Chapter 2
The Tension Between Image and Reality

2.1 Introduction

Security, freedom, stability and prosperity create the conditions for people to maintain economic and personal relationships with one another, to express themselves freely and to profess their beliefs, to be free from violence and to be protected from disproportionate risk. That is, in brief, the meaning of a democratic and social legal state.\(^1\) The societies of Europe are in urgent need of these public goods, which can no longer be provided by individual states acting on their own. However, there is considerable debate about the way in which European cooperation furnishes these public goods.

There is nothing new about the force field in which the relevant decisions must be taken. This book begins its analysis by considering the historic changes that followed the fall of the Berlin Wall in 1989 and that are associated with the Maastricht Treaty (1991–1993). The Maastricht Treaty marked a turning-point in the pattern of European integration initiated by the Single European Act of 1986 by triggering a process of fundamental change. It was followed by further significant changes, most recently the Treaty of Lisbon (2007), which taken together determine the nature of European integration today. In the remainder of this book, we stress the significance of the Maastricht Treaty in that regard by referring to it as the ‘Maastricht Gateway’—a gateway to a long road—through which European integration passed upon the signing of that Treaty and the creation of the European Union.

What is new about these problems is the incisive way in which they are being addressed. That incisiveness creates scope for a debate on new directions for European cooperation, one in which change and diversity are viewed as a realistic starting point rather than as an obstacle.\(^2\) A similar approach can be found in the White Paper presented in 2017, in which the European Commission (EC) attempts to force a discussion between supranational institutions, Member States and EU citizens.\(^3\) The White Paper spurs the search for new forms of integration. It should
be noted, however, that that search remains doggedly focused on the ‘how’ of European integration. We believe that this scope is too limited. After all, appeals for greater diversity should also consider the ‘why’ of integration.

Any form of cooperation within ‘Europe’—if it is to be stable—must be a sufficiently credible and therefore visible reflection of real needs and requirements. Acknowledging that reality starts by admitting that, in many respects, we already have the answer to the question ‘What kind of Europe do we want to live in’. After all, we cannot alter history and geography. Geography alone has condemned Europe to work constantly at maintaining its internal relationships. Indeed, it is unique in the deeply penetrating, finely meshed, and multifaceted nature of those relationships, and that colours European reality.

Cooperation as a credible reflection of real needs and requirements also means that the EU’s ‘inner’ and ‘outer’ spaces must always be closely connected. Reality does not cease at the external border, after all. It is in the relationship between internal and external that international cooperation takes shape and values can be fulfilled. That is why the system of internal organisation applied in the context of European integration must respond to the external challenges facing European societies, such as the arrival of refugees, security issues, and climate and environmental matters.

Under the Maastricht Treaty, the EU consisted of the European Communities and two other, new ‘pillars’; sixteen years later, the Union absorbed these pillars under the Treaty of Lisbon. After ‘Maastricht’, the EU moved beyond the broadly accepted realm of administrative tasks regulating a common European market. European integration thus ventured into more controversial and political arenas, and the number of Member States grew considerably. Accompanying these events were new and more diverse forms of integration, the most striking examples of which were the Schengen Agreement and the euro area. Despite these profound changes, the integration process remained focused on further economic and social convergence based on institutionally regulated reciprocity, rooted in a common market. In other words, while the reality of European integration after ‘Maastricht’ required more and more institutional adjustments and political change, the dominant approach to European integration remained roughly the same. That has caused problems, with significant examples of divergence emerging in the euro area and Member States such as Poland and Hungary falling out of step in terms of the basic conditions guaranteeing the rule of law.

As the pressure of circumstances mounted, other forms of institutional integration have proved possible, both within and outside the framework of existing EU Treaties. The crux of the credibility problems now challenging European integration is that diversity has been an increasingly important factor ever since the Maastricht Treaty, but so far has not been acknowledged and defined, or only to a limited extent and in any event not as an independent pathway to achieving integration.
2.2 The ‘Maastricht Gateway’

After the fall of the Berlin Wall in November 1989, European integration abruptly found itself in an entirely new geopolitical reality. Any analysis of the EU’s current public tasks must take that historic episode into account. European integration then passed through the ‘gateway’ of the 1992 Maastricht Treaty, a milestone on the journey of deepening the integration process that the Communities had embarked upon in 1986 with the Single European Act, but whose historical context had been dramatically altered by the fall of the Berlin Wall in 1989. By passing through this ‘gateway’, the European Union increasingly entered politically controversial territory, a process fuelled by the politicisation of its traditional economic policy domain.

