

INTRODUCTION AND RESEARCH FRAMEWORK



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1. Context and Definition of the Research Problem

The European Union is a unique international organisation whose internal structure differs significantly from the traditional Westphalian model of state sovereignty. Under this institutional arrangement, the European Union operates as a functionally supranational entity, while its Member States retain their status as sovereign subjects of public international law – a coexistence that is never fully reconciled. This tension is most evident in the judicial sphere, where the European Union's claim to hierarchical primacy is both institutionally weakest and most contested.

The relationship between the courts of the European Union and the supreme, particularly constitutional, courts of the Member States is not clearly defined by EU primary law. Instead, it is shaped by institutional logic and overlapping claims to ultimate authority in interpreting law. Under EU law, and according to Art. 19 TEU, the Court of Justice of the European Union is considered the final authority on EU law, a position it has consistently upheld in its case law. However, from the perspective of national constitutional law, constitutional courts assert an equally valid claim to protect constitutional identity and to determine the limits of power transferred to the European Union.

The founding Treaties leave the relationship between EU law and national constitutional law unregulated, and interpretative conflicts inevitably follow. The Treaties are silent on this issue, and judicial practice varies depending on whether the CJEU or national courts address a matter. Nevertheless, the underlying functional logic is clear: a common and supranational polity can function effectively only if it acts as a

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unified legal order. At first glance, this reasoning appears to support the European Union and, by extension, the authority of the CJEU.

Such a conclusion would be overly simplistic. The relationship between the European Union and its Member States is not unilateral; it is based on mutual interdependence and the principle of loyal cooperation. Within this framework, the European Union does not exercise absolute authority over its Member States. Instead, the relationship is an asymmetrical and variable model of shared public power, where the balance between autonomy and integration depends on the policy area and the relevant institutional context.

The Preamble to the Treaty on European Union expresses the Member States' intention to 'continue the process of creating an ever closer union among the peoples of Europe'. This wording is significant because it defines a process without specifying a final goal. European integration is presented as a desired and expected path, but neither the ultimate scope of this process nor the institutional form of a 'final' European Union is clearly defined. In practice, the Union's development has depended on what is politically feasible at any given time. There is no fixed ideal model for integration; instead, the idea of an ever closer union functions as a dynamic and open-ended concept, shaped by current political conditions within the Member States.

'More Europe' can therefore be seen as the practical expression of the ambition stated in the Preamble to the TEU. It is often used in response to global challenges facing the European Union, based on the belief that European states and peoples are better able to address these challenges together than alone. From this perspective, only joint action allows for an effective response to economic pressures, climate change, external security threats, and technological developments, including those related to information and communication technologies.

'More Europe' is often linked to restrictions on Member State sovereignty and a corresponding decrease in the influence of national governments, parliaments, and, indirectly, citizens. These changes benefit centralised EU institutions, whose structures were designed in a historical context that differs significantly from current integration efforts. While these institutions were originally intended to support supranational cooperation mainly in economic areas, they may not be fully prepared to address the wider and more intrusive goals associated with deeper political and regulatory integration.

The Preamble to the TEU explicitly mentions equality, prompting the question of whether it refers only to the equality of citizens, as expressed in the revolutionary maxim '*liberté, égalité, fraternité*', or whether it also includes the equality of states. This also leads to consideration of whether such equality aligns with the nature of a supranational organisation. The Preamble's simultaneous reference to solidarity and respect for the history, culture, and traditions of Member States indicates that equality may be recognised as a value. However, whether it can also be achieved in practical and institutional terms remains uncertain.

The Preamble also calls for strengthening the democratic nature and effective functioning of the Union's institutions, so they can better carry out their

responsibilities within a unified institutional framework. This creates another interpretative issue: does this aim require expanding institutional powers that operate independently of Member State participation, possibly replacing national authorities, or is it limited to the internal structure of the Union and the adjustment of relationships among its institutions?

Given this context, the need to continue building an ever closer union among the peoples of Europe requires renewed examination, both in theory and in relation to current circumstances. Although all Member States have a shared interest in cooperation within the European Union, there is ongoing disagreement about the preferred methods of cooperation (intergovernmental or supranational) and the policy areas in which cooperation should take place. There are also questions about whether the Union's current institutional structure remains adequate. The challenge of balancing democratic governance at the EU level, the equal status of Member States, and effective decision-making within EU institutions has therefore become more prominent.

