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# The European Union as a supranational association and the problem of state sovereignty

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## Abstract

The objective was to analyze the European Union EU as a supranational association, which, in turn, leads to problems of state sovereignty. The methodology employed consisted of general and special scientific methods. Sovereignty is an archaic political construct. There are two opposites: one focuses on the state and proclaims that sovereignty resides in a particular level of government, the parliament and the government derived from it; the other is the multilevel approach that presents sovereignty through a new prism, claiming that the concept itself is obsolete, challenging globalization and integration. The ability and right of existing states to exercise supreme authority over their territory, control access to it and defend their citizens has become more difficult to exercise. To conclude, globalization, transnational trade, culture and travel are just some of the factors that have challenged the effective capacity of the state. To adapt to these transformations, sovereignties are joined or shared with other states, as states are the main actors in an organization such as the EU because their interaction is so complex and intense that it has modified their independence.

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**Keywords:** national sovereignty; obsolete sovereignty; supranationalism; supreme political authority; independence.

## La Unión Europea como asociación supranacional y el problema de la soberanía estatal

### Resumen

El objetivo fue analizar la Unión Europea UE como una asociación supranacional, lo que, a su vez, conduce a problemas de soberanía estatal. La metodología empleada consistió en métodos científicos generales y especiales. La soberanía es una construcción política arcaica. Hay dos opuestos: uno, se centra en el Estado y proclama que la soberanía reside en un nivel particular de gobierno, el parlamento y el gobierno derivado de él; el otro, es el enfoque multinivel que presenta la soberanía a través de un nuevo prisma, afirmando que el concepto mismo es obsoleto, desafiando la globalización y la integración. La capacidad y el derecho de los Estados existentes de ejercer la autoridad suprema sobre su territorio, controlar el acceso a él y defender a sus ciudadanos se ha vuelto más difícil de ejercer. Para concluir, la globalización, el comercio transnacional, la cultura y los viajes son solo algunos de los factores que han desafiado la capacidad efectiva del Estado. Para adaptarse a estas transformaciones, las soberanías se unen o comparten con otros Estados, ya que los Estados son los principales actores de una organización como la UE porque su interacción es tan compleja e intensas que ha modificado su independencia.

**Palabras clave:** soberanía nacional; soberanía obsoleta; supranacionalismo; autoridad política suprema; independencia.

### Introduction

When European states emerged from the Middle Ages, creators worked to consolidate territorial possessions and rationalize territorial administration. The main goal of this period was to consolidate territory, often dispersed because of the dangers of inheritance or conquest. Thus, Austria gave up territories in southern Italy for the north, and France absorbed Franche-Comté, Alsace, and Lorraine, contributing to its efforts to replace the disorderly: “Pré carré, or straight line of division” and the chaotic 1659 border of the southern Netherlands (Abramson *et al.*, 2022).

That is, the main goal of these officials was to build increasingly efficient states bound by well-institutionalized boundaries. These increasingly effective state institutions played an important role in facilitating economic exchange between people who did not know each other, for example by providing clear rules and enforcing norms (Abramson *et al.*, 2022).

In the absence of effective state-building, individuals often relied on narrow and exclusive groups within which they could reliably engage in commerce. In sixteenth-century England, individuals formed exclusive associations to provide credit when the state was unable to provide a stable currency at all times (Abramson *et al.*, 2022).

Although frequent transfers of territory redrawing borders were part of the broader process of European state-building, at the local level they hampered efforts to build effective states. Regions with multiple border changes lagged behind, as territorial transfers interfered with state efforts to consolidate control.

Since the early days of the integration process, scholars have tried to establish how and to what extent integration and globalization have transformed sovereignty, both *de jure* and *de facto*. Although early theories of EU integration painted supranationality in contrasting colors, they only indirectly addressed the question of sovereignty.

The gradual transformation of the EU raised a critical question: How can power, united in a supranational union halfway between a federation and an international organization, be exercised collectively in a democratic way?

