# **Chapter 3 Growing Frictions**



### 3.1 Introduction

Since the early years of the common market, the Community legal order has focused on removing obstacles to the free movement of goods, persons, services and capital; in other words, on creating a single market. Social protection remained in place in national legislation; harmonisation was sought where politically feasible, but 'Europeanisation' has remained limited in this domain. Free competition was promoted through a European-level anti-trust policy and by counteracting preferential treatment by national governments. As a Member State of the European Union, the Netherlands is part of an internal and external economy of unprecedented power, with more than half a billion consumers and a combined Gross Domestic Product (GDP) of 14,714 billion euros (2015), the largest GDP in the world. Two thirds of the EU's trade in goods takes place between EU countries, with a volume of 3070 billion euros (2015). Approximately 72% of Dutch goods exports (measured in terms of their value) go to EU countries, and more than half of its imports come from EU countries (2015).

With the removal of barriers as the starting point, the Netherlands, like its neighbouring countries, is closely intertwined with its European biotope. Dutch legislation is embedded in European legislation in almost every area, and in fact it must be, because differences would be susceptible to exploitation in the single market. Even technical requirements for appliances must not differ too much from country to country, as they would otherwise create an obstacle to European trade or give one or other country an undesirable competitive advantage. Since the reforms of recent decades, virtually all relevant legislation is the result of joint decision-making by the European Parliament and the Council of the European Union, at the initiative of the European Commission. The Member States are represented in the Council by a minister; decisions are taken by qualified majority, which means that for a decision to pass, at least 55% of the Member States, representing at least 65% of the population, must be in favour of it. The weekly

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publication of important new rulings in the Dutch case-law reports *Nederlandse Jurisprudentie* (NJ) almost always begins with the case law of the Court of Justice of the European Union, for example on fraud prevention or the abuse of transactions carried out in another Member State.

In a striking contrast to this everyday reality, the people's trust in politics has plummeted, causing some—a minority—to argue in favour of leaving the European Union. It is difficult to fully explain why, in part because public opinion fluctuates, and preferences remain unclear, but we can certainly identify a number of frictions associated with changes in the international context and the way in which the European Union is socially embedded. That is what this chapter addresses.

### 3.2 The Western Context of 'Embedded Liberalism'

The international context in which European integration has advanced in recent decades differs considerably from the decades of recovery in which it began immediately after the Second World War. In those initial stages of European integration, there was a broad consensus among the main political movements that the social dimension should be an integral part of the European market economy. This ambition was no illusion, as it turned out. The more international coordination (e.g. in the Bretton Woods Institutions) and European integration took shape in the post-War period, the clearer it became that economic integration need not obstruct the growth of national welfare states.

Gradually, a system developed internationally that the American political scientist John Ruggie described in 1982 as 'embedded liberalism'. The promotion of free trade and multilateral coordination was 'embedded' in a large measure of autonomy for the participating states. Within their own borders, they were free to create a welfare state as they saw fit and shape the social policy most appropriate to it, in line with the views of their national, domestic democracy. Regarding the first decades of the post-war West, we can describe this system as 'Keynes at home, Smith abroad': welfare state within one's own borders, free trade outside. Western Europe explored and developed this system extensively within the institutional frameworks of European integration. In this model of embedded liberalism, the philosophy of *ordoliberalism* (as developed by the Freiburg School, initially in the 1950s) was influential on certain critical points.<sup>3</sup>

Ordoliberalism maintains that the market should operate with as few restrictions as possible within statutory frameworks that are enforced by independent institutions. The core principles of those frameworks are the protection of property rights, free and fair competition, and monetary prudence. Social policy is essential as a complementary and corrective measure, with due respect for the principle of subsidiarity. In Europe, this means that social policy is largely a national affair. The free movement of workers within Europe is facilitated by arrangements indicating which state is responsible for social security.

