

# The Future of the European Union Cooperation\*\*

## EU Cooperation as a Process, the Relevance of the Rule of Law and Suggestions for the Future

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### I Introduction

The reason for my attendance here today is connected to the fact that President János Áder has awarded me a Hungarian decoration, the 'Knight's Cross of the Hungarian Order of Merit'.

His Excellency the Minister of Justice, László Trócsányi, was the one who proposed me for the decoration 'in recognition of my work in the field of European Union law and international relations'. I really am proud and honoured by that initiative.

In order to introduce myself: I am a lawyer, I studied law at Leyden University. Thereafter I was granted an LLM degree at the College of Europe, the prestigious institute for European Studies in Bruges, Belgium. I received my doctor's degree from Groningen University.

I started my professional career as a member of the Bar of The Hague. After a period of six years I entered the Netherlands Foreign Office. I worked for a period of more than 18 years in the EU domain, in The Hague as well as in Brussels: with the Policy Department of European Integration, the Department of the Legal Advisor and the Netherlands' Permanent Representation in Brussels. In fact I served twice at the Department of the Legal Advisor in The Hague. I was also posted twice at our Permanent Representation in Brussels as legal advisor, respectively as legal adviser and coordinator for justice and home affairs.

After my period in the diplomatic service, in 1998 I was appointed full time Professor of the Law of the European Union at the Law School of the Erasmus University Rotterdam. During my stay at the university I served the faculty also as International Dean and as Dean.

Furthermore I was Director of the Netherlands Institute of International Relations 'Clingendael', in The Hague, for nearly six years.

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Finally, after being retired as European Law Professor in Rotterdam, I have been active as Professor of European Integration at an institute of higher education in The Hague, the The Hague University of Applied Sciences.

I have become Interested in what was then called ‘Eastern Europe’ very early, in fact when I was a student at Leyden University. At that time in Europe, we experienced the impact of the Cold War and the division of Europe between ‘East’ and ‘West’, as a consequence of the Iron Curtain put in place at the end of the Second World War. I really was excited when that curtain was lifted and the division of Europe was over, after the fall of the Berlin Wall on 9 November 1989.

By the way, Eötvös Loránd University (ELTE) is a university which I know rather well. During my service at Erasmus University Rotterdam I introduced – at the time in my capacity of International Dean – the Law School of ELTE into our Rotterdam Law Network (RLN), a university network for the exchange of students and lecturers and for the development of common projects. In fact, the last time I visited your University and Law School was in April 2015, when the coordination meeting of our network, chaired by me, took place here in this very room!

Finally, as we all know Hungary has been a Member State of the European Union (EU) since May 2004. Your membership followed a period of negotiations on how to connect Hungary to the European Union and its policies. The accession was the direct result of a decision taken by yourselves; it was the choice of the Hungarian people. A referendum on joining the European Union was held in Hungary on 12 April 2003. The proposal was approved by 83.8% of voters, with a voter turnout of 45.6%.

All ‘old’ Member States welcomed your accession wholeheartedly at the time.

## **II European Union Cooperation**

### **1 Objectives**

The main objective of EU cooperation has been the establishment of the internal market, mentioned in Article 26(2) of the Treaty on the Functioning of the EU and representing an economic area without internal frontiers, covering free movement of goods, persons, services and capital, and characterised by equal chances for competition.

Over the years we also have developed related domains of policy, such as environment, research, social and regional policy.<sup>1</sup>

Since the Treaty of Maastricht, entered into force in November 1993, Justice and Home Affairs (covering matters of substance such as asylum and immigration, as well as criminal law

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<sup>1</sup> See for the complete list of EU policies: Part Three of the *Treaty on the Functioning of the European Union* (TFEU): OJ C 326, 26.10.2012, 47–199.

and police cooperation)<sup>2</sup> and the Common Foreign and Security Policy<sup>3</sup> became new domains of cooperation. At the same time, the EMU, the Economic and Monetary Union, was also added to the list of EU policies.<sup>4</sup> Having said that, while the EMU may be considered a Monetary Union, it is not a properly speaking Economic Union, because of the lack of coordination of our national economic policies until now.