In the post-Maastricht era, member states of the European Union (EU) have been increasingly reluctant to delegate further powers to the supranational level, citing their willingness to protect their sovereignty. At the same time, recent crises in various policy areas, such as immigration, borders, monetary policy, trade, etc., have prompted decision-makers to expand, albeit in a limited way, the scope of EU institutions.

Not only the refugee crisis and attempts to save the euro but also the debate surrounding Britain's exit from the European Union has been a dominant sovereignty issue. This has provoked an unprecedented level of debate about the values underlying the EU's common policy and what many perceive as a new loss of sovereignty. Thus, the conundrum underlying notions of "common" or "pooled" sovereignty has once again found itself at the center of debates around the EU's legal, economic, and political legitimacy.

It is therefore important to reevaluate the issue of sovereignty in the EU in light of contemporary challenges. Although the notion of sovereignty has been central to the debate generated by the current EU

crisis, it remains strikingly under-researched. Big theories do not directly address the question of sovereignty and tend to limit their reflexions to the opposition between national sovereignty and supranationalism (Zaharia and Pozneacova, 2020).

Almost ten years after the explosion of the 2008 global and financial crisis and its European manifestation as the “Eurocrisis,” there is a growing consensus that the latter has quickly outgrown or changed into a deeper democratic crisis (Nanopoulos and Vergis, 2019).

EU integration, as a top-down process, had a corrosive effect on European polity, delegitimizing the very idea of Europe’s political unity, and at the same time promoting the growth of populist movements against the EU. Because of the obvious shortcomings of the European project, the only powerful narratives that seem to be populist rebuttals in blaming Brussels and, above all, are the conclusion that EU institutions are democratically delegitimized and cannot provide basic public goods such as employment, security, currency and the like (Longo, 2019).

This article is aimed at summarizing the understanding of the European Union as a supranational association and at the same time understanding that it is a problem of state sovereignty.

## **1. Literature Review**

Various scholars have investigated this problem, and their results and conclusions have been used in addressing this issue.

In their work Zaharia and Pozneacova (2020) emphasis to the process of framing supranational and intergovernmental theories in a historical context to determine their significance in the development of the European Community. The concept of supranationalism was developed by Albert Einstein, Winston Churchill, Robert Schuman, and Jean Monnet. At the beginning, this concept was expressed, on the one hand, in terms of the need to create a supranational organization in control of military and nuclear forces. In addition, these eminent persons noted the possibility of a supranational economic union.

It should be noted that the intergovernmental theory was described by Stanley Hoffmann, Alan Milward, Jeffrey Garrett, and Andrew Morawczyk. According to them, the state is the main actor in the process of European integration, and its role cannot be limited even in the best periods of European integration. The adaptations of intergovernmental theory, on the one hand, analyze the importance of the state in the European Community, but, on the other hand, note the process of formatting preferences in national state policies.

One response to the desire for a more democratically legitimate Union and to meet citizens' expectations about political institutions, which today are channeled mainly into radical populist messaging, is certainly to increase participation and extensive access to the processes under discussion. This is all happening under the umbrella of Institutional Change in the EU, following the adoption of the Lisbon Treaty, as an innovative tool to involve people in the debate on politics and lawmaking at the EU level, by supporting and submitting legislative initiatives to the Commission, which aimed to create conditions for a new dialogue between political institutions, civil society, and people, to "transfer the social sphere formed by citizens using their rights and freedom in political freedom" (Longo, 2019; 32).

The transformation of the Economic Community into a political union has sparked debates about how they change the nature of national sovereignty. Throughout the 1990s, scholars tried to understand the emergence of the new European configuration and the transformation of the concept of sovereignty by introducing a wide range of metaphors, indicating that sovereignty is unified and shared. They also tried to understand the implications of a model of unified or shared sovereignty.

