

CHAPTER 2

SHARED SOVEREIGNTY, LIMITED EQUALITY: THE TENSION BETWEEN MEMBER STATES AND SUPRANATIONALISM



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Abstract

The Chapter investigates the evolving concept of sovereignty within the EU, highlighting the balance between national autonomy and European integration. Thus, Member States have transferred aspects of their sovereign powers to EU institutions, creating a governance framework that is polycentric and non-hierarchical. This model allows for collective decision-making, enhancing the EU's global influence, but it also generates tensions and questions concerning the undermining of national sovereignty and inequalities in decision-making processes. Additionally, disputes over the supremacy of EU law versus the supremacy of national constitutions and constitutional identity highlight persistent challenges in the integration process.

The study explores the constitutional aspects of sovereignty within the EU, focusing on the principle of conferred competencies and the relationship between national and supranational governance. It examines the evolution of the EU as an autonomous legal order, specifically addressing areas such as fundamental rights protection and criminal law, which have traditionally been associated with national sovereignty. The analysis weighs up how various crises, such as those related to the rule of law, and contemporary challenges like cybersecurity and artificial intelligence highlight the necessity for supranational solutions. It also examines whether the strengthening of supranational authority undermines state sovereignty or contributes to a more cohesive and resilient Union. The main conclusion is that the concept of 'shared and responsible sovereignty' better describes balanced development and provides a solid framework for the future evolution of the EU.

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1. Introduction

In the light of the evolution of the concept of sovereignty, detailed in the first chapter of this book, our study will focus on the dynamics of this concept in the context of the EU, as a one-of-a-kind structure, where the Member States have common legislation, currency, and citizenship status. A delicate balance between national sovereignty and European integration, which emphasises concepts such as shared sovereignty,¹ pooled sovereignty,² supranationality³ or constitutional pluralism⁴ has shaped the EU's legal, political, and economic landscape, and remains one of the most challenging issues in the Union's history.

The importance and the evolution of sovereignty within the EU can be traced back to the Union's foundational principles and objectives. After World War II, European leaders aimed to establish a cooperative system to prevent future conflicts and promote stability and prosperity across the continent. The founding of the European Coal and Steel Community in 1951 marked the first step in a series of treaties designed to integrate the economies of Western European states. Central to this process was the understanding that pooling sovereignty – especially in economic policy – could lead to mutual benefits and a stronger, more interconnected Europe. This vision progressed with the formation of the European Economic Community in 1957 and eventually culminated in the establishment of the EU in 1993, with the Maastricht Treaty, which introduced the concept of European citizenship and expanded cooperation into new policy areas, including justice, home affairs, and foreign policy. The Lisbon Treaty clarified the competences of the Member States and the EU, incorporating many elements from the proposed Constitution for Europe into the Treaties. In this way, but also via the *praetorian* method, with CJEU as the main ‘architect’, the institutions of the EU have been consolidated, and the competences of the EU have expanded. A supranational, autonomous legal order⁵ has been created.

This integration process has consistently required Member States to relinquish elements of their sovereign rights, in exchange for the benefits of collective governance. The development of the single market, the Schengen Agreement allowing for free movement, and the introduction of the euro as currency for part of the

1 Bickerton et al., 2022.

2 Petr, 2025.

3 Brack, Coman and Crespy, 2019, pp. 3–30; Peterson, 1997, pp. 559–578.

4 Wilkinson, 2019, pp. 6–23.

5 Lenaerts, 2019, pp.1–11.

Member States, all represent milestones in this process that some authors call ‘shared sovereignty’.⁶ Each of these initiatives has necessitated a redefinition of state sovereignty within the EU framework, where individual Member States retain authority over a number of domestic issues, but also transfer powers to EU institutions, a process described as ‘pooled sovereignty’.⁷ Consequently, although Member States continue to declare themselves sovereign, in practice many powers that traditionally give expression to sovereignty were transferred to a supranational level. In this manner, the process of governing is no longer conducted exclusively by the states, but by a variety of supranational, state and non-state actors in a ‘polycentric and non-hierarchical’ system of governance.⁸ From this perspective, a key question is where we currently stand and where we are heading as Member States of the EU and the EU itself.

These questions are more relevant since the evolution of sovereignty within the EU has been both a source of strength and a point of tension. On the one hand, the ability of Member States to collectively pool their resources and decision-making powers has allowed the EU to become one of the most influential economic and political blocs in the world. On the other hand, the perceived erosion of national sovereignty has sparked criticism, especially from those who view the EU as overly bureaucratic and unresponsive to local concerns, as well as from those who feel a sense of inequality between Member States, especially in the decision-making process. The ongoing tensions between the courts and disputes over the supremacy of EU law have brought attention to national and constitutional identity, the limits of EU powers and the future path of EU integration.⁹

Based on these premises, the chapter examines the concept of sovereignty from the perspective of the Member States. It outlines the ‘state of play’ in terms of constitutional foundations of sovereignty and explores the constitutional limits of the sovereignty within the EU framework. Considering the dynamic nature of sovereignty and the principle of conferred competencies enshrined in the EU Treaties, the analysis also delves into the ideas of shared sovereignty, supranationality, and the constitutionality of the EU. This creates a base for analysing how this specific model of shared sovereignty continuously shapes the constitutional foundations of Member States. This discussion will explore several aspects of the consolidation of EU supranationalism, particularly its definition as an independent legal order with a constitutional aim and a distinct identity, examining the harmonisation of fundamental rights protection and the development of EU law, especially in the context of criminal law, which is traditionally closely tied to national sovereignty. Additionally, the study will address how various crises have reinforced this supranational approach while considering contemporary challenges related to security risks, particularly in the

6 Wallace, 1999, pp. 503–521.

7 Petr, 2025.

8 Marks, Hooghe and Blank, 1996, pp. 341–378.

9 Lenaerts and Gutiérrez-Fons, 2023, pp. 1495–1511.

areas of cybersecurity and the rapid advancement of artificial intelligence. The main research questions are: What does sovereignty mean within the EU today? What elements comprise what we might refer to as ‘shared sovereignty’ and how has this concept evolved within the EU framework, particularly concerning supranationality and constitutionality? Is the concept of shared sovereignty workable? What are the most challenging aspects of the relationship between sovereignty and supranationality, and which state actors are involved? Are EU Member States truly sovereign, or has the principle of supranationality undermined their sovereignty? What are the implications of these evolutions for a more integrated EU?

2. Constitutional Foundations of Sovereignty in EU Member States

2.1. *Sovereignty in National Constitutions*

The Constitutions of Member States present a varied approach to sovereignty. Some Constitutions highlight the ‘sovereignty of the state’. For example, the Constitution of Cyprus states in Art. 1 that ‘the State of Cyprus is an independent and sovereign Republic’.¹⁰ Similarly, the Constitution of the Czech Republic¹¹ asserts in Art. 1, para. 1, that ‘the Czech Republic is a sovereign, unitary, and democratic state governed by the rule of law, founded on respect for the rights and freedoms of man and of citizens’. The Constitution of Slovakia¹² declares in Art. 1 that ‘the Slovak Republic is a sovereign, democratic state governed by the rule of law’.

Other Constitutions highlight the ‘sovereignty of the nation’. The Constitution of Ireland¹³ affirms in Art. 1 that

the Irish nation hereby affirms its inalienable, indefeasible, and sovereign right to choose its own form of government, to determine its relations with other nations, and to develop its life – political, economic, and cultural – according to its own genius and traditions.

Similarly, the Constitution of Lithuania¹⁴ states in Art. 2 that ‘the State of Lithuania shall be created by the Nation. Sovereignty shall belong to the Nation’. The

10 CODICES, 1960.

11 CODICES, 1992a.

12 CODICES, 1992c.

13 CODICES, 1937.

14 CODICES, 1992b.

Polish Constitution emphasises this as well in Art. 4, stating ‘Supreme power in the Republic of Poland shall be vested in the Nation’.¹⁵

Various Constitutions incorporate the concept of ‘popular sovereignty’ like the Constitution of Greece¹⁶ which states in Art. 1, para. 2, that ‘popular sovereignty is the foundation of government’ or establishes that sovereignty belongs to the people as the Constitution of Bulgaria¹⁷ which declares in Art. 1, para. 2, that ‘the people shall be the sole fountain of state power. The people shall exercise this power directly and through the bodies provided for in this Constitution’. Additionally, para. 3 of the same article specifies that ‘no part of the people, political party or any other organization, government institution, or individual may usurp the implementation of the sovereignty of the people’. The Constitution of Finland¹⁸ establishes in Art. 2 that ‘the powers of the State in Finland are vested in the people, who are represented by the Parliament’ and the Constitution of Latvia¹⁹ asserts in Art. 2 that ‘the sovereign power of the State of Latvia is vested in the people of Latvia’. In Italy, Art. 1, para. 2 of the Constitution²⁰ affirms that ‘sovereignty belongs to the people and is exercised by the people in the forms and within the limits of the Constitution’. The Romanian Constitution²¹ states in Art. 1, para. 1, that ‘Romania is a national, sovereign, independent, unitary, and indivisible State’ and in Art. 2, titled ‘Sovereignty’, it declares that ‘National sovereignty resides within the Romanian people, who exercise it through their representative bodies, resulting from free, periodic, and fair elections, as well as by referendum. No group or person may exercise sovereignty in their own name’. Similarly, the Constitution of Estonia²² establishes in Art. 1 that ‘Estonia is an independent and sovereign democratic republic wherein the supreme power of the state is vested in the people’. The Portuguese Constitution²³ establishes in Art. 1 that ‘Portugal is a sovereign Republic’, and in Art. 2 refers to ‘the sovereignty of the people’. The Constitution of Spain specifies in Sec. 1, para. 2 that ‘national sovereignty belongs to the Spanish people, from whom all state powers emanate’.

The Constitutions of France and Croatia are remarkable in providing detailed regulations on sovereignty and explicitly defining the concept’s meaning and content. Accordingly, in France²⁴ the first title, On Sovereignty, contains three Arts. that encompass various values typically found in separate sections of other constitutions. Art. 2 states:

15 CODICES, 1997.

16 CODICES, 1975.

17 CODICES, 1991b.

18 CODICES, 1999.

19 CODICES, 1922.

20 CODICES, 1947.

21 CODICES, 1991a.

22 CODICES, 2007.

23 CODICES, 2005.

24 CODICES, 1958.

The language of the Republic shall be French. The national emblem shall be the blue, white, and red tricolor flag. The national anthem shall be '*La Marseillaise*'. The maxim of the Republic shall be 'Liberty, Equality, Fraternity'. The principle of the Republic shall be governance of the people, by the people, and for the people.

Art. 3 emphasises that 'national sovereignty shall vest in the people, who shall exercise it through their representatives and by means of referendum. No group of people or individual may claim the exercise of sovereignty for themselves'. Art. 4 states that 'political parties and groups shall contribute to the exercise of suffrage. They shall form and carry out their activities freely while respecting the principles of national sovereignty and democracy'. As regards Croatia,²⁵ an entire chapter, titled Historical foundation, discusses that

the millennial national identity of the Croatian nation and the continuity of its statehood, confirmed by the course of its entire historical experience in various political forms and by the perpetuation and development of a state-building idea grounded on the historical right of the Croatian nation to full sovereignty,

citing all the constitutional steps in this regard. Further, the Constitution states that

the inalienable and indivisible, non-transferable and perpetual right of the Croatian nation to self-determination and state sovereignty, including the inviolable right to secession and association as the fundamental conditions for peace and stability of the international order, the Republic of Croatia is hereby established as the nation state of the Croatian nation and the state of the members of its national minorities

and 'the will of the Croatian nation and all citizens so unwaveringly expressed in free elections' to establish and shall further develop Republic of Croatia 'as a sovereign and democratic state in which equality, freedoms and the rights of man and citizen are guaranteed and secured, and economic and cultural advancement and social welfare are promoted'. According to Art. 2 of the Constitution, the sovereignty of the Republic of Croatia is 'inalienable, indivisible and non-transferable' and 'encompasses its land, rivers, lakes, canals, internal maritime waters, territorial sea, and all air space above these'. The Republic of Croatia, in accordance with international law, 'shall exercise sovereign rights and jurisdiction over the maritime zones and seabed of the Adriatic Sea outside its state territory up to the borders of neighbouring countries'. The Croatian Parliament and people

shall directly, independently, and in accordance with the Constitution and law, decide upon: the regulation of economic, legal and political matters in the Republic

25 CODICES, 2014.

of Croatia; the preservation of natural and cultural wealth and use of the same; alliances with other states. The Republic of Croatia shall conclude alliances with other states, retaining its sovereign right to decide upon the powers to be so delegated and the right to freely withdraw therefrom.