The main question this monograph addresses is whether European integration can be further advanced while maintaining the equality of Member States, and, if so, under which legal and institutional conditions. While cooperation within the European Union is widely regarded as desirable, the more complex issue is how this cooperation should be organised. Specifically, although it is generally accepted that decision-making authority lies with the European Union as a supranational organisation, it remains disputed whether the Union should always have the final say, including on matters of fundamental importance to its Member States.

Another related question arises from recent developments in the integration process. At a stage marked, among other things, by a move from harmonisation to unification and by the strengthening of supranational features, it is necessary to consider whether the principle of equality among Member States remains viable. If it does not, it is important to identify the mechanisms that legitimise such inequality and, where possible, compensate for it.

2. Methodology

This monograph primarily uses doctrinal legal analysis, which informs all chapters. The analysis relies on primary sources, especially the Treaty on European Union and the Treaty on the Functioning of the European Union. The focus is on interpreting the Treaties' competence provisions using linguistic and systematic methods. The work places particular emphasis on purposive interpretation, which has been significant in CJEU case law, especially regarding Art. 114 TFEU, where the Court has consistently adopted a broad interpretative approach.

The monograph does not use empirical research methods directly. Instead, it reflects on practice in two ways. First, it provides detailed analysis of CJEU case law and the decisions of supreme and constitutional courts of Member States. Because EU primary law remains largely indeterminate on several foundational issues, judicial interpretation has shaped the relationship between EU law and national law to a considerable degree. The same applies to constitutional law at the national level. The absence of empirical methods is further balanced by institutional and contextual analysis of how the European Union and its institutions function in practice. This approach considers not only the formal requirements of EU law, but also the practical operation of EU institutions, especially where they have discretion.

Case law is analysed as an evolving body, recognising that legal doctrine changes over time. Both the CJEU and national constitutional courts contribute to this development through judicial dialogue.

An evolutionary analysis of case law alone is insufficient. It is necessary to examine in parallel the argumentative patterns used by the CJEU and the supreme courts of the Member States. The analysis of case law is therefore complemented by comparative approaches, which help identify and explain points of friction between EU law and national constitutional law. This approach also allows an assessment of whether the relationship between the CJEU and national supreme courts is mainly competitive (characterised by efforts to maximise institutional authority) or cooperative (marked by a minimalist and dialogical approach focused on protecting fundamental values).

The comparative method is used in two ways. First, a diachronic comparison examines different phases of European integration to identify trends in the evolution of state sovereignty and its limitations. This analysis focuses on changes in decision-making procedures, such as the move from unanimity to qualified majority voting, the shift from intergovernmental decision-making to supranational governance, and examples of replacing directives with regulations, which reduces the scope for national differentiation.

Second, the comparative method is applied synchronically, comparing the position of EU Member States with that of states in other international organisations or, in some respects, federal systems. This raises the question of whether similar integration objectives could be achieved through alternative institutional arrangements. The significance of this approach lies in its ability to assess the role of state sovereignty in enabling or limiting the achievement of integration goals.

A comprehensive analysis of all areas of EU integration exceeds the feasible scope of this monograph. However, the inquiry cannot remain abstract or purely theoretical. It is necessary to examine specific examples of EU powers in selected policy areas and assess their implications for Member State sovereignty. Accordingly, the monograph includes sectoral studies and crisis-related analyses, considering how the European Union addresses new challenges and manages crises in its relations with Member States.

The monograph also aims to go beyond a descriptive account of current arrangements. By synthesising findings, it seeks to identify causal relationships between developments in EU primary law and their effects on Member State sovereignty, as well as to clarify the structure and hierarchy of the resulting legal and institutional relationships. The main objective is to provide a methodologically grounded critical assessment of the sustainability and future prospects of the current model of European integration, along with an evaluation of plausible alternatives.

3. Research Claims

This monograph examines the validity of several claims. First, absolute sovereignty does not exist in practice, even within public international law. Although legal frameworks define relations between states, factual considerations are equally important. Interstate cooperation generally requires a rational and pragmatic approach, which, in the context of the European Union, often becomes transactional. Sovereignty can therefore be seen as a negotiable resource that Member States exchange for economic benefits, such as market access, increased efficiency, greater influence internationally, and collective security.

Second, the European Union systematically uses its supranational position and the open-textured nature of the founding Treaties to expand its competences, including into areas not explicitly conferred upon it and arguably not intended to be. This practice strains the principle of conferral and creates tensions with national constitutional orders.