The Europe of European integration left behind the Cold War period and the division of Europe and Germany and entered the multipolar world of the twenty-first century, fundamentally changing both the circumstances and the process of European integration. The EU gained more competences in more policy domains and in 1993 embarked on a major enlargement process, mainly by welcoming Central and Eastern European countries as new Member States. At the same time, the EU remained predominantly intergovernmental in nature regarding matters that lay beyond the remit of the internal market (the first pillar of ‘Maastricht’) and associated areas such as the environment and consumer protection. While it is true that politically sensitive policy domains, such as asylum and justice, became EU matters, they were initially decided by unanimity (the third pillar). The Common Foreign and Security Policy (CFSP) was also added, but remained intergovernmental in nature (the second pillar).

The Maastricht Treaty thus represented a major step towards diversifying the methods of integration. In addition to integration in accordance with the Community method—in which the Commission functions as a supranational institution, initiator of legislation and guardian of the Treaty organisation, the Council of Ministers takes decisions by majority, and the European Parliament (EP) serves as co-decision-maker—other forms of integration emerged: multi-speed (e.g. regarding EMU), intergovernmental alternatives, and new hybrid forms of supranational and intergovernmental governance, such as the Open Method of Coordination (OMC, the process of coordinating policies without resorting to the harmonisation decrees based on the Treaties).

In many respects—and certainly with regard to the first pillar of the EC Treaty—the process initiated in Maastricht can be viewed as a completion, refinement and constructive amendment of the traditional integration process begun by ‘the Six’ with the European Coal and Steel Community (ECSC) of 1951, which from 1957 onwards came to focus on the common market of the European Economic Community (EEC, later EC). In addition, the Maastricht Treaty kick-started emu (including the UK’s and Denmark’s opt-outs) and, from 1993 onwards, a package of harmonisation measures introduced the free movement of goods, persons, services and capital on a Community-wide basis (including opt-ins by Norway and
other non-EU Member States as participants in the European Economic Area (EEA)). Thus did de facto varied cooperation commence.

The Maastricht Treaty amended the Community Treaties and established the European Union, including the new pillar structure. Although the EU’s politically-tinged ambitions became institutionalised in this way—asylum, justice and other more sensitive policy domains became European matters and the aim of a CFSP was made explicit—the general attitude in Europe remained largely one of ‘business as usual’. In other words, despite being confronted by new challenges and unforeseen historical events, such as German unification, European unification, and the emergence of a multipolar world with greater independence for Europe, the process of European integration continued as if there was little need to alter (Western) Europe’s self-image or the political and democratic embeddedness of the integration process.

In short, in the new reality following the Cold War, the Europe of integration continued to place its trust in the Europe of the European Communities as it was shaped in the post-War period. Given the success of the European Community and what many considered the historic victory of ‘Western’ societies over their communist rivals, this was not surprising. Even after 1989–1991, the Europe of integration continued to define itself on the basis of the old Cold War order, the order to which the Treaty of Rome had given birth. It sought solid footing in policy programmes, institutions and practices inspired by the West European order of the second half of the twentieth century. As mentioned above, there were understandable and valid reasons for this, but it did so in an altered international context in which the EU was forced to address more politically controversial issues, and in an integration process characterised by a growing level of diversity. This growing diversity was fuelled, among other things, by:

1. treaty-related and institutional changes associated with the structure of the new EU (such as the UK’s and Denmark’s partial opt-out in the Maastricht Treaty), of which the European Community—in conjunction with the European Atomic Energy Community, still a legally distinct entity established by the Euratom Treaty, the second Treaty of Rome alongside the Treaty establishing the EEC—was now part;
2. the enlargement from 12 to the present 28 Member States, which led to much greater economic, cultural-historical and administrative disparities within the process of European integration;
3. the widening and deepening of European integration.