I realise that these new domains of cooperation all concern highly politically sensitive matters, touching as-it-were upon the roots of national societies. However, not all these areas belong to the exclusive domain of the European Union and its institutions. Member States keep being involved in the development of the new policies, in their capacity of members of the Council. Furthermore, Member States still hold their own responsibilities in the respective areas.

Having said that, is there an alternative in our world of today to dealing with such ‘global’ issues together, so commonly? To put it differently: should we prefer to keep full sovereignty in these areas, so to deal with them purely in the national domain? What would be the consequence? A country in splendid isolation, I am afraid. In my mind that is not an ideal scenario.

So, basically the Union is focusing on areas having a cross boundary character, therefore issues which individual states are no longer able to handle effectively on their own. Changes and amendments to the existing infrastructure are to be decided by the Member States collectively. This is because it is the Member States who are – as the Germans say – *‘die Herren der Verträge’*.<sup>5</sup>

## 2 Achievements

Looking back to the start of our European cooperation – my country, the Netherlands, was one of the founding fathers – and, taking into account the achievements during the period of your EU membership, we can only conclude that great results have been achieved.

We have secured peace and stability in our part of the continent, of course also thanks to the efforts made by NATO and the context of the end of the Cold War. We also have secured more prosperity.

In the context of your accession, you were able to profit from financial support, transferred by the European Union, to help your country to overcome the situation of backwardness in a variety of economic sectors. In that respect your country has made good progress over the years. That said, it may be that we have not been able to overcome all differences between old and new Member States, for example with regard to economic development, investments, employment and salaries. In that respect, work nevertheless remains to be done.

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<sup>2</sup> Part Three, Title V, TFEU.

<sup>3</sup> Title V of the Treaty on European Union (TEU: OJ C 326, 26.10.2012, 13-45) as well as Article 205 TFEU.

<sup>4</sup> Part Three, Title VIII, TFEU.

<sup>5</sup> See for the treaty amendment procedure: Article 48 TEU.

### III European Union and the Rule of Law

Over the last years, discussions have started, initiated *inter alia* by the European Commission in Brussels, about the respect in your country of fundamental principles which we all share.

Furthermore, your country has shown reluctance as to the way the EU exercises its competences and responsibilities in certain policy areas.

#### 1 Fundamental Values and Principles

The discussions about the respect of fundamental principles concern – or did concern – sectors such as:

- the Media (the establishment of a Media Council);
- the Judiciary (the discussions were about an age limit for judges and the composition of the Constitutional Court);
- Education (the Higher Education law);<sup>6</sup>
- the functioning of NGOs (the Act on foreign funded non-governmental organisations).<sup>7</sup>

Basically, these discussions concern institutions and organs playing an essential role in our today's societies and, broadly speaking, the public domain. The discussions touch upon the independence of these institutions and organs and, for that reason, are of major interest for the functioning of the rule of law.

Of course, partners – in this case, Member States of the EU – can disagree about the significance and interpretation of individual human rights and fundamental freedoms. To that extent, fortunately, in all cases mentioned, dialogues have started to overcome the differences of opinion.<sup>8</sup> A number of issues have already been settled.

Be that as it may, the European Union is – as are its individual Member States – a so-called 'community of law'. The Union issues decisions which are not only binding for the Member States themselves, but also for companies and, in certain circumstances, for the citizens. That principle has been confirmed over and over in the doctrine of the Court of Justice in Luxembourg.<sup>9</sup>

Therefore, in order to maintain a stable society, a number of minimum conditions have to be met. These minimum conditions, in fact corresponding with the minimum require-

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<sup>6</sup> See for some recent developments: [http://europa.eu/rapid/press-release\\_MEMO-17-3494\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-3494_en.htm).

