

INSTITUTE OF COMPARATIVE LAW (ISTITUTO DI DIRITTO COMPARATO)  
UNIVERSITY “NICCOLÒ CUSANO” (UNIVERSITÀ “NICCOLÒ CUSANO”)

INTERNATIONAL SCIENTIFIC THEMATIC CONFERENCE  
CONVEGNO SCIENTIFICO INTERNAZIONALE

**FROM NATIONAL SOVEREIGNTY TO  
NEGOTIATION SOVEREIGNTY  
“Days of Law Rolando Quadri”**

**DALLA SOVRANITÀ NAZIONALE ALLA  
SOVRANITÀ NEGOZIALE  
“Giorni del Diritto Rolando Quadri”**

Thematic Conference Proceedings of International Significance  
Atti di convegni tematici di rilevanza internazionale

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**Belgrade, 14 June 2024  
Belgrado, 14 giugno 2024**

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*Official Languages/Lingue ufficiali*

English and Italian/Inglese e italiano

*Technical Editor/Redattore tecnico*

Miloš Vasović, LLM

*Prepress/Prestampa*

Branimir Trošić

*Printed by/Stampato da*

Birograf Comp d.o.o., Beograd

*Copies/Copie*

150

ISBN 978-86-82582-18-2

DOI: [https://doi.org/10.56461/ZR\\_24.FNSTNS](https://doi.org/10.56461/ZR_24.FNSTNS)

This Collection of papers is a result of the research conducted at the Institute of Comparative Law financed by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia under the Contract on realisation and financing of scientific research of SRO in 2024 registered under no. 451-03-66/2024-03/200049.

Il presente Volume è il risultato della ricerca condotta presso l'Istituto di diritto comparato finanziato dal Ministero della Scienza, dello sviluppo tecnologico e dell'innovazione della Repubblica di Serbia nell'ambito del Contratto sulla realizzazione e il finanziamento della ricerca scientifica della SRO nel 2024 registrato con il n. 451-03-66/2024-03/200049.

## EU MODEL – NEGOTIATING A NEW CONCEPT OF SOVEREIGNTY\*\*

### *Abstract*

*European Union (EU) is considered to be a successful model of transfer of exclusive national sovereignty from its Member States to the EU institutions. However, this transfer was happening gradually and up to present has not yet been finished. At the economic level, process that is titled deepening of the European integration, started from customs union, than through common market and finally single market (EU) with the single currency, euro, which is not embracing all Member States. At the political level, the EU has not yet built central political authority with supranational powers that would overcome national jurisdictions of Member States. The Lisbon Treaty of 2009 tried to upgrade the complicated structure of mixed sovereignty divided between Member States and the EU institutions, by cancelling three pillars and forming single legal personality of the Union. Nevertheless, there are voices in the EU Member States from public officials, scholars and wide public, that traditional concept of national sovereignty is more recommendable to respond to modern challenges of contemporary world. Improving the EU model of sovereignty obviously has its limitations, because it is difficult to imagine a paradoxical perspective in which Member States will give up their sovereignty.*

**Keywords:** *European Union, competences, sovereignty*

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\* This paper is a result of the research conducted at the Institute of Comparative Law financed by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia under the Contract on realisation and financing of scientific research of SRO in 2024 registered under no. 451-03-66/2024-03/200049.

# MODEL EU – PREGOVORI O NOVOM KONCEPTU SUVERENITETA

## *Apstrakt*

*Evropska unija (EU) se smatra uspešnim modelom prenosa isključivog nacionalnog suvereniteta svojih država članica na institucije EU. Međutim, ovaj transfer se odvijao postepeno i do danas još nije završen. Pravna evolucija novog koncepta suvereniteta EU i njegovo jačanje u fokusu su analize ovog rada, kao i relevantni novi trendovi. Na ekonomskom nivou, proces koji se zove produbljivanje evropskih integracija, počeo je od carinske unije, zatim preko zajedničkog tržišta i konačno do jedinstvenog tržišta (EU) sa jedinstvenom valutom evro (Evrozona), koja ne obuhvata sve države članice. Na političkom nivou, EU još nije izgradila centralnu političku vlast sa nadnacionalnim ovlašćenjima, koja bi prevazišla nacionalne jurisdikcije država članica. Lisabonski ugovor iz 2009. pokušao je da nadogradi komplikovanu strukturu mešovite suverenosti podeljene između država članica i institucija EU, ukidanjem prethodna tri stuba saradnje i formiranjem jedinstvenog pravnog subjektiviteta Unije sa tri oblasti nadležnosti, sa taksativnom numeracijom delatnosti. Međutim, zbog brojnih problema funkcionisanja EU i snažnih geopolitičkih izazova, kojima je EU izložena, posebno posle pandemije i zbog rata u Ukrajini, ali i rata u Gazi, u državama članicama EU jačaju glasovi javnih zvaničnika, naučnika i široke javnosti, da je tradicionalni koncept nacionalnog suvereniteta preporučljiviji za odgovor na izazove savremenog sveta. Može se zaključiti da proces usavršavanja modela suvereniteta EU očigledno ima svoja ograničenja, jer je teško zamisliti paradoksalnu perspektivu u kojoj će se države odreći svog suvereniteta. Takođe, na globalnom nivou konceptualno jezgro suvereniteta ostaje osnovno i ispunjava mnoge važne zahteve međunarodnih odnosa, iako su zbog globalizacije potrebne njegove modifikacije.*

