

Chapter 1

Introduction



1.1 Room for Variation in the European Union

The European Union will have to offer more room for variation. That is the main thrust of this book, which we are presenting at a time when the European Union is under pressure, both internally and externally. Two decades of growth, both in the number of Member States and in its tasks, have placed so great a strain on the Union's internal resilience that cracks have begun to appear in its basis of support and even in respect for its democratic foundations under law. Both the current policy of the President of the United States and Russia's policy respond to trends that are weakening the position of the European Union, such as Brexit, internal political controversies concerning migration and economic policy, and external trade conflicts. In this book, we argue that more flexibility is needed in the Union's structure to bolster it in its critical tasks, including the internal market and protection against crime and social injustice. This is the lesson that we should be drawing from the experiences of the past 25 years, since the Maastricht Treaty took effect on 1 November 1993.

The Maastricht Treaty followed the upheaval in Central and Eastern Europe, which had changed the balance of power dramatically on the continent. At that time, few questioned that the process of European integration should continue. The Treaty integrated the European Communities and the new domains ('pillars') of European policy—law enforcement, migration, and foreign and security policy—into a broad new framework: the European Union (EU). Much has changed since then, not only because 16 new Member States have acceded but also because the content of its policy has 'deepened', for example the introduction of the euro and a common asylum system. In virtually every domain, the European Parliament, which is elected directly by the people, is now a co-legislator, together with the Council, composed of ministers representing the Member States. Moreover, since the entry into force of the Treaty of Lisbon on 1 December 2009, the institutional structure

has been simplified by merging the three pillars into one revitalised European Union.

The European Union must overcome the conflicts about its future that have arisen ever since. To be persuasive, changes must be driven by a realistic view of the European Union, which, despite Brexit, has almost 30 Member States. The Netherlands' position and the contribution it makes to the inevitable changes in the EU's functioning matter.

Uncertainty about the future of the European Union has arisen in a changed political environment. Today, European integration no longer goes without saying. The relief with which Europe welcomed the creation of a common market with free movement of persons, goods, capital and services—not least in Central Europe, with its recent history of closely guarded borders—has given way to a desire for greater protection of the individuality of the Member States. The introduction of rules and authorities to guarantee the functioning of the market is viewed on the one hand as interference and on the other as the dismantling of existing protective institutions such as state-owned companies and the ban on dismissals. Faltering 'Europeanisation', for example an asylum policy that is only partially harmonised, or the rather noncommittal coordination of foreign policy, has made the EU's institutions responsible for their own weakness. That weakness was laid bare by a series of dramatic events, from the repercussions of the Yugoslav Civil War (already raging at the time of the Maastricht Treaty), through the deep divisions over the Iraq War and the financial crises, to the current Syrian catastrophe and its consequences for migration.

And yet the institutions of the European Union perform vital tasks, day in, day out, to organise economic life and guarantee an area of freedom, security and justice for people and businesses. The fact that many are now questioning and have lost confidence in the EU shows that a Union of so many and such different Member States as the current 28 cannot be built on the idea that all of them, even after their transitional periods, will be integrated on an equal footing. Despite the aforementioned tensions, however, the enlargement of the Union to include Member States with disparate economies, histories, and legal and administrative cultures has given many people a more solid economic and social basis. The Union has shown itself capable of rebalancing after crises. That has had consequences, however. Often, and perhaps increasingly, it has had to accept the withdrawal of some Member States from certain aspects of EU legislation and policies. With regard to the Schengen Agreement, the euro, migration and asylum policy, and even the enforcement of fundamental rights and freedoms, it has, more or less reluctantly, accepted differences between Member States or conceded during tough negotiations. These are powerful indications that there is a need for variation between Member States. That is true not only of the new Member States, moreover. Differences of opinion that have arisen between the initial six Member States in new policy domains, such as monetary union and migration policy, also indicate a need for variation.

1.2 Opening Positions in the Debate on the Future of European Integration

The time when the process of European integration was clearly charged to the positive side of the political balance sheet is over. But the direction in which changes are to be made—less integration, transformation, deepening or variation—is controversial. The reasons for criticising the current state of affairs vary. Some emphasise the restrictions placed on national policymaking, others the lack of solidarity on the most pressing issues, and yet others the absence of democratic foundations or the inability of the Union to stop democracy from declining into authoritarianism in some Member States.