<sup>7</sup> See for some recent developments: [http://europa.eu/rapid/press-release\\_IP-17-3663\\_en.htm](http://europa.eu/rapid/press-release_IP-17-3663_en.htm).

<sup>8</sup> See for the approach proposed by the European Commission for such discussions: Communication 'A new EU framework to strengthen the Rule of Law, COM(2014)158 final of 11 March 2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0158&from=EN>.

<sup>9</sup> Long before the principle of the rule of law was explicitly referred to in the EU Treaties (see for the last version: Article 2 TEU), the Court of Justice in its judgment of 1986 'Les Verts' had emphasized that the EU is 'based on the rule of law inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic Constitutional Charter, the Treaty': Case 294/83, 'Les Verts' versus European Parliament, [1986] ECR 01339, para 23. See also Thomas von Danwitz, 'The Rule of Law in the Recent Jurisprudence of the ECJ' (2014) 37 (5) Fordham International Law Journal 1311–1346.

ments for membership of the EU, are embedded in Article 2 of the Treaty on European Union, which states ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities’. It is added ‘These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’.

In a way, nothing particular. Essentially such principles appear in the texts of all our constitutions, yours as well as the one of my country.

In the EU context furthermore, the procedure of Article 7 of the Treaty on European Union has been established to control the respect of those minimum requirements by the Member States.

Moreover, the Charter of Fundamental Rights of the European Union<sup>10</sup> embodies a series of fundamental freedoms and principles, the origins of which are to be found respectively in the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, and European Union law as interpreted by the Court of Justice.

Understand me correctly; we have to survey the respect of our fundamental common values and principles everywhere in the Union, in all the Member States. So in this country, but also for example in my own country, the Netherlands.

And, I repeat, the fact that there do exist differences of opinion about the interpretation of the norms and values mentioned should not be considered as abnormal. Each individual Member State has its own history, culture and political background. The Union has to respect the national identities of all Member States.<sup>11</sup> Moreover, according to a well-known slogan we are in Europe ‘united in diversity’.<sup>12</sup> In the end it is up to the ‘highest’ judge, whether it is the Court in Luxembourg or the one in Strasbourg, to provide a uniform interpretation.

Therefore, for the moment, it is best to have such differences of opinion discussed in the framework of the EU institutions in Brussels, in order to find satisfactory common solutions.

## 2 Exercise by the EU of its Competences

Furthermore, as I said earlier, your country from time to time manifests a reserved attitude with regard to the way the European Union exercises its competences.

In the Spring of this year, for example, a ‘*Stop Brussels*’ campaign took place, in the context of which a series of questions about six specific issues were submitted to the citizens. All six issues were directly connected to a presumed behaviour of the EU in the policy domains

<sup>10</sup> OJ C 326, 26.10.2012, 391–407.

<sup>11</sup> Article 4(2) TEU.

<sup>12</sup> See for example the reference to that motto of the Union in Article I-8 of the Treaty establishing a Constitution for Europe, signed on 29 October 2004 and published in OJ C 310, 16.12.2004, which treaty, though, never entered into force.

concerned. Because of the suggested linkages, the European Commission took a position. In its reaction, the Commission considered most of the questions ‘factually incorrect’ or even ‘misleading’.<sup>13</sup> Now, apparently a second consultation has started recently, or will start soon, about a so-called *Soros Migration Plan*, in which context reference is made – again, and at first sight wrongly – to an assumed close cooperation with the EU institutions.<sup>14</sup>

More importantly, all this sounds as if ‘Brussels’ and its institutions represent a framework of governance, completely separate from the capitals. That is not so. The European Union is an organisation, a mechanism, to implement the objectives and ideas discussed between and decided upon by the Member States themselves. The institutions, the Commission being one of them, assist in that process, each of them exercising its own role and responsibilities. Brussels is therefore ‘us’ and not ‘they’ or ‘them.’

Your country also takes opposite positions – compared to many other Member States – especially in the area of *asylum and migration*.