**Ključne reči:** *Evropska unija, nadležnosti, suverenitet*

## 1. Introduction

Sovereignty is the exclusive right to exercise supreme political authority (legislative, judicial, executive) over a certain territory and over a population on that territory.<sup>1</sup> Sovereignty is one of the most important concepts in international relations, since it has central role in setting the foundation for a rule of law. The Treaty of Westphalia, signed in Europe in 1648 after the Thirty Years' War, established the concept of the sovereign state. Sovereignty rests on the principles of territoriality and non-interference in the domestic affairs of states, according to the Westphalian definition.<sup>2</sup> Modern sovereign states are main subjects in international relations. The United Nations (UN) Charter, in Chapter 1, Article 2, asserts that the UN is “based on the principle of the sovereign equality of all its Members.” Sovereign state guarantees peace within its borders, ensures implementation of international agreements and of national legal system. Sovereignty is based on the principle of a territorial integrity of a state and on providing for the rule of law on a state territory.

European Union (EU) is considered to be a successful model of transfer of exclusive national sovereignty from its Member States to the EU institutions: the European Commission, the EU Council of Ministers, the EU Parliament and the European Court of Justice, with the main advisory bodies: the Committee of Regions and the Economic and Social Committee. However, this transfer was happening gradually and up to present has not yet been finished. EU Member States are the main constitutive subjects of the Union and as such dictate the course and pace of the establishment of the Union's scope of jurisdiction. The areas in which the EU Member States are ready to cede their competences to a supranational community and its institutions are becoming more and more numerous. Certainly, the explanation of this phenomenon, where national sovereignty is no longer an indivisible and forever defined conceptual category, lies in the growing interdependence of the states in the modern world within the process of globalization.

Despite the federalist efforts in the mid-50s of the last century, during the attempt to establish the European Defense Community, the functionalist approach to European integration prevailed, which is characterized by an overriding focus on the objectives of the Union's actions, and accordingly, the Member States ceded some parts of their competences to the Community/EU institutions.

At the economic level, process that is titled deepening of the European integration, started from customs union (European Economic Community - EEC), than through common market and finally single market (EU) with the single currency, euro, which is not embracing all Member States. The euro area, commonly called the Eurozone, is a currency union of 20 (twenty) Member States of the European Union that have adopted the euro as their primary currency and sole legal tender, and have thus fully implemented economic and monetary union (EMU) policies.

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<sup>1</sup> Similar definition see in: R.G. Tatar, A. Moisi, „The Concept of Sovereignty“, *Journal of Public Administration, Finance and Law*, Issue 24/2022, <https://doi.org/10.47743/jopaf1-2022-24-27>, last visited 4 July 2024.

<sup>2</sup> J. Hemmings, „Defining Sovereignty“, <https://ipdefenseforum.com/2023/03/defining-sovereignty/>, last visited 4 July 2024.

It has to be remembered as an unsuccessful effort of creating of supranational community in the form of European Coal and Steel Community (ECSC) consisting of six Member States founders in 1950 (France, West Germany, Italy and Benelux countries). The lesson learned from that, very limited in scope of competences, model of supranational community, i.e. only to coal and steel sector, contributed to the establishment of the EEC and later the EU. European Economic Community – EEC was a step back regarding the limitation of competences of its Member States for the sake of a supranational institution. Established institutions of the EEC: Commission, Council of Ministers, Parliament and European Court of Justice, with the advisory body: Economic and Social Committee, were equipped with competences strictly devoted to achieving the goals of restricted economic unification at that time. Consequently, the theory of implicit competences arose to explain such functionalistic approach.

At the political level, the EU has not yet built central political authority with supranational powers that would overcome national jurisdictions of Member States, in the following domains: common foreign policy, common security and partially justice and home affairs. Those spheres of jurisdictions are in exclusive competence of the EU Member States.

## 2. Legal evolution of a new concept of sovereignty of the EU

Bearing in mind that the Union has not yet become a federation or a confederation model of uniting its Member States, despite the fact that a large number of its members (but not all Member States) use the Euro as a single currency, some authors define the EU as a post-sovereign model of community.<sup>3</sup> Union has long since surpassed the classical characteristics of international organization and the usual typology. Therefore, many authors define the EU as a *sui generis* model of community.<sup>4</sup>

EU Member States are primarily motivated by the idea and advantages of an economic union, as a necessity in a highly globalized international economy. This is evidenced by the continuous process of improving the institutional structure of the EU, in the form of successive revisions of the constituent Treaties on the EU, then the unsuccessful Draft Treaty on the Constitution of Europe and finally the adoption and entry into force of the Lisbon Treaty on EU (2009). Evolution of legal development of a new concept of sovereignty started in Rome Treaties of 1957, continued in Single European Act of 1987, than by virtue of the Maastricht Treaty of 1993, the EU was established on three pillars of cooperation of Member States. Those pillars existed even through revisions of Maastricht Treaty, in Amsterdam Treaty of 1999 and in Nice Treaty of 2003.

