

SANTÉRUS  
FÖRLAG

Antonina  
Bakardjieva Engelbrekt  
Anna Michalski  
Lars Oxelheim  
[EDITORS]

EXECUTIVE SUMMARY

**THE EUROPEAN UNION  
AND THE RETURN  
OF THE NATION STATE**

EUROPAPERSPEKTIV 2019  
[WWW.EUROPAPERSPEKTIV.SE](http://WWW.EUROPAPERSPEKTIV.SE)



EXECUTIVE SUMMARY OF EUROPAPERSPEKTIV 2019

**THE EUROPEAN UNION**  
**AND**  
**THE RETURN OF THE NATION STATE**

Edited by ANTONINA BAKARDJIEVA ENGELBREKT,  
ANNA MICHALSKI, and LARS OXELHEIM

Santérus Förlag

## EUROPAPERSPEKTIV — NETWORK FOR EUROPEAN STUDIES

Swedish universities have since 1998 cooperated within a national network structure for European studies. This structure comprises networks for political science, economics, and law. The purpose is to enhance the understanding of the European Union in research and post-graduate education. Special resources are made available by the Swedish Parliament (*Sveriges Riksdag*) and are used for a shared infrastructure of courses, conferences, and seminars. The networks together are responsible for the annual yearbook on European studies—*Europaperspektiv*.

For more information on the yearbook project and the research networks, please visit our website: [www.europaperspektiv.se](http://www.europaperspektiv.se).

ISSN 1403-3879

ISBN 978-91-7359-132-4 [for the book]

© 2019 The authors and Santérus Förlag

Cover design: Sven Bylander, London, England

Santérus Förlag also publishes books under the imprint

Santérus Academic Press Sweden

[info@santerus.se](mailto:info@santerus.se)

[www.santerus.se](http://www.santerus.se)

Ever since the first steps towards European integration were taken in the early 1950s, the relationship between the nation-state and the European Union has been a crucial issue. Throughout the years and in various ways, this relationship has defined the form and scope of European integration. In particular, the movement towards deeper integration has followed two distinct and partly contrary lines of development: increased supranationalism, in the form of greater powers for the Union; and intensified intergovernmentalism, in the form of closer cooperation amongst the member states. In fact, the EU has embraced both types of integration since its inception. This can be seen in its treaties, in its common institutions, and in the formulation of its actual policies. However, this essentially natural and balancing relationship has recently been challenged by individual member states acting in their self-interest; and the foundations of European cooperation have been called more and more loudly into question. This raises two issues: First, if indeed we are witnessing the return of the nation-state, in what form is it returning? Second, is the national revival a lasting phenomenon with which the EU must deal for a long time to come, or is it rather a transitory trend?

In this book, we reflect on the relationship between the Union and its member states. Our main reason for asking whether the nation-state is returning lies in the increasingly egoistic behaviour of the member states in several policy areas, which can be best understood in light of the recent crises that have struck the EU. Tendencies towards economic nationalism, whereby countries seek to protect jobs within their own borders, are growing stronger in the wake of the economic crisis. Moreover, countries such as Hungary and Poland are refusing to implement commonly agreed decisions in the area of migration policy, on the grounds that they violate their sovereignty. Britain's decision to leave the Union (Brexit) was preceded by a long debate about whether the Union undermines the autonomy of its member states in crucial areas. Around Europe, the view of the nation-state as a safeguard against external threats and a guarantor of national economic interests seems to be resurfacing, despite its close historical association with war and suffering on the European continent. New divisions have clearly arisen between the EU's institutions and the member states, and between different groups amongst the latter. These divisions reflect the sovereign-debt crisis, the refugee and migration crises, the growth of populist currents around Europe, and the challenge raised by the Hungarian and Polish governments to the values of the Union. Populist parties have come to power in Hungary, Italy, and Poland, and they now form a prominent feature of the political landscape in virtually every member state. Victor Orbán and Matteo Salvini, Hungarian prime minister and Italian interior minister respectively, have

expressed an interest in forming a political alliance at the European level to protect the borders of the member states and to act as a counterweight to the liberal EU establishment. In 2018, the Italian government challenged common policy at the European level with a state budget that broke flagrantly with the Union's budgetary rules (although it later partly revised it). Furthermore, traditional political parties – in the UK, for instance – contain highly Eurosceptic factions which have influenced the policies of incumbent governments. New populist winds have filled the sails of existing Eurosceptic groupings, and the policies and powers of the Union are being called into fundamental question.

There is an opposite trend, however. Internal and external challenges – amongst them Brexit, aggressive Russian policies, and the assault by US President Donald Trump on international organizations and the liberal world order – have helped bring the member states of the Union closer together. Despite everything, the member states have been able to agree on political solutions and initiatives that were previously thought impossible. During the Brexit negotiations thus far, for example, cohesion amongst the 27 governments represented in the European Council has been exemplary. We are thus faced with a paradox: on the one hand, the EU's values and objectives are being called into fundamental question by prominent political currents and a group of member states; on the other, integration is being deepened in a number of policy areas. Now is a good time, then, to re-examine the complex relationship between the Union and the nation-state – here in its capacity as the EU member state – with an eye to discerning the contours of the next step of European integration.