Some constitutions, like those of Belgium, Netherland or Luxembourg, do not explicitly mention the concept of sovereignty and other constitutions refer to the idea of ‘power’, specifically in relation to the people as its source. For example, the Constitution of Austria²⁶ states in Art. 1 that ‘Austria is a democratic republic. Its law emanates from the people’, and the Constitution of Hungary²⁷ states in Art. B, para. 3 that ‘the source of public power shall be the people’. The Constitution of Sweden²⁸ also emphasises this idea, declaring in Art. 1 that ‘all public power in Sweden proceeds from the people’. The Constitution of Slovenia²⁹ asserts in Art. 3 that

Slovenia is a state of all its citizens and is based on the permanent and inalienable right of the Slovenian people to self-determination. In Slovenia, supreme power is vested in the people. Citizens exercise that power directly, and most notably, at elections, and consistently with the principle of the separation of legislative, executive and judicial powers.

Similarly, the German Constitution,³⁰ in Art. 20, titled ‘Constitutional Principles – Right of Resistance’ para. (2) states that ‘all state authority is derived from the people. It shall be exercised by the people through elections and other votes, as well as through specific legislative, executive, and judicial bodies’. Para. (3) further asserts that ‘all Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedies are available’. The concept of sovereignty in the German Constitution is used in the context of regulation of the exercise of state power by the *Länder* (federal states), as expressed in Art. 30, titled ‘Sovereign Powers of the *Länder*’. This article explains that ‘except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the *Länder*’.

The Constitution of Denmark³¹ refers to the ‘exercise of sovereignty’ in Art. 9, according to which

Provisions relating to the exercising of sovereign power in the event of the minority, illness, or absence of the King shall be laid down by Statutes. Where on the vacancy

26 CODICES, 1920.

27 CODICES, 2011a.

28 CODICES, 2011b.

29 CODICES, 1991c.

30 CODICES, 1949.

31 CODICES, 1953.

of the Throne there is no Successor to the Throne, the Folketing shall elect a King and establish the future order of succession to the Throne.

This overview highlights that sovereignty is a fundamental principle enshrined in the Member States Constitutions, serving as a defining characteristic of the state. The various forms in which it is enshrined, i.e. ‘national sovereignty’, ‘popular sovereignty’, ‘state sovereignty’, cover overlapping realities, but point to distinct theoretical justifications for state power.³² Thus, sovereignty that originates from the people, often referred to as ‘popular sovereignty’, is based on Enlightenment ideas from philosophers like John Locke, Jean-Jacques Rousseau, and Thomas Hobbes. This concept asserts that ultimate political power lies with the people as a collective body within a state. Popular sovereignty emphasises collective decision-making through institutions and laws that reflect the common good. In modern democratic states, this principle is institutionalised through mechanisms such as constitutions, elections, and representation. The idea of ‘the power of the people’ highlights the actual exercise of power, going beyond a mere abstract notion of sovereignty by exploring how power is distributed and practiced within a political community. In democracies, the power of the people is exercised through representative institutions and direct forms of democratic engagement, such as referenda, exemplifying this principle in action. For example, in the works of the Drafting Commission for the Romanian Constitution, the decision to establish that sovereignty belongs to the people was justified by the assertion that

national sovereignty, which reflects the supremacy of state power and its independence, is held by the people. This sovereignty is unique, inalienable, indivisible, and imprescriptible. The people, as the sole and exclusive holders of power, exercise their rights through their representative bodies and through referendums. This approach not only emphasizes the fundamental principle of the people’s omnipotence but also aims to merge direct democracy with representative democracy.³³

In contrast, ‘national sovereignty’ centres authority within the nation as a distinct community, often defined by objective elements like origin, language, religion, culture, and the recollection of a common history. Therefore, unlike popular sovereignty, which focuses on individual citizens, national sovereignty concerns the collective identity and historical continuity of the nation. It asserts that political power should serve the interests of the nation – defined by shared language, culture, ethnicity, or history – rather than solely the individuals within it. This notion is often tied to nationalist ideologies, which view sovereignty as a means of safeguarding the nation’s interests against external or internal threats. This can create tensions with liberal democratic principles, especially when the interests of the nation are

32 Tănăsescu and Muraru, 2008, p. 20.

33 Deleanu, 1998, p. 63.

interpreted in exclusionary, populist or authoritarian ways. Some Constitutions, such as that of Romania, seem to put the sign of equality between popular sovereignty and national sovereignty as long as it states that national sovereignty belongs to the Romanian people, a view in which it can be concluded that in this case sovereignty ‘is based on both theories equally’.³⁴

This variety of approaches help to define the unique constitutional profile of each state, showing that in modern political thought, sovereignty is understood to have arisen from multiple sources, most notably the people and the nation. Each of these perspectives offers a view on where ultimate authority lies and how power is exercised within a political community. The key distinctions between sovereignty derived from the people and the power of the people. The power of the nation reveals the tensions between individual and collective authority within democratic and national frameworks, which can also be relevant to the European integration process,³⁵ reflecting the way in which Member States and their citizens refer to EU integration.

2.2. Limits of Sovereignty and the Transfer of Powers to the EU

Enshrining the principle of sovereignty regardless of its various forms, the constitutions of the Member States also refer, many of them explicitly, to the limits of sovereignty, internal or external.

Thus, regarding the internal limits, for example, the Italian Constitution³⁶ enshrining the principle that ‘sovereignty belongs to the people’ expressly mentions that it is exercised ‘in the forms and within the limits of the Constitution’. Likewise, the Portuguese Constitution refers in Art. 3 to the exercise of sovereignty³⁷ ‘in the forms provided for in the Constitution’.

The external limits of sovereignty can take various forms, but in light of our study, we will particularly focus on the relationships with the EU. Some constitutions have specific regulations regarding the EU, while others treat them similarly to international relations and their associated limitations.

With regard to the first category, we refer to the example of France, where a special title (Title XV – On the European Union) regulates the relationship with EU in detail. According to Art. 88–1 of the Constitution,

the Republic shall participate in the European Union constituted by States which have freely chosen to exercise some of their powers in common by virtue of the Treaty on European Union and of the Treaty on the Functioning of the European Union, as they result from the treaty signed in Lisbon on 13 December, 2007.

34 Tănăsescu and Muraru, 2008, p. 24.

35 Martucci, 2021, p. 126.

36 CODICES, 1947.

37 CODICES, 2005.

The Hungarian Constitution³⁸ also expressly refers to the transfer of powers to the EU in Art. E, para. 2 according to which,

with a view to participating in the European Union as a Member State and on the basis of an international treaty, Hungary may, to the extent necessary to exercise the rights and fulfil the obligations deriving from the Founding Treaties, exercise some of its competences arising from the Fundamental Law jointly with other Member States, through the institutions of the European Union. Exercise of competences under this para. shall comply with the fundamental rights and freedoms provided for in the Fundamental Law and shall not limit the inalienable right of Hungary to determine its territorial unity, population, form of government and state structure. (3) The law of the European Union may stipulate generally binding rules of conduct subject to the conditions set out in para. (2). (4) The authorisation for expressing consent to be bound by an international treaty referred to in para. (2) shall require the votes of two-thirds of all Members of Parliament.

In Art. 7 of the Constitution Slovakia³⁹ establishes that it may enter into a state union with other states upon its free decision;

the Slovak Republic may, by an international treaty ratified and promulgated in a manner laid down by law, or on the basis of such treaty, transfer the exercise of a part of its rights to the European Communities and European Union.

Lithuania has a specific profile, where from the moment of accession, the Constitutional Act on accession is an integral part of the Constitution of the Republic of Lithuania. It provides in Art. 1 that

the Republic of Lithuania as a Member State of the European Union shall share with or confer on the European Union the competences of its State institutions in the areas provided for in the founding Treaties of the European Union and to the extent that, together with the other Member States of the European Union, it would, together with other Member States of the European Union, meet its membership commitments in those areas as well as enjoy the membership rights.

In Art. 65(1) of the Constitution Malta provides that

Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Malta in conformity with full respect for human rights, generally accepted principles of international law and Malta's international

38 CODICES, 2011a.

39 CONSTITUTE, 2017.

and regional obligations in particular those assumed by the treaty of accession to the European Union signed in Athens on the 16th April, 2003.

As mentioned earlier, other constitutions define the limits of sovereignty regarding the transfer of power. For example, the Austrian Constitution specifies in Art. 9, para. 2 that this can occur through laws or state treaties:

Austrian law may allow the transfer of specific federal competences to other states or intergovernmental organisations. The same way, the activity of agents of foreign states or intergovernmental organisations inside Austria and the activity of Austrian agents abroad may be regulated. The transfer of single federal competences from other states or intergovernmental organisations to Austrian agents can be provided for.

According to Art. 34 of the Belgian Constitution ‘the exercising of specific powers can be assigned by a treaty or by a law to institutions of public international law’. The Constitution of Croatia, which, as stated above, has an extensive regulation of the issue of sovereignty, but also refers to the limitation by ‘alliances with other states (...) retaining its sovereign right to decide upon the powers to be so delegated and the right to freely withdraw therefrom’ (Art. 2) or military alliances ‘assistance in the protection of the sovereignty and independence and defence of territorial integrity may also be rendered to the Republic of Croatia by allied states in pursuit of ratified international treaties’ (Art. 7), the various international acts/treaties the states are parties to.⁴⁰ Czech Constitution⁴¹ provides in Art. 10a (1) that

The Constitution of the Czech Republic allows for the transfer of certain powers by authorities to international organisations or institutions via treaty. (2) The ratification of the treaty in the para. requires the consent of Parliament, unless the constitutional act provides that such ratification requires an approval obtained via referendum.

The German Constitution enshrines in Art. 24 – Transfer of sovereign powers – System of collective security, that

The Federation may by a law transfer sovereign powers to international organisations. Insofar as the Länder are competent to exercise state powers and to perform state functions, they may, with the consent of the Federal Government, transfer sovereign powers to trans frontier institutions in neighbouring regions. With a view to maintaining peace, the Federation may enter into a system of mutual collective security; in doing so it shall consent to such limitations upon its sovereign powers as

40 CODICES, 2014.

41 CONSTITUTE, 2002.

will bring about and secure a lasting peace in Europe and among the nations of the world (...).

According to Art. 68 of the Latvian Constitution, ‘upon entering into international agreements, Latvia, with the purpose of strengthening democracy, may delegate a part of its State institution competencies to international institutions’. Luxembourg⁴² establishes in Art. 49bis of the Constitution that the exercise of the attributions reserved by the constitution to the legislative, executive and judicial powers may be temporarily vested by the treaty in institutions of international law. Similarly, the Constitution of Poland provides in Art. 90 that

The Republic of Poland may, by virtue of international agreements, delegate to an international organization or international institution the competence of organs of State authority in relation to certain matters (...) Granting of consent for ratification of such agreement may also be passed by a nationwide referendum in accordance with the provisions of Art. 125.

According to Art. 3 A of the Constitution of Slovenia⁴³

Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organisations which are based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values. Before ratifying a treaty referred to in the preceding para., the National Assembly may call a referendum. A proposal shall pass at the referendum if a majority of voters who have cast valid votes vote in favour of such. The National Assembly is bound by the result of such referendum. If such referendum has been held, a referendum regarding the law on the ratification of the treaty concerned may not be called.⁴⁴

Other constitutions do not address the transfer of (sovereign) powers or limitation of sovereignty explicitly. Instead, they specifically regulate relationships with the EU and the obligations that arise from these relationships. For example, the Constitution of Romania, in Art. 148 - Integration into the European Union, establishes that

As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence

42 CONSTITUTE, 2009.

43 CODICES, 1989.

44 Art. 3a was added by the Constitutional Act Amending the Constitution of the Republic of Slovenia (UZ3a, 47, 68), adopted in 2003 (Official Gazette of the Republic of Slovenia, No. 24/03).

over the opposite provisions of the national laws, in compliance with the provisions of the accession act. (para. 2)

and

The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that the obligations resulting from the accession act and the provisions of para. (2) are implemented (para. 4).