Does the abolition of the national veto, with a shift to qualified majority voting in most areas of EU decision-making, combined with a top-down European legal system, mark Europe's transition to a post-sovereign, a post-national political order based on human law? Or should it be perceived as a pre-sovereign configuration that "divides and distributes sovereignty in a way that eliminates the arbitrary power of any single agent or agency"? (Brack *et al.*, 2019).

Carmen (2022) points out that from the perspective of defenders of state sovereignty, the EU was a somewhat unintentional and ultimately undesirable evolution of the treaty creating a common economic space. The EU could be considered unintentional because once it became operational, individual states lost unilateral control over many of the changes made by successive treaties, and undesirable because it encroached on larger and larger areas of domestic politics.

The signatory states of the 1957 Treaty of Rome began a process that culminated in a regional organization that gradually asserted legal supremacy over the member states, thereby weakening the ability of these states to decide how to manage their own economies and other related economies. Civic nationalist views defending the idea of national self-determination and the value of state sovereignty can be interpreted as supporting this more skeptical view of the EU.

Over the past two decades, the formation of large coalitions has increased in the European Union (EU), even in countries that have had no previous political experience with them. Along with the significant growth of both

new and radical parties, large coalitions signal the growing fragmentation of contemporary European politics (Morini and Loveless, 2021).

An anti-essentialist perspective helps to better understand the phenomenon of Brexit and right-wing populist strategy in the United Kingdom. The success of the “exit” vote in the referendum was due to the ability of those defending exit from the EU to articulate a range of demands, in some ways heterogeneous. Tony Blair was largely responsible for the Brexit. He implemented a program that benefited the middle class in the south of England, which completely abandoned the more industrial northern regions. Neoliberal globalization has really devastated these sectors, and the Brexit referendum exit camp has managed to portray the European Union as the source of all the problems these communities face.

The Brexit has become hegemonic, highlighting a whole series of demands. In the construction of the people, heterogeneous demands are constantly being articulated. It requires a hegemonic qualifier that becomes a symbol that represents the demands; over which the people gather. The people of the exit campaign clustered around the symbol of the Brexit, which denoted all the heterogeneous competitions that were in fact resistance to the post-democratic conditions created by neoliberal hegemony.

Those leading the campaign for exit managed to express this not as a consequence of neoliberal hegemony, but as a consequence of belonging to Europe. On this basis, the decision was to take back control and leave the EU. This became the cement that crystallized the collective will. This collective freedom was not an expression of existing demands; there were no such demands against Europe. These demands were constructed by the discursive campaign “Leave” (Mouffe and Ouziel, 2022).

## **2. Methods**

The article is based on scientific works, articles, as well as the constituent documents of the EU. The functioning of these organizations is clearly evident in the fact that on the one hand, there are supranational bodies, on the other hand, that successful integration is not necessarily connected with the creation of supranational bodies.

The methods of research have been selected taking into account the specifics of the goals and objectives of this work. In general, a systematic approach based on a combination of the dialectical method of scientific knowledge of international legal phenomena and processes, as well as general scientific and special research methods was used.

The methodological basis of the work consists of interdisciplinary and integrated approaches. The interdisciplinary approach is based on the

application of theoretical developments of jurisprudence, philosophy, history, political science, economic theory, etc., which enable the fullest comprehensive study of European integration and identify its impact on the state sovereignty of the European Union countries.

Consequently, the comparative legal method is used in the study of the content and signs of superpower. In turn, the logical-legal method allows to find elements, signs, and models of supranationality.

In the study is used a comprehensive approach aimed at revealing the multidimensionality and multifactoriality of ontological determinants of the integration process, contributing to the elucidation of connections between the various structural levels of public power in the EU.

The hermeneutic method was used in the interpretation of the constituent treaties and legislation of the EU, constitutions, and other sources of national law in the aspect of clarifying the powers of Union institutions, the legal regulation of issues related to the implementation of state sovereignty.

