



## **The case for limited European sovereignty**

**Sovereignty is transferred from nations to the EU; in return, the EU must use its secondary sovereignty to deliver to EU citizens when nations, by themselves, cannot.**

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## **EXECUTIVE SUMMARY**

As the European Union raises its level of ambition on climate change, “technological sovereignty” or “strategic autonomy”, the underlying question is whether or not it is endowed with sovereignty and to what extent. The EU has no equivalent on the international scene, present or past. European sovereignty exists as a byproduct of transfers of sovereignty from Member States. Thus, it has to coexist with national sovereignties and operates within the boundaries of the transfers. Although it lacks many of fundamental elements of national sovereignty – such as monopoly of force on its territory – the EU has extensive and effective powers in important areas – such as trade. The result is a special mix of weaknesses and strengths. The sphere of European sovereignty is likely to widen in response to emerging supranational challenges but will remain a limited sovereignty. When Member States are not up to the task nationally, the EU should take over with additional transferred sovereignty from them.

### **Social Media summary**

Limited European sovereignty is here to stay. EU citizens should be thankful for the benefits it brings; EU institutions should respect its boundaries.

### **Keywords**

#Limited European sovereignty #patchy sovereignty# transfer from national sovereignties

### **Short bio**

Stefano Stefanini is a former Italian diplomat and writes extensively on international affairs. He was Diplomatic Advisor to the President of Italy, Giorgio Napolitano; Permanent Representative at NATO; Deputy Chief of Mission, Washington Embassy. He served in Perth, Western Australia, New York, UN; Moscow; Washington; Brussels, NATO. Throughout his career he built an extensive expertise in Transatlantic affairs, security and defence, Russia, European and Mediterranean affairs.



## 1. The XXI century severely testing nation States' traditional sovereignty.

National sovereignty is not waning. Far from it. National governments keep a strong hold on their unique powers. But they are not sufficient to confront a globalised world. If there were any doubt left, the Covid pandemic and climate change are bringing home the message, as discussed at length by Gianluca Ansalone in his insightful parallel analysis. Neither challenge can be dealt with at national level only – and in fact they are not. Like it or not, both require far reaching international cooperation that inevitably encroaches on national sovereignties.

Nowhere the shift is more conspicuous than in the relationship between the European Union and its Member States. With the “Green Deal” and its “FIT for 55” implementation follow-up, the EU had already taken the lead towards achieving and possibly anticipating the targets of the Paris conference on climate change; coronavirus has subsequently enhanced its key role in health and related issues. Significantly, the EU is coming up with a unified strategy that merges both challenges. In her recent State of the Union address (SOTEU), Commission President Ursula von der Leyen has forcefully rekindled proposals for the European Health Union<sup>1</sup> that had been teetering in its first response to the pandemic. The upshot of these developments is a strengthening and widening of the sphere of “European sovereignty”<sup>2</sup>.

The notion of European sovereignty is not undisputed. It encompasses “shares” of national sovereignties that Member States have agreed to pool together and delegate to the EU institutions through complex mechanisms of power sharing and a process of checks and balances. Therefore, it raises a number of partly unanswered questions:

- Does it exist on its own, separately from national sovereignties?
- To what extent it meets the traditional requisites of sovereignty?
- Is it desirable or necessary that it be further widened?

2. This paper tries to give some provisional answers from a strictly pragmatic rather than legal perspective. The existence and effectiveness of European sovereignty are undeniable, but it is not an exclusive notion – as national sovereignty’s - but “coexisting” one, in parallel, and sometimes in conflict, with national sovereignties. It lacks many, if not most, sovereignty’s traditional attributes, yet it is endowed with substantial powers in critical areas, making it a unique mix of weaknesses and strengths. Thus, it requires careful nurturing. In this author’s view, the EU should be wary of blindly taking advantage of the emergencies and riding the current crises to enlarge its “sovereignty” at the expense of Member States lest it generates a backlash. Yes, there is a need for “more Europe”, but without rush and/or power grabs by EU institutions. *Adelante, Pedro, con juicio*<sup>3</sup>.