It is interesting to note, however, when examining the works of the Constituent Assembly, that the proposal to introduce sovereignty within the limits of the revision of the constitution was criticised as it would raise ‘some difficulties in the EU integration process’. The question raised was ‘how to integrate into this formula of political organisation of Europe if you do not accept the priority, within the limits of the ‘European Constitution’ of the decisions of the structures at the Union level?’⁴⁵ Currently, sovereignty is not confined to the boundaries set by Art. 152 of the Romanian Constitution. However, the concept of independence has been introduced as a defining limit.

In any case, to understand the limits of sovereignty in relation to the EU, it is essential to examine how these limits are interpreted in the case law of constitutional courts. Notable cases illustrate the idea that transferring competencies from the national level to the EU level in pursuit of common goals constitutes a joint exercise of specific sovereign powers, rather than a transfer of sovereignty itself to the EU.

For example, a landmark case of the Constitutional Court of Romania (CCR) was about the initiative to revise the Constitution in 2003,⁴⁶ where the Court stated that the text proposed in Art. 145–1 (Integration into the EU) indicated that the legislator intended ‘the creation of a constitutional framework suitable for Romania’s integration into the EU’, also noting that ‘membership in this Union entails the transfer of certain powers related to state sovereignty to the EU’. According to the Court, ‘the creation of this constitutional framework is necessary’, ‘considering the strategic objectives of Romania, objectives that enjoy broad popular support’. The CCR emphasised that the new provisions ‘are intended to establish the rule according to which accession to the European Union is performed by law, adopted in the joint session of the Chamber of Deputies and the Senate, with a qualified majority of two thirds of the number of members of the Parliament’, expression of the constitutional provisions according to which ‘the Parliament is the supreme representative body of the Romanian people and the only legislative authority of the country’. The Court appreciated that

45 Iorgovan, 1998, p. 314.

46 Decision no 148/2003, Official Gazette of no. 317 13 May 2003.

the provision of accession by law aims to bring to the attention of the supreme representative body not only the importance of accession to the European Union, but also the responsibility that falls on the Romanian state, in the conditions in which it acquires the status of a member of the European Union. This responsibility stems, first of all, from the positive or negative consequences that can arise from the accession process, some stemming even from the act of ‘transferring some attributions to the community institutions’, which can call into question the issue of national sovereignty.

With reference to the problem of the transfer of some powers of Romania to the community institutions, the Court stated that

the act of accession has a double consequence, namely, on the one hand, the transfer of some powers to the community institutions, and on the other hand, the joint exercise, with the other states’ members, of the competences provided for in these treaties.

Regarding the first consequence, the CCR held that,

by the simple membership of a state to an international treaty, it diminishes its competences within the limits established by international regulation. From this first point of view, Romania’s membership in the United Nations Organization, the Council of Europe, the Organization of European Community States, the Central European Free Trade Agreement, etc. or Romania’s capacity as a party to the Convention for the Protection of Human Rights and Fundamental Freedoms or to other international treaties has the meaning of a restriction of the competences of the state authority, a relativisation of national sovereignty.

Correlating this statute with the issue of Romania’s integration into the EU, the CCR held that ‘the act of integration has the meaning of sharing the exercise of these sovereign attributes with the other component states of the international body’ but

through the acts of transfer of some attributions to the structures of the European Union, they do not acquire, through endowment, a ‘supercompetence’, a sovereignty of its own. In reality, the Member States of the European Union have decided to jointly exercise certain powers that, traditionally, belong to the field of national sovereignty.

The CCR rulings thus took into account the dynamics of the concept of sovereignty, the fact that ‘in the current era (...), the concept of national sovereignty can no longer be conceived as absolute and indivisible, without the risk of an unacceptable isolation’ and that ‘Romania’s desire to join the Euro-Atlantic structures is legitimised by the country’s interest’ and ‘sovereignty cannot be opposed to the goal of accession’. Further, based on its competencies provided by the Constitution, examining

whether the provisions related to accession to Euro-Atlantic structures affect the limits of constitutional revision, the CCR found⁴⁷ that the state's sovereignty 'does not fall under the scope of Art. 148 of the Constitution, which establishes the limits of constitutional revision'. However, the independent nature of the Romanian state does fall within this scope. From this perspective, the Court noted that 'it is obvious that accession to the Euro-Atlantic structures will be based on the independent expression of the will of the Romanian state, and is not a manifestation of the will imposed by an external entity'. Thus, the Court concluded that inserting two new Arts. into the constitution regarding EU integration does not violate any constitutional provisions concerning the limits of the amendment of the constitution.

Consequently, the CCR interprets the meaning of accession to the EU as a transfer of certain attributes related to the sovereignty to EU, limited and determined by law, as established by the supreme representative authority of the Romanian people: the Parliament. According to the CCR, vertical collaboration does not entail a transfer of sovereignty in itself, in the sense that the EU does not become sovereign. Therefore, the EU's legal framework should be understood as complementary to the national legal systems.

Similarly, in the judgments concerning compatibility with the constitution of the amendments of EU treaties by the Lisbon Treaty, the German Constitutional Court⁴⁸ pointed out that the Treaty would not lead to the formation of an EU State. Under the Lisbon Treaty, the EU would remain an association of sovereign states to which 'the principle of conferral applies:

Art. 23 of the Basic Law grants powers to take part in and develop a European Union designed as an association of sovereign states (Staatenverbund). The concept of Verbund covers a close long-term association of states which remain sovereign, a treaty-based association that exercises public authority but whose fundamental order is subject to the decision-making power of the Member States and in which the peoples, i.e. the citizens, of the Member States remain the subjects of democratic legitimation.

The Court underlined that

the special responsibility is incumbent on the legislative bodies, in addition to the Federal Government, within the context of participation which in Germany has to comply internally with the requirements under Art. 23.1 of the Basic Law (responsibility for integration) and which may be invoked in any proceedings before the Federal Constitutional Court.

⁴⁷ Ibid.

⁴⁸ Judgment of 30 June 2009 - 2 BvE 2/08.

A clear image of the dynamics of sovereignty is given by the Czech Constitutional Court,⁴⁹ in the sense in which despite the semantics, the EU *sui generis* construction needs a new perspective on sovereignty in order to achieve common goals:

The EU has advanced by far the furthest in the concept of pooled sovereignty, and today is creating an entity *sui generis*, which is difficult to classify in classical political science categories. It is more a linguistic question whether to describe the integration process as a 'loss' of part of sovereignty, or competences, or, somewhat more fittingly, as, e.g., 'lending, ceding' of part of the competence of a sovereign. It may seem paradoxical that their key expression of state sovereignty is the ability to dispose of one's sovereignty (or part of it), or to temporarily or even permanently cede certain competences. (para. 104);

The transfer of powers of the bodies of the Czech Republic to an international organisation under Art. 10a of the Constitution of the Czech Republic (the 'Constitution') cannot go so far as to violate the very essence of the republic as a democratic state governed by the rule of law, founded on respect for the rights and freedoms of human beings and of citizens, and to establish a change of the essential requirements of a democratic state governed by the rule of law (Art. 9 para. 2 in connection with Art. 1 para. 1 of the Constitution). If, on the basis of a transfer of powers, an international organisation could continue to change its powers at will, and independently of its members, i.e. if a constitutional competence (competence relating to competence) were transferred to it, this would be a transfer inconsistent with Art. 1 para. 1 and Art. 10a of the Constitution. The Treaty of Lisbon does not have such consequences in relation to the European Union, and the reviewed provisions thereof are consistent with the constitutional order of the Czech Republic.

In conclusion, when examining the constitutional foundations of sovereignty and its limits, it is evident that sovereignty remains a fundamental principle of Member States, as their own DNA. Most constitutions address the boundaries of sovereignty, reflecting its dynamics in today's complex international relations. The limitations imposed by EU membership are often explicitly outlined, with some constitutions delineating the relationship between norms in this new legal context. Even when constitutions directly reference the EU, the language generally indicates a limited and conditional transfer of powers, suggesting that states freely choose to exercise some of their powers collectively. Analysing how sovereignty and its exercise are articulated in constitutions reveals that further limitations on sovereignty may trigger mechanisms of direct democracy, such as referendums or semi-direct democracy. In these cases, laws adopted by Parliament may require qualified majorities, distinct from standard legislative procedures. These findings contribute to the understanding of the ongoing debate about expanding the EU's competencies in ways other than

amending the treaties, particularly through the jurisprudence of the CJEU, the revival of the topic of constitutional identity and the so called ‘battles’ of the Courts as challenges of the consolidation of EU supranationalism.

3. Exercise of Sovereignty in Terms of the EU Treaties. The EU Competences and Institutions

3.1. The Principle of Conferral of Competences

Over time, the evolution of the EU has created a unique institutional structure comprising as core institutions the European Commission, the European Parliament, the Council of the EU, the European Council, along with the CJEU, acting more or less in a separation of functions (similar with the classic separation of powers within the state). The European Commission acts as ‘the executive arm’, proposing legislation and managing daily affairs, the European Parliament, elected by EU citizens, shares legislative power with the Council of the EU, shaping laws, budgets, and agreements to ensure accountability, the Council of the EU represents Member States governments, collaborating with the Parliament on legislation, the European Council, consisting of heads of states or governments sets strategic priorities, and the CJEU ensures the uniform application of EU law across Member States. These institutions balance supranational and intergovernmental principles, allowing the EU to function cohesively while assuming to respect the autonomy of Member States and their equality. In such a complex constitutional environment, an essential aspect of answering the sovereignty question is understanding the distribution of competences between the Union and the Member States, as well as among the Union institutions.⁵⁰

For a long time, the competencies of the Union were not explicitly defined; instead, they were inferred from the objectives outlined in the Treaties. This ambiguity led to the emergence of the concept of vertical conflicts of competencies between the Member States and the Union. However, with the Lisbon Treaty, a framework of competencies was established, classifying areas as exclusive, shared, supporting, or in relation to the EU and its Member States. Thus, the TEU expressly provides in Art. 5 that ‘the limits of Union competences are governed by the principle of conferral’ and described this principle in the sense that

the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

50 See: Azoulai, 2014, p. 1.

Treaty on the Functioning of the EU ‘organises the functioning of the EU and determines the areas of, delimitation of, and arrangements for exercising its competences’. (Art. 1). According to Art. 2, paras. 1 and 2 TFEU,

When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.

TFEU describes categories and areas of EU competence, establishing in Art. 3 that the EU

shall have exclusive competence in the following areas: (a) customs union; (b) the establishing of the competition rules necessary for the functioning of the internal market; (c) monetary policy for the Member States whose currency is the euro; (d) the conservation of marine biological resources under the common fisheries policy; (e) common commercial policy.

The Union

shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

Art. 4 of the TFEU outlines the ‘principal areas’ of ‘shared competence between the Union and the Member States’. These areas include: the internal market, social policy, as defined in this Treaty, economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of marine biological resources; environmental protection; consumer protection; transport; trans-European networks; energy; the area of freedom, security and justice; common safety concerns in public health matters, as defined in this Treaty. Para. 3 of Art. 4 TFEU provides that

In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement

programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs,

and para. 4 provides that

In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

The Member States shall coordinate their economic policies according to Art. 5 TFEU, specific provisions applying to those Member States whose currency is the euro. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies and may take initiatives to ensure coordination of Member States' social policies. Art. 6 establishes the areas where the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, meaning protection and improvement of human health, industry, culture, tourism, education, vocational training, youth and sport, civil protection and administrative cooperation. According to Art. 4, para. 1 TEU, 'in accordance with Art. 5, competences not conferred upon the Union in the Treaties remain with the Member States'.