Relinquishing an all-too-common fixation on uniformity opens up new opportunities for a debate on the future of European integration. A ‘freer’ perspective that allows for more variation can foster a more realistic debate. The perspective proposed in this book makes it possible to move beyond the over-simplified debate that pits nation state against federation. While the contrast seems clarifying, it does not do justice to the multifaceted nature of reality. Many European citizens, politicians and policy-makers concerned about dichotomous thinking are extremely sensitive.

Variation in European integration is not a sign of weakness. European integration seems to have reached a point where solidarity, resolve and national engagement will in fact benefit from specific forms of cooperation. Variation supports the provision of public goods such as security, stability, prosperity and social protection. Accepting it can thus be a proactive means of revitalising the relationship between internal and external, between institutions and citizens, and between public tasks and perceived needs.

The trio consisting of the Treaty on European Union, the Treaty on the Functioning of the European Union, and the Charter of Fundamental Rights of the European Union provide the constitutional basis for the relationship between its own institutions, between those institutions and the Member States, and between those institutions and the citizens of those Member States. Although there are only minor differences between this trio and the unsuccessful Treaty establishing a Constitution for Europe with regard to their legal implications, the system that has been accepted is more open in purpose and therefore less specific and unequivocal. Continuing to see the European Union as a set of institutions serving a non-exclusive European legal order has given rise to openness as a principle. That is what we wish to elaborate on in this book.

The guiding principles enshrined in Articles 1–6 of the Treaty on European Union have been respected and put into practise: the European Union is a union among peoples—note the plural—based on common values such as respect for human dignity, democracy and the rule of law, but also characterised by pluralism and respect for equality between the Member States and their national identities. The constitutional principles governing the Union’s competences (Articles 4–6) mean that the Union has no more power than that which the Member States have conferred on it by treaty, that the Member States are expected to be loyal to one

another, and that the Union must adhere to the principles of subsidiarity and proportionality in its actions.

These principles must do more than merely pay lip service to national diversity. With the European Union now encompassing a wide variety of Member States, tasks, and therefore societal problems—the result of the changes that occurred in the 1990s and 2000s—the need for variation must be acknowledged. This book considers the notion that, if these constitutional principles are taken seriously, then the process of European integration might not only mean entrusting more competences to the Union and increasing the level of uniformity, but also giving the Member States scope to take responsibility for themselves and therefore allowing for pluralism within the Union.

It is not only jurists trained in a single legal system but also many others who are inclined to see legal and political orders as pyramids: the top is more important than the base, and the intermediate levels carry the weight of the top and pass on the instructions issued from there. Regardless of whether this image was ever completely accurate, it is in any case not up to date. International, supra-state, national and regional decision-making influence one another. The standards established in a broader context can only work if they are interpreted in smaller circles and are tailored to the situation in which they are applied—i.e. in different ways. Multi-level governance of this kind is the actual but also necessary form of governance and administration in the European Union.¹ Our view of this reality becomes blurred because we see the European Union as a kind of state, but also because we deny what has been the case since 1957, namely that the sovereignty of the Member States is limited because they have transferred legislative, executive and judicial competences to EU institutions. It is important to note that even when competences are transferred in this manner, the Member States exercise considerable influence on the drafting of legislation and the resolutions adopted within the Council of Ministers.

1.3 Democracy in Plural

Variation will not always be the outcome, not even when Member States express a wish for it. The nature of the tasks involved or the level of solidarity required may prevent it from being accepted. Nor is variation an end in itself, and there must always be solid common ground between all the Union's Member States, particularly regarding the founding values of democracy and the rule of law, the common market, and solidarity in the defence of freedom and security. Last but not least, allowing scope for variation addresses the desire to give the European Union more credible democratic foundations. The European Union has a relationship not only with its citizens, who are represented as a whole by the European Parliament, but also with the citizens of the individual Member States, who are represented by their national parliaments. While it is true that the European Parliament has become a co-legislative body, it is precisely the other 'leg' of the Union's legislature, namely

the Council (in which ministers represent their Member States and usually decide by qualified majority), that is too far removed from the democratic process in the Member States that it represents. As a ‘demoicracy’—*demoi* is the plural of the Greek root *demos* in ‘democracy’—the European Union must continue to align itself with the ideas and interests of its Member States.² The Council of Ministers is still too much of a negotiating platform to fulfil its representative role properly. There is room for improvement, even without amending the Treaties.