## **Origins and significance of the nation-state**

Viewed historically, the nation-state is a relatively modern state form. Its origins are usually thought to lie in the treaties which established the Peace of Westphalia in 1648. These gave legitimacy to smaller political units and reduced the power of multinational empires and the Catholic Church. There is a tight link between the nation-state and the principle of state sovereignty, which has both an external and an internal dimension. The latter relates to the state's territorial inviolability, its independence, and its capacity to conclude international agreements; the latter involves mandatory powers in connection with the administration of justice, the enactment of laws, and the possession of a legitimate monopoly on force. There is also the view of the state as inseparable from the nation (the latter being understood here as a majority population with a common national identity). Nation-states base their legitimacy,

then, on their control over a defined territory, their autonomy from outside powers, their recognition by the same, and their support from a (relatively) homogeneous population. They thus differ from vassal states that lack sovereignty, as well as from empires that contain numerous nations and ethnicities.

The legitimacy of the nation-state in Europe was in the first half of the 20th century undermined by the appeal of authoritarian regimes to nationalism, and by territorial claims made in the name of an area's 'rightful' people. Nationalist and chauvinist movements in Germany and Italy contributed to the outbreak of the Second World War. Elite and popular support for such ideas lay behind the First World War too, when most of the warring parties were lingering empires. We must understand the roots of European integration in this light. The original movement for integration was animated by a strong desire to circumscribe nationalism, which had been the driving force in the ruinous and self-destructive struggle between the countries of Europe, and which had made lasting forms of cooperation impossible. This was the motivation behind early efforts to create a political union in Europe – a union which, some of its advocates maintained, ought even to take the form of a European federation.

### **The nation-state and European integration**

The relationship between the nation-state and European integration has always been ambiguous. Early efforts at integration were inspired by the sense that selfish states had to be checked, in order to prevent them from pursuing their national interests at the expense of others. The basic idea behind the European Coal and Steel Community was to prevent further wars in Europe. Yet it is the member states, as sovereign states, which have concluded the Union's treaties: thus they are 'masters of the treaties'. This is revealed with particular clarity when fundamental power relations within the Union are undergoing change, as in the case of negotiations over treaties or over enlargement. The member states act then as sovereign states, whether they appoint a special negotiator to represent them or not. In other areas, by contrast, the Union has exclusive powers. The member states have relinquished their national sovereignty in connection with monetary policy, fisheries, competition rules, trade policy, and the customs union. In these areas, they have authorized the Union to act independently in their stead.

There are several other aspects as well to consider in connection with the double-edged nature of the EU's institutions in regard to supranationalism and intergovernmentalism. The European Commission, the European Parliament, the European Central Bank, and the Court of Justice of the European Union are all supranational in character. They have their own autonomous existence, with powers and prerogatives endowed by the treaties. Then we have the European Council and the Council of the European Union (or Council of Ministers). These represent the member states, which negotiate amongst themselves until a decision is taken. Yet the latter two bodies are also Union institutions in their own right, in which capacity they represent the member states as a collectivity. They also often act together in relation to the other institutions in the decision-making process. Finally, the double-edged quality of EU institutions in connection with supranationalism and intergovernmentalism is most clearly seen in the roles which the Parliament and the Council of Ministers play in the Union's legislative process – wherein the Council pursues a *unified* line vis-à-vis the Parliament.

We mentioned the Union's five exclusive powers above. In the vast majority of the EU's policy areas, however, decision-making competence is shared between the Union and the member states. There are also a number of areas where the Union has only a supporting function, and common binding rules cannot be established. Another interesting aspect of the double-edged nature of the Union is that both intergovernmental and supranational decision-making can be found within one and the same policy area. This is evident in the case of the Economic and Monetary Union (EMU), where fiscal policy is conducted on an intergovernmental basis and monetary policy on a supranational one – something that has caused major problems in the eurozone and which is regarded as a real system failure. In addition, the states in the eurozone have resorted to intergovernmental solutions outside the framework of the treaties in order to meet the major challenges entailed by the sovereign-debt crisis. An example hereof was the creation of the European Stability Mechanism (ESM) in 2012. When it comes to asylum and migration policy, moreover, a mixture of intergovernmentalism and supranationalism prevails – which can reduce the Union's capacity for effective action and make its policy in the area less transparent. Finally, it is important to pay due attention to EU law, which constitutes an independent legal order located somewhere between national law and international law. The importance of the autonomous standing of EU law for the Union's consolidation as a political system marked by the rule of law cannot be overstated.

What does this review of the Union's intergovernmental and supranational features tell us about the EU? One thing is plain: European integration has not developed in a straightforward way. In certain periods it has proceeded rapidly; at other times it has stalled. The integration process is furthermore incremental, and it differs between policy areas. It has gone furthest in regard to the single market. Progress has been much slower, on the other hand, in respect of migration policy and foreign and security policy, even though the Union faces major problems in these areas for which citizens expect a common solution. Clearly, the development of the EU has not followed the template of a classic state, with clearly delineated powers in a constitutional order. This can be seen as a sign that the Union is evolving towards a confederation rather than a federation.

