

## CONCLUSION AND IMPLICATIONS



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This monograph examines the relationship between equality and integration, two values that may seem contradictory. The contributing authors address whether deeper European integration can occur while preserving the equality of Member States, and, if so, identify the legal and institutional conditions required.

The analysis in the individual chapters demonstrates that this question does not have a clear or universal answer. Public international law, which is based on the principle of sovereign equality of states, as discussed in the introductory part of the book (K. Šmigová), is often used as a reference point. However, this ideal faces practical limitations. In reality, state equality is constrained by responsibility and power dynamics. Hierarchical, and thus both *de facto* and *de jure* unequal, relationships exist among states within major international organisations, such as the veto power in the UN Security Council. While legal equality formally protects weaker states, it does not prevent stronger states from pursuing their interests. Therefore, sovereignty and sovereign equality are fundamental principles of public international law, but they are not absolute.

Restrictions on equality should not automatically be viewed negatively. In some contexts, they are necessary for international organisations to function effectively, as they enable more influential actors to participate actively. This participation is voluntary and typically linked to a corresponding influence on decision-making. Without such arrangements, these institutions risk losing their relevance, as demonstrated empirically by the League of Nations. A certain level of inequality can therefore support the stability, peaceful coexistence, and development of the international community.

The key concept for a balanced response to the research question is ‘restraint’. This should guide both the European Union, particularly the European Commission and the Court of Justice of the European Union as central institutional actors, and the Member States. The requirement of restraint is closely connected to the idea of

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‘shared and responsible sovereignty’, as discussed by M. Safta and T. Toader. Here, sovereignty is not seen as an absolute barrier but as a commitment to exercising public power responsibly within a political and legal community.

The analyses in the monograph indicate that EU institutions meet the requirement of restraint only to a limited extent. In contrast, national constitutional courts are generally more restrained, intervening in conflicts with EU law only on issues they consider fundamental. However, it is also clear that the dynamic development of European integration has largely depended on the active, rather than restrained, approach of key EU institutions. Had their approach been significantly different, the European Union or its predecessors would likely have developed more as an inter-governmental organisation with limited supranational features, operating mainly under public international law.

It is increasingly evident that EU law is not without limits. Member States have repeatedly attempted to define these boundaries, most recently through the concept of national or constitutional identity. However, as chapter by F. Staničić shows, the Court of Justice of the European Union interprets the concept of *constitutional identity* restrictively, thereby weakening its function as a protective mechanism against the absolutization of the primacy of EU law.

To answer the research question affirmatively, national constitutional courts must be recognised as equal partners within the European constitutional space. The equality of Member States requires the preservation of at least a minimal form of *Kompetenz–Kompetenz*, particularly regarding the constitutional core of national legal systems. This also requires restraint from constitutional courts and, by extension, constitutional legislators. They should not allow issues only loosely connected, or unrelated, to constitutional identity to be included for expedient reasons.

Closely linked to this restraint is the issue of ‘competence creep’. A positive answer to the research question is only possible if the principle of conferred powers is consistently upheld. The fundamental premise should be the recognition of Member States’ right to differ in areas outside the exclusive competence of the European Union, which is also related to the selection of legal instruments.

These conclusions apply not only to primary law but also have significant implications for secondary law, especially regarding the choice of legal instruments. Although an apparently equal approach may seem fair, it can result in unequal outcomes. Recent developments show increased unification through regulations rather than directives, but this trend does not adequately consider the diverse economic, political, technological, and legal circumstances of Member States. Consequently, smaller and less well-resourced states may face higher relative costs when implementing and applying uniform EU regulation, which can worsen inequality under the guise of equality. From the perspective of equality among Member States, harmonisation through directives appears to be a more suitable approach.

The monograph tested four hypotheses related to equality. The first hypothesis, which states that absolute sovereignty does not exist and is exchanged for certain advantages, was confirmed. The Westphalian concept of sovereignty has been largely

replaced in current public international law. States do not have absolute independence or unconditional legal and factual equality. As K. Šmigová demonstrates, the operation of the UN, the Security Council, and responses to international crises show that states are not fully equal. Although public international law is based on the principle of equality, it modifies this principle through pragmatic and realistic mechanisms. This modification is not necessarily negative, as the Security Council's structure shows that limiting equality can lead to more effective solutions to global problems. This conclusion is even more relevant to cooperation within the European Union. It concerns not only the political and economic benefits that states receive in exchange for limits on sovereignty and equality, but also the functional consequences of integration across different regulatory frameworks.

This applies both to areas of EU law where Member States retain full control because EU law is limited to coordination, and to areas where national regulation is harmonised or replaced by EU law. S. Savčić's chapter demonstrates that although Member States maintain their own courts, these courts' roles are limited by obligations of mutual recognition and mutual trust. As a result, Member States have given up some ability to adjudicate disputes and enforce their own law independently, but have gained the ability to cooperate effectively and quickly across borders. A similar pattern appears in data protection, where reduced normative autonomy is balanced by increased global regulatory influence and participation in the Digital Single Market.