The Lisbon Treaty of 2009 tried to upgrade the complicated structure of mixed sovereignty divided between Member States and the EU institutions, by cancelling three

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<sup>3</sup> S. Samardžić, *Evropska unija kao model supranacionalne zajednice*, Institute for European Studies, Belgrade, 1999, 34.

<sup>4</sup> R. Vukadinović, *Pravo EU*, Kragujevac, 2006, 73, G. Gasmī, *Quo vadis EU – Relevantni pravni i institucionalni faktori*, Institute of Comparative Law, Belgrade, 2016, 12.

pillars and forming single legal personality of the Union with the three areas of competences, with taxative numeration of activities. New notion of sovereignty, at least for the EU Member States is based on: 1. exclusive competence of the EU, 2. exclusive competence of the Member States and 3. shared competences, followed by so-called coordinating competences. According to the Treaty of Lisbon, the degree of the EU competence on public policies can be divided into three main categories (see Table): (1) exclusive competence, (2) shared competence between the Member States and the EU, and (3) policy areas in which Member States are still the main players, even if the EU could be partially involved to supplement Member State action. As Table shows, the EU has the exclusive capacity to make decisions in few, but important public policies: external trade, monetary policy (only for the Eurozone), customs, competition policy, international agreements and conservation of marine resources.

The policies where the EU share competences with Member States include internal market, social policy, agriculture, environmental policies, research and development, transport, cohesion funds, energy, security and justice, etc. Finally, there are public policies where Member States manifest their sovereignty as the main players, even if the EU is involved to some extent: education, culture, public health, tourism, civil protection, administrative cooperation and industrial policy. The common foreign and common security policy is a separate system in the EU. Member States also harmonize their national economic, social and employment policies within the framework of the EU mechanisms.

Table of detailed areas of competences in the Lisbon Treaty on EU:

Exclusive Policies	Shared Policies	Coordination Policies
Customs Union	Internal Market	Economic Policy
Competition Rules	Social Policy	Employment Policy
Marine Conservation	Cohesion Funds	Social Policy
Commercial Policy	Agric & Fisheries	<b>Common Policies</b>
International Treaties	Environment	Development Cooperation
<b>External Policies</b>	Consumer Protection	Humanitarian Aid
CFSP	Transport	<b>Complementary Policies by MS</b>
CSDP	Trans-Europe Networks	Human Health
	Energy	Industry
	Security & Justice	Culture
	Public Health	Tourism
	Research	Education & Training
	Technology	Civil Protection
	Space	Administrative Cooperation

The process of transferring the sovereignty of Member States to the EU institutions is evolutionary in nature and depends on concrete economic and political determinants within the EU and in a global framework. It is illustrated by the globalization strengthening, which dictated furthermore the deepening the European integration



trends through widening of competences of the EU institutions, aimed at forming legal and political identity of the EU as a whole. In this way, the EU Member States performed the efforts to preserve their improved capacity in global economic and political international relations.

The dynamics of building a new concept of sovereignty under the auspices of the EU is variable depending on the political and economic conditions in the EU Member States. In this way, Rome Treaties of 1957 formed EEC (European Economic Community) and European Atomic Energy Community, based on the customs union, due to favorable political climate at that time.<sup>5</sup> The common market formed by the Rome EEC Treaty was, at that time, the biggest free trade area in the world. However, interesting example is the United Kingdom of Britain (UK), who participated in the initial negotiations for the both Rome Treaties, but withdrew because it expressed strong fear for the loss of national sovereignty.<sup>6</sup> This historical example proves the importance of political and economic factors in creating the new concept of mixed sovereignty in Western Europe.

The main reason for establishing the Community, as the forerunner of today's EU, was the establishment of an internal market and ensuring sustainable economic development, based on balanced economic growth, stable prices and a highly competitive market economy, which contributes to full employment and social progress. Rome Treaties came into force on 1<sup>st</sup> July 1958, introducing three communities: ECSC, EEC and Euratom. Since ECSC came to an end on 23<sup>rd</sup> July 2002,<sup>7</sup> from this date the EEC and Euratom were collectively referred to as the European Communities, as separate legal subjects. Established customs union was based on the abolition of all customs duties and quantitative restrictions in trade among Member States, a common external tariff and rules on the free movement of goods, labour, business and capital – four freedoms, thus creating economic conditions similar to the market of a single state. Furthermore, some authors therefore compare the EEC to the UK, because there is free movement of goods, persons, business and capital between England, Scotland, Wales and Northern Ireland.<sup>8</sup>

Rome Treaty on the EEC represents the revolutionary solution of mixed sovereignty that was based on delegated competences of the Community, which have not existed before its entry into force. What are the activities that Member States have transferred to the EEC? In the Art 3 of the Rome Treaty there were the following Community competences:

- Elimination among Member States of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures with equivalent effect;
- Forming a common customs tariff and a common commercial policy towards third countries (non members);
- Abolition of obstacles to the free movement of persons, services and capital among Member States;

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<sup>5</sup> J. Fairhurst, *Law of the European Union*, Longman / Pearson, 2010, 6.

<sup>6</sup> There was, in addition, the big concern for the damage to its preferential trade with the Commonwealth. *Ibid.*

<sup>7</sup> Paris Treaty on ECSC of 1952 was signed for 50 years duration.

<sup>8</sup> J. Fairhurst, *ibid.* 7.



