Conseil d'État – 2024 Annual Study

Sovereignty

Summary

Sovereignty is **a fundamental legal concept that underpins the modern state and international law. In recent years, its use has extended to new areas** in qualified or compound forms such as food sovereignty, energy sovereignty, industrial sovereignty, digital sovereignty and health sovereignty. The use of this concept outside its traditional scope raises questions not only about its meaning, but also about the ability of those who hold it to exercise it in a world of dependence and interdependence on all sides. The Conseil d'État felt therefore that it would be useful to study the scope and practice of sovereignty through the lens of history and geography. It did so by organising a series of five public conferences and holding many hearings, involving more than 200 people, including representatives of the main French political parties and heads of European and international institutions.

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Part 1 – Sovereignty is a fundamental legal concept that is still relevant today

The Conseil d'État began by clarifying the meaning and scope of the term "sovereignty". Historically and legally, sovereignty is the ability of someone to have "the last word", the freedom to choose. A sovereign is someone who has "the last word" for a given population and territory, without depending on any higher authority.

1 - The concept of sovereignty has its roots in political philosophy dating back to Antiquity and the Middle Ages. However, it was during the Renaissance that its modern form was born, in particular with Jean Bodin (1529-1596), who defined it as the "perpetual and absolute" power to say what the law is, and Thomas Hobbes (1588-1679), who developed the theory of what constitutes a sovereign state. State sovereignty, enshrined in the Treaties of Westphalia (1648), laid the cornerstone for international relations and paved the way for Europe to emerge from the Wars of Religion.

The French Revolution, motivated primarily by the thinking of John Locke (1632-1704) and Jean-Jacques Rousseau (1712-1778), but also by the American Revolution that had just taken place, transferred sovereignty from the King to the Nation, thereby establishing the basic principle of modern democracy: ***"The principle of all sovereignty resides essentially in the nation.*** *No body nor individual may exercise any authority which does not proceed directly from the nation"* (Article 3 of the Declaration of the Rights of Man and of the Citizen of 1789). Sieyès (1748-1836), who is credited with inventing the modern constitution, distinguished constituent power from constituted power and gave the constitution a dual purpose, firstly to organise power and secondly to limit it in order to protect the sovereignty of the nation against those who governed it. This was achieved through the separation of powers, the importance of which Montesquieu (1689-1755) had emphasised, and through the primacy of the legislative function over other functions. For this reason, 1789 was a significant turning point in the history of sovereignty. The *holder* of sovereignty was no longer the monarch, vested with

the power to make laws by virtue of divine right, but the Nation, which in principle predated the State and had constituent power: the ability to organise power and limit it. Consequently, **the Revolution laid the foundations for the democratic basis of sovereignty and the liberal constitutional framework that continues to this day**.

Despite the many debates that challenged the concept of sovereignty throughout the nineteenth and twentieth centuries, particularly between supporters of the sovereignty of the people and those of the sovereignty of the Nation, the concept was established in positive law. This was the case first with the Constitutions of 1791, Year I (1793) and Year III (1795), and then again with those of the Second (1848), Third (1875) and Fourth Republics (1946). The Constitution of 1946, drawn up after the tragedies of the Second World War, managed to blend the two sides of the debate by proclaiming that national sovereignty belongs to the people (Article 3) and that international law takes precedence over national laws (Articles 26 and 28). This blended approach was repeated in the Constitution of the Fifth Republic (1958), with the addition of a mechanism designed to ensure that the Constitution effectively takes precedence over laws, by establishing a review of the constitutionality of laws, a new feature in France.

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2 - **Sovereignty, as defined by the Constitution of 4 October 1958, therefore remains the pillar of the contemporary constitutional order in France. Article 3 of the Constitution** states that *"National sovereignty belongs to the people, who shall exercise it through their representatives and by means of referendum"*. The people are one in that they have citizenship and live within a given territory, the integrity of which must be guaranteed. **In France, the concept of sovereignty is associated with that of the nation state**, a state in which political unity and a sense of belonging to a single nation are combined.

The Constitution identifies two ways of expressing national sovereignty. The first is that the people express themselves through the **voice of their representatives**, who are entrusted with a national mandate of representation and who represent the entire nation. The second is that **the Constitution of the Fifth Republic reintroduces the referendum**, which had long been discredited by the plebiscitary use to which it was put during the First and Second Empires. Articles 11 and 89 of the current Constitution define the scope of the referendum. The decision to hold a referendum was for a long time reserved solely for the *"President of the Republic, on a proposal from the Government during the sessions or on a joint proposal from the two Assemblies, published in the Official Journal of the French Republic"*. The Constitutional Act of 23 July 2008 provided an additional route, whereby a referendum may be organized on the initiative of one fifth of MPs, if supported by one tenth of registered voters (around 4.7 million voters).