At the same time, an important step was taken in the Maastricht Treaty to connect the European project with the citizens of the Member States by establishing European Union citizenship, in addition to national citizenship. The Treaty not only consolidated existing rights relating to the free movement of persons, but also highlighted civil and political rights (the citizen as voter and electoral candidate) and their relationship to other fundamental rights. It was not until 2009 that the EU
Charter of Fundamental Rights, proclaimed in 2000, became fully legally binding, albeit with many reservations with regard to fundamental social rights.

In the period following the signing of the Maastricht Treaty, confidence in the traditional approach to European integration remained high. This confidence may have also been underpinned by the assumption that time would do its job: European integration would crystallise further, the basis was solid, and whirlwind changes were unnecessary and probably unwise. Considerations of this kind fostered a ‘muddling through’ and ‘wait and see’ approach, even with respect to extremely far-reaching new projects such as EMU, and the unprecedented enlargement of the Union with Central and East European states.

In short, the changes affecting European integration were enormous, but the way they were handled remained much the same as in the past. The EU staked its future on tried-and-tested formulas. There was frequent discussion of the need to radically reconceive the institutions of the ‘Rome order’—with a view to aligning them more closely to the process of deepening and widening European integration in the post-Cold War world—but only some of these discussions resulted in action. Core elements of the integration process clearly remained in place, such as mutual recognition as a basis for market access, convergence (of economies) and the Community method as the driver of integration.

2.3 After ‘Maastricht’

The inclination to rely on familiar formulas of integration after ‘Maastricht’ does not mean that there were no signs that such reticence would eventually lead to problems. Following the signing of the Maastricht Treaty, pressure mounted, slowly but surely, on the famed ‘permissive consensus’ (implicitly assumed support for the EU project), long regarded as the solid democratic basis underpinning European integration. Latent support for integration burgeoned into mistrust among ever larger groups of citizens.

That emerging mistrust found expression in public debate and in the results of the elections and referendums held since 2005. De sociale staat van Nederland reveals that support for membership of the European Union is higher in the Netherlands than in any other EU Member State. However, the share of the population who believe that Dutch membership of the EU is a good thing has fallen significantly in recent decades, from 75% in 1996 to 58% in 2016/2017. In 2017, 45% felt that European integration was going too far. According to Dekker, Dutch attitudes towards the EU are generally multidimensional and ambiguous. That is why the SCP has concluded that ‘Dutch public opinion appears to regard membership above all as something unavoidable’.

This shift in the public mood may well have decelerated the functioning of the Community institutions, in turn possibly reinforcing apolitical reticence and institutional caution in European policymaking, which reinforced the ‘muddling through’ and ‘wait and see’ approach.
These mutually reinforcing forces produced a paradoxical result: as the 1990s marched on, the political challenges facing the EU grew more and more acute even as it was less and less able to cope with those challenges. Of course, the EU engaged in politics despite this inability, but it did so in the disguise of depoliticisation, thereby creating a widening breach between institutional structure and reality.

Alongside the traditional, rather apolitical issues of functionality in European integration (e.g. regarding economies of scale and oversight), urgent matters of justice, distribution, transparency and humanity required more and more attention (e.g. to deal with the Yugoslav Civil Wars, the structuring of the monetary union, and the enlargement). The issues that arose in this second category were, in essence, politically and morally charged, making them hard to resolve within the existing policy rationality and corresponding instruments.

In cases where a functionalist rationale is absent as a grounds for transferring competences and when solidarity is not self-evident, it is difficult to legitimise possible European-level solutions democratically. Such a situation manifests itself in political inertia, leading in turn to a loss of confidence. This dilemma has now reached the point that even attempts to solve apolitical problems are often met with great resistance. The acute nature of this dilemma shows that the focus on extending European integration in the direction of a ‘regulatory state’, rooted in the functionalist rationale of the common market, has prevented more political and democratic mechanisms of legitimisation from developing to the point that they can function with sufficient credibility in the present day. Perhaps there was no immediate need for this, in fact.