- Adoption of a common agricultural policy;
- Adoption of a common transport policy;
- Creation of a Community competition policy;
- Approximation of national laws of Member States to the extent necessary for the proper functioning of the common market and
- Association of overseas countries and territories aimed at increasing trade and economic development.

Obviously, those are economic competences of the mixed sovereignty of the Community and its main institutions: the Commission, the Council of Ministers, the Assembly (later European Parliament) and the Court of Justice. The legal importance of those economic competences was confirmed in later amendments to the Rome Treaty by the Single European Act of 1987. In the meantime, in April 1965 happened the merger of institutions. Although the agreement was reached to exist only one Parliamentary Assembly and one Court of Justice for the ECSC, EEC and Euratom, by virtue of the Merger Treaty, one Council and one European Commission, together with one Court of Justice and one Assembly were introduced for the three Communities.

In this way, limited sovereignty of the Community was improved through strengthening of its institutional structure. However, the three Communities retained their separate legal personality, and continued to function in parallel. Because of the common bodies, membership and goals, the single term Community, which signifies the existence of three, was universally accepted as the European Community in the political sense. In the legal context, the three European communities continued to exist side by side.

The goal of institutional merging is better internal coordination of the performance of functions, reduction of costs, simplification of administrative procedures and simpler adoption of the budget.

Further legal evolution of a new concept of sovereignty came with the Single European Act of 1987, which introduced amendments to the founding Treaties. For the first time political cooperation among Member States was launched for the sake of forthcoming creation of the European Union, which was mentioned for the first time in the form of Member States' commitment to build European Union. Regular meetings of prime ministers or presidents of Member States, in order to draw common political aims were envisaged in the established European Council. The solution was found in an intergovernmental method of political cooperation in the European Council. Consequently, Member States were not bound unless all the Member States agree on some political issue.

This approach is present also in later revisions of Rome Treaties: in the Maastricht Treaty on the EU of 1993, the Amsterdam Treaty of 1999 and the Nice Treaty of 2003, as well as in the Lisbon Treaty on the EU, for areas of common foreign and security policy, common defence policy and to some extent, for economic policy, employment and social policies. Those are domains where Member States keep the primacy of their national sovereignty, in order to preserve vital national interests.

### 3. Strengthening the EU sovereignty

Strengthening the EU sovereignty developed through the improvement of legislative powers of the European Parliament. Without expanding the competence of the EU and strengthening the democratic responsibility of its institutions, where the European Parliament occupies a special place, it would be difficult to achieve the transfer of state sovereignty on the monetary level to the EU bodies. The leading members of the Community, France and Germany, advocated the need to build a political, economic and monetary union, which arose from the understanding of the connection between these areas.

Maastricht Treaty on the EU of 1993 was the result of those political efforts. In the established EU, common foreign and security policy remained outside the jurisdiction of the Community, forming the second pillar of member cooperation, according to the Maastricht EU Treaty. The third pillar of cooperation covered issues from the field of justice and internal affairs (immigration, asylum, cooperation of judicial authorities), as a kind of codification of informal agreements of Member States. In the central first pillar of the European Union, the then current body of relations and the legal system of the European communities, which continued to exist as the basis of the EU, was placed.

Given the extension of jurisdiction to new areas, the name European Economic Community was changed to European Community, because in this way we wanted to point out the broader (non-economic) functions of the Community. On the one hand, the existing communitarian competences were strengthened and this refers to: social policy (without the participation of Great Britain); area of economic and social cohesion (regional development); environmental protection; scientific research work and technological development. On the other hand, the EU Treaty from Maastricht introduced new areas of Community activity: education and professional training; visa policy; consumer protection; culture; development cooperation with developing countries; industrial policy; trans-European communication networks in transport, energy and telecommunications.

The adoption of the EU Treaty in Maastricht marked the official introduction of the monetary union of the EU members in three stages, which also represented the strengthening of the EU sovereignty.

The most important reforms were made in the sphere of competence and work of the European Parliament in the direction of improving its position in the legislative domain. The process of strengthening Parliamentary powers, which began with the Single European Act and establishing the procedure for the cooperation of the Parliament and the Council, continued with further legal reforms. In addition to the cooperation procedure, a complex co-decision procedure has been introduced and the number of cases where Parliament's consent is required has increased. The co-decision procedure with the Council (Art. 189 B), as a form of democratic control of the Council's work, is applied in several areas of particular importance for the development of the EU: implementation of the internal market, scientific research and technological development,

education and professional training, culture, health and protection of environment. Unlike the cooperation procedure, in co-decision the Parliament can stop the adoption of an act in the Council.

The legislative functions of the European Parliament are multiple:

- giving opinions on foreign-political issues and the judicial field;
- confirmation of trade and other agreements with third countries or international organizations (consent);
- adoption of the annual budget on equal footing with the Council;<sup>9</sup>
- co-decision with the Council enlarged to fifty new issues and
- cooperation legislative procedure.

In the field of political control in the EU, through the mechanism of electing the President of the Commission on the proposal of the European Council, the Parliament should take into account the results of the European elections for deputies, so that the President of the Commission is a representative of the political will of the majority of voters in the EU.