There is no doubt that the EU is a force for good but that “good” needs to be internalized by nations, peoples and public opinions. It cannot be “forced” on them. Too often Brussels’ mindset, especially the Commission’s, mirrors the classic recommendation Italian parents give to their

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<sup>1</sup> European Health Union. Protecting the health of Europeans and collectively responding to cross-border health crises, Retrieved on 4 October 2021 from [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/european-health-union\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/european-health-union_en)

<sup>2</sup> Jillian Deutsch, Europe’s ‘Health Union’ prepares for its first feeble steps, *Politico*, 1 September 2021, Retrieved on 4 October 2021 from <https://www.politico.eu/article/european-health-union-coronavirus-ema-hera-barda/>

<sup>3</sup> From Alessandro Manzoni (1785-1873), *The Betrothed* novel.



toddlers “*lo faccio per il tuo bene*”<sup>4</sup>. It does not fly well in the real world of domestic politics, interests, priorities and identities of 27 distinct Member States. There is delicate balance between European and national sovereignties that the EU would be well advised to value and maintain. The relationship between the two spheres is likely progressively shift in favour of the former in many areas of common interest but the process needs to smoothly unfold as circumstances demand. Untimely rush toward “more Europe” risks backfiring.

The EU’s sovereignty serves vital purposes in meeting challenges that its Member States would be increasingly unable to confront in isolation. But it was conceived as a “limited” sovereignty, contingent to transfers from national sovereignties – within the boundaries of the *Acquis Communautaire*, as reiterated by the Lisbon Treaty. It better stays that way.

3. Does the European Union have “sovereignty” and to what extent? Brexiteers would have no hesitation to answer in the affirmative: that is why they voted leave, to “take back control” and reinstate full national sovereignty. Factual evidence is more confusing and theoretically inconclusive. The EU does have supranational extensive powers that in specific areas overrule national sovereignty, trade being a case in point. However, given that (a) their scope is clearly fenced by the treaties and (b) they have been surrendered by Member States, it is debatable whether they amount to sovereignty in the classic, international law, connotation. The EU as such is not endowed with original sovereignty. It has received substantial but well defined “shares” of it. It might, and possibly will get more - but always courtesy of Member States. And the process is not irreversible, witness Brexit<sup>5</sup>.

Moreover, many of those powers are not unconditionally granted by Member States. Nations maintain a shareholder status in exercising them: EU legislation goes through a process of approval by national governments either by “qualified” majority vote, that sets the bar rather high, or by unanimity. Finally, in emergencies, national capitals can overrule EU’s authority, and occasionally they do, for instance by closing internal borders as they have done in immigration crises or during the Covid pandemic. None of the above limitations apply to national sovereignty.

Finally, the challenge from national sovereignties to European sovereignty is never ending. The Polish Constitutional Court’s claim that EU does not have primacy over national law – in Poland, at least – is legally incompatible with the terms of Poland’s EU membership. By freely joining the EU Poland has accepted the opposite. Politically, however, it reveals a hard core of resistance by nations to EU sovereignty, even if it has being delegated to the EU by themselves. Poland’s Constitutional Court’s ruling may be an aberration but the tension between national and EU sovereignty is a fact of life, witness the recurring issues raised at Germany’s Constitutional Court on compatibility of some EU financial measures with German Constitution.

4. European sovereignty is an elusive concept and a complicated matter. Legally, it must be navigated through the well chartered waters of hundreds of Treaties pages – the so-called *Acquis Communautaire*. Institutionally, it involves three powerhouses: the European Council, the Commission and the European Parliament – with one major remarkable exception: monetary policy that for the “Eurozone” is entrusted to the European Central Bank only. Politically, the

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<sup>4</sup> “I am doing it for your own good”

<sup>5</sup> This author believes that Brexit is nothing short of a geopolitical disaster and blunder. However, it does prove that sovereignty transferred to the EU from Member States can be withdrawn. The EU has a “lease” on sovereignty – it does not own it.



largest Member States often, though not always, end up calling the shots in true Animal Farm fashion: all are equal but some more equal than others.

Therefore, European sovereignty needs to be seen as a legal, institutional, and political melting pot. It exists to the extent it detracts from Member States shares of national sovereignty. But it also operates in conjunction and cooperation – occasionally contrast - with Member States. The result is a continuing criss-crossing of the respective spheres of sovereignty, European and national. Since national interests are at stake, the process of reconciling the two spheres is a continuing political, much more than legal, exercise.