**Box 2.1. The Effect of Historiography**

How can we explain the fixation on the status quo? To an important extent the explanation probably lies in what one might call the notion of ‘progressive functionalism’. This notion is one of the most important underpinnings of the ‘Rome order’. It has also long been a driving force in academic research. For decades, the historiography of European integration was overshadowed by functionalist explanations and their theoretical challengers. As a result, academic debate was confined to theories of utility maximisation and rational choice (focusing on the economic and/or geopolitical considerations of the actors in the integration process).

Once researchers began in the 1980s to gain access to more archives, they found that such theories did not adequately explain why things were going the way they were. Less rational, more historical-political or identity-inspired forces frequently played a defining role too, as did coincidence. For the time being, these insights have not yet broken the surface of political and public debate. The functionalist narrative still dominates, not least because the success of EU market integration has lent retroactive cogency to ‘rational actor theories’, which appeared to provide evidence mainly for various functionalist or rational choice development concepts (see also Sect. 2.3).
The persuasiveness of these theories in fact may distort history, leading ultimately to incomprehension and alienation.

In the past two decades, the public debate on European integration has been marred by problems associated with an overly functional approach. In many respects, these problems have revived the existential struggles of the early stages of European integration in today’s EU. In the decade following the end of the Second World War, the credibility of the whole enterprise rested on an idealistic European movement—the UK’s former Prime Minister Winston Churchill advocated the creation of a ‘United States of Europe’—but that movement had to win over the suspicion and reluctance of national movements in a battle for priority.

Today, the political debate about European integration is taking place in a completely different historical context, as well as in a much wider and more diverse integration process. The grave problems facing the EU increasingly raise the question of whether European integration is sustainable at all at a time when prosperity is stagnating or declining, or outside the borders of a core West European group of highly integrated, similar societies. Viewed from a historical perspective, the ‘Rome order’ and the ‘Maastricht order’ are not necessarily aligned.

The paradox between change and inertia that became manifest in the relationship between the EU’s internal and external space (profound change within and around the EU, but at the same time a growing reluctance to respond to it) also emerged in the way the EU dealt with the institutional order of European integration. While diversity became increasingly central to European integration, and ‘Maastricht’ even forced the issue within certain policy domains (by permitting multi-speed integration, for example with regard to EMU), the Community method and the notion of reciprocity between all Member States remained the undisputed frame of reference, including a firm expectation of convergence.

All this obscured the fact that, after ‘Maastricht’, various forms of differentiation, i.e. lead groups and opt-outs, gradually became possible outside the traditional domain of the internal market. Such flexibility remained almost invisible in the public and political domains, however. In those instances when flexibility was openly accepted, it was usually as a last resort, after every possible attempt had been made to reach a solution ‘together’ through the Community method. Variation thus took the form of ‘ad hoc dealmaking’, often in an attempt to limit damage. As late as 2015, the Dutch Government responded with extreme reticence to the aforementioned advisory report by the Advisory Council on International Affairs (AIV), which recommended making more extensive use of the options for internal variation.25

The ad hoc approach has exceeded its sell-by date, a point driven home by the White Paper on the future of the EU published by the European Commission
In early 2017, the EC sketches five scenarios for Europe by 2025 in an attempt to steer a debate on the future of Europe. Variation is the key concept in these scenarios, with the need for change being paramount.

**Box 2.2. The Way Ahead According to the European Commission**

The European Commission’s input for the Rome Summit of March 2017 is contained in a White Paper in which it presents five scenarios for how the EU could evolve by 2025, against a backdrop of structural changes in Europe’s international position. The main point is that Europe’s place in the world is shrinking as other, emerging, economies beyond its borders grow. Europe’s relative economic power is waning. In the EC’s view, this accentuates the need for Europe to speak with one voice on behalf of its own interests.

These changes have fuelled doubts about the ability of the EU’s social market economy to ensure that every generation will be better off than the previous one. Such doubts have been felt most strongly in the euro area. The EC believes this highlights the need to complete emu and strengthen the convergence of economic and social performances. The EC also cites a number of major challenges of our time: Europe’s ageing population, the growing pressure on its social protection systems, the changing nature of work, and climate change. It is difficult to close the gap between expectations and the EU’s capacity to deliver. That challenge is made all the greater by the complexity of the EU, i.e. the Member States and institutions such as the EC and the ECB combined; it is, for example, by no means easy to understand who does what.