The democratic control of the Parliament over the Commission is reflected not only in the approval of the election of its members, but also in the right of the Parliament to form an investigative commission and examine citizens' complaints about improper administrative work of the EU bodies (Ombudsman powers).

However, in the area of political union, more modest progress was achieved than in relation to the economic and monetary union, while in terms of social policy, agreement was not reached on greater Communitarian competence and decision-making rights of the Union. Great Britain again expressed reservations regarding the adoption of the new Social Charter, and the other eleven members concluded the Protocol on Social Policy and the Agreement, which is outside the legal framework of the Treaty on the European Community.<sup>10</sup>

The general principle of conferred competences, i.e. assigned competences, represents the principle on which is based the European Union and its model of sovereignty. The areas in which EU Member States are ready to cede their competences to a supra-national Community and its institutions, such as the EU, are becoming more numerous today. The national sovereignty of EU Member States is no longer an indivisible and forever defined conceptual category, because the interdependence of states is increasing at the global context and even more, at the regional level in the modern world.

In the area of shared competences, the EU operates on the basis of the principle of subsidiarity, which defines that the EU takes measures, only if the goals of the intended action cannot be achieved to the required extent by the Member States, that is, the goals can be more successfully achieved by the EU, taking into account the size or performance of

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<sup>9</sup> Until the Lisbon Treaty on the EU, the Council of Ministers had the right to final decisions in the area of mandatory budget expenditures, which make up the majority of the EU budget (especially expenditures for agriculture). G. Gasmi, *Quo vadis EU*, *op. cit.*

<sup>10</sup> G. Gasmi, *op. cit.*, 47.

the intended actions. Guardians of the consistent implementation of the subsidiarity principle in the EU, in terms of the hierarchy of competences in the EU, are primarily the national parliaments of the Member States and the European Court of Justice.

EU measures shall not go beyond what is necessary to achieve the objectives of the EU Treaty. This constitutes the principle of proportionality, which complements the principle of subsidiarity. Member States undertake all necessary measures to achieve EU tasks and refrain from any measures that may jeopardize the achievement of EU objectives. On the other side, the Lisbon Treaty strengthens the presumptions in favor of the competences of the Member States in situations where they are not explicitly assigned to the EU institutions.

Birth of the EU marked the strengthening of its specific model of sovereignty. In this process, the acquisition of the status of a legal entity of the Union, which enables the conclusion of international agreements on behalf of the EU as a whole and accession to international organizations and conventions, is of great positive importance. In relation to the common defense and security policy, the Lisbon Treaty made progress towards the formation of the so-called European common defense. A clause on mutual defense was introduced (Art. 42, paragraph 7), which means that if one member state is attacked, the other members have an obligation to help it in defense. It is the usual principle of collective security in international relations, which is embodied in Ch. VII of the UN Charter.

There is an important difference (*differentia specifica*) of common policies in relation to the coordination of national policies. First of all, in the case of common policies, there is a transfer of competence to the EU (especially in the area of achieving the internal market), while in the case of harmonization of national policies, the responsibility for implementing and formulating the policy is still in the hands of the Member States. Bearing that in mind, for a complete interpretation of the construction and functioning of the EU, it is necessary to apply a functionalist approach.

The founders of integration functionalism (D. Mitrani, Inis L. Claude, P. G. Taylor, etc.)<sup>11</sup> believe that political integration should automatically result from economic unification. Bearing in mind that through economic integration a greater closeness of attitudes develops in the cooperation of states, it should precede political integration. According to their views, the gradual transfer of state powers to the joint bodies of the international organization is moving in the direction of its formation into a supranational entity, that is, a political community of a parastate way of functioning.

Another important issue is the open question in relation to the EU enlargement *versus* sovereignty of the EU i.e. does the enlargement strengthen the competences of the EU or not. EU enlargement policy has been considered the most efficient foreign policy instrument, especially after the Big Bang enlargement in 2004. However, the deadlock in actual enlargement processes for the last decade, especially in the Western Balkans region, contributed significantly to decrease of the EU's geopolitical influence, its credibility, endangered security (especially with the Ukraine war), hampering economic

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<sup>11</sup> D. Mitrani, *A Working Peace System*, London, NY, 1946, 47.

opportunities and normative power.<sup>12</sup> Seen from the point of sovereignty view, both the EU and its Member States claim authority for foreign and even security affairs. Member States foster their national interests despite the existence of the EU, its foreign policy or common positions they jointly take on certain matters.<sup>13</sup>

Consequently, when the EU enlargement is at stake, Member States are insisting on primacy of their national interests, so the sovereignty of the EU is functional during negotiations on accession, but final say have the Member States when it comes to ratification of achieved agreements on accession. The result is that common foreign policy including the enlargement, as well as common defence policy are separate domains in terms of the EU jurisdiction, since there the Member States jealously keep their sovereign powers allowing only common positions and actions based on unanimity. Amsterdam Treaty on the EU (1999) has introduced the notion of the constructive abstention in the decision making process of the common foreign policy issues, aimed at reaching the consensus, very often so necessary in reality. However, it does not change the assessment of very limited sovereignty of the EU in foreign policy matters. Later Lisbon Treaty on the EU (2009) improved the ability of the Union to conclude international agreements by establishing the legal personality of the EU as a whole, which is considered to be a great improvement for the EU sovereignty.<sup>14</sup> Recent example is that the EU joined the Convention of the Council of Europe on preventing and combating violence against women and domestic violence (Istanbul Convention) as of October 2023, although not all Member States are contracting parties of this Convention.<sup>15</sup>