However, this distribution of competencies appears to address criticism⁵¹ that the scope of Community activity was so broad that few, if any, areas of national policy remained unaffected and the powers of the Community were sufficiently vague, making it difficult to determine their limits without considering how they impacted Member States' interests and the consequences of these actions for them. To facilitate its application ('the use'), the principle of conferral is complemented with two other important principles, enshrined in the same Art. 5 TEU, that is the principle of subsidiarity and proportionality.

3.2. Subsidiarity and Proportionality Protecting the Sovereignty Within the EU

According to the principle of subsidiarity,

in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and

51 Gareth, 2006, pp. 63–84.

proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

This principle was formally enshrined by the TEU, signed in 1992, but until the entry into force of the Lisbon Treaty, the assessment of the subsidiarity was in the ‘hands’ of the EU institutions, a fact that raised criticism because ‘subsidiarity may protect the right of Member States to be co-opted by the Community to do its work, but it does not protect their right to do their own work’.⁵² What the latest amendment to the treaties brings positively is the role of national Parliaments in subsidiarity control, in the sense of an *ex ante* ‘early warning’ control of legislation and thus the involvement of national parliaments in the decision-making mechanism at EU level. This appears as a crucial step in terms of the exercise of shared sovereignty, since ‘the national Parliaments have a particular interest to verify that the transferred powers are not abused, because it is they who initially gave away these powers to be shared within the EU’.⁵³

National Parliaments oversee compliance with the principle of subsidiarity according to the procedure outlined in Protocol No. 2.⁵⁴ Under the *ex ante* ‘early warning’ mechanism, any national parliament or chamber of a national parliament has eight weeks from the date a draft legislative act is forwarded to send a reasoned opinion to the Presidents of the European Parliament, the Council, and the Commission, explaining why the draft does not comply with the principle of subsidiarity. If reasoned opinions represent at least one-third of the votes allocated to national parliaments (one vote per chamber for bicameral systems and two votes for unicameral systems), the draft must be reviewed (this is referred to as a ‘yellow card’). The institution that produced the draft legislative act can choose to maintain, amend, or withdraw it, providing reasons for its decision. For draft acts related to police cooperation or judicial cooperation in criminal matters, the threshold is lower, requiring only one-quarter of the votes. In the context of the ordinary legislative procedure, if a simple majority of the votes allocated to national Parliaments challenges a proposal for a legislative act’s compliance with the principle of subsidiarity, and the Commission decides to keep its proposal, the matter is referred to the legislator (Parliament and the Council). They will then make a decision at first reading. If the legislator determines that the legislative proposal is incompatible with the principle of subsidiarity, it may reject it, requiring a majority of 55 percent of the members of the Council or a majority of the votes cast in the European Parliament (this is known as an ‘orange card’).

However, in order to effectively fulfil this role, subsidiarity control must be realised with awareness and involvement from national institutions. Besides, the scrutiny of national Parliaments under the Protocol on the application of the

52 Ibid.

53 Hettne and Langdal, 2011, pp. 350–355.

54 Protocol (No 2) on the application of the principles of subsidiarity and proportionality.

principles of subsidiarity is limited. Thus, only a draft of a legislative act, and not a non-legislative act, could be within their competence to review. Additionally, Parliaments can only comment on why they considered a draft to be inconsistent with the principle of subsidiarity and not whether a proposal appears to be incompatible with the principle of conferral. From the perspective of the recurrent debates concerning the interpretation and application of Art. 4 of the TEU concerning national identity, a noteworthy remark is that ‘there is no explicit provisions for the national parliaments to object if they believe that national identity has been violated within the meaning of Art. 4.2 of the EU Treaty’.⁵⁵ At the same time, this type of control involves two practical assessments: the sufficiency test and the added value test. The sufficiency test evaluates whether the state can adequately achieve the objectives of the proposed action, while the added value test examines whether the EU can achieve the same objectives more effectively. It has been noted⁵⁶ that measuring the impact using only quantitative parameters is often very challenging. Consequently, relying solely on qualitative assessments can limit decision-making authority, as qualitative methods may make way for political interpretation.

According to the principle of proportionality,

the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Its role ‘of guaranteeing that the European political centre does not exceed what is strictly necessary’⁵⁷ should not be underestimated either, ‘as its value is recognised by its place of honour within the principles of European law’.⁵⁸ The assessment of proportionality is also a challenging issue, because the margin of appreciation of the legislator is difficult to define.

In this regard, CJEU stated that

in the exercise of the powers conferred on it, the EU legislature must be allowed a broad discretion in areas in which its action involves political, economic and social choices and in which it is called upon to undertake complex assessments and evaluations. Thus, the criterion to be applied is not whether a measure adopted in such an area was the only or the best possible measure, since its legality can be affected only if the measure is manifestly inappropriate having regard to the objective which the

55 Hettne and Langdal, 2011, p. 352.

56 Enache and Deaconu, 2024, p. 106.

57 Ibid., p. 108.

58 Vida and Vida, 2016, p. 86.

competent institutions are seeking to pursue (judgement of 3 December 2019, Czech Republic v Parliament and Council, C-482/17, EU:C:2019:1035, para. 77).⁵⁹

Taking into account these challenges, and to apply more effectively the principle of subsidiarity and proportionality, in March 2017 the European Commission created a dedicated ‘Task Force on subsidiarity, proportionality and doing less more efficiently’, as part of the Better Regulation agenda. In 2018 the Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions was published on ‘The principles of subsidiarity and proportionality: Strengthening their role in the EU’s policymaking’,⁶⁰ in which ‘actions to strengthen the role of subsidiarity and proportionality’ are established: promoting a common understanding of subsidiarity and proportionality (the Commission intends to: incorporate the grid for assessing subsidiarity and proportionality in its better regulation guidance and use the grid to present its findings in impact assessments, evaluations and explanatory memoranda; use the grid as guidance in its communication with national Parliaments; make more visible the feedback it receives about its proposals from local and regional authorities to the European Parliament and the Council in each legislative procedure); enabling national Parliaments to scrutinise more effectively (sense in which the term of response is discussed and the idea to

give greater visibility to the views of national Parliaments’ reasoned opinions by providing aggregated responses, where relevant, and targeting their concerns and identifying proposals raising most comments in its annual reports on subsidiarity and Protocol No. 2 of the Treaties’), more active involvement of local and regional authorities, improving assessment and presentation of relevant impacts, evaluating existing legislation from the perspective of subsidiarity.

Further, to effectively fulfil its intended role and ensure genuine coherence between the Constitutions of Member States and EU treaties regarding transferred powers, it is essential to coordinate and clarify the performance of subsidiarity controls by national Parliaments.

3.3. More Competences for the EU?

Although there may seem to be a division of competences outlined in the Treaties, it is not simple to define the EU’s competence *ratione materiae*. To determine the legal basis that defines the scope of the competence conferred on the EU in a specific area

59 Case C-626/18, ACTION for annulment under Art. 263 TFEU, Republic of Poland, para. 95.

60 COM/2018/703 final.

and to achieve its stated objective, a systematic examination of the Treaty provisions is necessary. This analysis should also take into account the case law of the CJEU.

In the light of this, legal literature distinguishes competences ‘conferred expressly or impliedly by the Treaties’.⁶¹ As concerns the ‘implied competences’, it was observed that

some Treaty provisions do not expressly provide for all the necessary means in order to attain the objectives of the competence *ratione materiae* in question. In such cases, the Court of Justice has recognised that it is implicit in the Union competence that additional means may be used in order to achieve the objectives.⁶²

Thus, examining the jurisprudence of the CJEU it was found that the Union is entitled to rely on an implied competence when it is necessary to ensure the practical effect of the Union competence at issue.⁶³ For example in the case C-176/03, the CJEU found that

while it is true that, as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community’s competence, this does not, however, prevent the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, from taking measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective. That competence of the Community legislature in relation to the implementation of environmental policy cannot be called into question by the fact that Arts. 135 EC and 280(4) EC reserve to the Member States, in the spheres of customs cooperation and the protection of the Community’s financial interests respectively, the application of national criminal law and the administration of justice.

Also noting that the list of exclusive and shared competences enshrined in the TFEU is not exhaustive and limiting,⁶⁴ the doctrine has argued that the EU will reserve the right to annex new areas as long as the provisions of the former Arts. 95 and 308 TEC (current Arts. 114 and 352 TFEU) exist. The legal literature also brought to the attention the exercise of the exclusive competences, provided by Art. 3 TFEU, which remains free from further influences, since in those contexts a unitary action is considered to be necessary.⁶⁵ Other authors⁶⁶ discuss the way in which the EU competences can be interpreted extensively by the ‘appetite’ of the various Union

61 Lenaerts and Nuffel, 2021, p. 90.

62 Ibid., p. 91.

63 C-295/90; *ibid.*, p. 90.

64 Dumitraşcu, 2012, p. 52.; Enache and Deaconu, 2024, pp. 102–129.

65 Di Stasi, 2020, pp. 131–154.

66 Lupu, 2023, pp. 148–159.

structures to acquire more competencies, an evolution whose engine was especially the Commission and the CJEU by introducing new areas of regulation into discussion as *'a fait accompli'*.⁶⁷ The establishment of competencies through the Lisbon Treaty represented a significant transfer of competencies from individual states to the European Union in areas such as monetary policy, agriculture, and transport. However, in the case of new areas like artificial intelligence, the states themselves did not have sufficient time to develop regulations. In these cases we are no longer talking about a transfer from the Member States, but rather about a unilateral assumption by the Union. The lack of regulations and, above all, the lack of vision of the majority of national governments regarding regulation in new areas of social relations granted the EU to take the first steps, implementing the principle of 'occupying the field' specific to federal constructions.⁶⁸ In the light of this, the question 'until which point can we envisage the exercise of sovereign competences by a union of states, in some way *sui generis*, as it is the EU 'outside' the state body'?'⁶⁹ remains an interesting issue to analyse based on the continuous dynamics of EU relationships.

4. Transformation of Sovereignty Within the EU: Reshaped but Still Present

4.1. *'Shared Sovereignty' and Related Concepts*

The overview of the regulations outlined in the constitutions of the Member States and the EU treaties reveals a normative framework that is continuously evolving, also influenced by the interpretation in institutional practices. This evolution follows the general dynamics of sovereignty in the modern world, where the concept is necessarily connected with the state's willingness and will to participate in venues of international cooperation, and to share its competences with other subjects of the international community,⁷⁰ but has its own specifics. The complex relationship between 'State sovereignty' and the supremacy of EU law – law that does not originate from any state – can be summarised by a thought-provoking question: how can EU Member States be considered sovereign when EU law automatically becomes part of their internal legal system upon enactment, without the need for any ratification? Furthermore, in such circumstances, do the Member States remain sovereign states? Due to this intriguing specific, scholars have endeavoured to find an appropriate way

67 For a comparative analysis see Sagar, 2013, pp. 251–274.

68 Sagar, 2013, pp. 251–274.

69 Di Stasi, 2020, pp. 131–154.

70 Hamulak, 2016, p. 60.

to describe the relationships of sovereignty within the EU and the legal order that emerges from it.