In its White Paper, the EC states that the EU must choose: it can let its future be shaped by unexpected events, or it can try to carve out a different future for itself. The EC considers that the five scenarios presented in the White Paper can help steer the debate on the future of Europe.

The starting point for each scenario is that the Member States will move forward together as a Union. The five scenarios are not detailed blueprints or policy prescriptions; form must follow function. The EC recognises that all too often, the discussion on Europe’s future comes down to a binary—and misleading—choice between more or less Europe. It is up to the EU27 to decide together which combination of features from the five scenarios will best help advance the European project.

**Scenario 1: Carrying on (‘muddling through’)**

In this scenario, problems are tackled as they arise. The speed of decision-making depends on overcoming differences of views. The unity of the EU27 is preserved but may still be tested in the event of major disputes. Decision-making remains complex and the capacity to deliver does not always match expectations.

The internal market is strengthened, including in the energy and digital sectors. The EU actively pursues progressive trade agreements. The
functioning of the euro area and management of external borders will improve. There is also progress towards a common asylum system and improved coordination on security matters. Progress is expected on closer defence cooperation and on speaking with one voice on foreign affairs.

**Scenario 2: Nothing but the internal market**

The functioning of the single market becomes the main raison d’être of the EU27. Rights derived from EU law may be restricted. Decision-making may be easier to understand but the capacity to act collectively is limited. This may widen the gap between expectations and delivery at all levels.

Progress is easier to achieve for the free movement of capital and goods than in other areas, such as the free movement of persons and services, which can no longer be guaranteed. Given the sharp focus on reducing regulation at EU level, differences persist in consumer, environmental and social standards, leading to a ‘race to the bottom’. Cooperation in the euro area is limited. There is no common migration or asylum policy; as a result, there are more systematic internal border controls. Coordination on security is dealt with bilaterally.

**Scenario 3: Those who want more do more (multi-speed Europe, ‘lead groups’)**

The EU27 proceeds as today but certain Member States that want to do more in common work together in specific policy areas. As was the case for the Schengen area or the euro, such cooperation can build on the shared EU27 framework. The status of other Member States is preserved, and they have the option of joining those doing more in time. Citizens’ rights derived from EU law vary depending on whether or not citizens live in a country that has chosen to do more. Transparency is an issue because the different layers make decision-making complex.

At the very least, the EU27 follows scenario 1 by acting in unison in all policy areas. As in scenario 1, the internal market is strengthened and the EU27 pursues progressive trade agreements. Regarding EMU, a number of Member States deepen cooperation in areas such as taxation and social standards. They also do so with regard to security, defence and justice matters.

**Scenario 4: Doing less more efficiently**

In this scenario, there is a consensus on the need to better tackle certain priorities together. The EU27 decides to focus its attention and limited resources on a reduced number of areas, allowing it to act much quicker in a number of policy domains while doing less in other fields. In choosing its new priorities, the EU27 seeks to better align expectations and delivery. This clearer division of responsibilities helps European citizens to better
understand what is handled at which level, helping to close the gap between promise and delivery.

The EU has real difficulty in agreeing which areas it should prioritise, however. The EC in any event proposes dealing with trade exclusively at EU level but setting common standards in the internal market to a minimum. Several steps are also taken to consolidate the euro area to guarantee its stability, but the EU27 does less in employment and social policy. Cooperation on border management, asylum policies, counter-terrorism matters, foreign policy issues and defence (the creation of a European Defence Union) are further examples of deepening integration, according to the EC.

Scenario 5: Doing much more together

In this scenario, all the Member States decide to do much more together across the board. As a result, decisions are agreed faster at European level. Citizens have more rights derived directly from EU law, but there is the risk of alienating parts of society that feel that the EU lacks legitimacy or has taken too much power away from national authorities.

The internal market is strengthened through harmonisation of standards and stronger enforcement. Trade is dealt with exclusively at EU level. Economic, financial and fiscal Union is achieved as envisaged in the Five Presidents’ Report. Cooperation on border management, asylum policies, counter-terrorism, foreign policy and defence is deepened.