#### 4. New trends

Globalization is a process of interaction and integration that embodies a transformation in the organization of social relations and transactions, which generate transcontinental or interregional flow of communication, technology, knowledge and opportunities. Globalization has transformed several aspects of the global system and influenced almost all dimensions of human lives.<sup>16</sup> We witness now the functioning

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<sup>12</sup> I. Radić Milosavljević, M. Petrović, „EU Enlargement Policy between the Chronological Precedence of the Western Balkans and the Geopolitical Urgency in the Eastern Neighborhood: a Realist Perspective, *Političke perspektive*, Vol. 14, No. 1, 2024.

<sup>13</sup> *Ibid.*

<sup>14</sup> G. Gasmı, *Quo vadis EU – Relevantni pravni i institucionalni faktori*, Institute of Comparative Law, Belgrade, 2016, 121.

<sup>15</sup> Council Decision (EU) 2023/1075 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union, OJ L 143I , 2 June 2023, 1; Council Decision (EU) 2023/1076 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to matters related to judicial cooperation in criminal matters, asylum and non-refoulement, OJ L 143I , 2 June 2023, 4.

<sup>16</sup> D. Dubey, „Perspective on Traditional Concept of Sovereignty and Globalization“, 2021, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3868677](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3868677), last visited 5 July 2024.

of UN, European Union, NATO, World Bank, World Trade Organization (WTO) and International Monetary Fund (IMF) that have imposed their authority by promoting universal standards for everything. All those trends have thus changed the traditional concept of sovereignty. The very core of traditional sovereignty is power of self-determination, the power to determine for and by oneself and not the command of others.

The question is: which are the areas in which sovereign states are ready to cede their competences to a supranational community. As it stems from the historical course of development of the Community into the European Union, this question has not yet been given a final answer.

Furthermore open question arises: does this new concept of the EU model of sovereignty, as it was established in 2009 by the Lisbon Treaty on the EU, reflect the needs of modern states in XXI century? More and more, there are voices in the EU Member States from public officials, scholars and wide public, that traditional concept of national sovereignty is more recommendable to respond to modern challenges of contemporary world. This trend has developed recently, especially after Pandemic of Covid-19, which indicated the systemic weakness and the lack of competence and powers of the EU institutions in the area of public health protection, when population in most EU Member States asked primarily from their governments to protect them adequately. Additionally, this trend gained importance furthermore with security threats resulted from the wars in Ukraine and in Gaza.

However, traditional definition of sovereignty, as it was formulated in a Westphalian manner, is obsolete due to globalization and extreme interdependence of states.<sup>17</sup> The new concept of sovereignty, born within the EU, remains regionally limited and open to possible new negotiations among Member States in future eventual revision of the Lisbon Treaty on EU. Process of upgrading the new concept of sovereignty is dynamic and will depend on multidimensional factors, such as geopolitical elements in Europe, including war in Ukraine, economic stability or instability, national ruling parties in Member States and finally, European elections for EU Parliament showing political mood of wide EU population in 2024.

„At the level of the European Union, and on the international stage in general, the states are each sovereign. The European Union is thus a juxtaposition of the sovereignty of the Member States. Therefore, sovereignty cannot be absolute, but each state must respect the sovereignty of the other states, as well as the rules of Community law. The evolution of states is accompanied by the evolution of the concept of sovereignty, which designates them. Therefore, the concept of sovereignty must, in the context of Europeanization, be rethought.“<sup>18</sup>

At a global level, new trends are present in defining the concept of sovereignty, such as the notion of so called responsible sovereignty, which assumes that a state is

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<sup>17</sup> B. Aurescu, *The New Sovereignty*, C.H. Beck, Bucharest, 2003, 48, D. Herzog, *Sovereignty*, RIP, Yale University Press, 2020, 29.

<sup>18</sup> R. G. Tatar, A. Moisi, „The Concept of Sovereignty“, *Journal of Public Administration, Finance and Law*, Issue 24/2022, <https://doi.org/10.47743/jopafl-2022-24-27>, last visited 5 July 2024.



responsible for the welfare of its citizens and for the protection of their human rights.<sup>19</sup> The essence of this definition is that it makes the concept of sovereignty conditional upon fulfillment of economic prosperity and human rights protection. UN accepted the concept of responsible sovereignty by a resolution passed by the UN General Assembly in September 2005 at the World Summit. However, the interpretation and implementation of this concept of responsible sovereignty contrary to the traditional, absolute sovereignty, may pose problems and can result in conflicts among states.

It is important to stress the primacy of Community law and the *Acquis Communautaire* in the EU Member States, which is one of crucial principle of the EU functioning. Nevertheless, Poland has been sued by the European Commission following the decisions of the Polish Constitutional Court challenging the supremacy of EU law. The Polish Government explicitly argues that the Commission's legal action is an attack on its sovereignty.<sup>20</sup> This recent example directly illustrates the complexity of the execution of traditional notion of sovereignty of a Member State in the framework of the EU. However, the EU model of shared sovereignty does not ruin the essence of the concept of sovereignty, because its Member States consciously, voluntarily and supported by the public vote are those that delegate their powers to a common institutional structure in order to achieve effective security and viable prosperity.

