

# EDITORIAL

## TOWARDS A TRANSATLANTIC AREA OF COOPERATION

*Giacinto della Cananea\**

More than six decades ago, six countries moved by the hope of ensuring peace and rising living standards, agreed on the text drafted by Jean Monnet and made public by Robert Schuman and later signed the Treaty of Paris establishing the European Coal and Steel Community. After the failure of the Treaty establishing the European Defence Community, two further economic communities were created in 1957. The following decades have seen the achievement of the initial goals (peace and prosperity), the gradual expansion of the tasks of the new bodies, and the institutionalization of the European polity. This constitutes a “new legal order” – to borrow the famous expression used by the Court of Justice in its ruling in *Van Gend en Loos* – the subjects of which do not comprise only the States, but also their citizens. An unprecedented process of transformation from an interstate union to a “composite”, quasi-federal polity has thus taken place. Some similarities with federal polities, such as the United States of America, have often been pointed out, though the distinctive features cannot be ignored, to begin with the ambition to create “an ever closer union between the peoples of Europe”, instead of a people.

As the integration process has evolved from the transfer of sovereign powers, “albeit in limited fields”, to a more complex web of policies, this expanded the external role of the Community. Although the Member States retained their powers to negotiate unilaterally international treaties, as well as their powers to join the international regimes created after World War II, the Community has increasingly played a role on the international stage.

\* Full Professor of Administrative Law, University of Rome “Tor Vergata”

It has exercised its exclusive competence for commercial policy, becoming a founding member of the World Trade Organization, joining the US in promoting free trade, though not without differences and sometimes disputes. Similarly, in the environmental field, the European Union (which, after the Lisbon treaty, has replaced the Community) has promoted the creation of international regimes, such as that of Kyoto, not rarely in disagreement with US policies. More recently, the Union has taken important steps to ensure the respect of the resolutions adopted by the Security Council of the United Nations, and promoted or sustained by the US, though in Europe this area has become increasingly less insulated from judicial review and has eventually required a gradual adjustment of the measures provided by the UN.

All this shows that between the EU and the US there are important common features, but also distinctive traits. There is also an important, increasing potential for closer cooperation between the EU and the US. While the common foreign and security policy of the EU has been viewed as persistently weak by its counterparts on the other side of the Atlantic Ocean and the external dimension of its internal area of justice and security still needs to be strengthened, the role of the Union can be highly significant in the economic area not narrowly intended, that is to say with important implications for environmental and social policies.

The question that thus arises is whether, after the (sometimes mainly rhetoric) trans-Atlantic proclamations of solidarity in the aftermath of 9/11, the EU and the US can create a more institutionalized pattern of cooperation. An agreement, the *Transatlantic Trade and Investment Partnership*, has been under negotiation since 2013. If it is signed and ratified, and if it is combined with the trade agreements that already exist on both sides of the Atlantic Ocean (in the perspective of a Transatlantic Free Trade Area), it could give rise to the wider free trade area of the world, with important positive effects not only for the contracting parties, but also for the rest of the world. The “if”, however, is not merely a manifestation of caution. It also serves to point out that several steps must be taken in order to transform

those potentials into a reality of closer and institutionalized cooperation. What matters is not only the variety of attitudes that have emerged within Europe since the Iraqi War or the different views that prevail in the EU and the US with regard to the relations with other global players.

Looking at the topic from a legal point of view, the attempt to create a free trade area, where non-tariff barriers and other distortion to competition are eliminated raises, first, the question of the goals of competition, of its underlying philosophy. There is, second, an increasing divide in an important field, that of data protection. Few years ago, the decision by the European Court of Justice (in joined cases C-317/04 and 318/04) has annulled the decision on adequacy concerns processing of personal data, for its contrast with EU law. The Court, consistently with its case law, ruled in favour of a strong vision of data protection. This vision is in clear collision with the surveillance carried out by the US' National Security Agency (NSA) in the last years. Realists will argue that all national governments must, and do, carry out surveillance activities. Whatever the intellectual soundness and political expediency of this way to consider the question, there is evidence that an agreement does not only serve to enhance mutual trust between the parties, but it also presupposes such mutual trust. This requires concrete steps to harmonize legal and administrative provisions in order to ensure that an adequate protection has been put in place. Last but not least, remedies for citizens and business must be taken into due account. A growth of transnational exchange is likely to produce new disputes. Whether such disputes can be solved only through the traditional instruments of EU law, that is to say the courts, or through alternative instruments for solving disputes, it is an important question in view of the consolidation of a system of adjudication capable of responding to the needs of a transnational society.