According to the conventional view, the nation-state – in the form of the EU member state – has succeeded in keeping the core of its sovereignty against any excessive intrusion on the part of the Union. The rejection of the Constitutional Treaty in the Dutch and French referenda of 2005 would seem to indicate as much. According to some scholars, however, the relationship of the member states to European integration is much more complex. In *The European rescue of the nation-state* (1992), for example, the British political scientist Andrew Milward depicts the relationship between the nation-state and European integration as less conflictual than previously supposed. Instead, he avers, it should be seen as a fruitful and mutually supportive one. In particular, the single market has enabled member states to get around domestic stumbling blocks which had previously prevented them from carrying out necessary economic reforms. Another interesting perspective is offered by Christopher Bickerton, in *European integration: From nation-states to member states* (2012). In this book, Bickerton claims that the governments of the member states – in particular the heads of state or government in the European Council – exercise a form of collective leadership within the Union. This is particularly evident in areas where the intergovernmental logic prevails, such as foreign and security policy, and in the handling of the many crises the Union has undergone during the 2010s. Particularly relevant to the theme of this yearbook is Bickerton's contention that we must dispense with the simple notion of a conflict between the nation-state and supranationalism if we are to understand what is going on in the EU. In the distinctive system that now prevails, Bickerton claims, the member states frame and implement policy in a fundamentally different way than they did earlier. We must continue, accordingly, to explore the relationship between supranationalism and intergovernmentalism from a variety of perspectives.



## **Alternative perspectives on power and sovereignty within the EU**

As European integration has deepened, it has taken a variety of forms. In order better to understand its shifting dimensions, we can employ the various perspectives of earlier researchers to advantage. We shall briefly discuss some of the most influential ones here. An early but still relevant perspective, functionalism, was presented in the 1950s by the American political scientist Ernst Haas. It is often referred to as neofunctionalism. In this view, the development of the Union can be explained in terms of 'spillover' effects, whereby integration spreads from one policy area to another. An example of such spillover can be seen in how, due to the establishment of a customs union and the introduction of common rules on exports and imports, trade across borders increased – whereupon transnational actors, such as corporations, began to demand common rules in adjoining policy areas as well. The result was a common trade policy, and broader and deeper supranational cooperation thereby. In the same way, according to neofunctionalism, national officials who take part in the Union's policy processes change their behaviour and help to deepen integration. Due to their repeated interactions with each other and with EU representatives in Brussels, such officials adopt a new outlook – with a shift in loyalty from the nation to a new political centre at the level of Europe.

The logic behind neofunctionalism seems perfectly reasonable when we consider the deepening of the single market, where common rules within a given sector made cooperation possible and desirable in other policy areas too. However, the functionalist approach runs up against difficulties in explaining why integration in areas such as migration, internal security, and foreign and security policy has been slow and beset with sharp contradictions. As for national officials, they have not permanently shifted their loyalties to the European plane. They have rather developed an embedded dual loyalty: they retain their national identity and are prepared to defend national interests in the EU's institutions, while at the same time embracing common European standards and interests to a degree. Nor have developments since the turn of the millennium pointed to any diminution in the importance of the member states. On the contrary, the standing of the European Council within the EU – and its role in finding solutions to the crises which the Union has experienced – has been and remains absolutely central. Instead we see the emergence of a collective executive, with the governments of the member states at the helm – an executive in relation to which the Union's institutions sometimes act independently, sometimes as a support.

Another approach to understanding the Union, which has become prominent in the last twenty years, is that put forward by empirically oriented scholars like Helen Wallace from the UK and Claudio Radaelli from Italy. The focus here is on governance within the Union's policy processes. These take different forms depending on the degree of integration which has taken place in a given policy area. Thus, the formal powers of the Union within different policy areas give rise to a variety of forms for cooperation and decision-making. The instruments used to implement policy decisions, and the actual outcomes as well, can also be explained in terms of the forms of governance characteristic of a given policy area. To help make this reasoning more concrete, we can take the EMU as an example. Monetary policy lies within the exclusive authority of the Union for the countries that use the euro. These countries have relinquished the power to regulate the price of their currency. Responsibility lies instead with the European Central Bank, which follows the guidelines set out in the treaties. Power over other aspects of economic policy, on the other hand, remains in all essentials with the member states, although they have undertaken to comply with the rules for sound state finances set out in the Stability and Growth Pact. Furthermore, it follows from membership of the eurozone that countries should strive to improve their economic competitiveness, in order if possible to even out the excessive differences between them. To this end the Lisbon Strategy was launched in 2000, followed in 2010 by its successor, Europe 2020. Both Europe 2020 and the Stability and Growth Pact are characterized in all essentials by governance through the exchange of experience, a form of governance commonly known – inasmuch as it is conducted on a (more or less) voluntary basis – as the 'open method of coordination'.

To complete the picture of the Union's various forms of governance, we should also mention regulation of the financial market. This forms part of one of the single market's four freedoms – that for capital – and so figures amongst the Union's shared powers. As cooperation within the single market has deepened, the EU has enacted a large number of laws regulating the financial market. These laws have been established through the ordinary legislative procedure, whereby the Commission draws up a proposal, and the Council and the Parliament consider it. The law finally adopted often takes the form of a framework directive, which is then incorporated into national regulations governing the financial market and its actors. The governance perspective has the advantage of describing, in a concrete way, what really goes on in the EU's policy processes. On the other hand, it fails to capture the political dimensions of the system, whether at the national or the European level; nor does it reckon with normative questions, such as the state of democracy in the EU.