It seems that in near future the EU model of so called a juxtaposed sovereignty over the Member States needs to be rethought, especially after the Brexit, the withdrawal of the United Kingdom from the European Union and Euratom in early 2020. For the first time, it happened that a Member State left the Union, which was considered by Eurosceptics to be the beginning of disintegration. On the other side, many European states: from the Western Balkans region (Serbia, Montenegro, Bosnia & Herzegovina, Albania),<sup>21</sup> and Ukraine and Moldavia, as well as Turkey try to become members of the EU in a long-running negotiations. In candidate countries, the Union is seen as an adequate wheel of economic development and of sustainable peace among its members.

According to the Eurobarometer survey from December 2019, the distrust of citizens of EU Member States in the Union has increased and amounts to 47% of those surveyed. This is followed by a high percentage of mistrust in national governments (61%) and EU member parliaments (60%). In only four Member States, a relative majority say they "tend to trust the EU": Germany, Poland, Belgium (49%), and Slovakia (45%). Citizens in Great Britain (29%), France (32%) and Greece (34%) have the lowest level of trust in the EU. According to a regular Eurobarometer survey (December 2019), more than a

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<sup>19</sup> J. Hemmings, *op.cit.*

<sup>20</sup> Poland's Constitutional court ruled in July 2021 that the measures imposed by the European Court of Justice were unconstitutional, although Poland had agreed with the rule of law when it became a member of the EU in 2004. R. G. Tatar, A. Moisi, *op. cit.*

<sup>21</sup> G. Gasmı, D. Prlja, „European path of the Western Balkans region - normative aspects and geopolitical factors“, *Regional Law Review – Collection of papers from the First International Scientific Conference*, (ed. Reljanović M.), Institute of Comparative Law, Belgrade, COBISS.SR-ID 26220297, ISBN 978-86-80186-60-3 (IUP), 59 - 76., 2020.



third of citizens in EU countries (34%) believe that the migrant crisis is the most significant problem facing the Union since 2014.<sup>22</sup>

Consequently, this situation served to strengthen national far-right movements and Eurosceptics in the EU Member States and became even more indicative of the Union's institutional weaknesses.<sup>23</sup> Recent European elections in June 2024 for the European Parliament clearly confirmed those trends.

Conflicts in implementation of the EU model of sovereignty are often present: on April 2, 2020, the European Court of Justice ruled that three EU countries: the Czech Republic, Hungary and Poland violated EU regulations when they refused to accept migrants under the 2015 EU temporary quota system introduced by a decision of the Council of Ministers.<sup>24</sup> The European Court of Justice concluded that the three Member States were not entitled to invoke: "maintenance of law and order" or "maintenance of internal security", or to claim that the resettlement program was "dysfunctional".<sup>25</sup> The three Member States have posed the arguments of absolute national sovereignty, which were not accepted at the EU level.

Jean Monet wrote in his memoirs that "Europe will move forward in crises and it will be the sum of the solutions adopted for those crises". However, the absence of solidarity from other EU members towards Italy, France and Spain, the Member States that suffered the most losses in the Pandemic, indicated a direct violation of European values that are legally protected and declared by the Treaty of Lisbon (Articles 2, 3).

From a normative point of view, these provisions of the Lisbon Treaty emphasize universal values, such as: human dignity, freedom, democracy, equality, rule of law, solidarity, non-discrimination and respect for human and minority rights. "These values are common to Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men rule" (Art. 2). Therefore, some authors point out that the Treaty of Lisbon (TEU) is deeply rooted in human rights, because those provisions of Article 2 on the values of the Union have not only political, but also concrete legal effects.<sup>26</sup> In the EU practice, these values are seriously violated, which represents another example of the gap between the normative and real dimensions of the functioning of the Union.

<sup>22</sup> European Commission, "Autumn 2019 - Standard Eurobarometer", Press Release 20 December Brussels, <https://ec.europa.eu/commission/presscorner>, last visited 4 July 2024.

<sup>23</sup> G. Gasmi, „The legal framework of the EU - a decade since the adoption of the Lisbon Treaty on the EU and the black momentum of the Union“, in: *Liber Amicorum in honor of Radovan D. Vukadinović, Challenges in international business law and the law of the European Union*, (ed, Tatham A. F., Popović V., Vukadinović Marković J.), Academy of Sciences and Arts of the Republic of Srpska, Association for European Law, Kragujevac - Banja Luka, Official Gazette, 2020, 225 - 248.

<sup>24</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ 2015 L 248, 80).

<sup>25</sup> ECJ Judgment in Joined Cases C-715/17, C-718/17 and C-719/17 Commission v Poland, Hungary and the Czech Republic, Court of Justice of the European Union PRESS RELEASE No 40/20 Luxembourg, 2 April 2020, [www.curia.europa.eu](http://www.curia.europa.eu), last visited, 6 July 2024.

<sup>26</sup> J. Piris, *The Lisbon Treaty – A legal and Political Analysis*, Cambridge: Cambridge University Press, 2010, 71.

