INSIGHTS

QUESTIONING EUROPEAN (UNION) SOVEREIGNTY
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EUROPEAN SOVEREIGNTY NOW? A REFLECTION ON WHAT IT MEANS TO SPEAK OF "EUROPEAN SOVEREIGNTY"

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ABSTRACT: Spearheaded by French President Emmanuel Macron, the concept of "European sovereignty" is used increasingly often in debates on the role of the EU in the world. The concept's recurrent use makes it important to reflect on what it means to speak of a "European sovereignty" in the context of the institutional reality which is the EU. To contribute to this effort, in this insight I look at the role of the concept of "sovereignty" in the case law of the Court of Justice of the EU; I explore the differences and similarities between "sovereignty" and "autonomy" as the ordering principles of, respectively, the international and EU legal orders; and I point to a number of advantages and disadvantages that come with speaking of a "European sovereignty". I argue that, by refocussing political debate, the term may very well contribute to efforts to better equip the EU to face an increasingly unpredictable international environment. In the final analysis however, if the EU is to be able to "exist in the world as it currently exists, to defend our values and our interests", a European external sovereignty must go hand in hand with a meaningful degree of internal sovereignty. This, in turn, requires a reshuffling of the balance of power between EU institutions, with a greater role for those institutions that represent the interests of the EU citizenry, as well as a more effective enforcement of existing EU policies. In particular as far as the first of these requirements is concerned, it is unclear at this juncture whether President Macron is willing to take steps in this direction.

KEYWORDS: European sovereignty – sovereignty – principle of autonomy – new legal order – European Union – Court of Justice of the European Union.

I. INTRODUCTION

In a 2017 speech at the Sorbonne University, French President Macron spoke of a "European sovereignty", which he defined as "our capacity to exist in the world as it cur-

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rently exists, to defend our values and our interests".[1] He immediately added that this "European sovereignty" is still to be realised (*à construire*). Since the Sorbonne speech, European sovereignty has become somewhat of a go-to concept in French government policy documents. In his speech on the eve of Brexit, on 31 January 2020, President Macron again mentioned that he is aware that "Europe can only continue to advance if we reform it thoroughly, to make it more sovereign, more democratic, closer to its citizens and therefore also more [straighforward in its daily functioning]".[2] The term has also found its way to Brussels. For example, in his 2018 State of the Union speech, Commission President Jean-Claude Juncker mentioned that "[g]eopolitics teaches us that the time has come for European sovereignty, for Europe to take its destiny into its own hands. […] This belief that 'united we stand taller' is the very essence of what it means to be part of the European Union […] Sharing sovereignty where we need to makes each of our nation states stronger".[3] More recently, Commissioner Thierry Breton tweeted that "Europe must see itself as a political, strategic and sovereign power".[4] Similarly, official policy documents refer to Europe's "technological sovereignty"[5] and its "economic and financial sovereignty".[6]

Its recurrent use in debates on the role of the EU in the world makes it important to reflect on what it means to speak of a "European sovereignty" in the context of the institutional reality which is the EU. To contribute to this effort, in this insight I look at the role of the concept of "sovereignty" in the case law of the CJEU (also: the Court) (section II) and I explore the differences and similarities between "sovereignty" and "autonomy" as the ordering principles of, respectively, the international and EU legal orders (section III). In a fourth and final section, I point to a number of advantages and disadvantages that come with speaking of a "European sovereignty". I argue that by refocussing political debate the term may very well contribute to efforts to better equip the European Union to face an increasingly unpredictable international environment. In the final analysis however, if the EU is to be able to "exist in the world as it currently exists, to defend our values and our

[1] Presidency of the French Republic, *Initiative pour l'Europe – Speech of Emmanuel Macron pour une Europe souveraine, unie, démocratique*, 26 September 2017, available at www.elysee.fr: "Notre capacité à exister dans le monde actuel pour y défendre nos valeurs et nos intérêts".

[2] Presidency of the French Republic, *Plus que jamais nous avons besoin d'Europe. Message by the President Emmanuel Macron on Brexit*, 31 January 2020, available at www.elysee.fr: "[L]'Europe ne pourra continuer d'avancer que si nous la réformons en profondeur, pour la rendre plus souveraine, plus démocratique, plus proche de nos concitoyens et donc plus simple aussi dans son quotidien".