The notion of ‘demoicracy’ put forward in this book is based on the assumption that the ‘demoi’, the *political* peoples of Europe, should be regarded in plural. This would, for example, be possible if national parliaments not only had negative powers, such as the yellow card procedure, but also the right to initiate European policy and legislation, including variations in that policy. What we are emphasising here is that there are no hierarchical but rather cooperative relationships between EU and national institutions. The EU’s current system is in fact not modelled on the structure of the national state, in which legislative, policy-making, administrative and judicial competences are derived from the power structure shaped by history. The exact opposite is true in the European Communities and now in the European Union: the need for a partly common legal order led to the creation of institutions by treaty.

What this implies is that, at European level, the principle of democracy takes on a different meaning. The European order is a legal order, an economic order and, in a certain sense, a political order, but it is not a democracy in the same manner as a state. The EU provides a structure for cooperation, to offer protection and build a future lived in freedom; based on those goals and the common values in which they are rooted, however, it is also a structure for taking and overseeing joint decisions. In this European context, citizens exercise their influence primarily through their national elections, and it is there that the EU must seek its basis of national support.

Ultimately, proposals for the reform of the European Union are judged in terms of what is required to tackle common and cross-border problems and how such public goods as freedom, security, stability, prosperity and social protection can be provided. Reasoned choices will have to be made about the intensity of cooperation and the method of decision-making used for the tasks that must be performed, and those choices *may* vary from one Member State to the next. When it comes to the free movement of goods and other issues, full cooperation is required, and the Community method is the most appropriate. In this book, the Community method refers to joint decision-making by supranational institutions and representatives of the Member States. At the moment, the most important example is the ordinary legislative procedure set out in Article 294 TFEU: EU legislation (regulations and directives) is adopted by the Parliament (acting as a supranational representative assembly) and the Council (of Ministers, representing the Member States) acting jointly on a proposal from the Commission. In this procedure, the Council decides by qualified majority.

1.4 Variation Is More Than Differentiation

Variation is not an end in and of itself, but it certainly should be considered as a general solution for the major problems that beset the EU today, both internally and externally. Accepting variation does not, after all, mean that uniformity and like-mindedness are lacking, but rather that real differences in Member States' needs, views and modes of action are recognised.

Accepting variation as a distinctive feature of the European Union's future means keying into existing differences within the EU that the Netherlands' Adviesraad Internationale Vraagstukken (Advisory Council on International Affairs) (AIV) described in its advisory report of 2015 as 'differentiated integration'. The report claims that the EU's existing differentiation is the result of political impasses in negotiations on the preferred aim, namely the uniform integration of each and every Member State. When this could not be achieved, differentiated integration was accepted. The AIV cites the following as the most significant features of differentiated integration:

- enhanced cooperation: a formal EU instrument introduced in the Treaty of Amsterdam enabling a lead group of at least nine Member States to take the initiative to further integrate a specific policy domain, with the possibility of other Member States joining later (Article 20 TEU, 326–334 TFEU). This requires a (qualified) majority decision by the Council;
- temporary or permanent opt-out and opt-in (i.e. exemption) clauses;
- temporary or permanent intergovernmental cooperation, on the basis of agreements under international law; recent examples include the Treaty Establishing the European Stability Mechanism (2 February 2012) and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (2 March 2012);
- transitional provisions for parts of the *acquis* in the event of enlargement of the Union.³

In some instances, differentiation has been incorporated into the Treaties themselves, resulting in key policy domains in which not all Member States participate. Not all Member States participate in the euro area and the Schengen Agreement, whereas some non-Member States do (e.g. Montenegro and Kosovo are not EU Member States but do have the euro as their currency; Liechtenstein, Norway, Iceland and Switzerland are not EU Member States but do participate in the Schengen Agreement). There are also associations with non-EU Member States that conform to EU internal market rules and legislation to varying degrees, in particular the European Economic Area (EEA) and Switzerland. There are, moreover, many forms of integration in which *all* the Member States participate but which leave scope for individual states to fulfil their public tasks as they see fit. That is the nature of directives as a category of EU legislation, as opposed to regulations, which are directly applicable. The 'open method of coordination' leaves further scope for differentiation. The Member States then coordinate their

policy by formulating joint policy objectives and monitoring the results; in this case, however, there is no EU legislation.

