SUBSIDIARITY AND SOVEREIGNTY IN THE EUROPEAN UNION[1]

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RESUMO

O poder da União sobre os Estados membros é um poder supranacional. Com isso, quer-se significar um poder hierárquico de subordinação da União sobre os Estados membros, cujo traço jurídico mais importante é o do primado do Direito da União sobre o Direitos nacionais, hoje consagrado nos Tratados da União e aceite pelas Constituições dos Estados membros. Mas esse poder supranacional não pode ser visto como soberania da União. A União não tem soberania própria porque não tem um povo europeu com poder constituinte próprio. Os Tratados concebem a União como um somatório de povos dos Estados membros, não como ela possuindo um povo europeu sobreposto aos povos dos Estados. E o poder constituinte está entregue aos Estados porque são eles, e não um povo europeu que não existe, que revêem os Tratados. Por seu lado, os Estados continuam a ter soberania própria, ainda que limitada pela sua participação na União. Isso é assim não apenas porque as respectivas Constituições o dizem como também porque, segundo os Tratados, a União tem uma competência de atribuição, o que significa que os Estados continuam a ser soberanos quanto a todas as matérias não atribuídas, de modo expresso, pelos Tratados à União. Quanto às atribuições conferidas pelos Tratados à União (atribuições exclusivas da União, atribuições partilhadas e atribuições complementares), salvo quanto às atribuições exclusivas os Tratados, através do princípio da subsidiariedade, atribuem primazia aos Estados na prossecução dessas atribuições. Isso significa que, por esta via, os Estados vêem a sua soberania alargada a essas matérias pelo simples facto da sua participação na União.

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I. Introduction

In his vast scientific work Rudolf Streinz paid great attention to the structuring principles of the European Union. One of them was the principle of subsidiarity. What I propose to do herein is to reflect on the way that this principle, as set forth in the Treaties, interferes with the sovereignty of member States and, more specifically, conditions the content and dimension of such sovereignty.

We will, therefore, assess in this article how it is defined and what is the scope of the sovereignty of the member States of the Union. But to do so, we will have to start by establishing the nature of the political power of the Union in its relationship with the political power of the States.

II. The nature and extent of the Union's political power. The absence of Sovereignty in the Union

Traditionally, the Union power has been characterized since the beginning of integration as a "supranational power." It should be noted that the Treaties never used that expression to characterize the Communities or the Union. It was created by the Treaty establishing the European Coal and Steel Community (ECSC), and only in its Art. 9, to define the roles of the members of its High Authority and not the nature of that Community. But as it was not known for sure what that word meant and because, therefore, a great controversy was generated around it, it was removed in 1957 from that Treaty by the Treaty of merger of certain institutions of the Communities, known only as the Treaty of Merger, and it never appeared again in any of the founding Treaties of any of the Communities or the Union, given that, due to its novelty in the legal lexicon, it was controversial. But by the way the Treaties shaped, first, the Communities, then the Union, and using the founding fathers of European integration and its legal system, we know how supranationality was intended to be characterized. When speaking of supranational power, it is intended to refer to a vertical power, a power of subordination of the Union over the States, in order to make a difference with the horizontal power of coordination of the sovereignties of the States, which characterizes since Vitória and Suarez the great stain of Public International Law and despite the

limitations brought to the sovereignty of States even within the framework of classical International Law after the Second World War.[1]

There are several features in which this power of subordination of the Union over the States is concretized. We will only refer to the two most important ones.

Firstly, the primacy of Union Law, with all its scope and effects, as it has been elaborated by the case law of the ECJ with the collaboration of the State courts, namely, the constitutional courts.

The second feature consists of the vast and complex system of applicability and enforcement of Union Law in the internal order of the member States, from the direct applicability of some acts of secondary Law to the coercive competence of the ECJ, to the sanctioning power of the Union over Member States in the event of non-compliance with Union Law, and to the liability framework of the States for violations of Union Law.

We could also add, within these most important features, thinking specifically about the Economic and Monetary Union, the powers of the European Central Bank over the financial systems of the member States.

This supranacional power of the Union cannot be qualified as sovereign power. I.e., the Union has no sovereignty of its own.