For example your country has refused to implement a *Council decision of 22 September 2015* regarding the relocation of migrants coming from Africa, the Middle East and Asia, the majority of them looking for asylum in Europe.<sup>15</sup> That decision was adopted when the migration crisis was at its height.

Now, indeed, the relocation of migrants concerns a new and extremely complex problem for the EU, of a very specific nature also, not to be compared with technical harmonisation measures regarding the completion of the internal market.

Nonetheless, it is a subject matter essentially related to the working of the principle of free movement of persons, one of the fundamental freedoms of the internal market. In fact, asylum and immigration reflect the external dimension of free movement of persons, in the same way as exports of goods to and imports of goods from third countries reflect the external dimension of free movement of goods. The last mentioned ‘trade’ movements have given rise to the establishment of our common commercial policy.

In essence, the decision of the Council of 22 September 2015 intended to overcome a serious but common problem, in a period where the situation on the ground was extremely urgent. In a way, solidarity was at stake.

Now, your country, together with the Slovak Republic, appealed against that Council decision. You were fully entitled to do that, because, as we discussed earlier, we live in a society governed by the rule of law. Nonetheless, in its judgment of 6 September 2017, the Court of Justice dismissed your appeal and the grounds contained therein.<sup>16</sup>

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<sup>13</sup> [https://ec.europa.eu/commission/publications/stop-brussels-european-commission-responds-hungarian-national-consultation\\_en](https://ec.europa.eu/commission/publications/stop-brussels-european-commission-responds-hungarian-national-consultation_en).

<sup>14</sup> <http://abouthungary.hu/news-in-brief/national-consultation-on-the-soros-plan/>.

<sup>15</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ 2015 L 248, 80.

<sup>16</sup> Judgment in Joined Cases C-643/15 and C-647/15, *Slovakia and Hungary versus Council*, ECLI:EU:C:2017:631.

The Court had to interpret Article 78, third paragraph, of the Treaty on the functioning of the European Union, the text of which states the following:

In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

In its judgment of 6 September 2017 the Court ruled that:

Article 78(3) TFEU enables the EU institutions to adopt all the provisional measures necessary to respond effectively and swiftly to an emergency situation characterised by a sudden inflow of displaced persons. Those measures may also derogate from legislative acts, provided, in particular, that their material and temporal scope is circumscribed and that they have neither the object nor the effect of replacing or permanently amending legislative acts.

The Court came to the conclusion that those conditions were met in the present case.

It seems to me that that outcome is a correct and reasonable one. Having said that, the judgment also shows that the Court basically gave a policy decision, including criteria to be fulfilled, rather than a detailed analysis of the characteristics of the ‘provisional measures’ that Article 78(3) allows the Council to adopt. The Court in fact promotes the principle that EU polices, in order to be successful, must be ‘effective.’

## IV Global Threats and Challenges

Now, let’s take a look in the future, our common future.

In the course of time we have experienced a multitude of global problems and obstacles; external ones and internal ones.<sup>17</sup>

(From a Dutch perspective) the main external challenges are related to:

- The tensions between Russia and Ukraine;
- The unrest and conflicts at all our other external borders, whether it is in the Middle East or in Central and Northern Africa;
- Migration, the influx in Europe of migrants – coming from Africa, the Middle East and Asia – looking for protection in our safe European environment; and
- Threats of terrorism.

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<sup>17</sup> See for this discussion also: Jaap W. de Zwaan, *Stability and Differentiation in the European Union, Search for a Balance* (Eleven International Publishing 2017, The Hague) and Jaap W. de Zwaan, *Flexibility, Differentiation and Simplification in the European Union: Remedies for the Future?* in Jaap de Zwaan, Martijn Lak, Abiola Makinwa, Piet Willems (eds), *Governance and Security Issues of the European Union, Challenges ahead* (Asser Press/Springer 2016) 331–353.