The concept of variation described in this book includes forms of differentiated integration, but goes beyond differentiated integration as we know it today. It is not a derogation accepted after negotiation, but a desirable feature of the EU of the future, given the large number of Member States, each one very different from the next. Variation is not regarded as a failure of European integration, but rather as another, and in certain situations better, way of ensuring its success. The reasons for variation and its impact on citizens must be both acceptable and convincing. Variation thus builds on the principle of subsidiarity and, as a matter of principle, leaves room for the democratic functioning of each of the Member States: the EU as a ‘democracy’, in which each *demoi*⁴ is part of its own state *and* part of the European Union.

Our proposal regarding a future European Union with well-considered variations also makes clear that the aim is not (or no longer) to form a European federal state. In a federal state, the relationship between the members and the federal authority is, in principle, symmetrical; asymmetry only occurs in exceptional cases.⁵ Allowing variation is an asymmetric structuring principle. Even so, it does not imply a general aversion to the supranational competences of EU institutions. Where the nature of the tasks (for example organising the common market) so requires, Community integration and the participation of all Member States remains a possible outcome. In this book, we propose a method of assessment in each individual case.

In the line of thinking outlined above, the question is not so much *whether* varied cooperation should be permitted to ensure that the European project can continue successfully, but rather *how* variation can best take shape. The book will explore this and outline various possible considerations.

European variation offers a continuum of options in this way. By deliberately accepting scope for variation, it becomes possible to break through long-standing deadlocks and to maintain sufficient cooperation, despite the differences. The analytical approach outlined in this book can be used to address the many issues facing the EU and its Member States, both in existing policy domains, whenever uniformity appears to be generating too much tension, and in new areas of European cooperation. This book explores the option of variation in greater detail in three domains: (1) the internal market, (2) the euro area, and (3) asylum, migration and border control. The main purpose of these chapters is to clarify the many ways that variation in cooperation can take shape. Although we have limited the discussion in this way, it should be noted that the variation perspective elaborated here will also be effective in other policy domains.

Accepting variation in the number of participating Member States may, in certain contexts, resemble the ‘two-speed’ Europe, consisting of a ‘Core Europe’ and the remaining Member States. What we envisage may go even further than that, however. The circle of participating Member States may vary; indeed, it is

conceivable that two or three circles could arise simultaneously, if this would provide the most meaningful pooling of forces. Instead of a ‘hard core’, there would be a flexible core (or cores).⁶

1.5 The Netherlands in the European Union

The founding of the European Communities gave the Netherlands a say in the law and policy of its neighbouring countries for the very first time,⁷ on a *collective* basis. It marked another stage in the history of Dutch-European relations. The Dutch state is not only the result of national self-awareness and a desire for liberty, but also of coordination with other European states, first through the series of treaties known as the Peace of Westphalia (1648) and then within the framework of the Congress of Vienna (1815). *Shared* control became acceptable once it was realised that some interests should preferably not be surrendered to the dominance of one state over another. It is here that the organisation of common European interests by legal remedy has its origins.

How this works out in practice can be problematical, however. In this book, we address the ‘why’ and ‘how’, the reasons for the European Union, its purpose, its form, and how all these things relate to one another. This approach entails consideration of the following issues:

1. What do we want from European integration? (tasks)
2. Why do we want it? (values, goals and public interests)
3. How do we organise it? (institutions and standards).

The overriding principle is that form follows content. The form that cooperation takes can only emerge after the goals of that cooperation have been determined. For a comprehensive consideration of such questions about European cooperation, we first need to know why things have gone as they have during the various episodes of European integration.

The first step is to understand the results of European integration in the context in which they arose. Present-day discussions about the future of Europe generally assume, without further explanation, that the EU is a new public law entity with a territory, a population and a centrally organised authority. But the EU is not a state. Many even consider it to be unique (*‘sui generis’*). Nevertheless, the EU is usually compared to a state as an organising structure. Both proponents and opponents use this image and then either argue that the EU should develop into a federal state or are terrified by the prospect. Presenting things in this way obscures the reality of the EU’s history and hinders its further progress. The Communities from which the EU stems and the Union itself are the outcomes of a desire to arrive at a *common legal order* and *common policy* on certain issues. This is precisely how the Communities were described in the early case-law of the Court of Justice of the European Union (in short, the Court of Justice). In the Van Gend en Loos ruling of

5 February 1963,⁸ the Court of Justice found that ‘the Community constitutes a new legal order of international law for the benefit of which the States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals.’⁹

