

# Chapter 9

## Conclusions



### 9.1 Variation as a Guiding Perspective

The European Union seems to lurch from one crisis to the next in the past decade, from the financial crisis to the euro crises and from the refugee crisis to Brexit, not to mention pressure on the democratic rule of law in some Member States themselves. Opinions vary widely as to how best to respond to these push-pull forces: some argue that the answer lies in closer European integration,<sup>1</sup> while others suggest that it is time for Europe to invest in an exit strategy and to develop a disintegration policy.<sup>2</sup>

The choice between deeper integration and hard disintegration is misleading, however. European variation is a reality whose worth remains underappreciated or underexploited. It is not a question of everything or nothing. Cooperation within the European Union allows for a number of different approaches. Only rarely do the Member States move simultaneously in the same direction in every policy domain; very often, they differ. That is usually regarded as a problem, but in our opinion, that view is unjustified. Just because their positions diverge does not mean that cooperation between them can only be suboptimal at best. What it *does* mean is that cooperation demands more conscious and proactive variation than a stark choice between a uniform Community alliance in which *all* Member States work together and a selective alliance in which obstructionists necessitate opt-outs or multiple speeds. There is enormous diversity in Member States, challenges, issues, policy domains, procedures and institutions. Contrary to what the choice between integration and disintegration suggests, it is such diversity that is the appropriate motto.

Options allowing for greater diversity can be found both within and outside the current Treaty frameworks. The aim is to make the current quest for an optimal form of cooperation both proactive and more conscious, so as to provide a basis for a more constructive process. That requires us to place the debate on the future of the EU in a broader context. At the moment, the focus of discussion tends to be on the form of the institutional order. That focus, however, is based on a straightforward

contrast between ‘more’ or ‘less’ EU. By looking more specifically at the relationship between the nature of the problems, the differing goals, public interests and motivations, and possible forms of cooperation, we will gain a clearer idea of the forms of variation available.

This final chapter elaborates on the main message of our book. To support that message, we also review the variation options discussed in the chapters on the internal market, the euro area, and asylum, migration and border control. Our purpose is not to identify specific policy choices, but rather to illustrate possible directions for policymaking that could lead to greater variation. While our discussion covers the institutional structure, we do not make any specific recommendations in that regard. If more scope for variation is created in terms of which Member States are involved in legislation and policymaking in a given domain, then it is obvious that provision will also be made for non-participation in decision-making by representatives of other Member States. As in the case of the European Monetary Union, only representatives of the Member States involved will be able to take part in the decision-making process.

As this book explains, what variation is *not* is the consequence of an attempt at integration that has stranded halfway. There is no specified end point to cooperation in the European Union. Cooperation is always open-ended, because the nature of future relationships can never be clear. The emphasis should therefore be on the fundamentally open-ended nature of the destination to which the Member States and the EU are headed. That is why we have developed guidelines that we believe will help the European Union respond more effectively to the needs and legitimate expectations of its citizens. We recommend approaching the further development of the European Union with variation in mind. What this means is:

- accepting that not all tasks for which governments are responsible need to be based on the same relationship between European, national and regional or local policy (leaving room for variation in policy content), and
- recognising the value of different patterns of European cooperation between Member States (which may manifest themselves in different decision-making methodologies and/or different forms of membership).

Unlike the existing differentiation by means of opt-outs and deviations, variation is not a concession intended to resolve impasses in negotiations; it is, rather, a different structuring principle that takes differences in needs and in democratically expressed convictions seriously.

Variation cannot be accepted or pursued in every policy domain or everywhere to the same extent. A common core remains necessary for the European Union as a whole, specifically concerning the basic principles of democracy, rule of law, fundamental rights and freedoms, and the common market.

Article 2 of the TEU states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. The Member States share these values and they have asserted and committed themselves to upholding

them. Their societies endorse pluralism, non-discrimination, tolerance, justice, solidarity and gender equality values that should be reflected explicitly in the EU's political communications and institutional design. This is crucial for the credibility of European integration.<sup>3</sup> We therefore back the AIV's recommendation (in its report *The will of the people? The erosion of democracy under the rule of law in Europe*) that respect for diversity in states' democratic functioning should be paired with efforts to prevent the erosion of the rule of law.