The main internal challenges concern:

- The left-overs of the economic crisis (because the crisis is not yet over);
- The impact migration has on all our national societies;
- Euroscepticism, also in this country;
- And, of course, 'Brexit'.

## V European Union as Framework for Cooperation

It seems to me that the problems mentioned are common problems, best to be dealt with commonly. And, it is my conviction, the European Union is the best framework available for cooperation on how to solve these problems.

Because the European Union, although certainly not perfect, is:

- A stable organisation;
- Transparent in its working;
- Efficient; and
- Democratic, in view of the position the European Parliament has acquired as EU co-legislator and part of the EU budget authority.<sup>18</sup> Democratic also because of the involvement of national parliaments in the preliminary stage of EU decision making, when proposals of the Commission can be tested and assessed by them in the context of the subsidiarity and proportionality principles.<sup>19</sup>

Again, certainly the EU system is not perfect. What we have tried to achieve is to accommodate wishes and demands of Member States in such a way that a useful and efficient organisation has come into being. Don't forget in this respect that the construction is the result of essentially *voluntary* acts of the Member States – an application of accession being an example – and *voluntary* cooperation undertaken by all Member States collectively, in the context of the implementation of the EU objectives. Nobody forces a state to become a Member State of the EU. And, nobody imposes its will on other members. Article 50 of the Treaty on European Union even allows a Member State to withdraw from the Union.<sup>20</sup>

On the other hand, in order to allow the EU to fully implement its treaty objectives once they have been established by the Member States, variants of *majority voting* necessarily have to be applied in the decision-making process of the Council. The alternative being that all Member States would possess a veto right in each individual case. Such a situation would be a recipe for failure.

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<sup>18</sup> See the Articles 294 (ordinary legislative procedure) and 314 (procedure for the establishment of the annual budget) TFEU.

<sup>19</sup> See the Protocols no. 1 (on the role of National Parliaments in the European Union) and 2 (on the application of the principles of subsidiarity and proportionality), annexed to the Treaties: OJ C 326, 26.10.2012, 203–209.

<sup>20</sup> The reference here is obviously to the notification of the United Kingdom of 29 March 2017 to withdraw from the European Union.



- Anyway, majority voting in the Council<sup>21</sup> should not be a problem in a context wherein:
- the European Commission – in its capacity of ‘caretaker’ of the general interest of the EU –<sup>22</sup> exercises a right of initiative;
  - the European Parliament possesses co-legislative powers; and
  - the Court of Justice controls the legality of the acts of the EU institutions and bodies.<sup>23</sup>

That said, majority voting is an ultimate remedy only rarely practised in the Brussels negotiation rooms. In the overwhelming majority of cases consensus is looked for during the negotiations, and also reached by making compromises. To that principle, the relocation decision of the Council of 22 September 2015, earlier referred to, is obviously an exception. However, in that case the urgent and humanitarian situation on the ground had to be taken into account.<sup>24</sup>

## VI Possible Solutions

The question arises how the EU and its Member States should solve the global problems mentioned earlier.

Certainly, it would be best to maintain the working of the principles of ‘unity’ and ‘uniformity’ in future, meaning that all Member States cooperate in given policy domains in the same, identical, manner as well as at the same moment.<sup>25</sup>

That, indeed, would be the best way to ensure the consistency and stability of the overall EU cooperation. However, it is not very probable that such a scenario will work in future.

This is because, gradually and over the years, the group of Member States has become more and more heterogeneous. Differences of opinion have also appeared between the leaders of the Member States on how to deal with the problems concerned and, more generally, how to move forward with the European Union.

<sup>21</sup> See for the principle and the modalities of qualified majority voting: Article 16(3) and (4) TEU.

<sup>22</sup> See for this capacity the reference to the promotion of ‘the general interest of the Union’ in Article 17(1) TEU.

<sup>23</sup> See the description of the responsibilities of the Court in the second sentence of Article 19(1) TEU. See also Article 263 TFEU.