For the Union to have its own sovereignty, it would first have to be a State. It has not yet been possible to separate the concept of sovereignty from the concept of the State. Well, the Union is not a State, first, because it does not have a people with its own constituent power.[2]

It does not have a people. In fact, the Union is a sum of the peoples of the member States, but it does not have its own people, a European people, a people of the Union. This is why the Treaties never refer to a European people, but rather, in the plural, to the peoples of the several member States - this is the case, right in the Preamble of the Treaty on European Union (TEU), in recitals 6, 9, 12 and 13, and then Art. 3 (1 and 5) of the same Treaty. In fact, European citizenship, as results from the Treaties, specifically from Art. 20 (1, 2nd sentence), of the Treaty on the Functioning of the European Union (TFEU), is not an autonomous citizenship and different from state citizenship and one that overlaps with it. One is a citizen of the Union because one has the citizenship of one of the member

[1] This was the main subject of the thesis of Quadros, Direito das Comunidades Europeias e Direito Internacional Público, 1984.

[2] If it is not a State, much less will it be a "super-State" as some claim. Nor will we consider this hypothesis because Comparative Constitucional Law does not know the concept of a super-State.

States, not because it is a new citizenship, different from this one. In other words, there is no dual citizenship in the Union, which we find in some federal States.

In the absence of a European people, obviously there is no people in the Union with its own constituent power. Despite the flexibility brought by the Treaty of Lisbon to the system of amendment of the Treaties with the creation of a simplified amendment framework, the truth is that the States continue to amend the Treaties. In other words, to use a very old expression in Union Law, the States continue to be the "owners of the Treaties" ("*maítres des traités*", "*Herren der Vertréige*"). To put it even better, the *Kompetenz-Kompetenz*, which is an essential characteristic of the State, remains in the ownership of the member States and has not yet been transferred to the people of the Union. The Convention method, used in the drafting of the Charter of Fundamental Rights and the failed Constitutional Treaty of 2004, deserves to be revisited and deepened, but, as it was in force, it did not take away the definitive and decisive word from the States in the amendment of the Treaties.

Two arguments of the positive Law confirm that the Union does not have a state character.

On the one hand, the Treaties, including their Protocols and Declarations, nowhere in their long texts use the words state or statehood, or federal or federation.

On the other hand, and this is a decisive argument, Art. 5 (1) of the TEU delimits the Union's legal capacity by the principle of conferral or specialty. From the combination of this provision with no. 2 of the sarne Art. and with Art. 4 (1) of the sarne Treaty, it results that the Union only has those competences conferred on it by the Treaties and not those that they do not confer, making it clear that the competences that the States do not confer on the Union through the Treaties continue to belong to the States. Declaration no. 24 annexed to the Treaty of Lisbon emphasizes this conclusion, by repeating that the Union's own legal personality "will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties". And the first paragraph of Declaration no. 18, on the delimitation of competences, goes in the same direction. The Court of Justice has confirmed this interpretation of the Treaties, even when it has extended it, so that it also encompasses the powers that can be implicitly extracted from the provisions attributing

explicit competences to the Union[3-4]. On the other hand, no different conclusion can be drawn from Art. 4 (3, paragraph 2) of the TEU and Art. 352 of the TFEU.

In respect of Art. 4 (3, paragraph 2), it is obvious that all measures that States can take under its shade will have to respect the limits of the Union's competences.[5]

As far as Art. 352 of the TFEU is concerned, it has long been established that it allows the Council to create new powers for the institutions of the Union, it does not allow it to create new competences for the Union.[6]

Nevertheless, to the contrary, the State has a general and total capacity, an expansive capacity, i. e., it has an *Allzuständigkeit*. This general capacity stems from the people's sovereignty, enshrined in the Constitution (for instance, Grundgesetz, Art. 20 (2) 1st sentence[7], and Portuguese Constitution, Art. 3 (1)). Well, the principle of conferral or specialty is the denial of that general capacity and, therefore, constitutes an implicit refusal of the state character to the Union.