[3] European Commission, Press release, *European sovereignty: What does it mean to President Juncker?*, 12 September 2018, available at ec.europa.eu.

[4] Tweet by @ThierryBreton of 15 February 2020, available at twitter.com.

[5] Communication COM(2020) 50 final of 29 January 2020 from the Commission, *Secure 5G deployment in the EU – Implementing the EU toolbox*.

[6] Communication COM(2020) 37 final of 29 January 2020 from the Commission, *Commission Work Programme 2020 – A Union that strives for more*.

interests", a European *external* sovereignty must go hand in hand with a meaningful degree of *internal* sovereignty. This, in turn, requires a reshuffling of the balance of power between EU institutions, with a greater role for those institutions that represent the interests of the EU citizenry, as well as a more effective enforcement of existing EU policies. In particular as far as the first of these requirements is concerned, it is unclear at this juncture whether President Macron is willing to take steps in this direction.[7]

II. A post-sovereign world

Having read the work of Neil MacCormick with great interest as a law student, I had become convinced that sovereignty had become an obsolete concept no longer capable of explaining the contemporary globalised world consisting of overlapping legal orders.[8] If anything, sovereignty -- the *Grundnorm* of an international system which had failed the world twice in the twentieth century -- had done more harm than good. From this perspective, the European integration project has been a laudable and indeed revolutionary project, intended, as it was, as an effort to move beyond sovereignty and construct a "post-sovereign" world. In this world, not sovereignty, but the rule of law would become the highest law of the land.[9] Or, as Sir Francis Jacobs put it, within the European Union, the law itself would become sovereign.[10]

It is not a coincidence that one of the few references the CJEU ever made to the concept of "sovereignty" was when, in *Van Gend & Loos* and *Costa v. Enel*, it spoke of the limiting of national sovereignty with the view of establishing a "new legal order". In the Court's words in *Costa*:

> "By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their

[7] This essay was written before the Covid-19 pandemic had reached Europe and thus before the German-French proposal to allow the Commission to borrow on financial markets to finance the recovery of the eurozone economy. If adopted, this proposal may contribute towards a strengthening of a European internal sovereignty. On the proposal, see M. Karnitschnig, R. Momtaz, *Berlin Buckles on Bonds in €500B Franco-German Recovery Plan*, in *POLITICO*, 18 May 2020.

[8] N. MacCormick, *Beyond the Sovereign State*, in *The Modern Law Review*, 1993, p. 1 *et seq*.; Id., *Questioning Sovereignty*, Oxford: Oxford University Press, 2001.

[9] In this sense, see G. De Baere, *European Integration and the Rule of Law in Foreign Policy*, in J. Dickson, P. Eleftheriadis (eds), *Philosophical Foundations of European Union Law,* Oxford: Oxford University Press, 2012, p. 363, describing the European integration project as "an attempt to infuse often destructive political processes with law in order to prevent war and to infuse international relations with predictability".

[10] F. Jacobs, *The Sovereignty of Law: The European Way*, Cambridge: Cambridge University Press, 2007.

> sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves."[11]

The Court continues to speak of "sovereignty" in such terms. For instance, in the context of the Area of Freedom, Security and Justice, it has referred to the European Arrest Warrant system as a project that aims to replace "a traditional system of cooperation between sovereign States".[12] Here, the EU is presented as a rejection and an overcoming of national sovereignty, whereby the "old" (national sovereignty and, by extension, politics as the means through which to articulate the will of the people) is replaced by something "new" (the EU as a project of integration through law).[13] This arguably is the case even in the *Wightman* judgment, on the possibility for a Member State to revoke a notification of its intention to withdraw from the EU.[14] In this case, the Court confirmed that such a possibility exists as it "reflects a sovereign decision by that State to retain its status as a Member State of the European Union".[15] In this phrase the Court invokes national sovereignty, but only to protect the authority – or rather: the autonomy (see below) – of EU law. In short, EU law traditionally has had a two-fold aim: first, to limit national sovereignty and the politics that comes with the popular conception of sovereignty, and, second, to construct a European Union through law.