The relationship between the nation-state and the Union has also been discussed in connection with the process of legal integration. The EU is a community of law, wherein national law is subordinate in almost all areas to EU law. The Court of Justice of the European Union (CJEU) is the institution ultimately responsible for interpreting EU laws and for resolving legal disputes (between the Commission and the member states, for example). It is often noted in the literature that the Court has been able to push integration forward above all during periods of political division between the member states. An example hereof can be seen in the well-known rulings of the 1960s, in which the Court laid down basic principles for the EU's legal system. The Court established, for example, that Union law has direct effect and enjoys primacy over national law. These principles have been crucial for the progress of European integration during periods when the member states have been reluctant to delegate decision-making power to the EU.

Scholars are divided in how they see the role of the Court in relation to the tension between the Union and the member states. According to the neofunctionalist view, the CJEU is a strong supranational court with a clear agenda: to deepen integration. The member states may have found this supranationalism to be excessive and wished to limit the power of the Court, but such a change has essentially been impossible: amending the treaties in this area requires unanimity. A competing approach here, however, depicts the role of the Court quite differently. According to this view, intergovernmentalism, the CJEU has been a tool for serving the interests of the major member states. Irrespective of which approach best captures its behaviour, it is clear that many actors – in the UK not least – have been critical of the Court, painting it as a threat to national sovereignty. The core of this criticism is that the Court, through far-reaching interpretation of the EU's acts and treaties, has engaged in legal activism. The result has been deeper integration and increased supranationalism, with consequent limits on the member states' room to manoeuvre.

Dieter Grimm and Fritz Scharpf, legal scholar and political scientist respectively, have argued too that the Court pays insufficient heed to national legal and political traditions when deciding issues which the member states consider to belong to the (national) political arena. In the long term, they believe, such behaviour threatens to undermine the entire legitimacy of the Union, by making it difficult for the political leaders of the member states to justify the Court's rulings to their citizens. With Britain's decision to leave the Union, this fear may be said in part to have come true. While the research points to several reasons why the British

voted in 2016 to leave the Union, public debate in the UK has long been dominated by the view that the EU, with the CJEU at the forefront, violates the autonomy of the member states in key political areas. In an interview with the *Financial Times* in 2016, for instance, former Brexit Secretary Dominic Raab criticized the supranational court sharply: ‘They undermine the basic principle for our democracy – that the British people can hold to account those who write our laws.’

The CJEU’s greatest achievement has been to persuade the member states’ own courts to apply EU law loyally at the national level. In this way, the EU’s treaties have avoided the fate of many international agreements – of not being complied with at the domestic level. Instead, the courts have jointly ensured that EU law has become an integral part of 28 different national legal systems. Neofunctionalists, amongst others, often cite the acceptance of EU law by national courts in support of the proposition that the EU’s legal system has basically assumed the character of a national legal system. However, even if the courts of the member states largely comply with the rulings of the CJEU, some national courts have displayed a degree of opposition to the latter’s interpretations of EU law – something which neofunctionalists have found hard to explain. The highest courts of several member states have shown openly that they do not wholly accept the principle that EU law enjoys primacy over all national legislation. The German Constitutional Court, for example, has indicated on a number of occasions (*Solange I and II*, *Brunner*) that there is a limit to how much decision-making power can be transferred to the Union. The German constitution is still the ultimate guarantor of the values of liberal democracy. The highest court of Denmark has also defied the CJEU – in the *Ajos* case from 2016, when it refused to override a Danish law that violated EU law. The Danish court considered that, amongst other things, it lacked support in the country’s constitution for overriding the national provision. Overruling the law in question would mean going against the express will of the Danish parliament. Legal analysts claim the Danish court thereby undermined one of the most important principles enunciated by the CJEU – that national legislation is subordinate to EU law.

### **The return of the nation-state?**

Are we really witnessing the return of the nation-state in Europe? If so, what will that mean for European integration? Will it undermine the EU’s ability to meet the challenges it faces

from within and without? Or is the return of the nation-state in fact a necessity for restoring stability, the vigour of national democracy, and effective action by the member states?

These questions are complex, and they will occupy many a researcher and politician in future. We cannot supply definitive answers in this yearbook. Yet we think it important, at a time when political currents and actors are openly opposing Union policy and questioning the foundations of European cooperation, that we again focus attention on the driving forces affecting the relationship between the member states and the Union. European integration is obviously affected when certain member states openly and demonstratively thwart common policy, and refuse to implement political decisions which the EU has adopted. At the same time, the Union must assess in a clear-sighted manner the import of the fact that the member states hold differing views, and that they vary in their economic and to some extent political capacity to adjust to the Union's policies and its political and administrative processes. The Union has grown ever larger and more diverse with the years. It must somehow strike a balance between standardization and respect for difference, between divergent norms and notions, and between national and European powers.