The use of system-structural and structural-functional methods helped to consider the EU as an institutional-functional organization of power, the legal order of the EU, giving it a character of integrity, as well as to define the degree of complexity of the political system of the EU.

The historical-legal method was used to cover the issue of the evolution of approaches to the unification of European countries.

In turn, the comparative legal method was used to clarify the legal nature of the EU as an integration association, identifying a trend to strengthen the supranational foundations in its institutional mechanism.

### **3. Results**

Together with attempts at new forms of regional integration, the end of World War II ushered in a new phase for shifting territorial boundaries, political forces, and institutional structures on the European continent. From the outset, this sparked various political and scholarly debates about the further reconfiguration of state sovereignty, with federalists advocating the unification of former, mostly belligerent, nation-states into a European federation (Brack *et al.*, 2019).

Common values are the basis for establishing the institutional structure, defining the goals and objectives of the integration association, and legislating them. Common foundations give integration processes sustainability and a certain direction. The fundamental values remain largely unchanged and are generally preserved and proclaimed in all the founding acts of the EU. They may be formulated in different ways, undergo certain changes in the

relevant documents, but they remain unchanged in their essential content. The fundamental values laid down based on integration determine the nature and ways of achieving the set goals.

In practice, such goals and objectives are formulated and implemented as part of the development strategy, which may also undergo certain changes at different stages of the development of the integration process, depending on internal and external conditions. The objectives are directly related to the tasks, which are enshrined in the regulations and statutes. These are, first of all, founding treaties, as well as acts adopted to ensure their observance. Comparing the European Union with other geopolitical centers of power, it is necessary to bear in mind a number of its fundamental peculiarities.

The formation of the single market and the eurozone, contributing to the convergence of conditions in the EU countries, smoothing the differences between the national and regional models of the participants of these associations, did not deprive them of their national identity (Organisation for economic co-operation and development, 2019).

The commitment to common ideals, principles, and values is one of the most important conditions for the formation and stability of integration associations. Law does not establish values and ideals, it only consolidates and confirms their existence, builds upon them, and relies on them to ensure their fullest and most effective implementation (European parliament, 2021).

In the EU, the governance process is no longer carried out exclusively by the state, but by various supranational, state, and non-state actors in a polycentric and non-hierarchical system of governance. From this perspective, it seems that the political supremacy does not belong to the member states or to the supranational bodies of the EU, but between them is exercised in different ways and combinations according to the sphere of politics.

Over time, the EU has developed into a unique system of multi-level governance, in which national governments are limited in their ability to control the supranational institutions they have created at the European level. Who decides and how is not always clear in a policy that brings together 28 member states, a wide range of institutions, bodies, expert committees, national agencies, and national institutions in constant interaction with their domestic and international counterparts (Zaharia and Pozneacova, 2020).

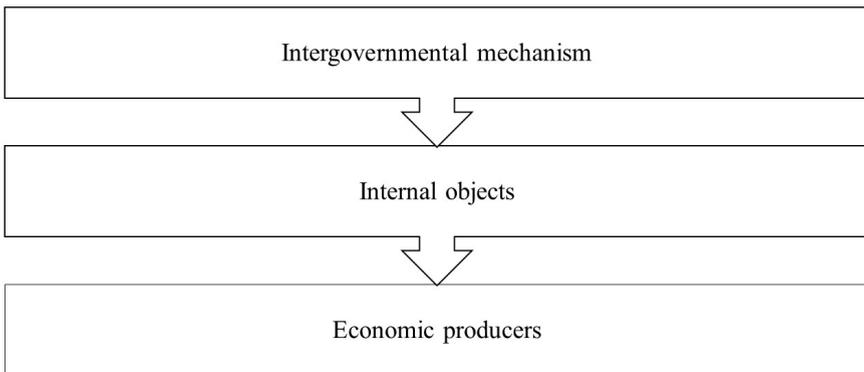
The EU continues to consist of sovereign actors in international economic relations who have transferred only part of their sovereignty to supranational bodies, choosing European values as a guide in state-building processes. Within the EU, states often act for themselves but join forces

against third countries at the supranational level. A “Europeanization of values and nationalization of interests” is taking place (Razumkov centre, 2021).