III. Autonomy: sovereignty in disguise?

Against this backdrop, it is perhaps surprising that the Court itself sometimes appears in need of concepts that fulfil a similar symbolic function to the one performed by sovereignty in the national context. Within the Member States the notion of "sovereignty" captures the unity of the State and political community and, by extension, the distinctiveness of the State from other entities, in particular other sovereign States. Similarly, the EU, as a federation of States that aims to strike a balance between unity and diversity[16], appears in need of a metaphor to capture the "unity" side of that balance, and to signify the distinctiveness of the EU as an entity in its own right.

[11] Court of Justice, judgment of 15 July 1964, case 6/64, *Costa v. Enel*, p. 593.

[12] See e.g. Court of Justice, judgment of 27 May 2019, case C-509/18, *PF (Procureur général de Lituanie)*, para. 43.

[13] On the "integration through law" project, see M. Cappelletti, M. Seccombe, J. Weiler, *Integration Through Law: Europe and the American Federal Experience*, Berlin: Walter de Gruyter, 1985.

[14] Court of Justice, judgment of 10 December 2018, case C-621/18, *Wightman and others v. Secretary of State for Exiting the European Union*.

[15] *Ibid*, para. 59.

[16] On the conception of the EU as a federation of States, see e.g. R. Schütze, *European Constitutional Law*, Cambridge: Cambridge University Press, 2015, pp 40-79.

"Sovereignty" being unavailable, the Court of Justice has looked for alternatives to fulfil sovereignty's symbolic function.[17] The aforementioned "new legal order" metaphor has been relied upon by the Court to denote the distinctiveness of EU law from the national legal orders. By emphasising the distinctiveness of EU law from domestic law (it was for the Court, not the national courts, the Court held in *Van Gend*, to decide whether a norm of EU law has direct effect within the legal orders of the Member States!; it was the EU, not the Member States, the Court held in *ERTA*, which had the competence to conclude the European Road Transport Agreement![18]), the Court strove to protect and consolidate the autonomy of the, at that time, newly established European Economic Community from attempts by the Member States to instrumentalise its institutions. Already in *Van Gend* and in *Costa*, the Court had indeed made clear that the "new legal order" had an institutional dimension, endowed as the then European Economic Community was with "its own institutions, for the benefit of which the Member States thereof have limited their sovereign rights".[19] From the "new legal order" metaphor, the Court derived constitutional principles – most importantly the primacy principle – that aim to protect the autonomy of all EU institutions *vis-à-vis* the Member States. This autonomy – a term to which I return below – includes the ability of these institutions to make their own decisions, in accordance with the decision-making rules set out in the Treaties, and thus independently from the Member States.

Towards the international legal order, the principle of "autonomy" of EU law came to play a similar role in the Court's case law to the one played by the "new legal order" metaphor in cases involving the EU-Member State relationship. To protect the autonomy of EU law, the Court put limits on the ability of other courts, outside of the EU system, to interpret and apply EU law. For example, in opinion 2/13, the Court considered that the EU could not accede to the European Convention of Human Rights on the terms proposed in the draft accession treaty, as these terms would have limited the access of Member State courts to the Court of Justice, the exclusive interpreter of Union law.[20] More recently, in opinion 1/17, the Court concluded that the CETA Tribunal did not threaten the autonomy of Union law and the role of the Court, and was therefore permissible.[21] The outcome of the analysis in both opinions was different, but the exercise was the same: the Court examined whether the proposed judicial framework would respect the autonomy of EU law.

[17] In this sense, see J. Weiler, *The Transformation of Europe*, in *Yale Law Journal*, 1991, p. 2481: "It would be more than ironic if a polity with its political process set up to counter the excesses of statism ended up coming round full circle and transforming itself into a (super)state".

[18] Court of Justice, judgment of 31 March 1971, case C-22/70, *Commission v. Council*.

[19] *Costa v. Enel*, cit., p. 593.

[20] Court of Justice, opinion 2/13 of 18 December 2014.

[21] Court of Justice, opinion 1/17 of 30 April 2019.

Strictly speaking, the principle of autonomy has thus far only been relied upon to protect the prerogatives of the Court. It is clear, however, that the autonomy principle protects not only the autonomy of the Court, but also that of the political EU institutions (the European Commission, the European Parliament, the two Councils). Indeed, as the Court submitted, for example, in *Kadi I*: when it speaks of "autonomy", it means the "autonomy *of the [Union] legal system*".[22] It follows that, as is the case for the "new legal order" metaphor in the EU-Member State context, "autonomy" covers the entirety of the Union legal order – an order which is, as mentioned earlier, endowed with its own institutional framework, as described in Arts 13 to 19 TEU.