2.4 An Historical Perspective on the Present

It is not only the present uncertainty and astonishing succession of recent crises that explain the situation as it stands today. The problems of inertia and credibility that have come so sharply to the fore also have long historical roots.

We have only a limited understanding of what perhaps lies at the very heart of the integration process: the political processes that led governments to set up multilateral and supranational institutions, thereby placing unprecedented restrictions on their own freedom of action. Those restrictions are most visible when Member States must face the fact that they have transferred authority to institutions, such as the EC and the ECB, whose competences eclipse those of their own national governments in certain areas. When the ECB takes interest rate decisions that are contrary to the position of the President of the De Nederlandsche Bank (Netherlands Central Bank) (DNB) but nevertheless binding on the DNB, then it becomes clear that certain matters are no longer national affairs.

On top of this, since ‘Maastricht’ these self-imposed restrictions have become much more visible, not least for the Member States in the euro area. When that is
combined with a limited understanding of the political ‘how’ and ‘why’ of the transfer of powers, a loss of confidence in European integration becomes almost inevitable. This is particularly true at a time when circumstances are driving the EU to pursue crisis intervention policy, as in recent years. Its responses to the euro crisis and the tensions surrounding the arrival of refugees are striking examples. Almost by definition, European crisis intervention policy involves interfering radically in national policy autonomy, and it forces the Member States to take ad hoc decisions on grounds that many consider obscure. This is at odds with democratic legitimacy and public support in the national political arena.

In the current uncertainty, the question of the ‘how’ and ‘why’ of the political processes that drive integration will only grow louder and echo far beyond the boundaries of policymaking and academia, for decades the only arenas to have addressed this question. In the meantime, the ‘how’ and ‘why’ of European integration has become a central issue in elections in the EU Member States. ‘Why have things gone the way they have?’ ‘How did “we”—a sovereign state—get ourselves into this situation?’ ‘Can the tide still be turned?’ Questions such as these are now setting the tone in public debate in almost all EU Member States, but politicians and policymakers have yet to follow up on them in any concrete way.

As more research is conducted into the history of European integration, it is becoming increasingly clear that the outcomes of European politics and rulings of the Court of Justice have frequently defined the integration process in ways unanticipated by the participating Member States and institutions. In other words, no one conceived of the integration process in its present form. In fact, the form that European integration took was, in most cases, entirely unforeseeable. It was something unexpected that belonged to everyone and no one, depending on the circumstances and the \textit{zeitgeist}—which does not mean that the result is necessarily wrong, of course.

The unpredictable nature of European integration becomes obvious in the Maastricht Treaty. The Treaty was an attempt by the ‘Europe of the Twelve’, as it was known, to respond to the unexpected challenges posed by the fall of the Berlin Wall and the end of the Cold War. Its response, however, revealed the two faces of European integration. On the one hand, the Treaty appeared to confirm the relevance of European integration and its capacity for change in the post-Cold War era. In that respect, ‘Maastricht’ provided a promising practical basis for a constructive approach to German and European unification in a radically new context. The EU was forward-looking. On the other hand, the same Treaty responded to the new challenges of the post-Cold War world with tried-and-tested, somewhat old-fashioned forms of European integration. The most obvious example is how it presented the monetary union as the completion of the common market, with the ‘Maastricht order’ hailed as the crowning glory of the ‘Rome order’. The EU sought justification for such a radical change mainly in the past.

In the twenty-five years since its signing, the Maastricht Treaty’s inherent tension has, slowly but inevitably, fuelled a growing strain between the EU’s self-image (based on the wildly successful apolitical ‘Rome order’, whose aim was social and economic convergence between the Member States) and a fundamentally
different European and international reality, which left scope for greater diversity within the EU and assigned an increasingly important role to (geo)politics within and around Europe.

It has become clear in recent years just how stubborn this paradox between self-image and reality has become in today’s Europe, but also how aptly the same paradox describes what has often been characterised as ‘European impotence’, from ‘muddling through’ and a belief in convergence on the one hand to the disruptive events of international politics on the other.

