained from this research insights about the future of the European Union. It can be evaluated clearer if further integration or reversing the actions taken so far in certain areas will bring the European Union closer or further away from being a state. This could be useful for the Member States themselves to examine their future, but also for countries that consider applying for a European Union membership and lastly, individuals. It can also serve to clarify concerns about the European Union becoming a super state or the amount of influence the European Union has in its Member States, not only for the academically interested, but also for individuals, e.g. voters, through the rather level-headed assessment in the table overview.

Due to the reasoning in the previous paragraphs, further advancements in integration in the European Union have to be viewed critically. Discussions about progress might become tenacious because the sovereignty of what is at the heart of the state and essential for its existence are being put into focus.

Future research could have the opportunity to further this research in terms of the relevance of criteria such as language or shared national identity. It could be evaluated more appropriately how much value the real-world reference should be given. A next step to the research done in this paper could be if there is positive support both from the people and from the Member States to continuously overcome the criteria that have not applied to the European Union. If so, it could be researched to solve this and integrate further.

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