In legal literature and political studies, the process by which certain powers, traditionally viewed as sovereign, are exercised jointly at a supranational level within the EU is often referred to as ‘shared sovereignty’. This concept generally involves⁷¹ the engagement of external actors in some of the domestic authority structures of states for an indefinite period of time and implies⁷² some pre-conditions: there must be international sovereignty, the agreement must be voluntary, the arrangement must not ask the third party to contribute large resources. The states cede their autonomy by pooling their resources into a multilateral structure also limited to specific issue areas and become bound by adherence to international norms developed as a result of this collective action or cooperation.⁷³ The essence of the ‘shared sovereignty’ is the decision of the state of pooling sovereign rights/competences. It was noted⁷⁴ (distinguishing in relation to the delegation of competence) that in the course of pooling sovereignty, a state transfers authority to a collective decision-making body, to set a policy in a given area. This transfer of authority can either be conditional and revocable, or unconditional, and the State may retain residual rights of control, or opt not to; in pooling sovereignty, states are making trade-offs between a unilateral policy that aligns more closely with their individual preferences and a collective policy that is more effective in addressing common issues. In other words, states are compromising to some extent on their ideal policies in order to adopt solutions that actually ‘work’ and resolve the problems they face. In relation to the specificity of the EU, there are diverse theoretical proposals of reconciliation of national sovereignty with European integration, such as the theories of constitutional pluralism, multi-level constitutionalism or the idea of constitutional tolerance.⁷⁵

Thus, regarding the theory of constitutional pluralism, there is a rich literature exploring the construction of Neil MacCormick that starts from the premise of the existence of a plurality of legal orders, and proposes pluralistic and non-monistic, interactive and non-hierarchical as the most appropriate method of analysis. According to this theory, the ordering of the Member States and the ordering of the EU are distinct but partially overlapping and interactive, and between them the hierarchical relationships do not determine a general superiority of one system over the other.⁷⁶ In relation to the premises of pluralism, the type of sovereignty that would be appropriate for the EU order, as well as all the multidimensional legal orders, is called ‘late sovereignty’, as opposed to ‘early sovereignty’, which belongs to traditional state political organisations.⁷⁷

71 Krasner, 2005, pp. 69–83.

72 Ibid.

73 Mamudu and Studlar, 2009, pp. 73–97.

74 Lake, 2017, pp. 219–237.

75 See Bifulco and Nato, 2020.

76 Menendez, 2011; Borowski, 2011, pp. 185–209.

77 Mac Amhlaigh and Cormac, 2011.

The theory of multilevel constitutionalism claims that the EU would constitute a composed constitutional system ‘from a national level and from a supranational level of legitimate public power, which influence each other, involving the individual citizens or other subjects of law in different dimensions’.⁷⁸ In terms of sovereignty, this European construction determines the necessary rethinking of the relationship between the national authority and the supranational authority. Answering to the fear that ‘this empowerment of common institutions at the European level is often understood as a loss of autonomy and sovereignty for the state, as well as a threat to democracy and the rights of individuals’, theoreticians of the multilevel constitutionalism⁷⁹ underlined that

one must remember that the principle of subsidiarity, in a broader meaning, governs not only the attribution of these powers to the Union, but it governs particularly their exercise by its institutions. This means that European powers are limited to what the MS cannot effectively achieve individually. Thus, the creation of European institutions to implement such policies results not in a loss of sovereignty for a Member State’s citizens, but rather in a gain in the form of new opportunities available to promote their interests;

yet this is not national sovereignty in the traditional sense, but another kind of sovereignty: it is not so much autonomy or autarchy (which, thanks to globalisation pressures and dependencies, does not exist anymore), but rather the ‘capacity to participate in transgovernmental networks of all types of sovereignty as participation’. Multilevel constitutionalism considers ‘not only supranational constitutional processes such as European integration, but also understands such processes as part of, and in close relation to, constitutional development at the national level’.⁸⁰ It implies national constitutions change with the progress of supranational constitutional arrangements, ‘as much as the states themselves change their face, political structure, and nature as a result of their integration in supranational organizations’.

Starting with the idea that Europe may have a constitutional legal order, but an absence of traditional constitutional legitimation, Joseph Weiler argues that Europe has not approved its constitutional order in a way that grants it the legitimacy needed to meet the demands and autonomy necessary to transcend state authority. He believes that Europe has already found its ‘federal way’, even though this path is not anchored in a state-like constitution. Instead, it is based on the principle of ‘constitutional tolerance’. Weiler asserts⁸¹ that

78 Bifulco and Nato, 2020.

79 Pernice, 2009, pp. 349–407, also with the reference, as regards the concept of ‘cooperative sovereignty’, to Besson, 2004.

80 Ibid.

81 Weiler, 2000, pp. 1–16.

Europe represents this alternative, civilizing strategy of dealing with the ‘other’. This is, more than peace and prosperity, Europe’s true soul. The constitutional expression of this strategy is the principle of Constitutional Tolerance and it is encapsulated in that most basic articulation of its meta-political objective in the Preamble to the EC Treaty.

To lay the foundations of an ever closer union among the peoples of Europe, Weiler showed that

no matter how close the Union, it is to remain among distinct peoples. An ever closer union could be achieved by an amalgam of distinct peoples into one nation – which is both the ideal and/or the de facto experience of most federal and non-federal states. The rejection by Europe of that One Nation ideal or destiny is usually understood one as intended to preserve the rich diversity – cultural and other – of the distinct European peoples as well as to respect their political self-determination. But the European choice has an even deeper spiritual meaning. An ever closer union is altogether easier if differences among the components are eliminated, if they come to resemble each other, if they aspire to become one.

Here – the opinion of Weiler resides on the Principle of Constitutional Tolerance:

inevitably, I define my distinct identity by a boundary which differentiates me from those who are unlike me. My continued existence as a distinct identity depends, ontologically, on that boundary and, psychologically and sociologically, on preserving that sentiment of otherness. The call to bond with those very others in an ever closer union demands an internalization (individual and societal) of a very high degree of toleration.

Beyond theoretical analyses and semantic nuances, what is important is whether this one-of-a-kind ‘*modus vivendi*’ ensures a coexistence of states in the spirit of the vision that led to the foundation of the EU. From this perspective, the challenges regarding sovereignty in the EU focus on balancing national autonomy with supra-national governance, highlighting the need for ongoing negotiation and adjustment of sovereignty concepts to align with the evolving framework of the EU. As we mentioned before, the continuous adjustments in the exercise of sovereignty have sparked debates and challenges, particularly regarding the expansion of EU competencies through informal means rather than through an explicit agreement among the states to modify the foundational treaties, since this ongoing process gradually implicitly restricts the competence of Member States. Considering the various crises that the EU has experienced over time, their effects can provide insights into the feasibility of sharing sovereignty within the EU.

4.2. The Dynamics of ‘Shared’ Sovereignty in the EU: Achievements and Vulnerabilities

4.2.1. The Autonomy of EU Legal Order, ‘A Shield’ and ‘A Sword’.⁸² The Identity of the EU as a Common Legal Order

In an Art. on the crisis of the European rule of law, Stefan Braum suggestively pointed out that ‘Europe is in a permanent mode of crisis’,⁸³ showing that global problems – such as the economy, migration, and crime – are overwhelming Europe, which seems unable to act decisively and lacks true sovereignty; this situation fosters a desire for traditional state power and strong politics. Paradoxically (or not), the solution lay in embracing Europe more and more fully to protect the democracy and the rule of law. Practically, these crises seem to have functioned as a kind of testing and strengthening of the Union’s immune system, contributing to the building of what the CJEU President called in a recent article.⁸⁴ the EU’s ‘shield’ and ‘sword’, that is its own identity as a common legal order.

Thus, from the early days of European construction to the present, the legal framework of the EU has developed into a well-organised and structured set of legal rules. This framework is based on the foundational treaties and their subsequent amendments, but it has also been significantly shaped by the integration of principles that have been established as essential constitutional foundations, largely through the actions of the CJEU, beginning with landmark rulings in cases such as *Van Gend & Loos v. Nederlandse Administratie der belastingen* (Case C 26/62), *Flaminio Costa v. E.N.E.L.* (Case C 6/64), and *Amministrazione delle Finanze dello Stato v. Simmenthal SA* (Case C 106/77). These decisions have significantly contributed to the constitutional framework of the EU as well as to the preliminary ruling mechanism in itself, facilitating legal, economic, and political integration. With the entry into force of the Lisbon Treaty, the EU no longer acts through ‘community law measures and non-Community measures’ but the measures on ‘Union law’.⁸⁵

This way, the autonomy of EU law itself was built, an idea expressed by the CJEU in its Opinion 2/13⁸⁶ as follows:

the founding treaties of the EU, unlike ordinary international treaties, established a new legal order, possessing its own institutions, for the benefit of which the Member States thereof have limited their sovereign rights, in ever wider fields, and the subjects of which comprise not only those States but also their nationals (see, in

⁸² Lenaerts and Gutiérrez-Fons, 2023, pp. 1495–1511.

⁸³ Braum, 2018, pp. 429–431.

⁸⁴ Lenaerts and Gutiérrez-Fons, 2023, pp. 1495–1511.

⁸⁵ Lenaerts and Nuffel, 2021, p. 45.

⁸⁶ Opinion 2/13 of the Court (Full Court), 18 December 2014

particular, judgments in *Van Gend & Loos*, 26/62, EU:C:1963:1, p. 12, and *Costa*, 6/64, EU:C:1964:66, p. 593, and Opinion 1/09, EU:C:2011:123, para. 65);⁸⁷

the EU has a new kind of legal order, the nature of which is peculiar to the EU, its own constitutional framework and founding principles, a particularly sophisticated institutional structure and a full set of legal rules to ensure its operation.⁸⁸

As explained from a normative perspective, the autonomy of EU law reflects the idea that the Treaties lay down a ‘constitutional order’, given that they have established ‘an autonomous, self-sufficient and coherent system of norms’, meaning a ‘constitutional order’ that has to be distinguished from ordinary international law’.⁸⁹

A crucial step in this construction in terms of the exercise of shared sovereignty was the affirmation of the own identity of the EU. One of the ‘catalysts’ of such development was the revival of the discussion concerning constitutional identity, promoted by Member States’ constitutional courts as a limit that the EU cannot exceed in exercising its competencies (based on the notion of ‘national identity’, enshrined in Art. 4(2) TEU). In order to balance different approaches and debates on constitutional identity, it is important to take into account the respect of the constitutional identity recognised in Art. 4 of the TEU, while being aware of the rise of populist and extremist movements in Europe, often exploiting the concept of constitutional identity to gain political support, rather than to promote genuine democratic values. This ‘mix’ and afferent crises lead the CJEU to construct a ‘doctrine’ of the constitutional identity based on its interpretation of Art. 4 TEU⁹⁰ and even a concept of EU identity as a common legal order. Thus, in the so-called Conditionality Judgments, the Court of Justice provided some valuable insights into what the ‘identity of the EU’ is:

Art. 2 TEU is not merely a statement of policy guidelines or intentions, but contains values which [...] are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States. Even though, as is apparent from Art. 4(2) TEU, the European Union respects the national identities of the Member States, inherent in their fundamental structures, political and constitutional, such that those States enjoy a certain degree of discretion in implementing the principles of the rule of law, it in no way follows that obligation as to the result to be achieved may vary from one Member State to another. Whilst they have separate national identities, inherent in their fundamental structures, political and constitutional, which the European Union respects, the Member States adhere to a concept

⁸⁷ Opinion 2/13 of the Court (Full Court), 18 December 2014, para. 157.

⁸⁸ Opinion 2/13 of the Court (Full Court), 18 December 2014, para. 158.

⁸⁹ Lenaerts, 2019, p. 10.