There are sound reasons for the importance that Ordoliberalism attaches to subsidiarity. It is preferable for different institutional models of socioeconomic organisation to co-exist within the space created by framework agreements; not only is it then possible to accommodate regional circumstances, but it also reveals which models set a 'good example', which the other members can then follow. Reinforcing the weakest links in this way benefits the entire community or union. The influence of Ordoliberalism is still visible today in Article 3 of the TEU, which describes the EU as a 'social market economy'.

# 3.3 Social Protection Gives Way to Market Liberalisation

As the decades wore on, the social dimension of European integration, despite frequent references to it in EU documents (for example in the preambles to the Treaties), remained a national affair and the responsibility of the Member States. At the same time, the market became increasingly integrated. From the 1980s onwards, this led to a trend that cast the European Community, and later the EU, into the role of European guardian of market liberalisation. Viewed from the perspective of the Member States, then, the institutions of European integration increasingly emerged as yet another external force favouring the reform or retrenchment of their welfare states. In brief, this also meant that the 'Keynes at home' element of the system that had prevailed in the initial decades of European integration was slowly undermined, with the EU's institutions regularly featuring as one of the driving forces behind this development.

European responsibility for social cohesion and for assuaging socioeconomic demands was thus relegated to the background. The image of European integration as a mere project of market integration, and the EU as the 'liberalisation engine' driving it forward, became much more powerful and realistic. That image has only gained force since the financial and economic crisis, in part because the crisis put the 'promise of convergence'—which was meant to replace the promises of the national welfare state to some extent—under so much pressure that suspicions of misrepresentation were roused.

The European promise of convergence embraced the notion that deeper economic integration would shrink differences between the Member States, while care would be taken within the national welfare states to distribute the benefits of economic cooperation fairly. In the first decades of the integration process, this promise yielded genuine benefits, in the form of unprecedented stability and economic prosperity. Indeed, the European model acted in many respects as a 'convergence engine' during that period: the poorer, less-developed Member States were pulled along by the economic growth of the richer Member States, resulting in prosperity growth in all Member States and making the aim of progressive social cohesion, both within and between Member States, appear feasible in this manner. That period has come and gone, however.

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The emphasis shifted between 1986 and 1993. The completion of the common market was given greater priority at that time, for example by privatising public utilities. The climax of this trend was the heated, protracted European debate on the Services Directive at the start of the twenty-first century. Europe shifted emphasis in many respects; it was less interested in harmonising legislation and more interested in abolishing it, in the expectation that free competition would undoubtedly produce the best possible results. This is precisely why the EU has not produced restrictive legislation but has instead weakened a number of protective rules and structures (such as those protecting companies providing services of general economic interest, in disregard of Article 36 of the Charter of Fundamental Rights of the European Union<sup>4</sup>). 'Free movement' has become the main touchstone of the institutions of European integration. In many decisive moments, the EU in fact seemed to be focused on the liberalisation of the international market.

Customs tariffs, and later customs and border checks on persons, have been abolished at the internal borders, with some exceptions in the latter case. External trade relations are also necessarily a Community matter. However, there are many cases where it is precisely the desire to prioritise market forces that has led to detailed new rules and oversight procedures. After all, market imperfections can originate anywhere. All the Member States have established market authorities, often giving them far-reaching powers of investigation and sanctioning. There are thus two faces to liberalisation.

Convergence between Member States is waning in the EU and the euro area of the twenty-first century,<sup>5</sup> whereas social inequality appears to be increasing. Large numbers of Europeans see this as the 'downside' of the policy as actually implemented, undermining confidence in European integration. The tensions induced by the threat of terrorism, the persistent problems with the banks in the wake of the financial and economic crisis, and the inability to collectively manage the arrival of larger numbers of asylum seekers are, for many, proof that the EU is incapable of taking effective action. Moreover, large numbers of Europeans no longer feel that they are in control of their own lives—a feeling that they did appear to have in the era of embedded liberalism.

# 3.4 Globalisation and the Problem of Alienation

The imbalance between economic growth and social protection is contributing to the crisis of confidence. The malfunctioning of the 'convergence engine' and the laborious efforts required to combat the financial crises have undermined the credibility of the euro area and the EU. The response to the crisis, the bank bailouts and nationalisations, confirms that the financial sector behaved irresponsibly and has aggravated people's sense of vulnerability.