<sup>24</sup> The Council decision of 23 October 2017 concerning the so-called posting of workers directive could be considered as a next example. However, in this case one should realize that the vote reflects only a provisional decision of the Council, to be submitted to the European Parliament for negotiations in the framework of the ordinary legislative procedure, referred to in Article 294 TFEU and mentioned earlier.

<sup>25</sup> See Jean-Claude Piris, ‘The acceleration of differentiated integration and enhanced cooperation’ *Fondation Robert Schuman/European Issues* no. 328 of 13 October 2014, 1–5, where it is stated on p. 1: ‘Respect for the unity dogma (...) was justified by the necessity to build a common market. A common playing field had to be established, the same rules had to apply, they had to be interpreted in the same way by all, an independent arbitrator had to check their implementation and their infringement had to be subject to sanctions by a judge’. Furthermore, the principle of uniform interpretation is embedded in the several elements of Article 234 TFEU. The importance of that principle is also expressed in the case law of the Court of Justice, such as the judgment of 18 October 2007 in the Case C-195/06, *KommAustria/ÖRF*, ECLI:EU:C:2007:613, notably paragraph 24.

Since the strict maintenance of the principles of unity and uniformity therefore cannot be considered a realistic perspective anymore, we have to reflect on alternative models, enabling:

- Those who want to go forward to do that; and
- Those who do not want to participate in new stages of the cooperation process to be left out of these new developments, at least for the moment. They should not be forced to join; however, they are free to do that at a later stage, once they are ready.

The result of such a new approach is that, in the end, nobody will be excluded.

As new instruments, to achieve such a new approach, I propose two mechanisms:

- Simplification of the application of the principle of enhanced cooperation, the principle allowing Member States to cooperate in smaller circles; and, connected to that proposal,
- Simplification of the ordinary treaty amendment procedure.

## 1 Simplification of Enhanced Cooperation

With regard to the idea of simplifying the application of the principle of enhanced cooperation,<sup>26</sup> I refer to Article 20 of the Treaty on European Union.<sup>27</sup>

At the moment, at least 9 Member States are required to launch an initiative regarding enhanced cooperation. Furthermore, such a launch has to be supported by a proposal of the Commission and requires the approval of the Council by qualified majority.

In my opinion, that procedure has become too complicated and should be simplified. The general ‘approach’, of how to apply the principle of enhanced cooperation, also has to be amended.

Instead therefore, my proposal is to enable a vast majority of Member States – say, *three quarters of the number of Member States*, so in the present state of play 21 out of the 28 existing Member States – to make such a new step without other conditions needing to be fulfilled, except of a formal ‘confirmation’ by the Commission. And, again, the others can join later, once they so wish.

## 2 Simplification of Treaty Amendment procedure

Next, simplification of the ordinary treaty amendment procedure, in my mind, is also greatly needed.<sup>28</sup> In this case I refer to paragraphs 1 to 5 of Article 48 of the Treaty on European Union.

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<sup>26</sup> See for this discussion also: De Zwaan, *Stability and Differentiation in the European Union, Search for a Balance* (n 17) 16–19, and de Zwaan, ‘Flexibility, Differentiation and Simplification in the European Union: Remedies for the Future?’ (n 17) 338–341.

<sup>27</sup> See for the rules how to apply enhanced cooperation: Articles 326–334 TFEU.

<sup>28</sup> See for this discussion also: De Zwaan, *Stability and Differentiation in the European Union, Search for a Balance* (n 17) 27–31, and de Zwaan, ‘Flexibility, Differentiation and Simplification in the European Union: Remedies for the Future?’ (n 17) 349–351.

At this moment in time, to have treaty amendments adopted and entering into force, consensus between all Member States is required, in the process of negotiations and signature of the texts concerned, in the approval of the amendments at national level and in the deposit of the respective acts of ratification.

In this case as well, my proposal is to allow a vast majority of *three quarters of the number of Member States* to agree on such amendments and have them applied, in the first instance of course – only – in their mutual relations. And, again, the Member States not participating in these new developments can always follow later, once they are ready to do so.