It is true that the Union already has federal traits.[8] But it is not yet a state and there can be no complete federalism without a state. Federalism is a method of organizing a State and it is in this sense that Comparative Constitutional Law leads us.[9]

It is true that the federalism of the European Union will have its own features, it will not have to imitate previous federal models which, in turn, do not converge with each other. To reach this conclusion, it will be enough to compare these models,[10] starting, from the outset, by comparing the German and the United States models. And there is one thing that is already known for certain, European federalism will always be strongly decentralized thanks to the principle of subsidiarity, which is in force to a large extent in the Union. And subsidiarity will be the key to cooperative

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3 See ECJ 28.3.1996 - Opinion 2/94, Slg. 1996, I-1759 paras. 24, 25 and 30 - Accession to the ECHR; ECJ 5.10.2000 - C-376/98, Slg.2000, I-8419 para.43 - Germany v. European Parliament and Council; ECJ 3.9.2008 - C-402/05 P and C-415/05 P, Slg. 2008, I-6351 para. 203 - Kadi.

4 The interpretation extracted from the referred provisions is the same as the one followed by the Commentaries to the Treaties; see, for instance Streinz, EUV /AEUV /Streinz, 3. ed. 2018, TEUArt.4 paras. 8-19; see also Louis/Ronse, L'ordre juridique de l'Union européenne, 2005, p.16; Lenaerts/van Nuffel, European Union Law, 2011, p.112; Isaac/Blanquet, Droit général de l'Union européenne, 10. ed. 2012, p.64.

5 Streinz, EUV /AEUV /Streinz, 3. ed. 2018, TEU Art.4 paras. 31-34.

6 Streinz, EUV /AEUV /Streinz, 3. ed. 2018, TEU Art. 4 para. 6; see also Quadros, Direito da União Europeia, 3. ed. 2013, pp.3 and 97.

7 See Isensee/Kirchhof, Handbuch des Staatsrechts/Gröschner, vol. II, 3rd ed., 2004, p.369.

8 See Quadros, Direito da União Europeia, 3. ed. 2013, p. 431, and Quadros, Droit de l'Union européenne, 2008, p. 301.

9 Weber, Europäische Verfassungsvergleichung, 2010, p. 13.

10 See Bifulco, Ordinamenti federali comparati, 2010.

federalism, which, taking the German political and constitutional system as a reference, is conceived by the Treaties as a future model for power within the Union.[11] We will return later to the principle of subsidiarity.[12]

In Germany, the Federal Constitutional Court understands that the Union is not a State. So it decided in the Judgment Maastricht,[13] which was later developed as regards this matter by the Judgment Lissabon.[14] And this has been, throughout the ages, the dominant position in German doctrine, as can be seen today in the thinking of Streinz[15] and von Bogdandy[16].

III. The contribution of the member States to the creation of the Union's political power

If the Union does not have its own sovereignty, how is its supranational political power formed?

It was created at the expense of the sovereignty of the States and with their contribution. The reason why many constitutionalists, from different founding States of the Communities, refused or were reluctant to the European integration at the beginning of the process (we are talking about the 50s and 60s of the last century), was precisely the fact that for them the sovereignty of the State was indivisible and, as such, it was incompatible with integration and with the creation of a power that soon was announced as "supranational" in relation to the member States.[17]

For a long time, since Bodin and Hobbes, state sovereignty was seen as an absolute power. It would still be under the conception of an absolute power that the concept of sovereignty would be used by the voluntaristic lines of doctrine as for the foundation of International Law. These would postulate that States would only be bound by International Law if that was their will and within the limits of their will. This doctrine presented some variants, which, however, do not interest us in this

[11] See Schütze, From Dual to Cooperative Federalism, 2009, p. 284; Cloots/De Baere/Sottiaux, Federalism in the European Union/Herwig, 2012, p. 67; and v. Bogdandy, Europäisches Verfassungsrecht/Grabenwarter, 2003, p.304.

[12] On the underlying issue, Quadros, Direito da União Europeia, 3. ed. 2013, p. 429.

[13] BVerfG 12.10.1993 - 2 BvR 2134/92, 2 BvR 2159/92, BVerfGE 89, 155 (181) - Maastricht.

[14] BVerfG 30.6.2009 - 2 BvE 2/08, 2 BvE 5/08, 2 BvR 1010/08, 2 BvR 1022/08, 2 BvR 1259/08, 2 BvR 182/09, VerfGE 123, 267 = NJW 2009, 2267 - Vertrag von Lissabon.

[15] Streinz, Europarecht, 11. ed. 2019, p. 54.

[16] V Bogdandy, Strukturwandel des öffentlichen Rechts, 2022, p. 39.