From the previous point, it is not a far stretch to suggest that the autonomy principle not only denotes the autonomy of the Court of Justice to interpret and apply EU law in the face of international legal norms, but also the autonomy of the EU's political institutions. As institutions endowed with certain powers by the EU Treaties, they ought to be able to act autonomously, in defence of EU values and principles – values and principles which, here as well, may very well be different from those of other actors on the international stage.[23] It follows also that, if this autonomy is to have any meaning, other actors ought to respect the autonomy of the EU and refrain from interfering in the EU's internal affairs without the latter's consent. In particular, they should respect the ability of the EU institutions to make decisions, and, in a spirit of good neighbourliness, not undertake actions that hinder the implementation and enforcement of such decisions.

To the international lawyer, all of this sounds familiar. Under international law, the principles of territorial integrity and non-intervention in the internal as well as the external affairs of States are core principles derived from international law's own *Grundnorm*: state sovereignty. The EU cannot be considered a State under international law, as only a single State can exercise jurisdiction over a given territory, and sovereignty, at least from the vantage point of public international law, thus cannot be shared (it can, at most, be delegated to international organisations, such as the EU). Further, as discussed, for historical reasons, the EU does not *want* to be considered a State, constructed as it is as a project of "integration through law" that rejects the politics of (popular) sovereignty.

At the same time, however, as described in the above, the Court of Justice has occasionally felt compelled to advance claims that could, in functional terms, easily be understood as claims to sovereignty. In the Hobbesian tradition, "internal" sovereignty refers to the ultimate authority of a given government within the territory of the state in-

[22] Court of Justice, judgment of 3 September 2008, joined cases C-402/05 P and C-415/05 P, *Kadi v. Council and Commission*, para. 282 (emphasis added). Similarly, in opinion 1/17, cit., para. 110, the Court mentioned that "autonomy accordingly resides in the fact that the Union possesses a constitutional framework that is unique to it".

[23] See J. ODERMATT, *The Principle of Autonomy: An Adolescent Disease of EU External Relations Law?*, in M. CREMONA (ed.), *Structural Principles in EU External Relations Law*, Oxford: Hart Publishing, 2018, p. 291 *et seq*., p. 293.

volved, whereas "external" sovereignty refers to the independence of a given state from other states, and the capacity of that state to engage in relations with other subjects of international law. External sovereignty denotes the idea that the State exists; that it is capable of acting in pursuit of its own interests and values; and, in legal terms, that it is capable of incurring rights and obligations to do so.[24] It is indeed tempting to draw a parallel between the "new legal order" metaphor and the autonomy principle on the one hand, and the internal and external dimensions of sovereignty on the other.[25]

Claims to sovereignty, whether internal or external, can be weak or strong. A weak claim to sovereignty can be understood as a claim to a meaningful degree of authority, which does not have to be absolute.[26] Within a federal-type system characterised by a division of competences, sovereignty claims are necessarily of the weaker type, and can be distinguished from a strong claim to sovereignty in the Hobbesian sense of the term, according to which sovereignty is necessarily absolute and indivisible. In the EU, then, primacy (itself derived from the "new legal order" metaphor) can plausibly be reformulated as a weak claim to internal sovereignty, casting the EU as an effective "government" albeit within "limited fields", as the Court described in *Van Gend*, whereas autonomy can be understood as a strong claim to external sovereignty, whereby the Court, as it made clear in *Kadi I*, ranks the EU Treaties above international law.

IV. European Sovereignty?

As Mr Macron explained during his election campaign, the concept of "European sovereignty" aims to recapture a term that had been claimed by the radical and extreme right, which consistently depicts the European project as a threat to national sovereignty (Mr Macron spoke of a *souveraineté de répli*). Regardless of the political-strategic considerations that may or may not be at play in Mr Macron's choice of terminology, however, what does it mean to speak of "European sovereignty"? Is there any added value in speaking of "sovereignty" as opposed to "autonomy", or is there something to be said for maintaining

[24] In this sense, see Permanent Court of International Justice, *S.S. Wimbledon* (Britain et al. v. Germany), judgment of 17 August 1923, para. 35: "No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty".