In this way, with regard to the future development of the EU integration process, a differentiated approach – initiated by a vast majority of Member States as ‘front runner’ groups – should be acceptable as long as none of the other partners will be excluded from such developments.

Apart from that, all partners – none excluded – will participate in the cooperation regarding a solid substantive *acquis* at *minimum* level comprising the internal market cooperation ‘plus’ domains such as trade policy, environment and – in my mind also – asylum and immigration.

As a result, we would have created a solid basis for future EU cooperation, in the context of which all Member States do cooperate intensively whereas, on top of that, facilities do exist for cooperation in specific areas between smaller groups of Member States.

## VII Proposals of the European Commission

### 1 Juncker’s White Paper

On 1 March 2017, Commission President Juncker submitted his White Paper of the Future of Europe.<sup>29</sup> In it, Juncker presents reflections and scenarios for the European Union of 27 Member States by 2025.<sup>30</sup>

More particularly the Commission proposes five scenarios:

- Carrying on;
- Nothing but the single market;
- Those who want to do more;
- Doing less more efficiently;
- Doing much more together.

If you ask me, the five scenarios proposed by Juncker are rather arbitrary ones. In fact, applying his own way of thinking, many more could be thought of.

<sup>29</sup> [https://ec.europa.eu/commission/sites/beta-political/files/white\\_paper\\_on\\_the\\_future\\_of\\_europe\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf).

<sup>30</sup> See for this discussion also: De Zwaan, *Stability and Differentiation in the European Union, Search for a Balance* (n 17) 25–27.

Other comments can also be made:

*Scenario 1: Carrying on*

This scenario implies that life continues by applying the instruments and procedures already available at present. In short, the reference is to ‘muddling through’. That, however, cannot be a solution; practice shows this on a daily basis. On the contrary, choices have to be made, such as whether we want ‘more’ or ‘less’ Europe. And, if a preference is manifested in favour of more Europe, the question arises of how to organise such additional responsibilities for the Union.

*Scenario 2: Nothing but the single market*

This scenario is hardly ambitious. In fact, it shows the way to a future based on (much) less substance of cooperation compared to what has been achieved today. Thus, it is not a very attractive scenario either.

*Scenario 3: Those who want to do more*

The reference here is to a multi-speed Europe, enabling those Member States who want to proceed to do so in smaller groups. Such a result indeed resembles the proposals I presented a while ago. However, whereas the Commission scenario refers to concrete policy domains, the proposals I am in favour of promote a more *global* approach, enabling Member States to choose targets and objectives deemed necessary at a certain moment, in view of the political circumstances at that particular moment.

*Scenario 4: Doing less more efficiently*

Certainly, ‘efficiency’ should be always welcomed. However, focusing on fewer targets and objectives compared to the situation as it is today demonstrates a model of low ambition.

*Scenario 5: Doing much more together*

This model certainly looks interesting. However, in view of the fact that this option presupposes, according to Juncker’s White Paper, collective action of all Member States as a point of departure for decision-making in the future stages of EU cooperation, the model does not seem very realistic.

All in all, Juncker’s proposals focus on a selection of specific policy matters. To that extent, the proposals of the White Paper are rather static.

On the contrary, the inherent characteristic of the proposals I am in favour of is that EU cooperation is a gradual process, illustrated by a ‘step by step’ approach. Therefore, my idea is that we rather need a flexible but *structural* model to be applied when considered necessary in the political circumstances at hand. In short, we need to provide for an adequate procedure to manage ‘the process’. In doing so, my idea – as recalled earlier – is to allow a majority of three quarters of the number of Member States taking the lead in the further stages of EU cooperation, whereas the other Member States may follow once they are willing and prepared to do so. In so doing, EU cooperation is open to all.