2.5 The Concept of Functionalist Development

The tension between the EU’s self-image and its reality becomes even more evident when we juxtapose the unforeseen outcomes described above with the ‘traditional form’ of socio-economic and legal convergence, as described in detail in social sciences research. Such research is based on a functionalist concept made up of three closely interwoven, highly principled components: (1) the *sui generis* momentum of market integration, (2) spill-overs between sectors, and (3) their consolidation by supranational institutions. These three components are inter-linked and therefore mutually reinforcing.

It was this functionalist concept that was also used to justify the construction of a supranational legal order. In that sense, it served as a political spur for the transfer of competences from the Member States to the supranational level.

(1) Market integration

The mechanism of market integration works in the following way. The first phase in creating and optimising a ‘level playing field’ is negative integration. This is meant to remove national barriers to trade and the free movement of goods, persons, services and capital. For example, import and export duties are prohibited between Member States, and Member States are not allowed to impose quotas or other obstacles to free movement. In practice, however, merely removing such barriers is often not enough. After all, each Member State sets its own requirements and upholds its own standards for products, services, diplomas and the like. Only when the Member States agree on the ‘mutual recognition’ of one another’s requirements, or when the EU introduces its own standards, is there truly a level playing field within a single European market. Even when standards are harmonised, however, differences—for example between the general economic or monetary policies of the Member States—can have an impact on the ability to operate successfully in an internal market. A recent example of this phased process is the attempt to create a capital markets union and a banking union in the euro area following the elimination in the 1980s of restrictions on capital movements, meant to promote a European capital market.
(2) **Spill-overs between sectors**

Spill-overs between sectors happen when market integration in a small number of economic sectors (such as Coal and Steel or Atomic Energy) induce new integration processes in adjacent sectors. This process has gained additional momentum through the internal market. The four freedoms that are the essence of the European market and stimulate harmonisation processes (see above) also create incentives for far-reaching spill-overs between sectors. Examples include European integration processes in the areas of traffic and transport, climate, consumer protection, the fight against crime and—in association with the free movement of persons—migration and asylum.

(3) **Consolidation by supranational institutions**

The third functionalist development is the establishment of supranational institutions as guardians of the order created in the internal market and by spill-overs. In this phase, harmonisation and spill-overs are consolidated by supranational bodies. Examples include the High Authority of the ECSC, its successor the European Commission (EC), and the European Court of Justice (ECJ). In turn, however, these supranational institutions serve not only as ‘guardians’ but also as ‘drivers’ of spill-over processes, thus giving rise to an independent functional development that often has a basis in the law. This process is visible in the discourse concerning the approximation of laws in policy domains not directly covered by the Treaties. The harmonisation process is undertaken at supranational level and takes the form of what is primarily a technical operation in pursuit of the economic objective of market integration.

One significant form of consolidation is the legal materialisation of the above: the confirmation of the functionalist concept in European case-law. Here, it is the supranational court, the Court of Justice (ECJ), that is the supreme authority in matters concerning the interpretation of the Treaties and their enforcement. This judicial practice has gradually developed its own powerful momentum, in tandem with the momentum of market integration and spill-overs, which are more economically driven. The Court has contributed in two decisive ways to this whole. First of all, it supports an often fragile political will to regulate matters at European level with the doctrine of **supremacy** of European law over national law and the doctrine of **direct effect**. Second, it is extremely flexible about the nature and scope of Europe’s legislative powers (thereby facilitating Europeanisation). The supremacy of European law over national law, confirmed by the Court in its established case-law, has bestowed a quasi-constitutional higher rank on the numerous operational provisions currently set out in the TFEU. That has greatly narrowed the scope for variation in applying EU law and in amending it in the light of experience.
2.6 Conclusion: Integration Through Variation and the Politics of Circumstance

The political processes that underpin European integration have not traversed a straightforward, preordained path; instead, they were forged by the pressure of circumstance, the result of what Van Middelaar\(^{32}\) calls ‘event-driven politics’—a form of policymaking that was decisive for European cooperation from the outset. The functionalist concept sets the tone for the integration process, but the image it leaves us with is distorted; in the real world of political cooperation, there was much more variation and flexibility. Functional theories can also be mutually reinforcing, which is why they remain a dominant force in the process of European integration.