[17] For example, Badura, VVDStRL 23 (1966), 34, who, nonetheless, changed his position throughout the times. On the evolution of the thinking of this author, see Quadros AöR 2016, 144. On this point, see also Pescatore, Le droit de l'intégration, 1972, reprint: 2005, p. 35.

article. They had their grounds in the Hegelian conception of the State.[18] But this doctrine was developed by Georg Jellinek,[19] who influenced German doctrine for many years and had a good following in France.[20] This led to some consequences, the main of which was that International Law was only in force in the internal order of the State by "transformation" into domestic law and, therefore, subject to the hierarchy of the domestic law own legal sources and its interpretation rules. In other words, and to sum up, this doctrine did not accept the existence of International Law as such, i. e., with autonomy and with its own characteristics.[21]

The possibility that the sovereignty of the States can be limited was first defended by John Locke in reaction to the absolute character of sovereignty held by Bodin and Hobbes. Later, this orientation would be deepened by Jeremy Bentham in his model of constitutionalism. However, it would be Jean-Jacques Rousseau who, shortly after Locke, and partly in disagreement with his position, would co1ne to frame State sovereignty in a system of constitutional limitation of sovereignty brought by the value of democracy. Sovereignty and democracy, and, within the latter, the will of the people, become two concepts to be reconciled and, in this way, democracy comes to constitute a limit to the sovereignty of the State. It should be noted, moreover, that in practice the limitations of State sovereignty were not a new phenomenon, as they had also existed in colonial and imperial situations.[22]

In order to accept the supranational power of the Union, the States transferred onto the European Communities, then to the Union, their "sovereign powers," i. e., "powers of authority" included in their sovereignty. The constitutions of the member States had to take a stand in this regard. For them, the supranacional power of the Union arises from the limitations of sovereignty allowed by the States for the benefit of the Union by virtue of their free membership and participation in the Union. These sovereignty limitations result precisely from the transfer of sovereign powers carried out by the States in favour of the Union, in the terms just mentioned above.

To understand this phenomenon, we must accept and start from the divisibility of State sovereignty. In other words, we must start from the distinction between qualitative sovereignty and

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18 Hegel, Grundlinien der Philosophie des Rechtes, 1821, p. 3.

19 Jellinek, Allgemeine Staatslehre, 1905.

20 See, for instance, Carré de Malberg, Contribution à la théorie générale de l'État I, 1920, pp. 234 and 241.

21 On the evolution of the concept of sovereignty by reference with the International Law, Wolfrum, The Max Planck Encyclopedia of Public Internacional Law IX/Besson, 2012, p. 368.

22 On these specific aspects of the evolution of the concept of sovereignty, see, especially, Bernhardt, Encyclopedia of Public Internacional Law IV/Steinberger, 2000, p. 501, and Wolfrum, The Max Planck Encyclopedia of Public International Law IX/Besson, 2012, p. 368.

quantitative sovereignty of States. Qualitative sovereignty is the root of sovereignty. The member States of the Union have not lost it and the proof is that their respective Constitutions continue to treat them as sovereign States. It is, in fact, because they have not lost their sovereignty that States can denounce the Treaties, leave the Union, and thereby recover all the sovereign powers they have transferred to the Union. The recent Brexit is a good example of that. Differently, quantitative sovereignty consists of the sum of sovereign powers, or powers of authority, on which qualitative sovereignty is projected, i.e., the sovereign powers that comprise the content of sovereignty. This is based on the assumption of the divisibility of State sovereignty.[23]

As we said earlier, the State Constitutions expressly accept, though with non-coinciding formal nuances, this orientation, when they intend to confer constitutional legitimacy to the participation of the respective States in the Union. Thus, for example, the Bonn Fundamental Law, in its Art. 23 (1, 2nd sentence), authorizes Germany to transfer to the European Union, not its sovereignty *("Souveranität")*, but its "sovereign powers" or "powers of authority" *("Hoheitsrechte"),* insofar as they are necessary "for the realization of a united Europe"[24] and which are integrated into its sovereignty.

The French Constitution, in the same sense, sets forth, in its Art. 88 (2), that France consents to the transfer of the "necessary powers" to its participation in the EuropeanUnion.

On the other hand, the Portuguese Constitution, without prejudice to prescribing, in its Art. 1, that Portugal is a "sovereign Republic", then authorizes, in Art. 7 (6), the Portuguese State to "agree to exercise in common, in cooperation or by the institutions of the Union the powers necessary for the construction and deepening of the European Union"[25].