For large groups of Europeans, then, 'euro' and 'EU' have become synonymous with austerity, the decline of the welfare state, and more uncertainty about the future. Market integration and the removal of economic barriers have a growing

negative association with globalisation.<sup>6</sup> One typical example is the polarised debate about the trade agreements with Canada and the United States, CETA and TTIP, the latter having now proved unfeasible.

In addition, terrorist violence and foreign political crises, such as the tense relationship with Russia, the war in Syria and the related destabilisation of the region, raise doubts about peace and security. The EU's inability to formulate a collective response to these issues is, for many, proof that it is failing—even if the same facts also furnish arguments in favour of strengthening it.

The loss of confidence has consequences. Support for European integration goes hand in hand with a willingness to show solidarity at European level. The responses to the major crises that the EU has faced in recent years show, however, that mutual solidarity has waned considerably. On top of the financial and economic crisis, the climate crisis and the migration crisis, there is now also a European solidarity crisis, and this latest crisis has furthermore arisen in a context in which problems of legitimacy and 'democratic alienation' are setting the tone. Even though the outcome of the Brexit referendum was partly because Britain's feelings of remoteness from the 'Continent' had never been overcome and because the electorate was misled about the consequences, it seemed indicative of a more widely felt, and growing, sentiment. As the negative impact of Brexit became clearer in the UK, support for the EU began to grow again on the Continent.

# 3.5 Solidarity and 'Demoicracy'

The international context has continued to change in recent years: after the UK's decision to trigger the exit process under Article 50 of the Treaty on European Union (TEU), a political tidal wave in the United States threw the European Union back on its own resources to a greater extent, with the expectation that France and Germany together would bring new élan to the integration process. In this new context, there is, seemingly, a tendency to make greater allowance for real socio-economic, socio-cultural and administrative differences between Member States and for the need for a familiar and protective national context.

This points to more varied cooperation within the EU. More specifically, this would mean that the EU would no longer do everything with all its Member States in the same way (see the paper by the European Political Strategy Centre of September 2017, *Two Visions, One Direction. Plans for the Future of Europe*). Such an approach would also allow Member States to maintain or regain more policy autonomy, and give them more clear-cut choices as to whether they should join in efforts to deepen their cooperation.

The big question, however, is what this will mean for EU solidarity. More varied cooperation would probably put that solidarity to the test even more than is presently the case. After all, will it not become more difficult to find common ground if the notion of communality were to be further abandoned as a guiding principle? Some argue that a 'European polyphony' could actually work *in favour* of

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integration. The idea is that polyphony promotes harmony because it leaves somewhat more room for diversity. <sup>10</sup>

Such notions of polyphony are also compatible with calls to cease regarding the European 'demoicracy' (a democratic system encompassing various *demoi*, i.e. peoples) as incomplete or as a 'half-way house' (something that an overarching *demos* at European level would transcend), but instead accept it as established practice or even as a guiding principle. <sup>11</sup>, <sup>12</sup> This would entail seeking grounds for European legitimacy in the diversity that is, rather than in a unity that has yet to be. Difference comes first in this approach, not as an end in itself but as a feature of European reality. It may refer to a difference in social and cultural-historical circumstances and backgrounds, a difference in the public sphere and the media landscape, a difference in the problems that arise, but also to a difference in the way groups of citizens are affected by such matters, both favourably and unfavourably. In this way, diversity becomes a guiding principle in the fulfilment of public tasks, rather than an obstacle to be overcome.