The allocation of power, we know, is not a zero-sum game. When the Union is able to act more effectively, the capacity of the member states to meet challenges is strengthened as well. At the same time, the member states have no wish to see far-reaching integration in all policy areas, and opinions are divided on how EU policy should be framed. Some member states have stressed the need for the Union to strengthen its capacities, in order to meet the tough challenges it faces; others oppose any increase in its political powers. Still others doubt such a strengthening is possible. Yet it is clear that, in the wake of Britain's decision to leave the Union, the EU has taken some important steps to strengthen its capacity to act in connection with trade policy, security and defence policy, the social dimension, and the Economic and Monetary Union. In many areas, the EU is one of the few remaining international actors to defend the multilateral rules-based world order against illiberal and destructive forces. The words of Angela Merkel and Emmanuel Macron, German chancellor and French president respectively, are of interest in the context. In the Meseberg Declaration of June 2018, the two leaders proclaimed that:

France and Germany are strongly committed to not only preserve the achievements of the European Union but also to further strengthen their cooperation within the European Union, with the constant preoccupation to ensure both the unity of its member states and its efficiency. The European Union will live up its values and be a strong voice for the protection of human rights and a force to defend, reform and strengthen multilateralism.

## Structure of the book

In the nine chapters of this volume, our contributors analyse the relationship between the Union and the nation-state. They seek to shed light on what the possible return of the nation-state means for political, economic, and legal integration within the EU. How can democracy at the European and national levels be strengthened? What are the ways forward for the integration process? Can a division of the euro into several currencies strengthen both the common currency and the Union in the long run? What can explain the paradigm shift from liberalization of the single market to stricter regulation of EU tax law? How should the EU respond when a member state repeatedly violates the fundamental values of the Union? Can demands for an independent Catalan or Scottish state be reconciled with the goal of a united Europe? Should the Union have a common refugee policy, or is it better if the member states decide matters on their own in that area? Where EU law is concerned, is it the Union or the member states which ultimately guarantee fundamental rights when sanctions against individuals are in question? How are we to understand the negotiations over Brexit, and how might the Union dissuade other member states from leaving? These are some of the issues addressed in this book.

In the first chapter of the book, *Torbjörn Bergman* and *Magnus Blomgren* note that debate over the proper relationship between the member states and the EU's institutions runs like a red thread through the history of the Union. But instead of just recounting the positions in this classical debate – between those who say the emphasis should be on intergovernmental principles, and those who argue that the Union should have a significant element of supranationalism – the authors analyse current debates within four major policy areas: migration, the economy, the social pillar, and security and defence policy. As becomes clear from their examination of the member states' positions on these issues, the debate has little to do with any choice between the two poles of supranationalism and intergovernmentalism. Instead, national political elites seek solutions to various problems on a pragmatic basis. The leaders of the member states take an incremental approach: in their negotiations with each other, they are largely agreed on the need for action but uncertain about the shape it ought to take. Reforms are therefore implemented gradually and evaluated successively, and harmonization is often done on a voluntary basis.

As Bergman and Blomgren see it, this raises a number of normative questions around democracy in the EU. Intergovernmentalism and supranationalism have one important point

in common: they both offer clear chains for citizen influence over political institutions. By contrast the third approach, incrementalism, makes things more complex from a democratic point of view. The authors contend that, since this third account is the most realistic depiction of how the EU actually works, and since the ‘hybrid’ of supranationalism and intergovernmentalism will likely prove lasting, we should devote much greater attention to the question of which democratic principles ought to prevail within the complex multi-level system. The democratic system characteristic of many European states, with its singular chain of delegation and accountability, accords but little with the incremental process of integration seen in the EU. What is needed instead, the authors aver, is an arrangement based on a Madisonian separation of powers, wherein different institutions check and balance one another, preventing an excessive concentration of power thereby. The great challenge, according to Bergman and Blomgren, is to combine a system where the majority will expressed in general elections is operative, with another in which the distribution of powers between the Union and the member states is clear. To date there has been no constructive discussion on what can and should be done to form such a legitimate European political order, in which democratic arrangements within the member states feature as well. The EU hybrid will only function democratically, as the two authors see it, if politicians and citizens can see the link between the national and European levels. This means we must be able to discuss the political issues decided at each level at the same time. National democracy cannot be understood unless we take into account its connection with the EU, and vice-versa.

In the second chapter of the book, *Andreas Moberg* analyses how the EU, through the Commission, has dealt with the judicial reform introduced by the Polish government in the autumn of 2015, and with the challenge to the Union’s values which this reform has entailed. The reform in brief provides, amongst other things, for the mandatory retirement of judges on the country’s Constitution Tribunal. Said reform represents, in Moberg’s view, a return of the nation-state, because Poland is persisting with its lustration. This despite the fact that more and more voices, both within the Union and amongst international organizations, are calling upon the Polish government to rescind the reform, as a threat to judicial independence and the rule of law. The chapter begins with a description of the tension between supranationalism and intergovernmentalism within the EU. Then, on the basis of this background, Moberg reviews and analyses Article 7 TEU, which provides for suspending the rights of a member state – especially its voting rights in the Council of Ministers – if it violates the fundamental values of the Union.

Having placed the rule of law in its historical context, thereby shedding light on how it has come to be a fundamental value of the Union, Moberg reviews the ‘EU framework to strengthen the rule of law’, adopted in 2014. The case of the Polish judicial reform is the first and hitherto only time this framework has been used, affording us a first opportunity to analyse its strengths and weaknesses. What conclusions, Moberg asks, can be drawn from the Polish case, in light of the tension between supranational and intergovernmental decision-making which is inherent in Article 7 TEU? His analysis of this question forms the basis for a number of policy recommendations on how the EU can handle the situation when a member state questions the fundamental values of the Union. To begin with, Moberg argues, the Commission should refrain from using the EU framework mentioned above. The traditional mechanisms for dealing with treaty breaches – with the greater role for the CJEU that they afford – are to be preferred. It would also be desirable for the Commission and the Council to achieve better cooperation on issues pertaining to protection of the Union’s fundamental values.