Even in matters, as trade, where the EU Commission has legally “exclusive competence”, it does not operate in a vacuum. Politically, the Commission has to accommodate Member States - that is to compromise with national sovereignties. The balance is not necessarily lopsided: on its side, the EU yields considerable *de facto* powers *vis à vis* with Member States and does not shy away from using them. The relationship results in constant “sovereignty overlapping” between the EU and Member States, with reciprocal interferences and in “patchy sovereignty” for the EU in so far that there are areas where it can flex its muscles because it has extensive and substantial clout and, on the contrary, other areas where it is completely powerless. Since some of the latter straddle over sovereignty’s quintessential attributes, European sovereignty can be severely hamstrung.

Anecdotal evidence. The strings attached to the post-Covid recovery fund (“Next Generation EU”, or NGEU given Brussels deep seated incapacity to call things with simple names...) require that the beneficiary Member States allocate 37% of the financing to “green economy” and 21% to digital transformation. That is not a guideline; it is mandatory. To this end, Brussels has made it clear that it will monitor national use of NGEU funds and will strictly enforce the green and digital parameters. If they want the money – and they do – Member States have their hands partially tied in how to spend it. That amounts to a significant, albeit perfectly understandable – money talks - extension of EU’s sovereignty to the expense of national prerogatives.

At the other end of the spectrum, in the wake of the Taliban violent takeover of Afghanistan, the EU was powerless to grant asylum to the Afghanis – like interpreters, drivers – whom it employed in Kabul because it cannot issue visas. That is a strictly national prerogative. To bring them to safety it had to rely on the good will of Member States. This happens because the EU lacks one of sovereignty’s fundamental attributes, control of borders. The Schengen area is an intergovernmental agreement, but countries do not hesitate to suspend the free circulation, if they need be, witness suspensions that happened during the Covid pandemic or immigration crises. When this happens, Brussels does not like it but has no choice but acquiesce nations do temporarily close borders and in order to make them reverse decisions the EU is left with little more than moral suasion.

There are stark differentiations between areas where European sovereignty has clear primacy, if not exclusivity, and areas where national sovereignties rule the waves, leaving Brussels, at best, in an accessory role. For instance, the EU run international trade; Member States run foreign and security policy. Examples of this dichotomy make an endless list.

5. As a result, the EU is a sovereign giant in some areas; a midget in others. There is a quite simple explanation for such a mix of strong, large supranational powers and next to non-existent ones that characterises the European sovereignty. It is a direct consequence of the quintessential nature of the Union. In the context of international law and organisations, the EU is a unique exception to the standard rules that define States and non-State entities. It is one of a kind and likely to remain so.



The European Union is neither a “super-State”, nor a Federation or Confederation. It is not an alliance. At the same time, it is much more than an international organisation, like the United Nations, or than an alliance, like the North Atlantic Alliance – though it does not provide for collective defence aggression as NATO does. Security-wise the EU ranks lower than NATO; it does not provide defence obligations among Member States. Lisbon Treaty’s Article 42.7 vague “obligation of aid and assistance” is in no way comparable to Washington Treaty’s Article 5 that make an attack on an Ally an attack against all Allies. EU’s European sovereignty stops short of security; NATO’s collective defence stops short of shared sovereignty among allies.

Bottom line: European sovereignty goes as far as the sharing of national sovereignties goes. It is strong, powerful and exclusive in the areas where Member States have willingly delegated and pooled national sovereignties. It largely coexists with national sovereignties where, through the European Council, majority vote or unanimity is required. In that sphere, that includes legislating, Member States’ votes and the European Parliament’s approval act as checks and balance to EU’s capacity to decide and act. But wherever Member States have chosen not to relinquish national sovereignty, European sovereignty disappears. Finally, as mentioned earlier, potential conflicts arise between European and national sovereignties when Member States decide to exercise their powers in spheres that normally fall within European-delegated sovereignty, as it happens with closure of borders under special circumstances such as pandemic or immigration flows.

6. That European sovereignty exists and thrives is next to a miracle as it lacks most of sovereignty’s requisites. In fact, the classical notion of sovereignty implies five basic elements:

- exclusive political authority;
- monopoly of use of force within a certain territory;
- borders’ control;
- free foreign policy;
- recognition by other States/governments<sup>6</sup>.

Although also nation States seldom possess all those components without some limitations, it is quite clear that the EU falls short on practically all of them. It has narrow political authority; it relies on Member States for the use of force and for borders’ control – external as well as internal; its foreign policy is basically the common minimum denominator of Member States’ foreign policies; its international recognition is always on thin ice, witness the recent diplomatic rows with the Trump administration and Boris Johnson’s post-Brexit government. But the EU itself could not bring itself to call “Ambassadors” its representatives in third countries!