⁹⁰ Faraguna and Drinóczi, 2022.

of ‘the rule of law’ which they share, as a value common to their own constitutional traditions, and which they have undertaken to respect at all times.⁹¹

Thus, the CJEU proceeded to stress the cardinal importance of the values on which the EU is founded: before accession, a candidate state for EU membership must align its own constitution and national identity with those values and once accession takes place, it is therefore presumed that the new Member State respects the values on which the EU is founded and thus may join a legal structure based on the principle of mutual trust. In the light of that principle, each Member State is equally committed to upholding those values and in so doing, to respecting EU law provisions that implement them.⁹²

It was correctly concluded in this regard that ‘according to this normative conception of constitutional identity, the ‘particular’ aspect of constitutional identity could not contradict its ‘general’ aspect’.⁹³ Declaring the identity of the EU as the ‘bedrock’ on which to build ‘the process of creating an ever-closer union among the peoples of Europe’⁹⁴ compels the involved partners, including Member States and their institutions, to seek standardised, harmonised solutions, ‘allowing room for openness towards the laws of the Member States and international law’.⁹⁵ Regarding how much ‘room’ is allowed, it should be noted that the CJEU established its exclusive jurisdiction to provide the definitive interpretation of Art. 4 TEU, stating, for example in the case C-430/21 *RS*, that

If a constitutional court of a Member State considers that a provision of secondary EU law, as interpreted by the Court, infringes the obligation to respect the national identity of that Member State, that constitutional court must stay the proceedings and make a reference to the Court for a preliminary ruling under Art. 267 TFEU, in order to assess the validity of that provision in the light of Art. 4(2) TEU, the Court alone having jurisdiction to declare an EU act invalid (see, to that effect, judgements of 22 October 1987, *Foto-Frost*, 314/85, EU:C:1987:452, para. 20, and of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, para. 96).⁹⁶

In addition, since, as has been pointed out in para. 52 above, the Court has exclusive jurisdiction to provide the definitive interpretation of EU law, the constitutional court of a Member State cannot, on the basis of its own interpretation of provisions of EU law, including Art. 267 TFEU, validly hold that the Court has delivered a judgement

91 Judgments in Cases C-156/21 *Hungary v Parliament and Council* and C-157/21 *Poland v Parliament and Council*.

92 Lenaerts and Gutiérrez-Fons, 2023, pp. 1495–1511.

93 Faraguna and Drinóczi, 2022.

94 Lenaerts and Gutiérrez-Fons, 2023, pp. 1495–1511.

95 Ibid.

96 C-430/21 *RS*, para. 71.

exceeding its jurisdiction and, therefore, refuse to give effect to a preliminary ruling from the Court.⁹⁷

Although this evolution proves the resilience of EU construction faced with populist and illiberal movements, the constitutional identity issue remains a point of tension⁹⁸ in terms of shared sovereignty, at least between courts within the EU, taking into account that although the treaties discuss national identity rather than sovereignty, the constitutional courts' focus on constitutional identity is based on a specific understanding of sovereignty (supremacy of the national constitutions).⁹⁹

4.2.2. *Uniform Standards of Protection of Human Rights*

The need for the effective protection of fundamental rights has long fuelled the opposition of constitutional courts to the action of EU institutions, an opposition based, in essence, on the lack of a catalogue of fundamental rights in the EU. There are well-known examples in this regard, such as the decisions of the German Federal Constitutional Court in the so-called 'Solange' cases.¹⁰⁰ However, with the Lisbon Treaty, the EU now has its own binding catalogue of human rights, as the EU Charter of Fundamental Rights holds the same legal status as the treaties. Now, the points of tension in the field have moved to other coordinates, which are inter-linked: the EU's accession to the Council of Europe's Convention for the Protection of Fundamental Rights and the ensuring of uniform standards for the protection of fundamental rights in the EU.

The issue at hand lies in the number and variety of instruments available for the protection of human rights in Europe. Citizens and legal practitioners must navigate various binding texts – both national and international – that may need to be applied simultaneously, each with its own specific nuances, structures, terminology, and qualifications. As a result, the interpretation and application of this extensive array of regulations and case law present significant challenges in establishing uniform standards for the protection of fundamental rights within the EU. This complexity is noteworthy; however, for the purpose of our study, we find it particularly interesting to examine the role of the CJEU in developing a methodology for applying these instruments and standards of protection and the actions of some constitutional courts, such as the Romanian one, which seeks to align its national constitution with the standards established by the CJEU.

Thus, in prominent cases like *Melloni*¹⁰¹ and *Akerberg Fransson*¹⁰² the CJEU has created its own 'doctrine' of standards of protection of human rights within the

97 C-430/21 RS, para. 72.

98 For a comprehensive approach of the topic see Zs. Varga and Berkes, 2023.

99 Cloots, 2016, pp. 82–98.

100 Hilpold, 2016.

101 *Stefano Melloni v Ministerio Fiscal*, Case C-399/11.

102 *Case C-617/10, Åklagaren v Hans Åkerberg Fransson*.

EU,¹⁰³ establishing the supremacy of the Charter of Fundamental Rights over national (constitutional) law and the ECHR. It essentially explained by the President of the Court as follows:

where EU law allows room for such a plurality, national standards must comply with three cumulative conditions. First, those standards must comply with the level of protection guaranteed by the Charter. Second, national standards may only be applied where the EU has not adopted a uniform level of protection which, needless to say, must itself comply with the Charter. Last but not least, a higher level of protection provided for by national law must not jeopardise the objectives pursued by EU law;¹⁰⁴

it follows from these two examples that neither European unity nor national diversity is absolute, as they must both comply with the level of protection provided for by the Charter. In addition, national diversity must not jeopardise the EU integration project, since it must take due account of the primacy, unity and effectiveness of EU law.¹⁰⁵

However, the CJEU's 'doctrine' regarding human rights standards prompts a re-evaluation of sovereignty since the Member State must align with uniform standards of human rights protection within the EU, even 'prohibiting a national constitutional court from providing for a higher level of fundamental rights protection because that would infringe the primacy and uniformity of Union law'.¹⁰⁶ The outcome looks more problematic taking into account that even the TEU establishes in Art. 6, para. 2 that 'the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties', the accession is still far away.

It is interesting to note in this regard approaches like those embraced by the Romanian Constitutional Court in terms of interpreting the limits of the revision of the Constitution (the core of Romanian Constitutional identity)¹⁰⁷ in order to align the national law with supranational standards of human rights. Thus, according to Art. 152(2) of the Romanian Constitution, 'no revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or of the safeguards thereof'. In applying the provisions providing the international connection of the Romanian Constitution – specifically Art. 20, which stipulates that the Constitution should be interpreted in accordance with international human rights treaties to which Romania is a party, prioritising the most favourable provisions, and Art. 148, which establishes the priority of EU law over national law, the CCR created the 'doctrine' of the

103 Lavranos, 2013, pp. 133–141.

104 Lenaerts, 2019, p. 10.

105 Ibid.

106 Lavranos, 2013, pp. 133–141.

107 Toader and Safta, 2023, pp. 271–352.

amendment of the Constitution only in the sense of the ‘upward protection’ of human rights. According to Decision No. 80/2014, para. 65 and Decision No. 465/2019, para. 29, the protection of these rights and freedoms must always progress in an upward direction. Since the CCR has referenced both the Convention for the Protection of Fundamental Rights and Freedoms, and the Charter of Fundamental Rights of the EU, along with the jurisprudence of the ECtHR and the CJEU. The CJEU has already developed its own doctrine that prohibits a higher level of protection than what is provided by the Charta. Therefore, it may be challenging to define what is meant by this upward protection. From this perspective, it is essential to have a coherence at the supranational level to align the national Constitution (which means sovereignty and identity) in itself.

The few aspects mentioned are meant to highlight that the protection of fundamental rights remains a vulnerability within the shared sovereignty in the EU, and achieving uniform protection standards is still a distant goal and a challenge for the Member States and the Union itself.

4.2.3. Building the European Criminal Law

It is often said that whoever punishes is sovereign, and those who punish fairly – or legitimately – are considered sovereign.¹⁰⁸ EU proves that these statements should be reconsidered since now we have a part of this power in the competence of EU institutions.

Thus, the Maastricht Treaty established the EU’s three pillars, each with distinct legislative powers. While a genuine European criminal law did not emerge, the goal was to create an area of freedom, security, and justice without frontiers. The Amsterdam Treaty introduced the Framework Decision for cooperation in criminal matters, requiring Member States to meet specific objectives while maintaining some flexibility. This harmonisation of criminal legislation advanced with the Lisbon Treaty which ended the three-pillar structure and established a unitary legislative approach. Now, the area of freedom, security, and justice is a shared competence between the EU and its Member States. Chapter 4 of the TFEU focuses on cooperation in criminal matters. Art. 82 states that the European Parliament and the Council may adopt directives to approximate minimum rules concerning criminal procedures that have a cross-border dimension. This includes aspects such as the mutual admissibility of evidence, the rights of individuals involved in these procedures, and the rights of victims. Other elements may also fall under this category if they are unanimously identified by the Council and subsequently approved by the European Parliament. Moreover, Art. 83 grants the EU legislative competence in the area of substantive criminal law. This article allows the Parliament and the Council to establish minimum rules for defining offences and sanctions in serious crimes that have a cross-border impact. While there is a non-exhaustive list of offences for

108 Braum, 2021, pp. 14–22.

the EU to address – such as terrorism, human trafficking, drug trafficking, and corruption – the Council can also adopt a unanimous decision, with the European Parliament’s approval, to extend these substantive criminal law powers to other relevant offences that meet the criteria.¹⁰⁹ At the same time, the evolution of principles such as mutual recognition, mutual trust, constitutional loyalty, and effective protection of the EU’s financial interests has consistently influenced national legal systems by aligning them with common standards for the protection of fundamental rights, ensuring a uniform interpretation of concepts that have acquired an autonomous meaning in EU law, and eliminating the application of domestic criminal laws that conflict with EU law. The establishment of a European approach to criminal law in a broad sense is also evident in the creation of various European bodies that operate at different stages of the criminal justice process, working to ensure coordination in investigations, prosecutions, and the enforcement of decisions. Europol, Eurojust, and the European Public Prosecutor’s Office have brought, at the supranational level, an important task that traditionally belongs to a sovereign state. As criminal law is central to national sovereignty, the question of whether any aspects of criminal law should fall under the exclusive competence of the EU is contested. Despite these contestations and the significant challenges and tensions arising from the EU’s involvement in criminal law,¹¹⁰ developments in this area continue. Global crises like the Russian aggression against Ukraine¹¹¹ serve as a catalyst for new measures in the field like, for example, adoption of the Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673. According to the Directive, the Member States have to establish ‘minimum rules concerning the definition of criminal offences and penalties’ for the violation of Union restrictive measures. This aims to close existing legal loopholes and enhance the deterrent effect against violating EU sanctions. Additionally, the rules will include improved provisions for freezing and confiscating assets and proceeds that are subject to EU sanctions and will strengthen cooperation and communication among the competent authorities within each Member State and between Member States across the Union.

However, a uniform approach to criminal regulations, sanctions, and penalties across Europe poses both a vulnerability and a challenge to shared sovereignty, as well as to the interpretation of criminal regulations in relation to human rights. For example, the degree to which constitutional courts examine the constitutional foundations of criminal provisions varies significantly and is influenced by national traditions. This variation may help us better understand the conflicts of the national

109 See Stewart, 2024.

110 Craig and de Burca, 2017, p. 1113.

111 See European Commission, 2024a.

courts and the CJEU in cases like *Tarico*,¹¹² *MAS*,¹¹³ and *Lin*, where in the centre of the discussions was the approach to the limitation period for criminal liability versus the imperative of protection of financial interest of the EU and the idea that protecting the Union's Financial Interests Prevails over national standards of fundamental rights.¹¹⁴ Nevertheless, there is an increasing constitutionalist approach to issues of criminal law, transforming this field into a 'laboratory' for constitutional law. This shift focuses on advancing fundamental constitutional questions and leads to a new understanding of sovereignty.¹¹⁵

4.2.4. *The Rule of Law Toolbox. The Power of Soft Law*

The various crises within the EU have determined the identification of adequate responses. The most appropriate 'key' has been provided by the concept and requirements of the rule of law,¹¹⁶ the 'heart' of the common values around which the EU was built. The comprehensive and continuously evolving meaning of this concept has the ability and versatility necessary to substantiate and apply a diversified set of measures designed to ensure a framework for joint development. In this generous framework we can discuss the legal approach and enforceability of values enshrined in the treaties, starting from the premise that their upholding is a shared responsibility of all EU institutions and all the Member States.

112 Case C-105/14: The CJEU decided that 'national rule in relation to the limitation periods for criminal offences such as that laid down by the last subparagraph of Art. 160 of the Penal Code, as amended by Law No 251 of 5 December 2005, read in conjunction with Art. 161 of that Code – which provided, at the material time in the main proceedings, that the interruption of criminal proceedings concerning serious fraud in relation to value added tax had the effect of extending the limitation period by only a quarter of its initial duration – is liable to have an adverse effect on the fulfilment of the Member States' obligations under Art. 325(1) and (2) TFEU if that national rule prevents the imposition of effective and dissuasive penalties in a significant number of cases of serious fraud affecting the financial interests of the European Union, or provides for longer limitation periods in respect of cases of fraud affecting the financial interests of the Member State concerned than in respect of those affecting the financial interests of the European Union, which is for the national court to verify. The national court must give full effect to Art. 325(1) and (2) TFEU, if need be by disapplying the provisions of national law the effect of which would be to prevent the Member State concerned from fulfilling its obligations under Art. 325(1) and (2) TFEU'.