## 2 Juncker's State of the Union Address

Now, by way of follow-up of his White Paper, Commission President Jean-Claude Juncker delivered on 13 September 2017 his State of the Union Address before the European Parliament.<sup>31</sup>

Referring to the present political 'momentum' – at that moment he referred to the election of Macron in France; since then we also can hint at the re-election of Chancellor Merkel in Germany – the President proposed a number of initiatives and ideas, such as to:

- finally open the Schengen cooperation to Bulgaria and Romania;
- encourage Member States which so far didn't do so (such as Hungary) to join the euro once they fulfil all conditions;
- maintain a credible enlargement perspective for the Western Balkans;
- rule out EU membership for Turkey for the foreseeable future;
- nominate a European Minister of Economy and Finance;
- make the EU stronger in fighting terrorism;
- make the EU a stronger global actor in the domains of foreign policy and defence; and, last but not least,
- merge the roles of President of the European Commission and the one of President of the European Council, that 'single' President to be elected after a Europe-wide election campaign.

Now, certainly, one can criticise the proposals or like them. I should say that Juncker at least has presented a vision. Moreover, what else could one have expected from a personality representing the *general interest* of the Union?

So, the least one can say is that Juncker has put forward ideas and proposals worth being discussed, not only at the level of the institutions in Brussels, but also in the Member States.

What is surprising, though, is that Juncker, in his September address, hardly refers any more to the principle of 'differentiation', the framework of cooperation in smaller circles, which in fact was a fundamental element of his 'Future of Europe' White Paper of March this year, discussed earlier.

Understandably it is the desire of the President of the European Commission to keep the group of Member States together, and to maintain unity as a principle of EU cooperation. However, it seems to me that, once it will appear during the forthcoming negotiations at the highest political level that, indeed, several heads of state or government reject Juncker's proposals, the idea of differentiated cooperation should be reintroduced in the debate.

Therefore, let's be grateful to Jean Claude Juncker for having launched his proposals which, if accepted at least by a large majority – three quarters? – of Member States, could bring the European Union further and enable the Union to become a real global player.

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<sup>31</sup> [http://europa.eu/rapid/press-release\\_SPEECH-17-3165\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm).

## VIII The Position of Hungary in the Debate

What now is the position of Hungary in this debate?

I should advise to count your blessings; at present we live in a stable continent and environment, whereas our continent is faced with a multitude of problems which individual countries cannot handle alone any longer.

In that respect, we must recognise that sovereignty these days is a highly relative concept. It is clear that in our complicated world, with so many international organisations being active and international rules and agreements in force, our economies and societies already are intensively interconnected. The United Kingdom will notice that, once that country has left the European Union.

We are therefore completely dependent on good international partnerships and solid frameworks for international cooperation. We have to join forces! Moreover, we should not forget that EU cooperation is a peace process and, in view of the way it operates, also a constructive and positive process. We therefore have to maintain – and to protect – the stability of that construction.

Last but not least, in order to stimulate the future development of our integration process, a differentiated approach – initiated and supported by a vast majority of Member States as ‘fore runner’ groups – should be acceptable as long as the other partners will not be excluded from participating in such developments, when they so wish.

## IX Final Remarks

All this leads me to five final remarks:

1. Differences of opinion – for example with regard to the interpretation of our common values and standards – have to be discussed. The reference here is to the discussions taking place between the Hungarian Government and the European Commission regarding a number of files.

2. Common global problems – such as the tensions at our external borders, migration and terrorism – have to be dealt with in common.

3. ‘Brussels’ is ‘US’ and not ‘THEY’ or ‘THEM’. In other words, Brussels is not a separate organisation. The European Union has been founded by the Member States themselves, for their own benefit. It is also the Member States who determine the objectives of the organisation, as well as how to implement these objectives.

4. The European Union, having institutions and organs plus efficient and democratic decision making procedures at its disposal, provides an adequate framework for our future cooperation; and

5. Further improvements to the infrastructures of the European Union – which are certainly necessary – have to be discussed and decided upon in common.