[25] For an argument in this sense, see C. Eckes, *The Autonomy of the EU Legal Order*, in *Europe and the World: A Law Review*, 2020, p. 19; and also J.W. van Rossem, *The Autonomy of EU Law: More Is Less?*, in R.A Wessel, S. Blockmans (eds), *Between Autonomy and Dependence: the EU Legal Order Under the Influence of International Organisations*, The Hague: Asser Press, 2013, p. 25.

[26] See the definition of federalism as "the coexistence within a compound polity of multiple levels of government each with constitutionally grounded claims to some degree of organizational autonomy and jurisdictional authority" in D. Halberstam, *Comparative Federalism and the Role of the Judiciary*, in G.A. Caldeira, R.D. Kelemen, K.E. Whittington (eds), *The Oxford Handbook of Law and Politics*, Oxford: Oxford University Press, 2008, p. 142 *et seq*.

the "autonomy" metaphor introduced by the Court of Justice? Further, it is worth looking into whether it is coherent to speak of a "European sovereignty" while at the same time defending French sovereignty, as Mr Macron has done on earlier occasions.[27]

In addressing these questions, I return to the distinction introduced earlier between internal and external sovereignty. From the rather succinct definition provided by Mr Macron himself (he speaks of a capacity to exist "in the world"), it would appear that, for the French president, "European sovereignty" refers, primarily, to sovereignty's external aspects. What Mr Macron appears to have in mind is a Europe that holds a seat at the decision-making table in international affairs, rather than a Europe that becomes (or remains?) a playground for other great powers, in particular the United States and China.[28] Further, by speaking of *a* capacity to exist in the world, Mr Macron would appear to advance a weak claim to external sovereignty: it is not because the EU can exist in the world that its Member States are precluded from existing alongside it.

Certain similarities between such a conception of sovereignty on the one hand, and the Court's understanding of autonomy as set out in the above, on the other, are apparent. For Mr Macron, as for the Court, autonomy denotes independence from external influences. The Court aims to protect the autonomy of the EU judiciary to have the final say on the meaning of EU law; Mr Macron understands "European sovereignty" to capture the idea that "Europe" should be able to make its own decisions, independently from other powers. Further, and despite the fact that the Court's autonomy claim is of the stronger type, the Court has been adamant to emphasise that it does not wish to foreclose international cooperation.[22] Likewise, as suggested by the juxtaposition in his Sorbonne speech of "European sovereignty" on the one hand and a *souveraineté de repli* on the other, Mr Macron's position does not appear to imply that "Europe" cannot or should not engage in relations with other powers. Clearly, there are similarities between both notions.

As speech acts, words can have performative power: they can change social reality. From this perspective, "European sovereignty", at least if used in a weak, non-absolutist sense, may have two advantages compared to "autonomy" as developed in the Court's case law. First, by introducing "sovereignty" in debates on the role of the EU on the international stage, issues that traditionally have been considered to fall within the sphere of "high" politics may come to carry greater weight within such debates. Following the failure of the European Defence Community, now over half a century ago, a Chinese wall had been erected within the EU's decision-making machinery that separates issues of "high" politics (defence, security, concentrated within the Council) from those

[27] Tweet by @EmmanuelMacron of 4 January 2018, twitter.com: *"La France doit être une puissance forte et souveraine. C'est une des conditions pour relever les défis du XXIe siècle*".

[28] *Emmanuel Macron in His Own Words (English)*, in *The Economist*, 7 November 2019, www.economist.com: "I'm just saying that if we don't wake up, face up to this situation and decide to do something about it, there's a considerable risk that in the long run we will disappear geopolitically, or at least that we will no longer be in control of our destiny".

of "low" politics (trade, concentrated within the Commission). Other great powers do not necessarily adhere to this separation, and are able more easily to deploy, for example, trade instruments in pursuit of security objectives. The aforementioned Chinese wall potentially puts the EU at a disadvantage in its dealings with such powers.[29] A strategic agenda built around the notion of "sovereignty" may contribute to the development of a more integrated approach to foreign policy making, whereby administrative actors in the Commission, the European External Action Service, the Council, and Member State administrations come to cooperate more closely with one another than has traditionally been the case.[30] There are reasons to expect this to be of benefit to the effectiveness of EU foreign relations.