In the book’s third chapter, *Magnus Henrekson*, *Tino Sanandaji*, and *Özge Öner* argue that differences in the number of refugees arriving in the different member states in 2019 are so great and systematic that it makes no sense to speak of a common refugee policy in the Union. The agreements concluded on a common refugee policy leave wide latitude to the individual member states, enabling them to regulate refugee immigration and yet to comply with their international commitments. It is the member states themselves, the authors point out, which are responsible for border controls, for the assessment of applications for asylum, and for regulations that determine what financial support and welfare services refugees are entitled to. In other words, the commitments made by the member states at EU level are largely voluntary; refugee policy is mainly a national affair.

The refugee crisis of 2015, the authors argue, revealed two things about the Union and the nation-state: the inherent weakness of the former as a federal project, and the continued importance of the latter. The Union failed, namely, to manage the increase in the number of asylum-seekers within the framework of a common policy. Several member states introduced border controls, citing the provisions of the Schengen Agreement which allow them to do so in case of a serious threat to public order and internal security. Amongst the countries that did so was Sweden, which had taken in by far the most refugees per capita during the 2010s.



Given the great variation in the number of refugees received by each member state, the question is whether the Union should keep trying to elaborate and enforce a common policy in this area. As the authors see it, the fact that the refugee question gives rise to such tension between the member states ought to tell us that the Union is not an optimal region for the conduct of a common refugee policy. The resistance has a real basis, and it must be heeded if the whole project of European integration is not to be endangered by the imposition of measures from above. Refugee policy ought therefore, in the view of the authors, to be formulated mainly at the national level – and in cooperation with local and regional authorities, which are responsible for the practical implementation of measures for integration in the form of training, job-matching, and the like. Yet the EU can play an important role, the authors note. It can provide assistance to countries afflicted by wars or natural disasters; it can conclude agreements on refugees with third countries; it can carry out rescue operations in the Mediterranean; it can guard the external borders of the Union. In sum, the authors conclude, the nation-state remains the most suitable unit for regulating the refugee flow, for processing applications for asylum, and for maintaining border controls. This ensures that the actions undertaken are in line with national opinion.

The theme of the book's fourth chapter, by *Rikard Forslid* and *Sten Nyberg*, is Brexit and the prospects for European cohesion. The authors begin by reviewing the evolution of the Union in relation to economic and political forces which promote international integration and national autonomy respectively. The EU emerged in competition with the European Free Trade Association (EFTA); and despite the fact that the former body incorporates a degree of supranationalism – of which many of the former EFTA countries were sceptical – the benefits of a large integrated market ultimately exceeded the costs.

In view of the strong gravitational force exerted by a large market, Forslid and Nyberg ask whether the Union can grow in size indefinitely. At least one thing, however, clearly pushes in the opposite direction: the increased heterogeneity that expansion brings. Under such conditions, the disjunction between uniform policies and local preferences grows progressively worse. The interaction between these forces, which the authors analyse with the help of earlier research on the optimal conditions for state formation, affects the prospects for European cohesion and conditions the risk that a member state will seek to withdraw from the Union. The authors then discuss what can happen if a country actually leaves the Union, based on the Brexit negotiations and the central points at issue therein – trade and migration. Forslid and Nyberg highlight the incentive of the parties to position themselves politically and

rhetorically, and they stress the impact of the structure of the negotiating process on the prospects for achieving less harmful outcomes. On the basis of both their own analysis and the results of previous research, the authors conclude that British voters opted for Brexit because large numbers amongst them, like their counterparts in other countries, see themselves as having lost out from globalization and from the market integration entailed by the EU's single market. The authors then consider how trade theory can help us to understand Brexit, and how citizens' attitudes towards the Union have developed in different countries. While British scepticism of the Union is of long standing, Forslid and Nyberg see no corresponding pattern in other countries. The risk of more 'exits' has diminished in light of the Brexit negotiations, which have clearly shown that even so large a country as the UK has difficulty attaining an economically advantageous agreement on exit. In the chapter's conclusion, the authors offer some recommendations on how exit negotiations can be conducted in order to reduce the risk of unfavourable outcomes. In view of the EU's increased heterogeneity, they stress, it is very important that the Union show sensitivity to legitimate criticism and that it clarify the advantages of membership besides. Adjusted in this way, EU policies can reduce the risk that other member states will choose to leave.

In the fifth chapter of the book, *Cécile Brokelind* analyses EU efforts to counteract the erosion of member states' corporate tax bases. This phenomenon drew particular attention in connection with the disclosure that multinational corporations, such as Apple, had basically escaped taxation through favourable deals with the Irish tax authorities. In light of the opportunities which an increasingly globalized world economy affords multinational corporations to reduce their tax liability by exploiting differences between the tax systems of different countries, Brokelind examines how the EU has tried to handle the problem. Despite the difficulty of reaching an agreement – due to differing views amongst the member states about the need to regulate tax competition – the Union was able in 1997 to establish a code of conduct for minimizing such competition. Thanks to digitization, however, tax competition has intensified in recent years at a global level. Digitization and globalization have made it harder for countries to tax corporations, since it is often the case that the latter no longer meet conditions for being taxable on the territory where they conduct their sales.