113 Case C-42/17: The CJEU decided that 'Art. 325(1) and (2) TFEU must be interpreted as requiring the national court, in criminal proceedings for infringements relating to value added tax, to disapply national provisions on limitation, forming part of national substantive law, which prevent the application of effective and deterrent criminal penalties in a significant number of cases of serious fraud affecting the financial interests of the European Union, or which lay down shorter limitation periods for cases of serious fraud affecting those interests than for those affecting the financial interests of the Member State concerned, unless that disapplication entails a breach of the principle that offences and penalties must be defined by law because of the lack of precision of the applicable law or because of the retroactive application of legislation imposing conditions of criminal liability stricter than those in force at the time the infringement was committed'.

114 Haupt, 2023.

115 See Stewart, 2024.

116 See Bóka, 2024.

Thus, under the broad description of a ‘Rule of Law Toolbox’, various instruments have been developed to address specific situations with the goal of promoting, preventing, or responding to rule of law issues. The most comprehensive is the Rule of Law Mechanism, which encompasses all Member States and includes annual reporting by the European Commission. In July 2019, the Commission adopted its Communication on Strengthening the rule of law within the Union – a blueprint for action, setting out some of the features of such a mechanism,¹¹⁷ designed as a preventive tool that provides a framework for continuous monitoring, verification, and evaluation of Member States, aiming to follow significant developments – both positive and negative – related to the rule of law. The mechanism prioritises four essential pillars: the justice system, the anti-corruption framework, media pluralism, and other institutional issues related to checks and balances. In 2020, the Commission issued its first report, including recommendations for all Member States. From the perspective of this study’s subject, we wish to emphasise a key positive aspect that the mechanism referred to provides, as well as a problem or vulnerability that tends to grow within the EU’s regulatory framework.

As regards the positive aspect, the Rule of Law mechanism is remarkable in terms of the equality among Member States and their will to promote the same values within the EU, satisfying, at least to a point, the approach in terms of equal partnership in the EU. The application of similar mechanisms to some states only (such as the Mechanism of Cooperation and Verification i.e. CVM in Bulgaria and Romania) has brought the feeling of frustration of unequal treatment, fuelling the resentment of the citizens and the populist discourse regarding ‘second-class citizens’. Other instruments and recent developments have also had positive significance in terms of equality, like the unanimous decision by the Council to lift internal land border controls with Romania and Bulgaria as of 1 January 2025,¹¹⁸ characterised as

the important step completes the full entry of both countries into the Schengen area. This not only strengthens the Schengen area but it will further strengthen the internal market, increase travel, trade and tourism. A robust Schengen area reinforces the EU’s unity and makes the EU stronger at a global scale.

In terms of vulnerabilities, we should carefully analyse the increasing amount and power of ‘soft law’ within the EU. Although it is generally characterised as not granting the EU any new powers to enforce common values and as a purely political instrument, largely depending on the willingness of the Member States to cooperate, the implementation of the Rule of law mechanism (meaning the ‘recommendations’ issued by the Commission) benefits from the groundwork laid by previous similar mechanisms. With reference to the CVM, the CJEU has incorporated

¹¹⁷ COM(2019) 343 final.

¹¹⁸ See European Commission, 2024b.

these recommendations (called ‘soft law norms’) into the framework of sincere cooperation, thus giving them a specific strength and enforceability. In regard to this, it is important to note that the preliminary referrals addressed to the CJEU by the Romanian courts of law on the issue of whether and to what extent the requirements and recommendations formulated in the reports of the European Commission adopted pursuant to Decision 2006/928 establishing the CVM are binding on Romania. In its response, in Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19 *Asociația ‘Forumul Judecătorilor din România’ and Others*, the CJEU invoked the principle of sincere cooperation, establishing that the benchmarks established by the decision to establish the CVM

are intended to ensure that this Member State complies with the value of the rule of law, set out in Art. 2 TEU, and are binding on it, in the sense that the latter is required to take the appropriate measures for the purposes of meeting those benchmarks, taking due account, under the principle of sincere cooperation laid down in Art. 4(3) TEU, of the reports drawn up by the Commission on the basis of Decision 2006/928, and in particular the recommendations made in those reports.

The Rule of Law Report and recommendations addressed to all Member States every year can now be approached based on these coordinates and the same disputes surrounding them. The soft law might be good¹¹⁹ in terms of influence and harmonise areas where binding regulations have not yet been adopted or are not able to fully regulate or effectively reach, but this raises questions about whether they truly reflect the intent of the Member States in accordance with the competencies outlined in the treaties.

4.2.5. *‘Battles’ of the Courts, the Independence of Judges and the Constitutional Review Within the EU*

In each of the previous sections, we have referred in one way or another to the constitutional courts and their role as guardians of the Constitutions. Given the enshrinement of national sovereignty in the constitutions of the Member States, the role of the constitutional courts is that of guarantors of national sovereignty as well. This is an important perspective for analysis and reflection on the sometimes tense moments of ‘negotiation’ between the constitutional courts and the CJEU regarding constitutional identity, the interpretation of the standards of protection of fundamental rights, including in correlation with criminal law, or the power of soft law to which we have briefly referred to in the previous sections.

The supremacy or primacy of EU law in itself was a topic of endless debates¹²⁰ in the history of the consolidation of the EU as an autonomous legal order which can

119 For a comprehensive approach on the topic see Ștefan, 2024, pp. 671–692.

120 Toader and Safta, 2023, pp. 271–352.

also be viewed as a conflict between national constitutions (upheld by constitutional courts) and EU law (upheld by the CJEU)¹²¹ and, consequently, in the fundamentals of sovereignty. It was well noted that when the independence of a legal system is questioned and efforts are made to subordinate it to another legal system through a claim of supremacy, the sovereignty of the state to which that legal system belongs is put into question.¹²²

In view of this, the more recent jurisprudence of the CJEU, in Cases like the Joined Cases C357/19, C379/19, C547/19, C811/19 and C840/19 Euro Box Promotion SRL and C430/21-RS, 116, have a high relevance not only in terms of positioning and rethinking the role of constitutional courts in relation to courts of law at the national level, but also in terms of rethinking national sovereignty itself, based on the supremacy of the Constitutions. We should bear in mind that in the cited cases the CJEU stated that

the principle of primacy of EU law is to be interpreted as precluding national rules or a national practice under which national ordinary courts are bound by decisions of the national constitutional court and cannot, by virtue of that fact and without committing a disciplinary offence, disapply, on their own authority, the case-law established in those decisions, even though they are of the view, in the light of a judgement of the Court of Justice, that that case-law is contrary to the second Subpara. of Art. 19(1) TEU, Art. 325(1) TFEU or Decision 2006/928;

1. The second Subpara. of Art. 19(1) TEU, read in conjunction with Art. 2 and Art. 4(2) and (3) TEU, with Art. 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which the ordinary courts of a Member State have no jurisdiction to examine the compatibility with EU law of national legislation which the constitutional court of that Member State has found to be consistent with a national constitutional provision that requires compliance with the principle of the primacy of EU law.

2. The second Subpara. of Art. 19(1) TEU, read in conjunction with Art. 2 and Art. 4(2) and (3) TEU, with Art. 267 TFEU and with the principle of the primacy of EU law, must be interpreted as precluding national rules or a national practice under which a national judge may incur disciplinary liability on the ground that he or she has applied EU law, as interpreted by the Court, thereby departing from case-law of the constitutional court of the Member State concerned that is incompatible with the principle of the primacy of EU law.

There is no doubt that these cases reinforce the independence of judges in the courts of law. However, what do they signify regarding the role and position of constitutional

121 For an analysis on the judicial reaction concerning the primacy principle see Berger, 2024, pp. 4–45.

122 See MacCormick, 1993, p. 8.

courts as guarantors of the constitution (and sovereignty) within the Member States since CJEU established that the courts of law can effectively ‘override’ the decisions of the constitutional courts? In the logic of these jurisprudential developments, we are witnessing the consolidation of ordinary courts and the shift of the centre of gravity, particularly with regard to the fundamental rights component, in the relational triangle courts of law – CJEU, ECtHR, with a secondary role assigned to constitutional courts. Essentially, as long as national courts, such as those in Romania, can directly apply the ECtHR and set aside domestic rules that contradict the Charter of Fundamental Rights of the EU, the need for appeals to the Constitutional Court may arise less frequently. This situation depends, of course, on the constitutional regulations of each EU Member State. In this context, constitutional courts may gradually revert to the traditional, political-jurisdictional role described by Kelsen, which is primarily focused on the abstract control of rules. However, this role, too, is becoming increasingly limited due to the shared competences between the given state and the EU). As for the concrete control of the norms, we are witnessing the construction of a *sui generis* model of constitutionality control, just as the EU itself is a *sui generis* model of state construction. Thus, the centralised constitutional review of the norms emanating from the national system, exercised by the constitutional courts, is combined with a decentralised control of the norms in the interference of national/international plans, having as supreme authority the CJEU and the courts of law as actors, that have the mechanism of preliminary reference and the dialogue with the CJEU at their disposal. In one way or another, in various contexts, any union court of law can also become a ‘constitutional’ court of the EU, in the sense that they ensure the priority and effectiveness of European law.¹²³ The final arbiter in this case is the CJEU, the guarantor of the EU (constitutional) order rather than the constitutional courts, the guarantor of national Constitutions (the pillars of states sovereignty).

In terms of a healthy and balanced exercise of shared sovereignty, we believe it is essential to continue supporting constitutional courts and constitutional dialogue within the EU, by strengthening them both externally and internally, in terms of both the abstract and the concrete control of legal norms. Constitutional courts have established a reputation and a vital role in the structure of states as a crucial factor for balance and authority. They can serve as a filtering mechanism; without them, the ECtHR and the CJEU would face an increasing caseload. Additionally, constitutional courts can help limit potential excesses from supranational and international courts, because the ECtHR and the CJEU are not infallible either. Strengthening external support requires legislative efforts to regulate and promote constitutional justice, as well as the appointment of judges who meet the necessary qualifications for such a role. Internal strengthening involves ensuring independence, constitutional loyalty, accountability, balance, and competence within the courts.

123 Safta, 2024, pp. 209–218.

Without these standards, there is a risk that constitutional courts may be marginalised or left ‘out of the game’.¹²⁴

4.3. New Challenges. The ‘Digital Sovereignty’ of the EU. Politics and Algorithms

One of the most important challenges of our time is the rapid evolution of Artificial Intelligence (AI). Concerning our topic, studies in the field reveal the power of data as a ‘key aspect of sovereignty’,¹²⁵ since sovereignty is facing a new transformation with the emergence of the digital sphere. The concept of ‘data sovereignty’ refers to the principle that any information located within a nation’s borders is subject to that nation’s laws. While this principle pertains in the physical world, it becomes less clear in the online environment. The mobility, fragmentation, and dispersed nature of data make it challenging to confine information within specific geographical boundaries. Additionally, the longstanding practice of self-regulation in cyberspace limits the involvement of sovereign governments in the global data governance system. Furthermore, the stakeholder model, which promotes equal participation from international organisations, businesses, technical groups, and private institutions, often marginalises sovereign governments in the decision-making process. It was shown¹²⁶ in this regard that the digital realm is a fluid, borderless, and ever-changing universe governed by physical laws. Individuals and entities of various identities can access this space, creating independent network nodes and exchanging information. Their creativity and the diverse data they generate are key components of the digital environment. Some technological groups aspire to establish a new order in this digital space, believing that the traditional concept of sovereignty is becoming obsolete. The new technological revolution significantly impacts society, economy, and politics, restructuring traditional power systems. In this changed environment, power sources and contents are diverse, making it difficult for a single actor to hold concentrated power. Attempting to replicate the Westphalian system in this context is both technically unfeasible and counterproductive to the interests of all participants, including sovereign states. Susan Strange suggestively describes this process as ‘leakage’,¹²⁷ in the sense that national sovereignty is gradually eroded, weakened, or even partially replaced.

In terms of the evolution of sovereignty within the EU, the AI phenomenon determined the adaptation of EU instruments, being a ‘catalyst’ for the evolution of the supranational regulations and the emergence of new concepts such as the ‘digital sovereignty’. As stated earlier,¹²⁸ the concept of digital sovereignty in public dis-

¹²⁴ See for details Florczak-Wątor, 2023.

¹²⁵ Gu, 2024, pp. 591–612.