Second, just as a "sovereignty"-focused agenda may lead to a greater emphasis on issues of "high politics", it may also pave the way for a greater emphasis on the democratic legitimacy of EU foreign policy making. As discussed, the Court of Justice has put autonomy to use as a means to protect its own independence from external influences. While the principle applies to the entire EU institutional framework, and thus also to the EU's political institutions, the principle's origins in the "new legal order" metaphor, itself devised as an effort to overcome national sovereignty, arguably make the autonomy principle ill-equipped to operate as a vehicle for a further democratisation of EU decision-making. By contrast, in the European context, sovereignty evokes self-government.[31] The performative effect of speaking of the EU as a "sovereign" actor in international relations may very well contribute to creating the conditions required for the EU to put in place institutional reforms aimed at democratising EU foreign policy making. As I further elaborate below, such reforms are necessary if "European sovereignty" understood in an external sense is to have any meaning.

While there may thus be advantages in speaking the language of sovereignty, there are also obvious pitfalls. I focus on one ambiguity in Mr Macron's use of the term "European sovereignty", which harks back to the link between external and internal sovereignty. The French president defined "European sovereignty" as "our capacity to exist in the world as it currently exists, to defend our values and our interests". Who is the "our" in this definition, however? Mr Macron's choice of terminology may suggest his conception of "European sovereignty" is not wedded to the EU as an institutional project. A reference to a "European" (as opposed to an EU) defence in Mr Macron's Sorbonne speech

[29] For a similar argument in the US context, see R.D. BLACKWILL, J.M. HARRIS, *War by Other Means: Geoeconomics and Statecraft*, Cambridge, Massachusetts: Harvard University Press, 2017.

[30] For a recent call for such a more integrated approach, see T. GEHRKE, *What Could a Geoeconomic EU Look Like in 2020?*, in *Security Policy Brief*, no. 123, February 2020.

[31] Note e.g. that, following the fall of communism, EU Member States had agreed only to recognise as new sovereign States those Eastern European States that had constituted themselves on a democratic basis. See Declaration of Guidelines on the Recognition of New States in Eastern Europe and in the Former Soviet Union, adopted at an Extraordinary EPC Ministerial Meeting at Brussels on 16 December 1991.

has already been translated into the setting up of a joint military intervention force, outside of the EU framework.[32] If "Europe" is to be understood in a flexible, civilizational sense, rather than as a tangible, institutional reality, endowed with its own "actorness"[33], it is not "Europe" that is acting, but rather those European states.

If "Europe", rather than European states, wish to construct a European *external* sovereignty, it will first be necessary to build a meaningful degree of *internal* sovereignty. As Christina Eckes argued: "To make a claim to external sovereignty, modern states must make a claim that they can govern their territory and their people (relatively) effectively".[34] The same arguably applies to "Europe". For "Europe" to hold external sovereignty, it must also "exist" as an institutional reality capable of "governing" its territory effectively. To construct an EU capable of "governing" its territory effectively, two elements are required: first, a European capacity to make decisions independently from individual constituent members, and second, a capacity to enforce those decisions *vis-à-vis* those members.[35] To achieve the former objective, the position of the two Councils should be counterbalanced by a greater involvement of the EU citizenry in the process of setting out the political directions and priorities of the EU (a responsibility which, today, is within the exclusive purview of the European Council). To achieve the latter, amongst other things, investments in novel mechanisms to monitor Member State activities that risk undermining EU policies would be required. An EU foreign direct investment screening mechanism whereby investments are screened at EU level would be an example of such a mechanism, making the EU less vulnerable to external pressures.[36]

It is unclear, at this point, whether the aforementioned reforms are also what Mr Macron has in mind when he speaks of a "European sovereignty". As far as the enforcement of EU law is concerned, the proposals made in his Sorbonne speech, or in his March 2019 open letter published in several European newspapers[37], suggest a willingness to move beyond the traditional model of executive federalism whereby the implementation of decisions taken at the EU level is left primarily to the Member States. Mr Macron's calls for a larger EU budget, for an EU administrative capacity to enforce an integrated asylum policy, for an EU prosecutor to fight terrorism and organised crime,

[32] D. Boffey, *Nine EU States Sign off on Joint Military Intervention Force*, in *The Guardian*, 25 June 2018.

[33] M. Rhinard, G. Sjöstedt, *The EU as a Global Actor: A New Conceptualisation Four Decades after "Actorness"*, Swedish Institute for International Affairs, 2019, p. 6.