Against this background, Brokelind reviews how the preferences of the member states have changed on the issue of which state should have the power to tax international companies. Initially, the EU followed the model prescribed by the Organization for Economic Cooperation and Development (OECD) – that the state where a company's main office is

registered has the right to tax said company. But the Union's view on the matter has changed. The feeling now is that the right to tax should lie with the state where a company conducts its sales. In recent years, accordingly, the Union has adopted a number of laws embodying this protectionist approach. Furthermore, Brokelind explains, multinational corporations like Apple have been able to exploit differences between the tax systems of member states in order to maximize their profits. The author shows too how the Commission has used EU rules on state aid to limit this kind of tax competition, with the drain on the revenues of member states it entails. Brokelind then presents the thesis that the member states, through the EU, have managed to defend their interests in protecting their own corporate tax revenues under the pretext of securing financing for welfare. However, the measures adopted by the EU to prevent tax competition may be viewed as contrary to the Union's basic principles of competition and free movement. Brokelind sees this as a sign that the return of the nation-state is affecting the political and economic development of the Union, inasmuch as the EU is helping to strengthen the sovereignty of its member states. In view of this trend, Brokelind recommends that the Union and its member states agree on a common tax policy for cross-border transactions – such as the proposed directive on a common consolidated corporate tax base – in order to prevent individual member states from trying to safeguard their sovereignty through protectionist measures.

In the sixth chapter, *Fredrik N G Andersson* examines the current problems and future prospects of the common currency. The challenge for the euro, Andersson points out, is not that the nation-state has returned, but rather that it never disappeared. If the benefits of a common currency are to exceed its costs, the participating countries must join in a political union with common rules, in amongst other areas taxes, welfare, and labour markets. The states of the eurozone, however, have not wished to part with their power over economic policy. Andersson shows that, in many areas, the participating states have acted in accordance with their national interest instead of the common good, giving rise to economic divergence. This divergence in turn has exacerbated political conflict between the member states, and made European cooperation as a whole more difficult. Andersson also explores the ideas for reform presented by the Commission, which are aimed at strengthening the euro. He takes a critical view of these proposals, seeing them both as backward-looking and as insufficient to restore economic balance in the eurozone.

On the basis of this analysis, Andersson then asks whether the euro should be split into two or more currencies. In practice, after all, the participating countries have proved unwilling to do

what it takes – establishing a political union – to secure the euro’s future. Given that, the most reasonable course would be for one or more of the states in question to leave the common currency. A scenario of this kind could help reduce the social and economic pressures which have built up in the eurozone, and which now – in the year 2019 – are undermining the prospects for European cooperation. Splitting the euro is not easy, however, and it may prove terribly expensive in the short term. Nevertheless, Andersson argues, the long-term advantages of so doing will likely be greater than the short-term costs. Andersson concludes by recommending that the Union and its member states prepare a friendly divorce, in which the short-term costs of splitting the euro are minimized by carrying out the divorce in as controlled a manner as possible. In this way, less euro may mean more Europe down the line.

In the seventh chapter, *Jane Reichel* takes up one of the most widely debated issues in European constitutional law: how to guarantee fundamental rights and the rule of law within the scope of application of Union law. In a democratic constitutional state, public power is exercised in accordance with the rule of law. This means, according to Reichel, that the exercise of public power is constrained and held accountable through principles of legality and legal certainty, as well as constitutional guarantees for the protection of fundamental rights. What are the implications hereof for EU law? As we saw earlier, EU law lodges a claim to direct effect and to primacy over national law. This makes it necessary to elaborate rules and protections under EU law which set limits on how penalties can be applied in individual cases. The idea is that, the more interventionist the measures that can be taken under EU law, the more urgent is the need to put clear and unambiguous limits on their application. The overarching question Reichel addresses in her chapter is this: who is it – the Union or the member states – that ultimately guarantees the rule of law and the protection of fundamental rights when sanctions against individuals are decided within the ambit of EU law? As we have seen, the rule of law is now being openly challenged in certain member states, such as Hungary. Can the member states rely, in times such as these, on the EU to guarantee that decisions which may subject individuals to sanctions are made on a secure basis?

Reichel begins by noting that, during the 2010s, more and more rules have been adopted under EU law which make it possible to impose sanctions and other burdens on individuals. At the same time, due to developments in certain member states, the CJEU has accepted that EU law cannot always be applied in the manner intended. National courts have been able, accordingly, to refuse to surrender criminal suspects whose extradition has been requested

through the European Arrest Warrant, and to refrain from handing over asylum-seekers in accordance with the provisions of the Dublin Regulation. In other cases it is less clear how EU rules relate to national constitutional principles, or when EU principles are to be applied instead of national ones. Reichel explores two types of situation in the chapter: decisions imposing sanctions which are taken by national authorities and courts in a cross-border setting, and cases where EU law includes rules on sanctions against individuals which are applied within a member state. In view of the results of her investigation, she concludes that the answer to the question of whether the member states can rely on the EU is strikingly often: 'it depends'. In practice, this means the content and effect of the principle of the rule of law varies from situation to situation. On the basis on this conclusion, Reichel recommends that the EU enact legislation setting limits to the exercise of public power within the scope of EU law, with a view to ensuring due process for individuals and companies.