The Constitution entrusts the Constitutional Council with the task of *"ensur[ing] the regularity of the referendum operations provided for in Articles 11 and 89 and Title XV [and] proclaim[ing] the results"*. In this respect, the Constitutional Council has recognised its jurisdiction to hear appeals against the decree calling a referendum (decision no. 2000-21 REF, 25 July 2000, *Hauchemaille*). From a legal point of view, **the referendum route is not superior to the parliamentary route and Parliament can always undo what the referendum has decided and vice versa**. However, from a political point of view, the issue is obviously more complex, as the criticism levelled at the choice of the parliamentary route to ratify the European Union's Lisbon Treaty illustrates. It was claimed that this circumvented the "no" vote in the referendum on the EU Constitutional Treaty in 2005.

Furthermore, it is clear from the Constitution that national sovereignty cannot be delegated by law to territorial authorities and that, under the terms of its Article 4, *"political parties and groupings contribute to the expression of suffrage [and] must respect the principles of national sovereignty and democracy"*.

In the domestic legal order, the constituent assembly has the power of "the last word", since the Constitution is the apex of the legal order. Through the review of the constitutionality of laws,

established by the Constitution of 1958 and strengthened by the constituent assembly in 1974 (referral by 60 deputies or 60 senators) and in 2008 (introduction of the priority question of constitutionality), the Constitution has truly become the supreme legal standard, with **the Constitutional Court acting as guarantor of this primacy**, including the Preamble to the Constitution, which itself refers to the Preamble to the 1946 Constitution and the Declaration of 1789 (DC no. 71-44 of 16 July 1971) and, since the 2005 revision of the Constitution, to the Charter for the Environment.

France's integration into the international order and the European Union does not undermine the primacy of the Constitution in the national legal order. The Constitution takes precedence over treaties in accordance with settled and convergent case law (CE, Ass., 30 October 1998, *Sarran and Levacher*, no. 200286; CCass., Ass. Plén., 2 June 2000, *Fraisse*, no. 99-60.274, Cons, DC no. 2004-505 of 19 November 2004). This is despite the fact that, from the point of view of international law, a state may not invoke its domestic law, even if it is constitutional, to legally exempt itself from compliance with the obligations of a treaty to which it is party, under the principle of *"pacta sunt servanda"* ("treaties must be complied with", a principle which the Constitutional Council recognised as having constitutional value in 1992).

Building on the 1946 Constitution, **Article 55 of the 1958 Constitution asserts the primacy of treaties over laws:** *"Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party."* Although the primacy of treaties over laws, even subsequent ones, leaves little room for ambiguity, the question of deciding which court has jurisdiction to verify whether a law is compatible with a treaty (known as a conventionality review) has been debated at length. In its 1975 decision (DC no. 74-54 of 15 January 1975), the Constitutional Council ruled that it was not incumbent upon it to review the conventionality of laws, referring the task of enforcing the rule laid down in Article 55 to the administrative and criminal courts. A few weeks later, the Cour de Cassation (France's supreme court) drew the logical conclusion from this decision, ruling that it was incumbent upon it, pursuant to Article 55 of the Constitution, to set aside a law, including a more recent one, that was incompatible with an international commitment entered into by France (24 May 1975, *Adm. des douanes v. soc. des cafés Jacques Vabre*, no. 73-13.556). The Conseil d'État, meanwhile, waited until 1989 and the *Nicolo* decision (Ass., 20 October 1989, no. 108243) before it agreed to review the conventionality of laws, something it had initially refused to do.

The same reasoning applies to acts adopted by the institutions of the European Union under the provisions of treaties but not, given the actual wording of Article 55, to international customary law (CE, Ass., 6 June 1997, *Aquarone*, no. 148683) or general principles of international law (CE, 28 July 2000, *Paulin*, no. 178834), which the Conseil d'État has refused to equate with treaties within the meaning of Article 55. Although applying Article 55 of the Constitution may lead a court to set aside a legislative provision in favour of a treaty, thereby departing from the "legislative-centric" tradition of the Third Republic and sometimes leading to criticism as the "government of judges", in reality, when dealing with a dispute referred to it, the court merely applies the principle laid down by the Constitution itself, a principle that has never been challenged by the constituent assembly, which in fact strengthened it by adding, in the 1992 revision, Title XV to the Constitution enshrining France's membership of the European Union in the supreme legal standard.

The courts also carefully preserve France's constitutional identity as part of the process of European integration. In a recent decision (no. 2021-940 QPC of 15 October 2021, *Air France*), the **Constitutional Council** stated that it considered that it had *"jurisdiction to review the compliance of the contested provisions with the rights and freedoms guaranteed by the Constitution […] insofar as they challenge a rule or principle which, lacking equivalent protection in European Union law, is inherent in the constitutional identity of France"*. Following the same logic, in 2007 the **Conseil d'État** also considered that it had jurisdiction to examine appeals against regulatory acts that *"directly transpose the precise and unconditional provisions of a Community directive"*, in other words, that transpose the directive in question in a way that is likely to infringe principles or provisions of constitutional value.