The same conclusion can be reached comparing European sovereignty to the different areas to which sovereignty should apply<sup>7</sup>: There is no match between level of ambitions in each one of them and the EU’s effective powers.

In fact, European sovereignty exists against the odds. It runs against two major hurdles: concurring national sovereignties and lack of powers traditionally associated with sovereignty, namely and mostly the use of force. That straitjacket has not prevented European sovereignty from being first

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<sup>6</sup> Adapted from Richard Haas, *Sovereignty, Existing Rights, Evolving Responsibilities*, Georgetown University, 2003.

<sup>7</sup> “Domestic sovereignty, referring to the organization of public authority within a state and to the level of effective control exercised by those holding authority; interdependence sovereignty, referring to the ability of public authorities to control transborder movements; international legal sovereignty, referring to mutual recognition of states or other entities; and Westphalian sovereignty, referring to the exclusion of external actors from domestic authority configurations” (Stephen D. Krasner, *Sovereignty Organized Hypocrisy*, p. 9, Princeton University Press, 1999).





established, then alive and kicking. But it has always sailed in previously uncharted waters. It has done so quite successfully for nearly two decades since the Lisbon Treaty which strengthened its legal basis – within boundaries. What about its future course?

7. As stated earlier, European sovereignty cannot be framed in a purely legal context. It also involves balance of power among EU institutions and among Member States, shifting relations between Brussels and national capitals<sup>8</sup>, domestic and international pressures, economic constraints - in short, it depends on *realpolitik*. Trying to capture and identify European sovereignty without connecting it with the wider scenarios in which it has to operate would amount to an academic exercise.

As of today, full sovereignty remains fully anchored to the nation State. The State remains the only international actor that can claim to possess all its requisites and related powers. The European Union has a significantly limited sphere of sovereignty and only to the extent it has been transferred to it by its Member States. Hence, European sovereignty is rooted in a partial sharing, by agreement, of national sovereignties that is delegated to the EU by Member States. As we have seen, that transfer is not irreversible. Nothing comparable to Brexit – Polexit, Italexit etc. - is likely to happen in the foreseeable future because of *pragmatic not theoretical reasons*. The jury is still out on the outcome of Brexit for the United Kingdom; the process of assessing the full consequences will play out in a long timeframe. But it is quite clear that the costs and pains of “taking back control” are extremely high. Depending on domestic politics, other Member States may flirt with the idea but are unlikely to follow it through. They simply cannot afford it – that applies especially to Eurozone countries.

8. As a result, from a *realpolitik* perspective, today European sovereignty rests on relatively solid ground. Its foundations are not only legal, but – more important – political and economic. But should it move further? This is where we enter the debate on the future of the European Union.

There are two opposing schools of thought: “more Europe” and “less Europe” – the latter being the moderate version of the “no Europe” initially advocated by populist and nativist movements across the continent. “No Europe” is discredited: in the world of pandemics and climate-induced natural disasters it simply runs against common sense. “Less Europe” would instead only reduce European sovereignty’s sphere in partial reversal of the process of European integration. It appeals to the identity and nationalistic chords of European but ends up fighting a rear-guard battle as nation States are simply not up to the task of standing alone in confronting globalisation challenges. By all means these dynamics apply to the international community at large, not only to Europe.

The “more Europe” approach is tempting, and certainly much more in tune with the current international trends. It carries the opposite risk of backlash that can re-ignite rejectionism and nativism. It needs to be handled with care and attention to people’s sensitivities. Moreover, those trends themselves are far from irreversible – have we forgotten about America first? Thus, the sphere of European sovereignty is likely to grow but it would be advisable to expand it gradually and pragmatically in locked step with challenges, as they arise and as they are being dealt with.