We expect that elaborating on variation as a guiding perspective will nurture the critical political and policy-related imagination, so that it can also be declared applicable in other domains in which European public tasks have an impact.

This could have significant consequences in terms of the EU's institutional structure. Where variation implies that not all Member States participate, and that European legislation therefore does not apply in all Member States, then it must also be possible to vary the composition of EU institutions. In the future, for example, this could mean that the Council and Parliament meet in differing configurations depending on the subject matter and territorial scope.

Because variation allows the relationship between European, national and sub-national bodies to differ depending on the issue at hand, it also creates leeway to root the fulfilment of public tasks more firmly in the political basis of the Member States. The institutional design may be altered in certain respects, but what is most important is to regard the EU less in terms of a state-like institutional design; instead, it should be viewed as a system of dispersed and shared principles and responsibilities, with democratic roots both in the Member States and in the European Union thus clearing the way for the concept of *demoicracy*.

This book further explores the variation perspective in the domains of the internal market, EMU and the euro, and asylum and migration. It can, obviously, also apply in many other policy domains, and in fact it already does so. Our final chapter outlines the dimensions in which variation can occur (Sect. 9.2). We follow up with an overview of our findings in a number of policy domains (Sect. 9.3) and a description of the prospects for variation in the ongoing development of the European Union (Sect. 9.4). We conclude our book by describing how the Netherlands can contribute to further consultations on the future the European Union (Sect. 9.5).

## 9.2 The Dimensions of Variation

The EU's current situation has forced the debate on variation as a tool for change in the EU out into the open. The Treaties and the reality on the ground already offer myriad examples of what could be seen as steps towards variation, pushed even further by the turbulence in the euro area. Perhaps, in the years ahead, variation will gain political acceptance as a desirable feature of the fulfilment of public tasks in the context of the European Union. This book sees an opportunity here to align the European Union more closely with its existing political and social diversity, but it is

not blind to the risks associated with too much variation. Coherence between different policy domains could be undermined, and Member States might engage in cherry-picking. All this raises questions concerning the appropriate relationship between socio-economic stability, human rights, security, and the four freedoms that define the internal market.

This book reveals a whole range of possibilities for variation within the European Union. It discusses forms of variation that fall both within and outside the current framework of European Union Treaty law. As we stated earlier, variation has three dimensions: (1) policy content, (2) decision methodology, and (3) the Member States. The options for variation can be represented as a three-dimensional continuum whereby the degree of uniformity in each dimension runs from minimum to maximum.

### **Variation in policy content**

The first dimension concerns the scope for variation within the content of policy, i.e. the leeway that each Member State has to interpret how certain public interests, objectives and values are to be achieved. This means that Member States can have different interpretations of policy but continue to participate in decision-making and show support for a political form of solidarity. More specifically, they are given more policy discretion in directives involving minimum harmonisation or open standards. Such directives employ concepts that allow the Member States more leeway to shape national policy as they see fit. At the other extreme are regulations that apply directly at national level and that limit national policy discretion.

The room for manoeuvre created for the Member States in this manner prevents the tensions caused by diverging aims from resulting in opt-outs, for example (variation in membership). Variation in policy content makes it possible to incorporate the Member States' diverse motivations for collective action or diverse interpretations of the same into the process of European integration without compromising unity in participation. The process of policymaking must then reveal, time and again, how much room for manoeuvre there actually is.

Trade-offs are also possible within a policy area. One example of this is 'flexible solidarity' within the context of migration, asylum and borders. Variation in this domain is not meant to ignore the basic principle of solidarity, but it does require paying greater attention to geographical and political differences between the Member States.

### **Variation in the decision-making method**

This dimension concerns the way in which policy and legislative decisions must be taken: in an intergovernmental context, via the Community method, or entirely at supranational level.

Within an intergovernmental framework, there is no interference from institutions to which the cooperating states are subordinate; competences are not surrendered and are thus retained at the national level. Decision-making thus requires unanimity. States have the right to veto any policy measure or legislative act, guaranteeing that their policy autonomy is preserved. The open method of

coordination (OMC), which does not involve legislative competences and in which decisions are taken on the basis of unanimity, is one example of this form of variation.