If the constitutional principle whose infringement is alleged has an equivalent in European Union law, it is incumbent upon the administrative tribunals and courts, in the event of serious difficulties, to refer the matter to the Court of Justice of the European Union (CJEU) for a preliminary ruling. However, if the principle in question has no equivalent in EU law, it is incumbent upon the administrative tribunals and courts to examine first-hand the constitutionality of the disputed regulatory provisions and, in practice, the constitutionality of the directive itself, through the instrument transposing it into French law (CE, Ass., *Arcelor Atlantique et Lorraine and others*, no. 287110). In two recent decisions, the Conseil d'État had the opportunity to supplement this case law by ruling that, where applying an EU act, as interpreted by the CJEU, would have the effect of depriving a constitutional requirement without equivalent protection under EU law of effective guarantees, it is incumbent upon the administrative tribunals and courts to set aside its application to the extent strictly required to comply with the Constitution (CE, Ass., 21 April 2021, *French Data Network and others*, nos 394922, 397851 and CE, 17 December 2021, *Mr B…*, no. 437125). Through these various decisions, **the Conseil d'État has ensured the effective primacy of the Constitution over any international or European standard**.

Furthermore, the constituent assembly, under Article 54 of the Constitution, entrusts the Constitutional Council with the task of reviewing international undertakings before they are ratified, to ensure that they **do not contain a clause contrary to the Constitution or undermine the conditions essential for exercising national sovereignty**. The Constitutional Council thus ruled that irrevocable acceptance of an international undertaking affecting an area inherent to national sovereignty undermines the exercise of that sovereignty (DC no. 2005-524/525 of 13 October 2005). This is also the case when a treaty stipulates that a competence conferred on the European Union may be implemented by qualified majority, when this competence relates to an area inherent in the exercise of sovereignty (such as monetary and exchange rate policy, measures relating to the right of asylum, immigration and the crossing of internal borders, etc.). In such a case, *"authorization to ratify or approve the international undertaking involved may be given only after amending the Constitution"*, otherwise the treaty will not be binding on France. Following this case law, the constituent assembly has intervened on eight occasions to revise the Constitution and pave the way for the ratification of a treaty, including in the case of six European treaties, for example the Treaties of Maastricht (25 June 1992), Amsterdam (25 January 1999) and Lisbon (4 February 2008), as well as for treaties with a broader scope (the treaty establishing the International Criminal Court, on 8 July 1999, and the international undertakings to abolish the death penalty, on 23 February 2007).

The sovereign people, when acting in their constituent capacity, have "the last word". They can therefore intervene to overturn a decision by the constitutional court. This has happened on three occasions. The first was in 1993, when the Constitutional Council invalidated certain provisions of the law on the reception conditions of asylum seekers; the second time was in 1999, with the adoption of the Constitutional Act of 8 July 1999 on gender equality; and the third was in 2007, when Article 77 of the Constitution was amended to specify the reference table to be used to establish the electorate required to elect the members of the deliberative assemblies of New Caledonia. Furthermore, under the procedure defined by Article 89 of the Constitution for voting on constitutional amendments, the constituent assembly is not bound by any supra-constitutional norm. The Constitutional Council has therefore ruled that it does not exercise any control over a constitutional amendment (DC no. 2003-469 of 23 March 2003). In the light of these elements, it is clear that, **when acting as a constituent assembly, the sovereign people are not subject to any control and therefore have, in any event, the power of "the last word"**.

National sovereignty is the foundation of action by the State. It is what gives it primacy over its territory and its population. This public power translates into the ability to enact regulations and enforce them (or punish non-compliance with them) through the use of legitimate force under the supervision of the courts. To exercise its internal sovereignty, the State in normal times has at its disposal the attributes of public power, which reach their full force and scope in times of crisis or even war. Sovereignty in France is also distinctive in that it is exercised through a structure that is still

essentially a single unit. This distinguishes it from the regional or federal approaches used in other countries, even though in recent years France has made an effort to differentiate between regions.

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3 - While sovereignty on a domestic level can be understood as absolute power (the ability to have "the last word" through the monopoly of legitimate force and competence over competence), in other words, a power of command, **external sovereignty can be defined as what characterises a state**, in other words, effective control over a territory and a population, independence or "non-subjugation" with regard to another state, and the freedom to enter into undertakings with other states.