And the ECJ accepted this orientation very early on. In two of the most known Judgments from the beginning of its jurisprudence, the Court made clear that the political power of the then Communities arose from a transfer by the States of their sovereign powers to the Communities, which resulted in a limitation, consented by them, of their sovereignty. Thus, in the Van Gend & Loos case, the Court ruled that the EEC constituted a new legal order "in favour of which the States limited, even if in restricted areas, their sovereign rights"[26]. Months later, in Costa v. ENEL, the Court stated

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[23] See this matter, thus presented and developed, in Quadros, Direito das Comunidades Europeias e Direito Internacional Público, 1984, p. 336.

[24] Dürig/Herzog/Scholz, Grundgesetz Kommentar/Scholz, 92. ed. 2020, Art. 23 paras. 61-69.

[25] See Battis/Tsatsos/Stefanou, Europäische Integration und nationales Verfassungsrecht/Quadros, 1995, p. 375, and Quadros, Liber amicorum en l'honneur du professeur Vlad Constantinesco, 2015, p.667.

[26] ECJ 5.2.1963 - C 26/62, Slg. 1963, 1 - van Gend & Loos.

that “the transfer, carried out by the States, of their internal legal order in favour of the community legal order, of rights and obligations corresponding to the provisions of the Treaty, implies a definitive limitation of their sovereign rights”[27].

IV. The Subsidiarity between the Sovereignty of the member States and the Union’s political power

The principle of subsidiarity is one of the most important general principles of the European Union law. It began by being stated in Art. 130 r (4) EEC, restricted to environmental matters. It then turned into general principle in Art. 5 TEC, then in Art. 5 TEU and, with the Lisbon Treaty, in Art. 5(3) TEU.[28]28 It indicates how the competences conferred on the Union by the Treaties should be exercised.

As set forth in the Treaties, the principle of subsidiarity postulates that in the pursuit of all the competences conferred on the Union by the Treaties, except in matters falling within its exclusive competences, listed in Art. 3 of the TFEU, the States have preference in their pursuit. This means that, within the vast set of shared competences, of Art. 4 of the TFEU, and of supporting competences, of Art. 6 of the TFEU, State intervention has primacy. In other words, the ownership of the competences belongs, by force of the Treaties, to the Union but, also by requirement of the Treaties, their exercise is preferably fulfilled by the States. This results from Art. 5 (3) of the TEU, supplemented by Protocol No. 2 annexed to the Treaty of Lisbon, on the application of the principles of subsidiarity and proportionality, and by the Declaration on the delimitation of competences, also annexed to the Treaty of Lisbon, and already mentioned above. Despite being competences that the Treaties conferred on the Union, and with the great dimension they have, it is the States that, at first instance, will pursue them.

The principle of subsidiarity, in the way the Treaties regulate it, brings benefits both to the Union and to the member States.

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27 ECJ 15. 7.1964 - C-6/64, Slg. 1964, 1141 - Costa/E.N.E.L.

28 Streinz, EUV/AEUV/Streinz, 3. ed. 2018, TEU Art. 4 paras. 20-32; Grabitz/Hilf/Nettesheim, Das Recht der EU/Bast, 60. ed. 2016, TEU Art. 5 paras. 49-65; Tridimas, The General Principles of EU Law, 2. ed. 2006, p. 175. See also Gemert, EuR 2021, p. 551. Specifically on the birth of the principle of subsidiarity in European Union Law, see Tomuschat/Kötz/von Maydell, Europäische Integration und nationale Rechtskulturen/Quadros, 1994, p. 335, and Quadros, O princípio da subsidiariedade no Direito Comunitário após o Tratado da União Europeia, 1995.

It brings benefits to the Union because it ensures a high level of pursuit of the objectives that, in principle, are ascribed and imposed on the Union and, in this way, guarantees good governance of the Union. In fact, the Treaties assume that these objectives will be pursued "sufficiently" by the member States and, only if this does not happen and it is demonstrable that they will be "better" achieved by the Union, will they be pursued directly by the latter ["the objectives" (...) cannot be sufficiently achieved by the member States" and "can (...) be better achieved at Union level"].

