Classical legal theory has always found it extremely difficult to determine the legal nature of the EU. It is clearly inadequate to call EU a confederation of states, and yet there are even more decisive objections against calling it a federal state. However, in so far as it is a prisoner of this binary classification – the EU is either a confederation of states or a federal state, tertium non datur (Leben, 1991; Constantinesco, 2002) – classical theory prefers to call it a confederation, which is in effect the least bad description, but not without adding, as if to excuse the abyss that separates the EU from the former American, Swiss and German confederations, that it is ‘very integrated’ (Lejeune, 1995, p. 147).

We object to this rather unenlightening approach. We defend here the thesis that the EU is of the species ‘plurinational federation’ of the genus ‘federal phenomena’ which includes two other species – federal states and confederations of states, in other words, tertium datur – on the condition that we redefine the notion of confederation in a way different from that employed in classical doctrine, and that we construct a generic concept of federation able to encompass the three distinct species that we have just named.

After this exercise in legal conceptualism, which tries to explain the very special fate that the EU reserves for the sovereignty of member states (Part I), we show that this plurinational federation is based on a ‘constitutional pact’ that requires a special form of ‘federal loyalty’. In order to explain the legal, political and ethical requirements that this principle seems to postulate, we will employ what Belgian legal theorist François Ost, among others, calls the ‘translation ethic’ (Part II) (Ost, 2009).

Finally, we will see that inspirations for the institutional and material law of the EU include, at least to a large degree, a philosophical idea: cosmopolitanism. This partly covers the characteristic features that we group together under the label ‘plurinational federation’ founded on a ‘constitutional pact’, but it complements them with other features that are just as essential to understanding the legal nature of our object (Part III). We will then be able
to describe the EU in the most accurate, rigorous manner: as a plurinational federation *in sensu cosmopolitico*.

Because of space constraints, we will not be able to describe the entire path that has led us to this construction. However, we have to note that our concept of plurinational federation results from a reworking of the concept of ‘federation’ as the French public law theorist Olivier Beaud framed it (Beaud, 1996, 1999, 2007, 2010), while the legal features that we present under the label of the cosmopolitan idea come from a dialogue that we have been engaging in for many years with the French philosopher Jean-Marc Ferry (Dumont, 2003; Ferry, 2000, 2003, 2005, 2010, pp. 144–57). While we owe a great deal to both of these authors, we take complete responsibility for the double conceptual construction that we are building here, partly with them and partly against them.\(^1\)

**The EU is a plurinational federation**

The EU benefits from being presented as a new species that is, nonetheless, part of a genus that we are calling here ‘federations’ or ‘federal phenomenon’. Under this generic concept, which we will define precisely, we will identify three species: confederations of states, to which it would be mistaken to reduce the EU; federal states, a category into which the Union also does not fall; and plurinational federations, of which the EU is the prototype.

**Confederations of states and federal states: two species of federation**

The federal phenomenon, in other words, the most generic concept of federation, which includes these three species, can be defined as follows: it is a sustainable union\(^2\) formed by distinct political communities each of which has legal personhood, and the union itself has legal personhood and an institutional apparatus that can take decisions sometimes with the unanimous approval of and sometimes with the majority of votes of its component communities. All the component communities have at least legislative and executive autonomy. Competences are thus shared and a balance is sought between union and diversity. Citizens of the union have dual legal membership in the union and in their own community.

Within the federal phenomenon defined in this way, confederations of states are special mainly because of their foundation and their answer to the question of who holds formal sovereignty. By sovereignty in the formal sense, we mean the power to have the last word, that is, the ultimate power to decide which competences one will have, in opposition with the concept of material sovereignty, which concerns the content of concrete prerogatives – so-called regalian powers – which are specific to state power. In order to fully understand the justification that will follow our proposal, it should be noted that we are distancing ourselves from the classical definition of confederation that is still found in most manuals of international and constitutional