In the eighth chapter, *Malin Stegmann McCallion* discusses how Europeanization can be understood at a time when the nation-state appears to be gaining greater influence over the integration process. Her point of departure is that the member states can be influenced by the Union (top-down Europeanization), and that they can also exert their own independent influence on the Union (bottom-up Europeanization). Her chapter deals with the different strategies employed by the member states to meet pressures for change from the Union. By blocking decisions in the Council of Ministers, for instance, they can try to put a brake on common policies. Hungary and Poland have pursued such a strategy on the issue of migration, by refusing to implement the relocation mechanism for asylum-seekers.

Stegmann McCallion then considers whether differentiated integration might offer a solution to some of the problems faced by the Union. Under such an arrangement, those member states that wish to collaborate more closely may do so, while those that do not may refrain from joining in. The EMU and Schengen are examples of differentiated integration. Stegmann McCallion takes the view that, while differentiated integration can work in certain areas, it risks reducing the transparency of the EU's political system. If member states can pick and choose which areas to take part in, and to what extent, it can become even more difficult for citizens to ascertain how much influence any given member state has at the European level, or who is responsible for which decisions. Moreover, there is a risk that additional distinctions between different member states will result in their developing even more diverse interests, complicating European cooperation still further. In light of this analysis, Stegmann McCallion concludes by recommending that the EU and its member states consider carefully what type

of differentiated integration is desirable. She also calls for greater nuance in the public debate on the EU. National politicians should refrain from systematically blaming the Union for unpopular decisions which they themselves have taken. Politicians and journalists should focus instead on the content of policy proposals, and explain to citizens how they can influence EU policy.

In the ninth and final chapter of the book, *Niklas Bremberg* analyses the relationship between regional separatism and European integration. The main issue examined in his chapter is how the Union is being challenged by politicians and citizens in certain regions who wish to establish their own nation-states. Bremberg reviews the political-science literature on regional separatism, national independence, and European integration since the 1990s. He explores different ways of viewing the effects of European integration on regional separatism, as well as various interpretations of how EU law and enlargement policy can be applied and understood in the event such a region gains independence through secession.

Bremberg then turns to two cases where the question of independence and EU membership has recently arisen: Scotland and Catalonia. A comparative analysis of these cases is particularly apposite, as Bremberg sees it, in that an independent Catalonia would apparently need to apply for EU membership, even though an overwhelming majority of Catalans wish to remain part of the Union; whereas Scotland, on account of Brexit, is in the course of losing its EU membership, despite the fact that a majority of Scots opted for Remain. Bremberg thus highlights the political and normative challenges that regional separatism poses for the EU. He concludes with a discussion of how the standing of the regions within the Union could be strengthened, and how demands for secession might be managed within the framework of the existing member states. The Commission, for example, could take the initiative for a study of the situation of the regions within the Union, with the express purpose of investigating whether democracy in the EU could be deepened by reinforcing their standing.

## **Conclusion**

How, then, are we to understand the constant tension between the Union and its member states at a time when the question of which future Europe we want to see has become ever more urgent, due to the challenges from within and without which the Union faces? In his annual State of the Union address (2018), Commission President Jean-Claude Juncker said: ‘So let us show the European Union a bit more respect. Let us stop dragging its name through

the mud and start defending our communal way of life more.’ Juncker seemed to be aiming his remarks at the member states in particular, as when he said it is not just the Commission or the Parliament which must bear the blame for the fact that many of the problems the Union faces are still unsolved. The heaviest responsibility lies with the member states, in view of their inability to reach agreement in the Council of Ministers and the European Council. This connects up with the discussion of what the way forward may be for the Union at a time when the nation-state seems to be playing a greater role than previously. Is this a threat which the Union ought to meet by setting out an ambitious reform agenda, with an eye to revitalizing the European project and possibly building a federal union? Or should the EU take a step back, bide its time, and allow intergovernmental cooperation between the member states to play a greater role?

It is important for the continued discussion to recall that, as an historical matter, the EU and its member states have always had to negotiate on the balance between supranational and intergovernmental elements in the cooperative scheme. The contributors to this book offer several pragmatic proposals on how the EU can handle this fundamentally existential issue. All are based on the presumption that the Union cannot ignore the tensions arising from the return of the nation-state; instead it must take them seriously, whether the question be the future of the common currency, the rise of regional separatism, or threats to the rule of law. However, instead of moving towards either the supranational or the intergovernmental pole, the idea is to choose – within the bounds of the middle position that marks the EU – which democratic, legal, and economic principles should prevail. This means that the Union must concentrate on how the balance between supranational and intergovernmental interests can be calibrated so as to avoid a list in either direction, with the risk for further fragmentation within the Union that would entail. This is a delicate task.

Several of the contributors to this book stress how important it is that the EU’s institutions join battle for the common values which the Union claims to defend. The Union should take a clear stand on both basic legal principles and democratic rights. It should also remind member states and citizens of the benefits of European cooperation. At least as important, however, is that the Union require that its member states honour both the formal and informal principles they have pledged to follow, and that they stop using the Union as a scapegoat for unpopular decisions (or non-decisions) for which they themselves bear a large part of the responsibility. This can help ensure that the return of the nation-state, which has set its stamp on many

important areas over the last decade, does not come at the expense of all European cooperation.