The Covid pandemic is a case in point. Apart some initial missteps the EU can rightly claim it to be a success story that Member States could not have achieved on their own. That certainly applies

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<sup>8</sup> For instance, the upcoming change of government in Germany, with a new Chancellor and, most likely, a different coalition, will inevitably bring an adaptation in the Berlin-Brussels relationship.





to NGEU which has become the lifeline of Europe's economic recovery. The EU population has caught up with the United States and the United Kingdom in vaccinations. Less glamorous but extremely effective in daily lives of tens of millions of EU citizens is the "green pass" that has rapidly unified, standardized, and digitalized vaccinations' certificates for the entire bloc. Getting in line 27 national bureaucracies in few weeks' time is no small feat. Only the EU could do it; absent the EU, traveling across Europe during this summer would have been an utter mess. Perfect it was not, but certainly doable. Tourist industry in countries like Greece, Italy, Spain got a welcome lift.

Success matters. The EU has delivered on Covid. It can and will deliver on other issues. The sphere of European sovereignty can and will be extended accordingly. But there must be a constant linkage between accretion of European sovereignty and benefits to EU citizens delivered by additional transfers of national sovereignty to Brussels institutions. The underlying rationale must always be: the EU steps in to do what national sovereignties cannot do or to do it better and more efficiently. *Adelante, Pedro, con juicio.*

## Conclusion

European sovereignty is both a reality and an ongoing process of further building its sphere, for instance with the Health Union, in response to structural changes and challenges in a globalised world. But it has boundaries that the EU institutions must recognise and respect and will continue to coexist with national sovereignties that the legal and political capacity to set the limits.

Such limited European sovereignty is here to stay. Member States need to enhance it to confront issues that they cannot deal with in isolation. EU citizens should be thankful for it: only a shared, supranational, sovereignty can cater for their common interests. EU institutions should acknowledge that their hard-fought "sovereignty" is not a natural endowment. It originates from national sovereignties and must be used it wisely.

## Policy recommendations

- Finish the job. There EU is usually effective in reacting to crises such as the financial crisis or, to a lesser extent, the migration crisis by strengthening integration and, hence, extending areas of EU exclusive or mixed sovereignty as appropriate. When the crises subside the process slows down or it is left incomplete, as it has been the case with the Banking Union; or the EU is unable to tackle issues, such as refugees and asylum, despite their supranational character. Those matters need closure be it by extending EU sovereignty as appropriate or honestly recognizing its limitations. They should not left hanging in uncertainty
- Build on success. EU sovereignty should be consolidated and, if circumstances require, enlarged when and where it proves to deliver services to EU citizens more and more efficiently than single Member States can. Those are the areas where, clearly, "more Europe" is not only needed but also welcome by the people. For instance, in the wake of the overall successful vaccination campaign, the EU should aim at building the European Health Union.
- Be less arrogant and self-righteousness; cut down long-drawn and repetitive policy presentations. The EU needs to realise that even if its policy prescriptions are right, competent and sensible, they need acceptance in the real world and they have to come to terms with conflicting responses. Too often the EU tries to assert sovereignty by claiming



perfection of its proposals while nations and citizens can only bear lesser but more pragmatic solutions.

- Do not work in isolation. The EU is a powerful international player – though somewhat less so after Brexit – but it is not the only rule-maker in the world. The “Brussels effect” still exists but should not be overestimated especially in presence of rising economic powers, China being the prime, but not unique example. When venturing in areas of wide international relevance the EU should work more closely with other national players, such as the United States, and organisations or for a, such as the OECD, WTO, G7, G20. Case in point: the global corporate tax on which a breakthrough was achieved only when the U. S. weighed in and consensus was reached at OECD level.
- Value subsidiarity. While consolidating and extending European sovereignty, the EU would be well advised to recognize areas and issues where it can be diluted and delegated at national-regional-local level. After being leveraged as selling point for the Lisbon Treaty, subsidiarity has become the forgotten word in Brussels jargon. An effective and well functioning sovereignty is also a decentralized sovereignty. The more so in a Union that encompasses a wide variety of nations, peoples and cultures,



## Bibliography

\*\*\* European Health Union. Protecting the health of Europeans and collectively responding to cross-border health crises, [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/european-health-union\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/european-health-union_en)

Deutsch, Jillian, Europe's 'Health Union' prepares for its first feeble steps, *Politico*, 1 September 2021 <https://www.politico.eu/article/european-health-union-coronavirus-ema-hera-barda/>

Haas, Richard, *Sovereignty, Existing Rights, Evolving Responsibilities*, Georgetown University, 2003.

Krasner, Stephen D., *Sovereignty Organized Hypocrisy*, Princeton University Press, 1999).

Manzoni, Alessandro (1785-1873), *The Betrothed* novel.