In international law, the concept of sovereignty is inseparable from the concept of the state. It is through sovereignty that states exist at the international level. It is through sovereignty that they recognise each other and bind themselves together, and, in so doing, set limits on themselves through the rules to which they agree. However, the way in which states exercise their international sovereignty is relative in two respects: firstly, because by entering into a sovereign relationship with other states, a state agrees to limit the exercise of its sovereignty; and secondly, because its action takes place within a binding framework. Three main factors have restricted state action since 1945: firstly, the measures that may be decided by the United Nations Security Council under Chapter VII of the United Nations Charter; secondly, the development of international criminal justice and, more generally, of international case law, particularly that of the International Court of Justice; and thirdly, the obligations imposed on states for humanitarian or peacekeeping purposes (the principles of "humanitarian intervention", "right of interference" and "responsibility to protect"). However, this framework is controversial and has not always proved effective.

The European venture has created a special legal framework in which the issue of state sovereignty and its scope play a central role, both from a legal point of view and in political debates. By agreeing to limitations and transfers of competences to the European Union and its institutions, the states that freely chose to create and join the EU have set up a unique system in which they retain competence over competence but agree to the joint exercise of certain competences. However, while the concept of "European sovereignty" has gained currency in public debate in recent years, it has no legal reality today and is in fact a political goal aimed at asserting the EU's enhanced strategic autonomy in certain key sectors. As far as the concept of "sovereignty of the European Union" is concerned, which has recently made an appearance in some European documents, the EU is the custodian, in the areas in which it has been granted exclusive competence, of a part of each of the sovereignties of its Member States, and it acts, in dealings with the outside world, as the representative of those states.

In terms of international law, **French sovereignty** is a self-evident reality. France is heavily involved in diplomacy and pursues an ambitious foreign policy, forging many partnerships around the world and drawing on one of the world's most far-reaching diplomatic networks. The country's military (it belongs to the club of countries with nuclear weapons), economic, demographic, scientific and cultural, and political (it is a permanent member of the UN Security Council) clout all contribute to its success in this area. However, **France is not bound against its will** since it has several mechanisms that enable it to assert its sovereignty in its relations with its European and international partners (the unanimity rule for decisions in the most sensitive areas such as foreign policy or taxation, even though this rule may have more troublesome effects in areas in which France would like the EU to take more ambitious steps) and the national courts guarantee the primacy of the Constitution at the domestic level. Furthermore, as a last resort, there is always the option of withdrawing from a treaty or reneging on an international agreement.

At the end of this clarification exercise, it is worth emphasising that **sovereignty, independence and power are not synonymous concepts**. Every states are, to varying degrees, interdependent, and a

state can be sovereign without being powerful. But there are clearly links between these concepts, as **the ability of each state to exercise its sovereignty depends on the specific equation it uses to determine the extent of its power, the dimensions of that power, and its degrees of dependence and interdependence.**

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Part 2 – "Sovereignties": the exercise of sovereignty in today's world

The increasing number of qualified uses of the word sovereignty (food sovereignty, industrial sovereignty, digital sovereignty, health sovereignty, and so on) raises the question of how sovereignty is exercised in today's world, in response to a triple challenge: global dependence and interdependence; the impact of European integration on the exercise of sovereignty; and the crisis of traditional representative democracy affecting the sovereign people themselves.

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1 - The first challenge to the exercise of sovereignty today lies in the interdependencies – and dependencies – that are a defining feature of today's world, which is both globalised and riven by growing tensions and even clashes between sovereignties.

There are three factors that explain these dependencies and interdependencies: in general terms, **economic globalisation**, which has driven economic growth in recent decades and led not only to specialisation, but also to deindustrialisation and even fragility when specialisation is used for retaliatory purposes. In France in particular, the **growing dependence of its economy on foreign players** due to its trade imbalance and the effects this has on its balance of payments and on the state of its debt and public finances is clear to see, but so is the **weakness of its strategic thinking, which leads it to focus on the short term** and make choices that increase its dependence (as evidenced, for example, by its foot-dragging on energy over the last 20 years). Recent crises – the banking crisis followed by the sovereign debt crisis, the Covid-19 pandemic, clashes between the US and China, and Russia's invasion of Ukraine – have revealed the extent of these vulnerabilities and fuelled concerns about how to regain control.

Increasingly, **power relations are putting the exercise of sovereignty to the test**, with the return of attacks on the existential attributes of the sovereign state, namely its borders (e.g. the war in Ukraine), and the emergence of new forms of power relations between states, with the weakening of global governance and the use of standards as a weapon to constrain the sovereignty of competitors (e.g. engaging in practices of extraterritoriality, particularly by the United States). There is also **a rising tide of new non-state actors competing with states in exercising their sovereignty** (multinationals such as the Big Five global tech companies, NGOs and major foundations) or even attacking them directly (mafia and terrorist networks). With the advent of digital technology, control over data has become a real weapon in the world, and interference, particularly cyber interference, poses a real threat to democracies.