Therefore, many authors are proponents of the idea of the Europe of free nations, i.e. as A. Dvorak wrote: „But this does not mean that we should cease being inspired by European integration created from below. The search for ways to continue further free existence and preserve national independence while building mutually beneficial cooperation with neighbouring states was justifiable yesterday, is today and will be tomorrow.“<sup>27</sup> This quote not only affirms the strengthening of the old traditional concept of sovereign states, but furthermore indicates the problems of the EU model of juxtaposed and shared sovereignty in relation to its Member States.

Furthermore Petr Drulak wrote about the tragedy of the EU<sup>28</sup> suggesting the closer Central European integration based on the primacy of national sovereignty: „The basic premise is: less EU, more national sovereignty and a new type of regional integration. The weakening of the EU and the strengthening of individual states are linked vessels. States need to regain the ability to regulate capitalism and sovereignly decide the rules by which they would live.“<sup>29</sup>

Additionally, there is a strong resistance to a new-wave trend of decarbonisation policy of the EU, because the EU accounts for only about one tenth of global carbon emissions<sup>30</sup> and yet it wants to radically change European industry and energy. Opponents consider that the EU will endanger its own economic prosperity, because decarbonisation experiments damage European economies and exacerbate social disparities.

## 5. Conclusions

Bearing in mind geopolitical challenges of XXI century, especially Pandemic, war in Ukraine in Europe, but also war in Gaza, the concept of sovereignty receives new connotations and conceptual additions in order to respond to new social, political and economic requirements. This is applicable furthermore for the European Union and its Member States, since there is a significant mood for constitutional amendments of its Lisbon Treaty without cancelling achieved results of integration, but followed by strengthening of national sovereignty of Member States in a traditional sense.

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<sup>27</sup> A. Dvorak, „Historical development and contradictory concepts of efforts to unite Europe“, in: *Saint Adalbert and Central Europe*, (ed. Tomáš Kulman, Michal Semín), Patrimonium Sancti Adalberti, Prague 6 – Břevnov, Czech Republic, 2021, 31.

<sup>28</sup> P. Drulák, „A dangerous world and the Central European integration as a necessity“, in: *Saint Adalbert and Central Europe*, (ed. Tomáš Kulman, Michal Semín), Patrimonium Sancti Adalberti, Prague 6 – Břevnov, Czech Republic, 2021, 35: „The real tragedy of today’s European Union is not its failure to stand up to geopolitical challenges. It was not founded with such objective in mind and its Member States are not prepared to provide it with the necessary tools to do so. France may dream that its nuclear weapons, military and intelligence capabilities, and veto power in the UN Security Council predestine it for a leading role in a strategically acting Europe, but others do not want to defer to either France or the European Commission on strategic issues.“

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

At a global level, starting from the point of complexity of current international flows, the concept of sovereignty remains necessary, because states are main subjects in international relations. However, globalization trends make unavoidable pressures on traditional essence of sovereignty, diminishing its scope and asking for its adaptation. Open question still is: does globalization and deepening of integration within the EU will result in effective changes of the notion of sovereignty. The answer to this question is already present to a limited extent, because the EU model clearly shows revolutionary steps in creating a new concept of mixed sovereignty, no matter how complicated it is in practice.

It can be concluded that the process of perfecting the EU model of sovereignty obviously has its limitations, because it is difficult to imagine a paradoxical perspective in which states will give up their sovereignty. History of unsuccessful efforts in moving the Union towards confederation or even federation through Draft Treaty on European Constitution (2004), which was rejected at French referendum and later in Netherlands (2005), confirms this conclusion. Consequently, changes of a new concept of sovereignty in the EU will be only nuanced. Furthermore, at a global level conceptual core of the sovereignty remains basic and meets many important requirements of international relations, although its modifications are needed due to globalization.

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CIP - Каталогизација у публикацији  
Народна библиотека Србије, Београд

341(082)

341.211(082)

341.217(4-672EU)(082)

341.176(4-672EU)(082)

**INTERNATIONAL scientific thematic conference From national sovereignty to negotiation sovereignty "Days of Law Rolando Quadri" (2024 ; Beograd)**

International scientific thematic conference From national sovereignty to negotiation sovereignty "Days of Law Rolando Quadri", Belgrade, 14 June 2024 : thematic conference proceedings of international significance = Convegno scientifico internazionale Dalla sovranità nazionale alla sovranità negoziale "Giorni del Diritto Rolando Quadri", Belgrado, 14 giugno 2024 : atti di convegni tematici di rilevanza internazionale / [organized by] Institute of comparative law (Istituto di diritto comparato), University "Niccolò Cusano" (Università "Niccolò Cusano") ; editors, a Cura di Jelena Kostić, Valentina Ranaldi, Augusto Sinagra. - Belgrade : Institute of Comparative Law ; Rome : University "Niccolò Cusano", 2024 (Beograd : Birograf comp). - XXI, 375 str. ; 24 cm

Radovi na engl. i ital. jeziku. - Tiraž 150. - Str. IX-XVI: Preface = Preface / Jelena Kostić, Valentina Ranaldi. - Napomene i bibliografske reference uz tekst. - Bibliografija uz svaki rad. - Apstrakti.

ISBN 978-86-82582-18-2

а) Европска унија -- Наднационална надлежност -- Зборници б) Сувереност -- Зборници в) Међународно право -- Зборници

COBISS.SR-ID 151823113