¹²⁶ Ibid.

¹²⁷ Strange, 1995, pp. 55–74.

¹²⁸ Lupu, 2023, pp. 148–159.

course was subsequent to the emergence of another one, which sparked a heated debate: EU ‘strategic autonomy’. It was used for the first time in an official EU document in the European Council conclusions of December 2013¹²⁹ (where ‘for the first time since the entry into force of the Lisbon Treaty, the European Council held a thematic debate on defence’), referring to increasing Europe’s strategic autonomy by developing a technological and industrial base capable of supporting and developing defence capabilities. The term was taken up and placed at the heart of the Global Strategy for the EU’s Foreign and Security Policy, published in June 2016¹³⁰ and the EU’s New Strategic Agenda 2019-2024 which highlights ‘the need to pursue a strategic course of action and increase the EU’s capacity to act autonomously’.¹³¹ According to the documents of the European Parliament, the notion of ‘technological’ or ‘digital sovereignty’ emerged as a means of promoting the notion of European leadership and strategic autonomy in the digital field; ‘digital sovereignty’ refers to ‘Europe’s ability to act independently in the digital world and should be understood in terms of both protective mechanisms and offensive tools to foster digital innovation (also in cooperation with non-EU companies)’.¹³²

The EU has evolved along this path as an autonomous actor profile, a strategist, a quasi-state actor, that tries to ensure the exclusivity or, at least, the primacy of its actions in certain essential areas, with the implicit acceptance of the Member States and without operating in this sense any resizing of the powers in the treaties. Steps in this regard were the adoption of The Digital Services Act package,¹³³ i.e. the Digital Services Act and Digital Markets Act with the aim to create a safer digital space where the fundamental rights of users are protected and to establish a level playing field for businesses,¹³⁴ based on the idea that ‘the diverging national laws negatively affect the internal market’, and ‘in order to safeguard and improve the functioning of the internal market’. The AI Act has recently entered into force (Regulation (EU) 2024/1689),¹³⁵ characterised as ‘the first-ever legal framework on AI, which addresses the risks of AI and positions Europe to play a leading role globally’. The AI Act is a component of a broader set of policy measures aimed at fostering the development of trustworthy AI. This package also includes the AI Innovation Package and the Coordinated Plan on AI. Together, these measures ensure the safety

129 European Council, 2013.

130 European Union Global Strategy, 2016.

131 European Defence Matters, 2024.

132 Madiega, 2020.

133 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance).

134 European Commission, 2024c.

135 Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024, laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act).

and fundamental rights of individuals and businesses regarding AI. Additionally, they promote investment, innovation, and the adoption of AI throughout the EU.

The steps towards the ‘digital sovereignty’ should be linked with the Europeanisation of the economic and financial policy (it is important to recognise that a socially just economic policy necessitates a common economic governance framework, which may impose limitations on the budgetary sovereignty of national parliaments)¹³⁶ but also, increasingly important, with security policy. AI is a complex challenge in this regard, in many ways. In the light of very recent developments in Romania, the political dimension (closely related to the expression of the sovereignty) should be highlighted. There is no doubt that technology is inherently political; in its many forms, it plays a significant role in the human experience, conveying and mediating changes in human perception and consciousness, affecting society and even influencing political decisions. The recent influence on the Romanian presidential election is a case that deserves a closer analysis in this regard. In an unprecedented decision in the history of Romania, the CCR (the Constitutional Court of Romania) ordered the annulment of the presidential election of Romania in 2024 (Ruling no. 32 of December 6, 2024). Based on the declassification of confidential documents on December 4, 2024 and their public release, the court found that the electoral process for the election of the President of Romania was flawed in all stages by multiple irregularities and the violations of electoral legislation that distorted the free and fair nature of the vote and the equal opportunity of electoral competitors (para. 5). The flaw in the electoral process, according to the ruling of the CCR, was the violation of the freely expressed nature of the vote mainly through the exploitation of social media platform algorithms, alteration of the right to be elected by violating the equal opportunity of electoral competitors through the use of digital technologies and artificial intelligence without transparency and breach of the legislation on the legal and transparent financing of the electoral campaign. As a consequence in terms of measures at the EU level, the EU Commission opened formal proceedings against TikTok on election risks under the Digital Services Act in relation to TikTok’s obligation to properly assess and mitigate systemic risks linked to election integrity.¹³⁷ According to the position of the Commission,

the proceedings will focus on the management of risks to elections and civic discourse, linked to the following areas: TikTok’s recommender systems, notably the risks related to the coordinated inauthentic manipulation or automated exploitation of the service; TikTok’s policies on political advertisements and paid-for political content.

It is similarly important to note the consequences in terms of the next steps at the supranational level:

¹³⁶ Braum, 2018, pp. 429–431.

¹³⁷ European Council, 2024.

the opening of formal proceedings empowers the Commission to take further enforcement steps, such as interim measures, and non-compliance decisions. The Commission is also empowered to accept any commitment made by TikTok to remedy the matters subject to the proceedings.¹³⁸

As a brief conclusion on these very recent developments, we believe that the emergence of the concept of ‘digital sovereignty’ of the EU and the assumption of a strategic and leading role of the EU in this area has a profound significance in terms of reshaping the sovereignty of the Member States. It is widely acknowledged invoking sovereignty often involves power dynamics. In the context of the EU, this necessitates a reevaluation of the competences outlined in the treaties. According to Art. 4, para. (3) TFEU, the Union can regulate in the areas of research and technological development, but this should not limit the competences of the Member States. Furthermore, security issues will play a significant role in consolidating leadership, which will require adjustments to policies related to the Member States.

5. Conclusions. The Concept of ‘Shared and Responsible’ Sovereignty

When answering the question of what sovereignty means in today’s EU – whether Member States still possess sovereignty or if the EU’s principle of supranationality negates it – we can agree with the assertions that today EU Member States *are neither totally sovereign nor fully bound to one another*¹³⁹ or to a supranational structure.¹⁴⁰ As explained in the first section, Member States strongly affirm the sovereignty in their Constitutions and retain the right to withdraw from the EU, as explicitly enshrined in the Treaties. The relationship with the EU is outlined in their constitutions, and the transfer of powers is restricted by the very same constitutions (as interpreted by the Constitutional Courts). In terms of international law and in relation to third states, they act as independent states on an equal footing, to maintain diplomatic and consular relations, and to exerting influence on the development of international law.¹⁴¹

However, when examining the exercise of sovereignty, we find that the Lisbon Treaty established a distinction between exclusive and shared competences within the EU, while also establishing mechanisms that facilitate more integration and the transfer of competences to the supranational level. Along this legislative framework,

138 Ibid.

139 Piattoni, 2017, pp. 385–411.

140 Fassbender, 2023, pp. 1629–1643.

141 Ibid.

state competences are subject to a continuous erosion phenomenon, partly the result of supranational actions – specifically, the interpretation of competences outlined in the treaties, and partly due to the actions or inactions of national political actors. Time to time, more or less *vivid* conflicts, bring to the attention the debate of the supremacy of the EU legal order versus the supremacy of the constitution of the Member States. It is clear that ‘supranational supremacy is hardly compatible with a vision of integration limited to coordination of the Member States’.¹⁴² Consequently, both parts (at the national and supranational level) should embrace a more nuanced vision, taking into account the texts of the constitutions and treaties, but also the reality of the ‘leakage’ of elements of classic sovereignty in so many ways and actions of the national and supranational institutional actors.

Is the concept of shared sovereignty a workable idea? The answer could be affirmative, at least to some point, since the unique EU model led to a highly developed phase across various areas of integration, including the fields of Economic and Monetary Union, Social Policy, Environmental Regulations, Foreign and Security Policy, and Justice and Home Affairs. Nevertheless, this model presupposes the acceptance of the fact that sovereignty no longer implies the supreme power of the Member States to regulate in any field, but rather the ability to be the final decision-maker over a set of fields (seemingly getting smaller and smaller), as well as the relativisation of the territorial element of sovereignty, more visible in the case of the development of AI. As briefly indicated in the previous sections of our study, various crises that have affected the EU have, in one way or another, shaped the search for solutions regarding shared sovereignty, ultimately strengthening the EU and proving the resilience of EU construction (‘all crises ‘verticalise’ power’).¹⁴³ The ‘battle’ for the constitutional identity of the EU states has led to the development of the concept of EU identity, to which the identity of the states must align. The ‘battle’ for the highest standards of protection of fundamental rights resulted in the adoption of the Charter of Fundamental Rights and the establishment of the CJEU ‘doctrine’ aimed at ensuring uniform protection standards that do not compromise the interests of the EU. The ‘battles’ with the criminal phenomenon across the EU facilitated the development of a European criminal law framework. The crises concerning the rule of law have led to the implementation of a comprehensive mechanism designed to uphold the values outlined in Art. 2 of the TEU, also proving the potential for EU mechanisms to promote equality among Member States and the balance between national interests with collective EU objectives. However, each of this ‘triumphs’ came with some vulnerabilities which requires a careful analysis and solutions with the equal involvement of Member States and national institutions in order to ensure that the strengthening of supranational authority does not undermine state sovereignty (in terms of ‘the will of the people’) but contributes to a more cohesive and resilient

¹⁴² Perju, 2020, p. 28.

¹⁴³ Piattoni, 2017, pp. 385–411.

Union. The other chapters of this book will thoroughly examine some sensitive topics we have briefly identified.

What are the most challenging aspects of the relationship between sovereignty and supranationality, and which state actors are involved? Perhaps one of the most challenging aspects is finding a common voice in our shared endeavours within the EU while balancing the traditions and identities of each Member State, also trusting that this represents our democratic voice. Accession to the EU was a constitutional momentum for each Member State, in terms of assuming the same core values. Since those values do not mean the obligation of the Member States to adopt a specific constitutional model, but to provide ‘a framework of reference within which the Member States may make their own constitutional choices’¹⁴⁴ it is clear that having a shared understanding of them is essential for the coherence of the EU model of coexistence. Once the Member State joined the EU, the citizens of the state are affected by the decisions taken ‘by the EU’ and even by other Member States. Identifying the way to learn and trust this new understanding of democracy is challenging in itself, but even more when ‘values of the EU’ are opposed (or perceived as opposed) to a ‘way of life’ rooted in communities and traditions. In fact, this sentiment is speculated by undemocratic populist movements when they put the sovereignty claims on the table, feeding ‘the politics of fear’. Another challenge is to ensure equality among the Member States and to foster a sense of trust and fairness among them. Placing the rule of law at the core of the EU’s identity and establishing a system to evaluate, to varying degrees, all actions of the Member States in the same light helped to create an image of states on equal footing. But who is responsible for this evaluation, and what are the limits within which it can be performed? The Rule of Law Mechanism relies on the agreement of the Member States. However, the authority of the soft law issued under this framework looks mandatory, as has been defined by the CJEU based on the principle of sincere cooperation. While this interpretation is a logical conclusion in terms of the effectiveness of this mechanism, it raises questions regarding the margin of appreciation granted to the European Commission and creates an image of ‘centralised’ power at the supranational level, calling into question the intentions of the Member States when they agreed to establish this Mechanism.

Consequently, in terms of a ‘more integrated EU’, possibly the concept of a ‘shared and responsible sovereignty’ advanced by Simone Piattoni¹⁴⁵ could be a suggestive one. In our understanding, this concept also extends to the idea of responsibility of the national institutions, taking into account the axiological dimension of the EU construction, as ‘a community that springs from the dream of coming together and the reality of (still) living apart’.¹⁴⁶ We should remember the goals of the EU and not get lost in this ‘constitutional imagination’ which combines more and more texts, precedents, policies, competences, and inflated egos. The challenge and the success

144 Lenaerts and Gutiérrez-Fons, 2023, pp. 1495–1511.

145 Piattoni, 2016, pp. 385–411.

146 Koncewicz, 2024, p. 113.

also reside in ‘paddling together’, the expression used by Tomasz Tadeusz Koncewicz in a recent study,¹⁴⁷ ‘finding the right balance between building a truly supranational consensus around basic values on the one hand, while catering to the existing domestic overlapping consensuses on the other’.

¹⁴⁷ Koncewicz, 2024, pp. 85–120.

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