Lastly, **when faced with global challenges** such as climate, demographics and health, the traditional exercise of sovereignty is reaching its limits, and that is without even considering the special case of the frontier-free expanses of the high seas, the polar regions, outer space and cyberspace.

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2 - At the European level, there are a number of paradoxes in the exercise of sovereignty.

While **European integration enables EU Member States to combine their power** and increase their weight in the world (the European Union is the world's leading trading power and has the second-largest currency) and provides them with common policies, strong regulatory powers and an easily

mobilised framework for cooperation (as was the case, for example, during Covid-19 for the collecting purchasing of face masks and vaccines), the European framework also imposes **constraints on Member States which, although agreed to, are nonetheless often only accepted reluctantly.** This is illustrated by the difficulties that can arise in practice between, for example, competition policy, which primarily falls within the European framework, and industrial policy, which remains largely a national competence, even though recent years have seen the balance shift in favour of a European industrial policy. Another source of difficulties is the **differences of opinion between Member States**.

The continuing integration of the EU is also fuelling negative reactions, as demonstrated by the result of the 2005 referendum on the Constitutional Treaty. At the root of this feeling is **the "ratchet effect" of the European venture** – it is rare for powers transferred to the Union to revert to Member States – and the difficulty of revising secondary legislation. There is also the often proactive approach of the Commission, which tends to make extensive use of the powers given by the Treaties to organise the internal market as a legal basis for many pieces of legislation, some of which go far beyond simply organising the internal market in terms of their impact. It is true that it is at the request of the Member States themselves that the EU sometimes takes action in areas where its powers are in principle limited (Covid-19, for example). As for the European courts, established by the Treaties, in particular the CJEU, whose role as arbiter and interpreter of EU law is essential to the proper functioning of the EU, they are no less susceptible to criticism of the "government of judges" given the increasing role they have taken on, particularly in recent years.

Against this backdrop, there is both a **form of disaffection towards Europe**, which reached its peak with Brexit and which is sustained by the perception that the EU is not as effective or legitimate as it should be, and **a demand for more from Europe** among many stakeholders, to counter the growing competition from major states such as China, the United States and Russia.

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3 - Finally, **the third set of challenges facing the exercise of sovereignty affects the sovereign people themselves, in the form of a crisis in traditional representative democracy**, which France, like other democracies around the world, is experiencing. This crisis takes several forms.

It affects **how democratic institutions operate** and is reflected in fluctuating voter turnout and mistrust of public officials (as measured, for example, by the OECD studies highlighting the importance of this in France), which stems from the failure of public action to be effective (see the Conseil d'État's study on the last mile of public action in 2023). It also raises questions about the suitability of the representative system and, at the same time, the inability to make effective use of the tools of direct democracy.

National sovereignty is also being called into question by the rise of new expectations, whether through the desire for alternative forms of participation in public decision-making, the development of independence movements in certain parts of the country, or the upsurge of ideologies hostile to the laws of the French Republic, such as religious fundamentalism and conspiracy movements.

While the very idea of sovereignty is still relevant, particularly as the foundation of modern democracies and the cornerstone of the international system, these new challenges make it clear that it is the conditions under which sovereignty is exercised that must be improved if it is to play its full part in addressing today's issues.

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Part 3 – Ten proposals for improving the conditions under which sovereignty is exercised

In response to the challenges affecting all aspects of the exercise of sovereignty, the Conseil d'État has put forward **ten proposals or areas for improvement**. These proposals do not examine the substance of public policies, but focus on **methodological issues**. They are also unique in that they have been formulated **without any change to the Constitution or the Treaties**, although it did seem useful to offer some insight into certain changes to the Constitution or European treaties currently under debate. The ten proposals focus on **three areas**:

- Strengthening citizenship and the functioning of institutions at national level to ensure that sovereignty can be fully exercised.
- Improving the way in which national sovereignty and membership of the European Union are reconciled at the European level.
- Reinforcing the mechanisms for exercising sovereignty in response to global challenges.

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1 – Strengthening citizenship and the functioning of institutions at national level to ensure that sovereignty can be fully exercised

The first series of proposals aims at providing answers to the democratic crisis, based on two key messages: empowering citizens to play a full part in exercising sovereignty and ensuring that public authorities provide an even more effective service to citizens.

The first proposal aims at strengthening the means of expression available to the sovereign people. The goal is to respond to the crisis of representation by improving the tools of representative democracy. It seems appropriate to strengthen the role of political parties which, under the terms of the Constitution, contribute to the expression of suffrage. This could involve changing the role of political foundations along the lines of those in Germany, which have far greater resources than French political parties. Furthermore, it seems worthwhile to strengthen the "local role of MPs", and, without settling the question of the evolution of the ban on holding more than one public office, it seems that consideration should be given to a possible change. Finally, strengthening the status of locally elected representatives seems to be a good idea.