A *demoicracy* should address those issues that affect not only Member States but also Europeans in differing formations; in a certain sense, the demoicracy that is the EU already does this. This reality, which is trans-European in nature, gives rise to the need for European public tasks. The plural of *demos*, *demoi*, therefore refers not so much to the co-existence of Member States' electorates as to the cross-border issues affecting citizens in differing Member States. Such cross-border issues are at the root of the public tasks that Europe must take up, as are global risks, which are equally cross-border in nature and concern such matters as financial stability, security and mobility. One of defining traits of such issues is that they can both unite and divide Europe. <sup>13</sup>

The diversity and variability of these issues imply that variation (both in the form that cooperation takes and in differences in each policy domain) can be regarded as a permanent feature rather than as a temporary gateway to closer cooperation or integration. What remains decisive is to show mutual solidarity, even—and perhaps even more so—when undertaking more varied methods of cooperation. The question is which notions of cooperation, integration and solidarity would apply in scenarios that allow for more variation. Whatever the answer to this question may be, it is clear that this is primarily what Habermas<sup>14</sup> refers to as a *political* form of solidarity. This 'political solidarity' distinguishes itself from other forms—such as moral (obligatory) and legal (enforceable) solidarity—through the 'joint involvement in a network of social relations', a situation that can perhaps best be described as a form of institutionalised solidarity.

That involvement fosters greater confidence that the other members of the network will continue to respect the principle of reciprocity in the future. Such 'benefits' of joint, institutionally embedded involvement are crucial to its survival. Political cooperative relationships operate in a context that must be actively reproduced, over and over again, if they are to endure. In other words, to be sustainable, political solidarity must help preserve the precarious social alliance that supports joint involvement. This implies that political solidarity can only be sustained if it is rooted in a subtle feeling for relationships and mutual dependencies.<sup>15</sup>

Throughout the history of European integration, political solidarity came about because political parties broadly supported the principles that (1) people are bound together by mutual dependencies, (2) social cohesion is the aim of European cooperation, and (3) the state is there to offer protection to individuals (and not the other way around)<sup>16</sup>. Christian democrats, social democrats and social liberals were united in the conviction that market integration and multilateral coordination of trade, financial, economic and monetary policy should go hand in hand with maintaining social cohesion at national and regional level. This conviction dovetails with the concept of the 'social market economy' discussed above.

In parallel with the 'social embeddedness' of post-war multilateralism in the construction of national welfare states, however (see Sects. 3.1 and 3.2), this same multilateralism was also 'embedded' in the construction of an international and European legal order. European integration was a constantly evolving part of this post-war multilateralism and its 'double embeddedness' (in national welfare states and in a special type of international legal order).

## 3.6 Conclusion: Social Embeddedness Under Pressure

The European social market economy developed in a context in which an international and European legal order was being constructed, based on human rights, including fundamental social and economic rights; it was 'embedded' from the outset in the construction of that legal order. This second 'embedding' took its cue from the 'Four Freedoms' presented by President Roosevelt in 1941 (freedom of speech, freedom of worship, freedom from want, and freedom from fear). Among other things, these ideas offered firm foundations for creating the Council of Europe and the European Communities and a basis for establishing structures that would protect fundamental rights in the Member States of these European organisations. Social and economic rights were also included, as they are in some national constitutions, and were reinforced by the protective structures of fundamental rights.

It should be noted that, in the early years, the safeguarding of human rights was the task of the Council of Europe alone. Since then, this task has been defined in greater detail in the European Convention on Human Rights and Fundamental Freedoms (ECHR) and in the intensive scrutiny of the European Court of Human Rights; it was also gradually taken up by the European Communities and later by the EU with the adoption of the Charter of Fundamental Rights of the European Union.

Besides the tensions that have now arisen within this 'second embedding' of European integration in human rights (for example concerning the refugee issue), the 'social embeddedness' of market integration has also been under pressure for some time. In the 1990s, the 'Washington Consensus' (the name given to the IMF's neoliberal economic reform programmes) became increasingly popular within the EU, and in particular within the emu. It manifested itself in the European Treaties, in the governance of the EMU, and in a selective and market-driven penchant for negative integration (by removing barriers to trade and privatisation). Article 36 of

the Charter of Fundamental Rights of the European Union 'recognises and respects access to services of general economic interest as provided for in national laws and practices...in order to promote the social and territorial cohesion of the Union'. Nevertheless, in the policies as actually implemented, market forces often outweighed social cohesion.