Policies and legislation developed according to the Community method apply equally to all participating Member States and are based on (1) supranational institutions as initiators and guardians of the Treaty order, (2) qualified majority voting in the Council and (3) co-decision-making by the European Parliament (ordinary legislative procedure). The difference between this and a fully supranational decision-making framework is that, in the Community method, qualified majority voting makes it possible to form blocking minorities, for example in the Council. This means that, unlike in the supranational method, enough Member States must cooperate to reach a decision.

### **Variation in membership/members**

The third dimension concerns membership. If the Member States' motivations for collective action differ too much to fulfil public tasks by means of the Community method or variation in policy content, the Member States can switch to the most extreme form of variation, i.e. variation in membership/members. In this form of variation, the Member States do not see sufficient reason to undertake collective action and must pursue a different type of relationship with one another. Examples include opt-outs, lead groups, multiple speeds, and closer cooperation. When new Member States accede to the Union, this form of variation allows for a more realistic and less constrained approach to situations where a state is not ready to accept all aspects of the Union's total body of laws and rules (the 'acquis').

To apply the variation options in actual practice, however, the Union must keep an open mind to the opportunities afforded by the existing Treaties by (1) considering the relationship between motivations for collective action and the possible institutional orders, and thus (2) relinquishing its fixation on regulations and directives, the Community method and participation by all the Member States, and on the resulting compulsion to rely on certain motivations for collective action.

The normative and actual evolution of the relationship between socio-economic stability, human rights, security and the four freedoms determines whether and, if so, what variation in European integration is appropriate and necessary. Variation in the internal market for goods is scarcely feasible (although some Member State regions are excluded territorially) because unimpeded trade is only possible when products are subject to the same requirements. In the initial decades of the European Communities, differences in place of establishment still played an important role: the free movement of persons was still closely linked to the frameworks of the national labour market and mainly concerned effective participation in this market.

That changed quite suddenly when the free movement of services was implemented in full. The free movement of services could then be used to circumvent the frameworks of the national labour market and weaken the associated protection. In response—and in addition to tightening up the Services Directive and the Posting of Workers Directive—there were calls for closer harmonisation of

socio-economic policy. That is an obvious next step, but since there is little inclination to do, greater variation may offer an alternative.

While membership of the current Member States is regarded as a given, it is possible to reassess, in dialogue with and between Member States, which policy domains require the EU to fulfil public tasks. The conclusions may differ from one Member State to the next. Variation not only means ‘which Member States cooperate in which domains and in which form’. As indicated, it can also mean a change in the design of the institutions of the European Union, for example by allowing them to operate in different configurations depending on which Member States are involved or their relationship with national parliaments. It can also mean reassessing the relationship between the four freedoms and important public tasks associated with stability, security, prosperity and social protection.

### **9.3 Variation (Options) Within the Internal Market, Emu and Asylum, Migration and Border Control**

In this final chapter, we elaborate on the main message of this book and illustrates the options for variation. This section looks at the options described earlier for the internal market (Chap. 5), the euro area (Chap. 7), and asylum, migration and border control (Chap. 8). More specifically, these are options for exploring and analysing opportunities for variation, not concrete policy options or policy recommendations.

Variation is not an end in itself, but a path ripe for exploration. It offers solutions whenever stalemates threaten cooperation and it creates opportunities that take existing differences between the Member States and their populations into account. The main question is: How can variation serve as a starting point for European cooperation? Variation is certainly not the answer in all cases, and not all issues allow the same degree of variation. Nevertheless, there are myriad opportunities for making further use of variation, and it can serve as a guiding perspective in many policy domains.

### **9.4 Variation and the Internal Market**

In Chap. 5, we considered which options are currently available in each of the three dimensions of variation. Within the internal market, variation in policy content currently consists of minimum harmonisation, open standards, and higher levels of protection in certain Member States. Regarding the second dimension, variation in decision-making, the internal market illustrates how the special legislative procedure (in the form of the open method of coordination) concerns not the harmonisation of national legislation but rather the coordination of national policies

(without mandatory standards). Member States cannot be outvoted in this decision-making method because decisions are only taken unanimously.