While representative democracy is and must remain the bedrock of national politics, many French people would like to be consulted more often on major policy issues. There are several possible **approaches to improving the tools of direct democracy** without changing the constitutional framework. One way would be to encourage direct consultation at local level, for example by introducing the option of preferential voting, which increases the chances of building a consensus following the election. Another way would be to allow the public to organise citizens' conventions on a particular issue. Furthermore, should referendums be reintroduced, it might be useful to develop tools beforehand to help clarify the issues at stake in the referendum question, similar to the practice in other democracies such as Switzerland or certain states in the United States, to contribute to the quality of public debate.

With regard to the **tools for citizen participation**, the challenge is not to increase their number but instead to make them effective, by ensuring that they are backed up by a certain number of guarantees, by promoting participatory approaches at the local level and by starting a debate on "citizen participant" status.

Lastly, while it is beyond the remit of the Conseil d'État to make recommendations on how **Parliament** should function, it seems appropriate to continue strengthening its role in assessing public policy and to involve stakeholders and citizens as much as possible in this process.

In addition to these proposals based on an unchanged constitutional framework, it may be useful to **highlight a number of options for reforming the referendum process that are currently under discussion** but would require amendments to the Constitution. These include broadening the scope of the referendum under Article 11, offering multiple choices rather than a binary (yes/no) response to

the question posed, as is the practice in some countries, entrusting a citizens' convention with the task of defining the options to be put to the referendum and of considering the consequences of each, reviewing the arrangements for implementing a "shared initiative referendum" (organised on the initiative of one fifth of MPs and supported by one tenth of registered voters), and opening up a citizens' initiative route to a referendum.

The study's second proposal aims at strengthening the exercise of citizenship. This means **making citizenship training a priority**, not just in schools but at all stages of people's lives. This is the challenge of the **current overhaul of the moral and civic education syllabus, which needs to be backed up** by changes to teacher training systems to ensure they are fit for purpose. This could be supplemented by organising in-classroom talks by senior civil servants or locally elected representatives on their experience of working within institutions. In addition to this training targeting young people, a **strategy targeting adults** should be developed, based for example on posters and questionnaires available in all public reception areas, as well as new campaigns on television.

Secondly, in light of the "cognitive war" that France, like other democracies, is currently facing, there seems to be a need to **strengthen our collective and individual abilities to think critically**. One way of doing this could be to support initiatives from civil society, in particular from "civic tech" players who have the power to argue for and shed light on the issues raised by digital technology. Media and information education (MIE) is also part of this effort to encourage civil society's involvement. In addition to these actions aimed at young people, the network of around 4,000 digital advisers could also provide information and training on the risks of information manipulation for certain vulnerable groups. Finally, it might be a good idea to include programming obligations relating to media education and the development of critical thinking in the broadcasting sector's specifications or agreements, or to implement campaigns to raise awareness of the techniques used to manipulate information, along the lines of road safety campaigns.

In addition, the public authorities should ensure that **the information provided by the media remains reliable, independent and pluralist**. It will be vital to support those organisations that are able to assess the reliability of information published online (fact checking), starting with Agence France Presse (AFP). Work also needs to continue on regulating the targeted advertising market. An additional option would be to consider applying the "polluter pays" principle to the world of news and information, with the platforms responsible for misinformation being required to contribute to the cost of fact-checking. It is also important, in accordance with the law of 30 September 1986 on freedom of communication, amended in 2016, to guarantee independent and pluralist expression of schools of thought and opinion in the media, particularly in news programmes, a responsibility that the law entrusts to the Audiovisual and Digital Communications Regulatory Authority (ARCOM).

In the same vein, it is essential to **make it easier for citizens to take action**, by recognising individual commitment to a collective project (for example, by developing skills sponsorship or digital commons), by encouraging administrative authorities to listen to and enter into dialogue with intermediary bodies, and by allocating appropriate public funding to associations in all parts of the country.

The study's third proposal aims at strengthening the spirit of defence, in other words, to improve our individual understanding of the challenges that France faces and to bolster the **nation's capacity for resilience**. This is the approach taken by Sweden, for example, which distributed a booklet to its citizens to inform them about the different types of crises. Along the same lines, it seems worthwhile to develop initiatives to **strengthen the link between the armed forces and the nation**. Furthermore, if **national service**, based until now on volunteers, is to become mandatory for all, which itself raises questions, it would be advisable to examine the reasons for the under-representation of certain sections of the population in the current system, while ensuring that federations representing young people and students are involved in the discussions. Lastly, it seems appropriate to **involve certain key stakeholders more closely in these defence issues**. For example, locally elected representatives and academics could be made aware of the benefits of developing partnerships with the National Guard.