[34] C. Eckes, *The Reflexive Relationship Between Internal and External Sovereignty*, in *Irish Journal of European Law*, 2015, p. 43.

[35] In a similar sense, see the reference to Sjöstedt's conception of "actorness" in M. Rhinard, G. Sjöstedt, *op. cit*., p. 2.

[36] On the vulnerability of the EU – in particular peripheral Member States – to external influences, see e.g. M.A. Orenstein, R.D. Kelemen, *Trojan Horses in EU Foreign Policy: Europe's Hybrid Foreign Policy*, in *Journal of Common Market Studies*, 2017, p. 87 *et seq*.

[37] *Emmanuel Macron: Dear Europe, Brexit Is a Lesson for All of Us: It's Time for Renewal*, in *The Guardian*, 4 March 2019.

as well as his emphasis on the proper enforcement of EU trade agreements (a proposal taken up by the Commission, which recently announced the creation of a "Chief Trade Enforcement Officer"): these suggestions all point to a willingness to invest more in executing and enforcing what has been decided at the EU level.

Less clear, however, is whether Mr Macron is willing to change the institutional set up of the EU to achieve a meaningful independent decision-making capacity. In his Sorbonne speech, Mr Macron called for the introduction of transnational electoral lists during European Parliament elections. This may be useful to increase citizen involvement in the electoral process; it does not lead, however, to more independent decision-making at the EU level. By contrast, I am not aware of suggestions to strengthen the institutional position of the Commission and Parliament *vis-à-vis* that of the two Councils. It is on this institutional nexus, however, that reforms are required if the EU is to acquire a meaningful independent decision-making capacity. As mentioned, within the current EU institutional set up, political directions are set out by the European Council.[38] As Deirdre Curtin mentioned in the context of internal decision-making (but the same arguably holds for the EU's external action): "The European Council calls the shots in general terms and largely tells the Commission (and the Council) what to do if formal legislation needs to be adopted".[39] Within this institutional framework, the preferences of Member States – in particular larger Member States – weigh heavily.[40] By increasing the relative weight of the EU institutions that represent competing interests – in particular those of the EU citizenry, such as the Parliament[41] – EU policy outcomes would be decoupled, to some extent, from the preferences of individual Member States. In this sense, democratisation would lead to a greater independent decision-making capacity, and thus to greater internal sovereignty.

Absent a meaningful degree of independent decision-making capacity, and absent more effective enforcement mechanisms, the EU cannot meaningfully claim to enjoy internal sovereignty. By necessary implication, it will not be able to lay claim to external sovereignty, either. The path towards a meaningful external European sovereignty runs through institutional reform both at the legislative and the executive fronts. Much can be done under the existing Treaties (the aforementioned Chief Trade Enforcement Of-

[38] Art. 15, para. 1, TEU.

[39] D. CURTIN, *Democratic Accountability of EU Executive Power: A Reform Agenda for Parliaments*, in F. FABBRINI, E.M.H. HIRSCH BALLIN, H. SOMSEN (eds), *What Form of Government for the European Union and the Eurozone?*, Oxford: Hart Publishing, 2015, p. 177 *et seq*.

[40] On the risk of domination in EU decision-making, see e.g. S. FABBRINI, *From Consensus to Domination: The Intergovernmental Union in a Crisis Situation*, in *Journal of European Integration*, 2016, p. 587 *et seq*.

[41] Another option would be to merge the Commission and European Council presidencies and to directly elect the holder of this office. Proposing the direct election of the European Council President, see F. FABBRINI, *Austerity, the European Council, and the Institutional Future of the European Union: A Proposal to Strengthen the Presidency of the European Council*, in *Indiana Journal of Global Legal Studies*, 2015, p. 269 *et seq*.

ficer being a good example, and the recently adopted FDI screening regulation being a step in the right direction[42]). However, to put in place a meaningful democratisation of EU decision-making, and, by doing so, to construct an independent EU decision-making capacity, Treaty reform will be necessary. Whether this will happen remains to be seen. Recent developments surrounding the "Conference on the Future of Europe" do not suggest it will be on the table in the near future.[43]

[42] Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.

[43] M. DE LA BAUME, *Conference on the Future of Europe: Don't mention the T word*, in *POLITICO*, 21 January 2020.