The EU’s institutions were created precisely to construct this common legal order and to implement this common policy. Together, they form the institutional structure that should enable the EU to translate the objectives linked to a common legal order and a common policy into the fulfilment of European public tasks. In this book, we do not focus on this institutional structure but on what is required of the EU: the fulfilment of European public tasks. ‘Public tasks’ is not an administrative concept but a political and constitutional one. Public tasks concern matters that enable citizens to live freely and to take responsibility for their lives, such as market regulation, education, health care and infrastructure. Essentially, these tasks can be derived from the definitions of fundamental rights, including economic, social and cultural rights, and everything that relates to peace and security. The Charter of Fundamental Rights of the European Union basically provides a legal guarantee of these public tasks. This naturally makes demands on implementation by the Member States, but it does not exclude variation (as noted in research on the open method of coordination).¹⁰

European integration has its origins in the hope that cooperation will provide a lasting counterweight to the dynamic forces of nationalism in international politics. After all, those forces lead to conflicts or to trade-offs, in both cases amounting to the view that ‘your profit is my loss’ and ‘your security is my threat’. The European integration process put an end to this zero-sum-game thinking. From the outset, the aim was for the ‘union among peoples’ to focus on shared values. Public tasks in the EU are therefore more than just a matter of common interest. They are a shared actualisation of the values that guide European integration. Respect for human dignity, and therefore for human rights, is decisive in this. However, how these and other values of the Union are defined in Article 2 TEU leaves room for a wide range of national interpretations. For this reason alone, the institutionalisation of European cooperation requires constant reflection on Europe’s tasks and functions.

1.6 Europe in the World

The process of European integration always takes place in dialogue with changes occurring in the world that surrounds Europe. That is and will remain true both of the widening and of the deepening of integration. Within the framework of the European integration process, the aim from the outset has been an ever-closer ‘union among peoples’. But reinforcing that union economically, socially and culturally is more than just an inward-looking European affair. European

cooperation aims to combine globalisation in economic and interpersonal contacts with socially embedded economic freedom and a common ‘area of freedom, security and justice’.¹¹ In so doing, it has given substance to the task of attaining the closely interrelated aims of peace, socio-economic stability, security, and international trade and mobility.

The European Union is meant to be an international force that increasingly acts in unison; in 2009, it also gained full recognition as a legal entity. But every era has different challenges and sees different demands and desires being expressed by the participating Member States and peoples. Something fundamental has also changed. The dissolution of the Warsaw Pact and the break-up of the Soviet Union have altered entirely the context in which European integration is taking place. The old negative reference point has disappeared. For more than two decades now, the Union has no longer been able to base its identity on being ‘different’—i.e. freer, more trustworthy and more economically efficient—from its counterparts in Eastern Europe, and China seems too far away to serve as its new opposite number. Time and again, the Union will have to determine how European integration stands in relation to such geopolitical challenges as economic globalisation, migration, security, global warming, financial stability and social protection. The fulfilment of ‘public tasks’ to produce the public goods demanded of it must be understood within that relationship. The demand for public goods by European societies may differ from one era to the next and it may also differ between Member States and within them.

In the same way that the Netherlands is ‘attached to other countries’, as the WRR put it in 2010, the EU is inextricably linked to global politics and the world economy. That link is a two-way street. On the one hand, it forces the EU, time after time, to accept its share of responsibility in international affairs, not only in trade policy and development cooperation but also in foreign, security and climate policy. On the other hand, being more relevant on the international stage may help to reduce scepticism about European integration. European integration was originally driven, at least in part, by the ideal of lasting peace among peoples: the nations of Europe were no longer prepared to submit to the ‘us-against-them’ forces of nationalism and instead wanted to ensure the collective protection of rights and interests for future generations. It is extremely important to emphasise in politics and governance that security, stability and human rights come at a certain cost. It takes sustained, collective effort and dedication to guarantee these public goods, time after time.

1.7 Structuring Principles of the European Union

Many authors reflecting on the nature and future of the European Union assume that the EU ‘overarches’ the national legal orders, as it were, in the form of an extra tier on top of the Member States. However, this notion does no justice to the particular

way in which the European Union is structured. That structure is difficult to compare with such familiar patterns as federal states or confederacies.

Although EU law is binding on the Member States and has its own institutions, these only fulfil public tasks with respect to specifically designated issues. The EU is primarily a legal order that regulates the rights and obligations of citizens and their organisations and enterprises through the incorporation of its law into the national law of the Member States, as indicated in the rulings of the Court of Justice in the early years of the European Communities. For the most part, the EU's legal order is shaped by the interaction between its institutions and its Member States. People must be able to rely on this common legal order and that is why institutions and procedures are necessary. However, these institutions and procedures are not some mandatory template for resolving differences between the Member States or issues that affect the populations.