The fourth proposal is to ensure that public authorities are even more supportive of this sovereignty. One way of doing this is to improve the effectiveness of public action. This approach, which the Conseil d'État developed in its 2023 annual study on the last mile of public action, requires listening and dialogue, a new way of thinking about regulations and, ultimately, the need to be accountable to citizens. It is also important to clarify the roles and responsibilities of public-sector stakeholders at the local level. This includes giving prefects enough flexibility to negotiate the content of contractual agreements and the commitments to honour them.

With regard to the role of the courts in exercising sovereignty, it seems worthwhile to develop efforts to educate the public about the function of the judiciary. The judicial function is essential in a democracy, as it ensures that the rule of law is effectively upheld, guarantees the due process of law, protects individual rights and freedoms in the public interest and thus helps to maintain civil order. The courts restrict themselves to settling the disputes brought before them by applying the rules defined by the constituent power, legislative power and regulatory power. They do so in strict compliance with the separation of powers – the cornerstone of democracy – which protects the prerogatives of the legislature and the executive and presupposes the independence of judges. As the Conseil d'État pointed out in its Litigation Assembly decision of 11 October 2023, *"it is not for the courts, in carrying out [their] function, to take the place of the public authorities in determining public policy or to order them to do so"*. **The courts can, through their decisions, help to ensure that sovereignty is exercised**, as the aforementioned decisions concerning *French Data Network* on connection data and *Mr B…* on military working hours clearly demonstrate. This also applies to the judicial authority, as the action taken by the National Financial Prosecutor's Office since 2016 to restore France's sovereignty in response to US extraterritoriality has shown. On this point, it might be worth considering **further legislation to give French criminal courts jurisdiction over breaches of provisions relating to international embargoes and sanctions**.

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2 – Improving the way in which national sovereignty and membership of the European Union are reconciled at the European level

In addition to these internal proposals designed to strengthen the democratic framework for expressing national sovereignty, there are also **ways of improving the way in which sovereignty is exercised within the European framework**. The study puts forward three proposals in this respect.

The study's fifth proposal highlights the need to improve compliance with the principle of subsidiarity. As the European Union only has conferred jurisdiction, it is important that its institutions ensure strict compliance with the Treaties. The last Commission appointed a vice-president with specific responsibility for ensuring compliance with the principle of subsidiarity. This member of the Commission could therefore be required to present an annual report on how the principle of subsidiarity has been applied. Alongside this, it also makes sense for the European Council, as one of the European co-legislators, to strengthen its role in terms of compliance with the principle of subsidiarity. To achieve this, the President of the Council could appoint a subsidiarity tsar to work alongside them, who would develop expert knowledge and be particularly vigilant in this area, not least by forging links with national parliaments. In France, the General Secretariat for European Affairs could be tasked with coordinating interministerial monitoring of the subsidiarity principle.

Looking beyond this, it is important to pay particular attention to **the negotiation of European standards**. It would be particularly welcome if Member States had an opportunity to discuss the choice of legal instrument (regulation or directive) at the start of the process. It would also be useful to include in secondary legislation, as is already the case in certain sectors, a reservation or **"shield"** clause containing a reminder in each instrument under discussion that its provisions do not affect core state functions, in particular those relating to maintaining law and order and safeguarding national security, and that national security is the sole responsibility of each Member State.

Finally, **the Court of Justice of the European Union** is ultimately responsible for ensuring compliance with the principles of conferral and subsidiarity laid down in the Treaties. While it is true that this role of judge is unique to the Court of Justice, it seems essential that the European courts and national courts listen to each other, particularly when principles of constitutional value are at stake. The Court's role as judge implies that it must ensure that the Treaties are applied strictly. When national security is at stake, especially in a climate of increasing threat, it would be preferable to give Member States more flexibility in carrying out their most critical functions, in line with the approach adopted by the European Court of Human Rights. Furthermore, to promote better coordination between European and national judges, it would seem appropriate for the panel set up under Article 255 of the Treaty on the Functioning of the European Union (TFEU) to give an opinion on the candidates put forward by Member States to be appointed to the Court to be chaired by a national supreme court judge and for the Court to be made up of a majority of national judges.

In the case of the **European Court of Human Rights**, the timing between the interim measures it orders and its final judgment needs to be improved.

The study's sixth proposal is to make the European Union an even more powerful driving force for Member States, by acting in a more united way in areas where individual Member States cannot hope to wield influence effectively on their own.

While there is no doubt that there are many major challenges facing the European Union and its Member States, **recommendations can be made, without the need to amend any Treaties, on improving the way in which the EU institutions and the Member States coordinate their action**, in accordance with their respective jurisdictions. One way forward could be to **adopt a "coordinated action method"**, based on the EU and its 27 Member States setting strategic objectives, similar to the approach taken at the Versailles Summit in 2022. The idea would be to move away from a "silo" approach, tackling each policy separately, and to promote an approach that leverages the tools of each to work towards a common goal. This exercise could, for example, focus on the practical ways of ensuring there is better coordination between industrial policy and competition policy.