The internal market's legal framework is so flexible that both the legislator and the Court can weigh economic market interests against other public interests, the former from a political and the latter from a legal standpoint. That is because the organisation of the internal market reflects the explicit pursuit of a social market economy and the view that fundamental rights and the principles of solidarity, proportionality and 'mainstreaming' (which mirror public interests) are important principles of market organisation under the Treaty. Moreover, the Treaties assume that the functioning of the internal market will contribute positively to the public's well-being and standard of living.

There are also objections to variation. Variation between the guiding principles of the internal market and closely associated policy domains raises problems when it comes to establishing a social market economy. Variation in the way the Member States interpret the four freedoms could also pose a major risk not only to the economic completion of the internal market but also to the safeguards afforded to the associated social and public interests. The general principles of Union loyalty and effectiveness of Union law limit such variation, in any event. At the same time, however, we also see that the broad spectrum of principles underpinning the internal market does, in fact, offer more scope for national variation, especially where no EU legislation applies. These principles allow for variation by permitting Member States to apply certain rules and practices that protect certain public interests in preference to the interests of the internal market.

Existing variations within the internal market inspire variation options within other policy domains, such as EMU and asylum, migration and border control, two controversial and divisive topics within the European Union. We discuss these below.

## 9.5 Variation in EMU and the Euro

Chapter 7 on variation in EMU and the euro outlined various possibilities for variation. Here, variation requires different, co-existing arrangements. Elements of the current governance of the euro that can be included in variation without further ado are:

- the extent to which euro-area Member States exercise market discipline;
- whether the Member States want mutual insurance, and the status of a common monetary fund;
- whether the IMF should be involved.

This list begins with the option of variation in policy content, but that does not exclude the possibility of variation in membership and decision-making.

What are the options that arise working with the above elements (on the understanding that we do not immediately assess their feasibility)? Below, we discuss two potential routes to variation, by which we mean different arrangements that can co-exist. They are:

1. variation by means of market discipline and IMF involvement going forward;
2. variation by means of a European Monetary Fund (EMF).

In addition, we discuss variation as a form of macroprudential policy as it currently exists and as explained in Chap. 7.

### **Re 1. Variation by means of market discipline and IMF involvement going forward**

One option is for some Member States to exercise market discipline and submit to the IMF's recovery programmes in the event of difficulties while other Member States establish a common fund providing mutual insurance. The market discipline/IMF arrangement is appropriate for countries that are committed to taking responsibility for their own affairs. The fund arrangement, in turn, requires a large measure of trust between the Member States that choose to participate (e.g. in an EMF). An EMF may be of particular value as an emergency fund, but Article 122 (2) of the Treaty already provides for the possibility of financial assistance to Member States in such cases. As an interpretation of this clause, an EMF could take the form of an ex ante fund and/or (mutual) borrowing capacity.

In the case of mutual borrowing capacity, variation is possible in policy design (and possibly also in decision-making and degrees of participation). That would certainly be true if such organised borrowing capacity can be applied in tandem with pre-existing IMF funds (formed by euro-area countries). Specifically, this could mean, for example, that euro-area Member States whose government deficits regularly test the boundaries of the rules and agreements would be more likely to request assistance from an EMF and/or the IMF, and do so more frequently, than other euro-area Member States.

Variation can be built in by pegging risk premiums to this fiscal behaviour, for example by applying SGP criteria. Another option would be to make the establishment of an emergency fund optional for Member States: those that want to arrange joint coverage contribute to the fund (and can rely on it in crisis situations); those that do not, do not contribute and must rely on themselves (and the IMF) in crisis situations. As a result, the basic fund, in which everyone participates, may be limited or very limited. Variation in this sense may also imply less integration, for example with regard to fiscal rules.

The Dutch Council of State has also examined this approach, noting that if this more 'decentralised' trend were to be continued, three elements would be important: (1) completion of the banking union, (2) certain financial safety nets, (3) European enforcement of fiscal and economic rules in special circumstances.<sup>4</sup> This is in keeping with the main thrust of the analyses in this section and the previous chapter of this book.