An analysis of the European Union's external relations (B. Tubić, M. Siman) shows that alternative forms of involvement in European integration, such as the European Economic Area or the post-Brexit model of the United Kingdom, do not restore absolute sovereignty. EEA states must respect the principle of homogeneity and adopt EU law without direct or meaningful influence on its creation. As a result, sovereignty remains a negotiable concept even outside the EU.

The second hypothesis, which assumes a systematic expansion of EU powers (*competence creep*) and a weakening of the principle of conferred powers, is also confirmed. B. Oreziak demonstrates, using Art. 114 TFEU and the regulation of artificial intelligence as examples, that this legal basis is used to intervene in areas beyond the internal market, including ethical issues and fundamental rights. Expansion of powers also occurs through case law, as M. Wielec notes in relation to criminal law and the European Public Prosecutor's Office, where there is a gradual erosion of the state's exclusive right to exercise criminal jurisdiction (*ius puniendi*).

The third hypothesis was confirmed by the finding that formal equality does not ensure de facto equality. A. Varga's chapter demonstrates that, regarding the rule of law, new Member States face requirements not applied to the same extent to original Member States. R. Malachta adds that this asymmetry undermines mutual trust, which is necessary for effective judicial cooperation. These developments disadvantage new and small Member States. L. Trócsányi and L. Sándor argue that changes in the conceptual foundations and institutional structure of the EU, especially after the Lisbon Treaty, have transformed the EU into an entity that guarantees

political equality among citizens of the Member States, while moving away from the principle of sovereign equality of states, to the ongoing benefit of larger Member States.

S. Savčić notes that even formally unified regulation can create inequalities, as shown by the GDPR, which may favour states with developed infrastructure and place a disproportionate burden on less developed states. Thus, while the principle of mutual trust may formally treat Member States equally, in practice it benefits those with a 'good reputation' and imposes greater scrutiny on others.

The fourth hypothesis, which claims that unification is the only guarantee of effectiveness, was challenged in the monograph. Unification can create inequality, particularly in areas where economic and institutional diversity among Member States is significant. In tax law, M. Radvan shows that tax competition can be a legitimate economic policy tool for weaker states, whereas blanket unification would entrench existing differences. Similarly, B. Oręziak's analysis of replacing directives with regulations finds that this approach reduces the ability to consider national specificities and conflicts with the principle of subsidiarity.

The main consequence of the identified trends is the risk of weakening the legitimacy of the European integration project. For the European Union to remain sustainable in the long term, its development must not rely solely on hierarchy, unification, or political equality among citizens of the Member States. Instead, it should also respect the constitutional identity and diversity of Member States.

Another important question is whether the European Union's goals can be achieved through other means. B. Tubić and B. Flander address this issue in their chapters. The first author examines alternative forms of state involvement in European integration to determine whether removing the principle of supranationality could result in greater equality for the state concerned. B. Tubić's chapter shows that models based on external cooperation with the EU, such as the European Economic Area, Turkey's special relationship with the EU, deep and comprehensive free trade agreements, or the post-Brexit arrangement of the United Kingdom, do not provide genuine equality or sovereignty for the third countries involved. Instead, these countries are in an unequal position compared to the EU and its Member States, with the relationship being significantly asymmetrical in favour of the EU. This is due to the limited influence these countries have on EU lawmaking, which leads them to adopt much of EU regulation without corresponding participatory rights. From the perspective of equality, these arrangements are structurally less advantageous than full membership of the European Union.

B. Flander's chapter examines whether the European Union could operate in a fundamentally different manner, considering other integration projects based on federal, confederal, and supranational structures. Analysis of selected federal states and hybrid integration models shows that equality among constituent units is neither absolute nor clearly defined in any of these systems. From this perspective, the main issue for the European Union is not the existence of asymmetries, but rather their insufficient normative basis and legitimacy.

These findings support an important conclusion: critical reflection on the current model of European integration does not suggest that leaving the European Union or replacing it with purely intergovernmental cooperation would be a realistic or normatively acceptable alternative. Although this form of cooperation cannot be entirely dismissed, as shown in D. Sehnálek's chapters, intergovernmental cooperation can lay the groundwork for future supranational collaboration. Its strengths include greater democratic legitimacy and a stronger focus on legislative quality than what is typically achieved within European Union institutions.

Despite the shortcomings identified in the monograph, the European Union remains the most advanced effort to institutionalise shared sovereignty while upholding the formal equality of states. Therefore, questions of internal legitimacy, respect for the constitutional identity of Member States, and careful exercise of delegated powers are crucial. While the European Union offers clear advantages, it is also necessary to acknowledge its shortcomings to enable constructive criticism and improvement of the European integration project, which serves the common interest of all participating state and non-state actors.