But the principle of subsidiarity also benefits the States. First, it leads to the decentralized exercise of Union power by giving States preference in the exercise of these competences. In this way, the principle of subsidiarity makes a strong contribution to cooperative federalism, which the Union has been progressively building as a model for its legal-political organization and, therefore, also for the exercise of its political power. And it should be noted that the TUE, in the aforementioned Art. 5 (2), is not satisfied with the decentralization of the power of the Union only in the States but demands that infra-state entities also participate in the exercise of that power, whether regional (such as federated States and political and administrative regions) or local (such as municipalities). By demanding that infra-state entities also intervene in the exercise of Union power, and not only the Central Power of States, that article of the TEU is pushing the member States towards a model of internal organization based on the deepening of political or administrative decentralization and local autonomy. This is particularly relevant for states that in the 19th century adopted systems of political or administrative organization inspired by Napoleon's centralism and which have not yet completely freed themselves from this model.

On the other hand, the principle of subsidiarity also benefits States insofar as, the new power that they are given to carry out tasks specific to the Union, compensates for the loss of power that for them results from the progressive extension of the qualified majority rule to the detriment of the unanimity rule and, therefore, of the reduction of the unanimity requirement as a voting rule in the Council. This point has been little discussed, but it must be given due importance.

Added to this is the fact that member States can monitor compliance with the applicability of the principle of subsidiarity, including through their national parliaments, as results from the aforementioned Protocol on the application of the principles of subsidiarity and proportionality.

But the principle of subsidiarity also benefits European citizenship. By giving preference to States and their regional and local entities in the pursuit of the Union's objectives, it brings the exercise of the Union's power closer to the citizens and, therefore, it makes a strong contribution to fulfilling a great purpose of the Treaties, which consists of "continue the process (...) in which

decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity" (Recital 13 of the Preamble of the TEU.).

As they do so, and insofar as they do so, theStates recover, therefore, in the way they exercise these competences, their sovereign powers that have passed to the Union. And they pursue these competences not from a selfish national perspective, but within a broader scope, the scope of the Union and in the general and common interest of the Union. In other words, subsidiarity expands the dimension of sovereign powers transferred by States to the Union. But the fact that the member States exercise these powers within the framework of the common interest of the Union does not deny that they are the ones who effectively exercise these powers even though these, at their root, are committed to the Union. Undoubtedly, we are facing a new way of exercising sovereignty by States, not in their national selfish interest, but in the common or general interest of the Union.[29]

V. Conclusion

The Union's political power is a supranational power. It is not a sovereign power. The attempt to qualify the political power of the Union as a sovereign power is unfounded. The Union has no sovereignty. And it does not have it, from the very beginning, because it doesn't have a European people with its own constituent power. We made that clear above. The way in which the Union's political power is constituted is through the transfer of sovereign powers, or powers of authority, from the States to the Union, but not of its sovereignty. Such transfer, in those terms, is expressly authorized by the respective national Constitutions.

For all these reasons, one cannot yet speak of "European sovereignty", in the sense of Union sovereignty, as recently proposed by France, when it presided over the Union in the first semester of 2022.[30]

In turn, member States continue to be qualified as sovereign states by their respective constitutions. Its sovereignty is limited by the supranational power of the Union but is extended by

[29] Currently, this issue is developed in Quadros, Direito da União Europeia, 3. ed. 2013, pp. 140 and 247. But right after the inclusion of the subsidiarity principle as a general principle in the Maastricht Treaty, it was discussed by Tomuschat/Kötz/von Maydell, Europäische Integration und nationale Rechtskulturen/Quadros, 1994, p.335, and Quadros, O princípio da. subsidiariedade no Direito Comunitário após o Tratado da União Europeia, 1995, p. 61.

[30] Élysée, https://www.elysee.fr/ (last visited 23.12.2022). See the comments of Eijsbouts/Reestman, European Constitutional Law Review 2018, p.1. See also the blog blogdroiteuropéen, étiquette: souveraineté européenne, available at https://blogdroiteuropeen.com/tag/souverainete-europeenne/ (last visited 23.12.2022).

the subsidiarity in its relations with the power of the Union. In fact, and repeating what we have reasoned above, by virtue of the principle of subsidiarity, as it is constructed by the Treaties, States have preference in exercising the competences that the Treaties attribute, at first, to the Union, except for their exclusive competences. Hence, it is correct to say that subsidiarity extends the sovereignty of States, which, in the beginning, they see limited by their accession to the Union.