## **Re 2. Variation by means of an EMF**

An EMF could function as a stabilisation mechanism for the monetary union. The single currency as it now stands offers starting points for a move in that direction. For example, the European Stability Mechanism could form the basis for a permanent stabilisation fund. The set-up of the fund can remain intergovernmental in nature. Within that set-up, all sorts of variation options are conceivable (in policy content), and more scope can be created for democratic control and/or economic ‘conditionality’ as prerequisites for such a fund. The latter can be intergovernmental in nature or involve a hybrid blend of intergovernmental and Community elements (variation in decision-making).

An EMF could bolster the monetary union by allowing for variation in short, medium and long-term measures, as well as in overarching conditions of democratic control and economic robustness. It could also mean that euro-area Member States whose government deficits regularly test the boundaries of the rules would be more likely to request assistance from an EMF or the IMF, whereas others would not have to. It then becomes possible to build variation into the architecture of an emf, for example by charging different premiums on such fiscal behaviour.

An EMF would be an outgrowth of the ESM that is already in place, and would align with the institutional paths trodden in response to the euro crisis: excluding Treaty amendments but including the structural involvement of the IMF. In certain respects, this would also fit in with the next phase of the programme to strengthen the euro area—following the acute crisis management of recent years—which will need to focus on reassessing national and European responsibilities for the single currency going forward. This will be part of a broader approach to the underlying problems that stem largely from the lack of appropriate coordination mechanisms for dealing with major differences between economies.

### **Variation in the form of macroprudential policy**

Finally, with reference to EMU and the euro, this book briefly mentioned an existing example of variation in the form of macroprudential policy. As it now stands, a conscious choice has already been made to let national authorities chart their own course in this policy area, given that financial cycles can vary widely between Member States. This policy should be positioned alongside the existing macro-economic imbalances procedure and the enforcement of price stability, a task entrusted to the ECB. The case for developing a macroprudential policy of this kind stems from the increasingly decisive role that financial factors play in the functioning of EMU and the euro. The options for institutional design range from intergovernmental to supranational.

## 9.6 Variation in Asylum, Migration and Border Control

Chapter 8 on asylum, migration and border control outlined several examples of existing variation and also described other options. The statutory provisions concerning the treatment of asylum seekers laid down in the Geneva Convention on Refugees, Article 3 of the ECHR, and Article 18 of the Charter of Fundamental Rights of the European Union establish a clear-cut minimum level of uniformity in European asylum policy. Only *refoulement*—forcibly returning people to a country where they are likely to be exposed to persecution or degrading treatment—is in any case prohibited. This obligation is incumbent on both the Member States and the Union as a whole. Even so, this human rights standard need not lead to a completely uniform asylum policy; in fact, it even allows scope for variation in the way in which asylum is ensured. In other words, in all further questions of policy and legislation, the point is to assess the most appropriate model of action.

We can assess variation in the fulfilment of European public tasks concerning asylum and migration in part by considering whether such variation strengthens democratic support for migration policy. Social and political differences between the Member States suggest less unity, but the nature of the problems may in fact require more.

In 2016, the Advisory Council on International Affairs recommended creating more scope for variation in migration policy within the circle of Schengen countries.<sup>5</sup> The AIV drew attention to the possibility of closer cooperation as defined in the EU Treaty (Article 20 TEU) between Member States wishing to implement the Schengen Agreement within the framework of a fully functioning common asylum system, including similar forms of reception and integration, the acceptance of distribution keys, sharing information on abuses, coordination with the UNHCR on resettlement, and agreements with safe countries outside the EU regarding the return of migrants. This is an example of variation in membership. Other Schengen countries would maintain open internal borders under normal circumstances and share responsibility for external borders and the common visa policy, provided that they agree to share costs, jointly manage external borders and perform selective checks at internal borders, all of which points to ‘flexible solidarity’ towards the resettlement of asylum seekers, as suggested by a number of Central European Member States. This proposal allows for societal differences between Member States and includes trade-offs within a policy domain—in other words, variation in policy content. After all, there is little point in forcibly transferring a refugee to a Member State that does not want to take in asylum seekers. In terms of the EU’s own development, it is important that this variation does not jeopardise the socio-economically valuable single market.

Variation in the decision-making method is conceivable, for example when treaties are concluded by departing from the usual decision-making procedure (e.g. by means of intergovernmental decision-making within the European Council). It is crucial that minimum thresholds, such as the principle of *non-refoulement* reaffirmed in the Charter of Fundamental Rights of the European Union, are fully

respected. Anticipatory policy must set the stage for what follows in all cases. That can only be entrusted to a European Union that pursues international policy towards countries of origin and takes action to prevent new crises.