In this context, the dividing line between public and private interests grew fainter within the EU itself, for example, and issues such as the level of social protection or the 'social dimension' of European integration faded increasingly from view. <sup>17</sup> The pursuit of peace, security and social and economic stability was superseded by a narrow focus on market forces and globalisation. For a growing number of Europeans, then, European integration became a risk rather than a source of protection.

This development is now putting political solidarity in the EU under severe pressure. In the euro area, for example, it is now doubtful whether political solidarity can be attained at all, for instance between northern and southern countries. <sup>18</sup>

It is an observation that raises important questions about the state of European integration. Integration and disintegration sometimes go hand in hand. Both are typical of the integration process. The crucial question, however, is to what extent they fall under the heading of common purpose and joint protection of shared public tasks. Where do the fracture lines appear? To answer these questions, we will outline an analysis framework for describing and explaining these developments in the following chapter. We do so based on the premise that harmonisation and growing uniformity do not exclude variation. This framework will be applied in Appendix 1 to analyse some of the EU's most urgent issues.

## Notes

1. The creation of a common market was at the heart of the original concept of the European Communities. To a large extent, European integration has taken shape through this common market. In this newly formed single market, integration (joining different components under a single common denominator) incited (and still incites) conflicts between market freedoms and public interests. After all, the Member States' national policies may prohibit the free movement of goods, persons, services or capital within that single market. In addition to obvious barriers at the border, such as customs tariffs and import bans, provisions meant to protect citizens (e.g. against harmful or polluting substances, but also against the downside of market liberalisation) can lead to differences in competitiveness. There are several ways in which European integration can balance these different interests. For example, it can limit itself to prohibitions, i.e. 'negative' integration, meaning that barriers to the internal market must be removed, or it can issue European standards or jointly formulated principles. The latter, known as 'positive' integration, is achieved by means of European laws. The provisions banning discrimination on the grounds of nationality and thus protectionism or barriers to intra-Community trade —'negative' integration—can be found in the European treaties themselves.

- 2. Kamer van Koophandel (n.d.) *Interne Markt*, available at https://www.kvk.nl/over-de-kvk/kvk-en-europa/interne-markt/.
- 3. Segers (2019).
- 4. 'The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.'
- 5. See M. Dauderstädt, Friederich Ebert Stiftung (2014) *Konvergenz in der Krise Europas gefährdete Integration*. http://library.fes.de/pdf-files/id/ipa/10941.pdf.
- 6. van den Hoeven (2016).
- 7. 'This is a phenomenon that is occurring at present in many democracies where a growing number of citizens feel increasingly unable to identify with the decisions taken by the legislature or government, no matter how much the democratic procedures are observed.' Council of State of the Netherlands, Advisory Division, W01.12.0457/I, 'Report on the embedding of democratic control in the reform of economic governance in Europe to combat the economic and financial crisis', 18 January 2013, p. 6.
- 8. B. Stokes, R. Wike and D. Manevich (2017) *Post-Brexit, Europeans More Favorable Toward EU*, Pew Research Center 15 June. http://www.pewglobal.org/2017/06/15/post-brexit-europeans-more-favorable-toward-eu/.
- 9. In effect that was already the case; not all the Member States, for example, participate in the euro or in Schengen and there are various opt-outs, but the actual intention is otherwise.
- 10. Zielonka (2014: XII).
- 11. Bohman (2007), Nicolaïdis (2012), Lindseth (2014)
- 12. In line with Weiler's statement that 'the European Union is a community of others, not brothers', Nicolaïdis (2012) describes the EU as a demoicracy, but now in the positive (appreciative) and idealistic sense of the word: 'A Union-as-demoicracy 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.'
- 13. Beck and Grande (2007).
- 14. Habermas (2015).
- 15. Habermas (2015).
- 16. Segers (2013), Stjerno (2011).
- 17. See Mazower (2013: 408-412).
- 18. See Streeck (2015a, b).

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