Third, the formal equality of Member States does not result in factual equality. Material disparities favour larger and original Member States, not only in decision-making but also in institutional expectations, standards of compliance with Union values, and the economic capacity to adapt to regulatory frameworks driven by unification.

Fourth, rational alternatives to the prevailing model of European integration face legal and political constraints, limiting their practical viability. A unified and largely undifferentiated supranational approach is widely seen as necessary for the European Union to function effectively. From this perspective, unification appears legitimate, while alternative models are often viewed as undermining the Union's coherence and legitimacy. However, this monograph critically assesses whether this assumption holds in all policy areas and considers whether, in fields such as tax law or criminal law, maintaining regulatory diversity and competition between legal systems may offer a more legitimate and effective approach.

4. Structure of the Monograph

The monograph is structured to address the identified issues systematically and coherently. It is organised into thematic parts that move from general theoretical foundations to specific sectoral analyses.

The first part places the inquiry within the broader context of public international law by examining the concept of state sovereignty and its historical development. Sovereignty is presented as a dynamic concept that has changed significantly over time. The analysis begins with the core assumption of public international law that states are formally equal. This part assesses whether this assumption is valid not only legally but also factually, considering differences in power and influence. It also examines how sovereignty has changed in relation to supranationality, focusing on the effects of shared sovereignty on the equality of Member States. Special attention is given to the constitutional foundations of these changes, including the relationship between EU law and national constitutional identity, and whether this relationship should be seen as hierarchical or heterarchical.

The second part addresses institutional practice by analysing how sovereignty and equality appear in the functioning of EU institutions. Equality is considered from two perspectives: representation of Member States within EU institutions, and equality of Member States before those institutions. The relationship between these two aspects is explored, as well as the extent to which unequal representation, whether legal or factual, may result in unequal treatment. This part also considers whether limiting direct Member State influence in favour of independent supranational institutions can improve equality among Member States, and whether increasing politicisation within institutions such as the European Commission may undermine this equality.

The third part examines mechanisms of differentiation within the European Union, mapping exemptions, transitional arrangements, and forms of enhanced co-operation, and assessing their effects on equality. Differentiation can paradoxically help maintain overall unity while allowing integration to advance. A Member State's choice not to join certain integration projects may itself represent an expression of equality. The analysis also considers forms of cooperation outside the scope of EU law that still use EU institutions and structures.

The fourth and fifth parts offer a practical analysis of sovereignty and equality in selected policy areas. Due to the monograph's scope, it does not attempt to cover all EU policies. Instead, the analysis focuses on traditional areas of tension linked to state sovereignty, such as judicial cooperation, recognition and enforcement of judgments, and the development of supranational enforcement bodies, including the European Public Prosecutor's Office (EPPO), in both civil and criminal contexts. The fourth part also presents a case study in tax law, where Member States have largely maintained their sovereign powers through unanimity-based decision-making. The fifth part extends this analysis to new regulatory fields that increasingly rely on unification, such as information and communication technologies (especially the

regulation of artificial intelligence) and data protection (the transition to the GDPR). It considers whether these developments indicate a systematic expansion of EU powers through secondary legislation.

The sixth part examines possible alternatives to the current model of integration. It assesses forms of participation in European integration without full EU membership, such as the European Economic Area, and considers alternative models that could inspire reform within the Union. Inspiration may come from other international organisations or federal systems, recognising that the Member States remain the ‘masters of the Treaties’.

This monograph aims to analyse the process of European integration critically and impartially. Its approach is not idealistic, but is based on legal doctrine and realism. It recognises that legal structures function alongside political dynamics shaped by ongoing negotiation among Member States, who often have divergent economic and political interests. These dynamics interact with the actions of supranational actors, who may interpret their mandates broadly to pursue common objectives, sometimes reducing Member State sovereignty and equality, and occasionally with the support of Member States that benefit from these changes. The monograph does not seek to criticise the European Union indiscriminately, but to analyse the limits of legitimate integration, identify mechanisms of competence expansion, and consider how to maintain a meaningful balance between efficiency, democracy, and equality among Member States. Ultimately, the work focuses on the search for mutual respect and equilibrium as essential conditions for the continued success of this voluntary integration project among sovereign states.

PART I

THE THEORETICAL
FRAMEWORK – DIVERSE,
YET EQUAL