## 9.7 Perspective on Change

The capacity for change and adaptation has always been a critical force behind European integration. It is vital that we rediscover that capacity, because if the EU itself cannot change, then circumstances will at some point force inevitable changes upon it. The main objective is not to amend the Treaty, but rather to adopt a different attitude towards the Treaties and their application. This will also lighten the burden on new Member States that are caught between the political will to accede to the Union and the real obstacles to their immediate and equal participation in all areas. Nor is it necessary to make a binary distinction between Member States and non-Member States in relation to associated countries and territories. The same applies to the distinction between overseas countries and territories, including the Caribbean parts of the Kingdom of the Netherlands, and the ‘outermost regions’.

The functional rationality that has long been a powerful driver of European integration is not inviolable. History has made that more than evident. The (1) unique 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 supranational rule of law, are, moreover, processes that cannot be maintained under altered circumstances. European cooperation and integration have often been the result of negotiations or major external events that required a response. To forge a covenant between peoples is not to narrow that covenant down to an institutional narrative.

How can the Member States continue to chart a course on the basis of self-determination? 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 that context, 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 EU: 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 support.

In addition, by being more self-aware and proactive in its approach to variation, the EU can better reflect the diversity of ‘demoi’, and the different interests and aspirations arising from it, in legislation and policy. To involve the ‘peoples’ more closely in the EU, it must have a closer relationship with the national parliaments. It should also be more aware that each and every parliament represents a people who want space and protection for their life plans and those of future generations. The Charter of Fundamental Rights of the European Union can serve as a guideline in this respect. The Charter does not refer specifically to the division of tasks between European and national governments, but it does identify and protect the fulfilment of public tasks as indispensable to the pursuits of citizens, their organisations and businesses.

The ‘logic of consequences’, i.e. the question of what costs and benefits are at stake, is inextricably bound up with the ‘logic of appropriateness’, i.e. the question of what moral considerations play a role. After all, cooperation within the Union is always based on the principles of democracy, the rule of law and fundamental rights and freedoms, including social rights and the right to protection against persecution.

These requirements are particularly important when it comes to the protection of the rule of law, democracy and human rights. If we accept variations as a feature of the European Union, we must face up to the question of what the Union’s essential common features are. Only then will it be possible to appreciate differences while maintaining sufficient cohesion. Too often, the European Union stands accused of straightjacketing its Member States and showing no regard for their individuality. Such dissatisfaction indicates a fundamental cross-border appreciation for individuality in diversity. Respecting this means seeing people not as separate individuals, but as persons who engage with others on the basis of their culture, beliefs and traditions. That is the view of humanity that underpins the notion of human rights.

The scope for variation sought in this book and recommended with a view to future developments must not endanger the above vision of human society; in fact, it is precisely this vision that has inspired our call to abandon the forced pursuit of uniformity. Respect for individuality is manifest—or, indeed, lacking—at various levels. In each case, what is at stake is the rights and responsibilities of people as citizens: as citizens of their town or village, as citizens of their country, and as European citizens. No variation in the allocation and fulfilment of public tasks should lose sight of that. It is expressed in the scope of application of the Charter of Fundamental Rights of the European Union (Article 51 as interpreted in the case law of the European Court of Justice).

The variations that we have recommended therefore do not limit the fundamental values set out in Article 2 of the EU Treaty, let alone cast them aside. Only by recognising that these values—which include democracy, the rule of law and

human rights—are closely bound up with the EU and European citizenship can an EU of variation maintain and act upon its vision of a shared future. While the effect may vary depending on local and national circumstances, the democratic rule of law must be regarded as inviolable. We therefore endorse the AIV's recommendation<sup>6</sup> in its report *The will of the people? The erosion of democracy under the rule of law in Europe* that respect for diversity in states' democratic functioning should be paired with efforts to prevent the erosion of the rule of law.