The EU is not finished, and it never will be. Removing the pressure to achieve uniformity offers scope for a discussion on the future of European integration that does more justice to reality. The notion that all the Member States must cooperate in every policy domain, resulting in ever more harmonised standards, is unrealistic. We advocate taking a more proactive approach to the concept of variation and considering it in a broader context. This does not mean that the EU should be regarded as a kind of à la carte menu. There are downsides to variation as well. But thinking only in terms of uniformity means disregarding all kinds of variations that already exist, or that could be developed further. In addition, it is important to recognise variations in cooperation for what they truly are: a fully-fledged method of European cooperation. In the real world of European integration, variation in cooperation is neither 'second best' nor merely opportune in times of crisis, when nothing else helps.

Variation does not weaken the relationships that in fact shape Europe and the Netherlands. Since the founding of the European Communities, the Netherlands too has had a say in the law and policy of its neighbouring countries. *Shared* control became acceptable once it was realised that some interests should preferably not be surrendered to one state's dominance over another.

This book recommends first introducing this approach as a political concept and mode of action regarding the future of the European Union before proposing any Treaty amendments. A thorough overhaul of the Treaties is a politically complicated process that also involves complex constitutional procedures in several Member States. In many instances, variation can be achieved by having the participating Member States conclude their own treaties, as was the case with the Schengen Agreement and emu, for example. In addition, variation can be applied more often by using open standards and minimum harmonisation, and by making more deliberate trade-offs within and between policy fields.

1.8 Structure of the Book

Chapter 2 starts with an analysis of European integration after the fall of the Berlin Wall in 1989. At that time, the integration process faced numerous political challenges that proved difficult to cover in the Treaties. The core elements of the integration process remained in place, such as reciprocity and harmonisation as a basis for mutual market access, convergence driven by market integration, and the Community method as an institutional decision-making process. There are, however, growing reservations about the triad of (1) the unique and intensifying momentum of market integration, (2) spill-overs between sectors, i.e. the ‘dissemination’ of integration practices from one policy domain to another, and (3) their consolidation by supranational institutions that uphold the rule of law in both the theoretical and practical sense.

Chapter 3 describes how the pursuit of social protection has been pushed into the background in recent decades by a focus on market liberalisation, and how that has affected democratic trust in the EU’s institutions and the evolution of human rights within the European legal order.

Chapter 4 applies the theory of motivations for collective action to create an analysis matrix that aims to provide a better understanding of the discussions concerning some of the EU’s most sensitive issues. The matrix is constructed along two axes: ‘motivations for collective action’ and ‘institutional order’.

Chapter 5 describes the different forms of variation that already exist within the internal market and that may therefore exist in other policy fields.

Chapter 6 analyses what variation can and cannot achieve. Here, variation in cooperation is deliberately viewed on a continuum. The EU’s current situation calls for a new, more conscious and proactive form of reflection on the potential of variation. Variation can help get a better grip and a stronger sense of control; it is an alternative to relying on a future ‘binding effect’ of convergence.

Chapters 7 and 8 explore the potential of variation in Economic and Monetary Union (EMU) and in migration, asylum and border control. They do not contain specific recommendations concerning these policy areas; it is beyond the scope of a single chapter in this book to make such recommendations anyway. What these chapters do instead is broaden our understanding of the existing variation and suggest various methods for identifying suitable forms of cooperation.

Finally, Chap. 9 will present the main conclusions with regard to an EU that allows for variation. In particular, it examines what this approach means for the Netherlands and its position in the EU.

Notes

1. Piatonni (2010: 247, 260).
2. Nicolaïdis (2003, 2012).
3. AIV (2015: 8).
4. Peoples in the constitutional sense, as opposed to ethnically identified ‘nations’.

5. For example the position of the District of Columbia in the federal system of the United States.
6. Cf. Schmidt (2016: 10).
7. Leaving aside the Central Commission for the Navigation of the Rhine (CCNR), which was granted supranational powers as long ago as 1815.
8. ECLI:EU:C:1963:1.
9. The concept of the European Community as politically neutral, a technocratic ‘community based on the rule of law’ in that sense, has evolved into that of a legal area with a much more pronounced political complexion. See Von Bogdandy 2017.
10. Armstrong (2016: 15).
11. Article 3(2) TEU and Part Three, Title V TFEU.

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