The dominant nature of this image means that the ‘credible reflection’ of real needs and requirements emphasised at the beginning of this chapter falls short. There is very little interest in the possibility of flexibility and variation and their actual implications, leaving them unknown and unloved. It also means that flexibility and variation are only used in emergencies, when all the functionalist routes have been exhausted. Using them merely as damage limitation mechanisms, however, is unhelpful in the ongoing ‘politics of circumstance’ so typical of European cooperation.

The legitimacy of ever-closer integration based on the interplay of the functionalist concept is now under growing pressure in the societies of the EU Member States. In other words, it is becoming increasingly difficult to apply the functional rationale that was transferred wholesale from the ‘Rome order’ to the ‘Maastricht order’. As the next chapter will reveal, that has implications for the civil and political embeddedness of the European project and the confidence that citizens and peoples have in it.

Notes

1. The United Nations Vienna Declaration on Human Rights (1993) asserts that states should focus on this, both individually and in cooperation with one another.
2. Piris (2012), AIV (2015), Martinico (2012).
3. European Commission (2017d).
4. E.g. Bauman (2004), Joas (2001, 2008, 2013).
5. It is important to note that although the Treaty of Lisbon (2007) further consolidated new institutional forms, this process had already been initiated during and by the historical circumstances of ‘Maastricht’.
6. See Jabko (1999).
7. International events, such as the wars in the Balkans, soon led to the EU having to face issues of a more (geo)political nature.
8. The ECSC ceased to exist in 2002, when the ECSC Treaty expired after 50 years.
9. Dyson and Sepos (2010: 3–23).
10. Striking examples of this are the attempts to streamline the institutions and simplify the frameworks of the Treaties during the negotiations leading to the Treaties of Amsterdam (1997; when this task was also described as the ‘Maastricht leftovers’) and Nice (2000), and the failure of the Constitutional Treaty in 2005.

11. For an explanation of the ‘normative core’—broken down into ‘Transnational Non-domination’ and ‘Transnational Mutual Recognition’—on which these core elements are based, see: Nicolaïdis (2013), here: p. 358–360. Partly on this basis, Nicolaïdis argues for an EU as a ‘Union-as-democracy’, a democracy with demos in plural, which ‘should remain an open-ended process of transformation which seeks to accommodate the tensions inherent in the pursuit of radical mutual opening between separate peoples’. Building on this, Lindseth suggested that this ‘democracy could be developed into a model of European ‘administrative governance’, in which the relationship between national and supranational actors leads to ‘mediated legitimacy’ based on ‘polycentric constitutional principles on the national level’ Lindseth (2014).

12. See Tietmeyer (1994), Metten and Van Riel (2000), Schäuble and Lamers (1994), Delors (1985).

13. Cini (2016: 414), Rood (2016).

14. SCP (2017).

15. SCP (2017: 77).

16. SCP (2017: 76).

17. SCP (2017: 77).

18. Dekker (2017: 8).

19. SCP (2017: 78).

20. See Sternberg (2013).

21. Majone (1993).

22. See Lindseth (2014: 551–552).

23. Anderson (2009), Milward et al. (1994), Cini and Perez-Solorzano Borragan (2016).

24. See Pierson (1996: 123–163), Segers (2012).

25. AIV (2015); Kamerstukken II 2015–2016, 34350 V, nr. 50.

26. The White Paper seeks to launch an open and wide-ranging debate on how Europe should evolve in the coming years. The EC will organise a number of ‘Future of Europe Debates’ in national parliaments and cities in the EU in the near future. The EC will contribute to the debate in the coming months by publishing a series of reflection papers on the European social dimension, deepening EMU, globalisation, the future of European defence, and the future of EU finances.

27. See Fioretos (2011), Lindseth (2014: 550).

28. See Fioretos (2011: 9), Bronk and Jacoby (2013).

29. See Moravcsik (1998), Anderson (2009).
30. The functionalist theory of European integration has a long and venerable history; core texts and recent applications and variants of the theory include: Haas (1958), Sandholtz and Stone Sweet (1998), Niemann (2006), Catherine Barnard (2016), *The Substantive Law of the EU—The four Freedoms*, Oxford University Press, 5th Edition, p. 14–17.

31. Grimm (2016).

32. van Middelaar (2017).