Another important aspect of the perspective offered in this book is that, regardless of the level of policy diversity or uniformity, the EU's internal relationships must be equal to the challenges posed by the outside world. The EU and its Member States are dealing with external forces, forces that affect international trade, security, data transmissions and even the integrity of democratic procedures. The nature and intensity of European integration must be able to adapt constantly to these forces.

## 9.8 The Dutch View of the European Union

What is the significance of the variation perspective for the Netherlands? The main purpose of this book is to consider a particular approach to European cooperation. The options put forward in different policy domains in the previous chapters provide examples. However, our most important message here is that the fundamental openness of the European project should be perceived as a space for creativity and imagination. In other words, variation should not be a mere last resort when compromise is required and differences are simply unavoidable.

Variation does not offer *carte blanche* to Member States, including the Netherlands. The significance of the 'variation' perspective for the Netherlands is evident in two areas, namely the area of interests and the area of values. This distinction—which is rife with interdependencies in the real world—corresponds to the logic of consequences (interests, cost-benefit) and the logic of appropriateness (normative perspective), discussed earlier.

The 'logic of consequences' has become even more important for the Netherlands, in part because Brexit has brought about an intensification in Franco-German cooperation. The economic, cultural and technical evolution of the Netherlands is inextricably bound up with that of these important neighbouring states. In its relationship with these and other Member States, the Netherlands must regard its place in the European Union as a given, but alterable, reality. To deny this would lead to further democratic alienation and involve portraying matters as if nothing could be changed about European integration.

It is therefore necessary for the Netherlands to express its political commitment to Europe in words and deeds, and it is equally necessary for this commitment to be reflected in the form of the EU at the same time. Both manifestations of political commitment are essential, all the more so because the political organisation of the EU is highly specific and its democratic embeddedness is extremely complex.

In today's reality, we see this in the position of the prime minister, for example, who has increasingly also taken on the role of 'Minister for European Affairs', partly owing to his or her position as a member of the European Council—a role that can go to improve the visibility of European affairs.

Public tasks are not merely the outcome of a process of give and take, of wheeling and dealing. They are fundamental because they arise against the backdrop of shared history, geographical proximity, trade, and political ideals. The creation of the European Communities and, later, of the European Union was, of course, the result of negotiations and agreement reached between states as sovereign actors, but this particular process of international coordination differed from ordinary negotiations in two respects. It was compelled by the insight that the governments of Europe, and the peoples they represented, had more to gain than a mere trade-off of interests: the experience of destruction that preceded the coordination process taught them that they shared an important interest in the relatively small continent of Western Europe, where close relationships had always abounded. That meant finding an arrangement on which citizens and their organisations and businesses could depend across national borders. That is the essential feature of the European Union.

A parallel can be drawn in this sense between the discussions on the future of 'the Netherlands' and those on the future of 'Europe'. Both in the European context and in the Netherlands, there is a need to flesh out the 'big words' that are needed so that the outcomes of cooperation are not reduced to a trade-off of interests. Those outcomes may be better than expected or disappointing, which is why they are always debatable. In that sense, the debate on the Netherlands and the EU is the same: it requires a discussion about long-term reliability in the fulfilment of public tasks.

The 'logic of consequences', i.e. the question of what costs and benefits are at stake, is inextricably bound up with the 'logic of appropriateness', i.e. the question of what moral considerations play a role. Cooperation within the Union is always based on the principles of democracy, the rule of law and fundamental rights and freedoms, including social rights and the right to protection against persecution.

If we accept variation as a feature of the European Union, we must, time and again, face up to the question of what the Union's essential shared features are. The common foundations are set out in the Treaties and in the Charter of Fundamental Rights of the European Union. Cooperation within the Union is always based on the principles of democracy, the rule of law and fundamental rights and freedoms, including social rights and the right to protection against persecution, and the principles of subsidiarity and solidarity. Respect for individuality is manifest—or, indeed, lacking—at various levels of organisation. At each level, what is at stake is the rights and responsibilities of people as citizens: as citizens of their town or village, as citizens of their country, and as European citizens. Variation in fulfilment is crucially important because the desire for personal responsibility is something that connects people across borders.

**Notes**

1. Guérot (2017).
2. Jones (2018); Zielonka (2012).
3. AIV (2017c).
4. Raad van State (2017a: 93).
5. AIV (2016).
6. AIV (2017c).

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