Regarding the new European Union candidates, it is important to note that Central and Eastern European countries wishing to join the European Union must undertake public administration reforms at the national level to meet the Copenhagen and Madrid criteria for European Union membership. In turn, such reforms are expressed in the adaptation of EU values by introducing qualitative multisectoral reforms in order to bring national legal systems as close as possible to EU law (Gerasymova *et al.*, 2021).

In the liberal intergovernmental mechanism, “domestic social actors” are embodied, in essence, as economic producers who contribute to shaping the advantages of states and the “winning set” available to them during intergovernmental negotiations (Figure 1). In view of this, postfunctionalism is the only theoretical approach that emphasizes the primacy of domestic politics and the possible pressures it can have on reducing the level and scope of integration (Webber, 2019).

He also notes the relevance of politicizing issues related to identity and sovereignty, especially for explaining crises. For example, the migration crisis, the illiberal challenge, and Brexit can be explained in part by the moderating effect of the politicization of identity and/or sovereignty issues by political actors at the domestic level. These crises mobilized collective identities, which some saw them as sovereignty issues, and any attempts to depoliticize these issues had the opposite effect (Börzel *et al.*, 2019).



**Figure 1. Liberal mechanism of formation of supranational European Union (author’s own development).**

Although post-functionalism does not offer a particular development of the concept of sovereignty per se, it emphasizes the need to go beyond the binary opposition of national sovereignty versus supranationalism and shows how important internal actors and events are for understanding EU integration and its crises (Brack *et al.*, 2019).

Daring to categorize the European Union, it is necessary to agree with Villasmil (2022), who point out that it is the timely resolution of the crises in different democratic societies that will determine the continuation of this form of government in time, a situation that requires a specific scientific study of each experience of polyarchy in the hands of an interdisciplinary team and, more importantly, still through the support of an organized civil society that wants to build a better reality.

According to Bellamy, state sovereignty matters because people living in states have a long history of self-government. Liberal-democratic states give their citizens room to create and shape the institutions governing their social and economic lives to ensure freedom and justice, including political and social rights. But a proper assessment of state sovereignty does not require the abandonment of supranational institutional schemes that bring states together.

Indeed, supranational institutions such as the EU offer states a number of important advantages, including regulating their interactions to avoid interstate domination, addressing collective action, and cooperating to better meet the needs of their citizens. But to be consistent about respect for state sovereignty, cooperation among states is best realized through a “consensus agreement among democratic states,” acting as democratic representatives of their citizens (Bellamy, 2019).

Since the famous Maastricht ruling of the German Constitutional Court in 1993, there has been a constant debate around the “No demos” thesis. In their ruling on the Maastricht Treaty, German judges argued that there were no pan-European demos that would underlie a possibly fully democratic European polity. Thus, the main problem with popular sovereignty in the EU is the impossibility of finding a sovereign who could grant powers to joint institutions (Rose, 2019).

On the one hand, the fact that different people remain distinct means that they retain control (i.e., veto power or withdrawal) over the constitutive rules of state structure; on the other hand, it also implies that different European peoples are obliged to exercise their sovereignty “only in agreement with all other members of the state or people.”

Today’s political practice, however, shows that a) on an intellectual level, the concept of democracy has no political or social consensus, and b) on a practical level, shared sovereignty is not (yet?) an operational concept; rather, it tests the limits of different types of sovereignty in everyday politics,

igniting vivid conflicts with destructive potential for democratic order in Europe (Brack *et al.*, 2019).

#### 4. Discussion

Institutionalized cooperation among states does not diminish the sovereignty of member states and their people but can preserve and enhance it. It becomes possible: by creating the conditions of external sovereignty, providing for the protection of states from undue interference by other states, or by enabling states to increase their internal capacity to promote and protect the interests of their citizens.

In general, one can agree with the normative framework and the need to define more precisely the relationship between state sovereignty and supranational institutions. But, contrary to the arguments, one cannot see how a supranational structure like the European Union can be created without reducing the sovereign power of member states.

Over the past decade, the EU has been confronted with a “polycrisis”. While it may seem that the EU is in a state of permanent crisis, this time is different, as the European project has never had to face so many challenges simultaneously, over such a long period of time, and with such a high price to pay for inaction (Brack *et al.*, 2019).

Over the past 10 years, not only have some Eastern and Central European countries consistently challenged the legitimacy of the EU and the Commission to take action when national governments adopt legislative changes that put pressure on the liberal constitutional order and the independence of their judicial systems, but more recently they have challenged the necessarily supranational institutions to defend the common values on which the EU was founded. This debate has raised fundamental normative, political, and legal questions about the nature of the EU’s political regime and its role in protecting shared values and preventing member states from putting those values under significant pressure. This is an existential threat and a political challenge to EU integration (Brack *et al.*, 2019).

The result of the Brexit referendum on June 23, 2016, came as a shock not only to those remaining in Britain but also to pro-Europeans throughout the EU. Apparently, pro-European adherents significantly misjudged the support of most of their preferences. It is plausible to expect that an event with such visibility and ramifications will affect the shaping of beliefs and benefits not only among British citizens but also European citizens outside the UK (Delis *et al.*, 2020).

## **Conclusions**

The EU is an example of an orderly confidence-building process, allowing governments to steadily cede elements of national prerogatives to supranational institutions. In an effort to lay the foundation for greater integration to make future wars in Europe impossible, a gradual approach was adopted, beginning with the European Coal and Steel Community as the area where the benefits of cooperation after the war were most evident. Based on this, the Treaties of Rome establishing the European Economic Community were signed in 1957.

The 1978 decision of the European Court of Justice established the principle of mutual recognition of judgments in any one state among all other European states. The Single European Act of 1987 abolished the requirement of unanimity in decision-making, and then streamlined Europe in 1992 and abolished border controls. The European Parliament evolved from a deliberative group of national parliamentarians to a directly elected body.

The Maastricht Treaty of 1992 called for a common currency and gave legal meaning to the concept of Union citizenship. The Lisbon Treaty in 2009 expanded European competence, strengthening the European Parliament. There have been ups and downs, and countries have progressed at different rates, but the Union has expanded to 28 members.

Since the end of the twentieth century, the EU is believed to have suffered from a significant legitimacy crisis, combining symptoms of a structural democratic deficit on the one hand and a general lack of effective solutions to common problems on the other.

Since the creation of the European project, the external relations of the European Union and its member states have been central to their development at the international level. A striking feature of international relations today is the increasing number of international organizations and international agreements, as well as the growing range of issues they involve. This naturally encourages the EU and its member states to make active use of their external powers. While the EU has gained a lot of external powers - because of treaties and case law - member states can still take autonomous actions, as long as they do not violate EU law.

Sovereignty is at the heart of conflicts over membership, as the Brexit showed. Although in the past “closest union” was the only way forward, and the return of sovereignty was unthinkable and legally impossible, the Lisbon Treaty allows member states to withdraw from the Union in accordance with their constitutional requirements. The extent to which leaving the EU allows a return to the world of “early sovereignty” is unknown, and Brexit is an interesting case in point. Similarly, the conflicts in Britain over the

Brexit reveal a fundamental tension between different types of sovereignty, in particular between popular sovereignty and parliamentary sovereignty. These crises demonstrate that conflicts of sovereignty occur at different levels, in different domestic situations, and involve different spheres of politics.

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