Similarly, work on **codifying European law** for each of the major sectors in which EU law applies (for example, competition, digital technology and agriculture) could make it easier for everyone to access this European law and reconcile it with national law.

Lastly, it is important to **ensure that standards adopted at EU level are implemented effectively**, as the Commission has begun to do for trade-related matters, with the appointment of a deputy director-general specifically responsible for this area. This work should continue, with the support of the Member States, particularly in areas where regulatory powers have been conferred directly on the European Commission (as is the case with the major digital platforms).

The seventh proposal aims at improving the link between the exercise of sovereignty at the national and EU levels. The **President of the European Council** could, for example, act as a link between the EU and national governments by maintaining more regular contact with key decision-makers in the Member States. A visit to each of the 27 EU capitals for a few days each year would enable the President to engage in informal discussions with political, economic and social leaders and the main media organisations in those countries.

At the **European Commission** level, the question of improving coordination with national parliaments raises difficulties of a different kind, since the challenge for the Commission is to promote the overall European interest, which can neither be considered in isolation from national interests, nor simply reduced to the sum of national interests. In addition to the efforts already under way, Commissioners could consider building closer relationships with national parliaments through more regular meetings. It would also be useful to encourage more interaction between European, national and even local administrative bodies. This could be achieved by introducing a requirement for people to relocate if they wish to take up certain positions.

In addition to these proposals under existing law, the study examines the conditions under which the scope of qualified majority voting could be extended to legal bases where unanimity still applies, the advantages and disadvantages of adopting such a change, and the precautions to be taken, if any. It also examines the conditions under which closer cooperation could be put in place and raises the question of deeper integration between eurozone countries. Lastly, it looks at the important issue of the architecture of the European continent.

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3 – Reinforcing the mechanisms for exercising sovereignty in response to global challenges

The **final set of proposals** involve looking at ways of reinforcing the exercise of sovereignty in a world that is both highly interdependent and conflict-ridden, including by encouraging the exercise of sovereignty through cooperation.

The eighth proposal aims to ensure that the State develops a genuine capacity for long-term strategic analysis, through what might be called **a "sovereignty doctrine"**, with a view to shifting away from an approach that is all too often short-term, fragmented and sector-specific. This doctrine for exercising sovereignty would provide not only a common frame of reference for all government ministries and agencies, including independent agencies, but also a more systematic basis for decision-making at interministerial level. In practical terms, this would involve mapping our dependencies and interdependencies and identifying the approaches that could be implemented to tailor responses to the various dependencies and needs mapped (diversification of supplies, development of a storage policy, relocation of certain production lines, conversion of industrial facilities to manufacture vital products in an emergency, investment in strategic infrastructure such as satellites or submarine cables, etc.), while never losing sight of the question of the level at which we could achieve the strategic autonomy we are striving for.

To achieve this objective, the government should **consolidate its capacity for planning and operational management**, within a framework reporting to the Prime Minister, combining the full range of the government's forward-planning skills and involving stakeholders including trade unions, elected representatives and universities. The aim would be to ensure that the strategic priorities are disseminated, acted upon and monitored over the long term, thereby demonstrating the necessary "strategic patience" to avoid damaging U-turns (as happened in the past with energy) and take long-term action instead (as in the case of the defence technological and industrial base in the current tense geopolitical context).

Furthermore, it seems essential to **think about how the State should be structured to manage public action over the long term** by allocating budgetary resources in a multi-year programming law and appointing leaders, recognised by their peers, in each of the strategic industries or sectors to avoid the pitfalls of over-centralised management.

The study's ninth proposal is aimed at ensuring that the country has the right skills to make a useful contribution, given that human resources are essential to exercising sovereignty. However, there are currently weaknesses in these foundational skills, particularly **in the technical and scientific fields**, which need to be addressed firstly in schools, by promoting technical and scientific careers, developing teaching practices that encourage the development of these skills, and ensuring that the training provided in technical colleges meets the needs of the business world, and secondly in teaching, by making his noble profession more attractive, particularly in these scientific and technical disciplines. In addition, it is important to gear the training system towards filling the positions of technicians and engineers that will be essential to strengthening how we exercise sovereignty between now and 2030, in particular by expanding the talent pool through work-linked training and sandwich courses and paying particular attention to the pipeline of students enrolled at university.

Furthermore, it would be helpful to **inform public decision-making and action, not only through academic expertise, but also through the work of practitioners in the fields concerned**, by taking care

to clarify the status of experts and by encouraging dialogue and feedback between the public and private sectors, while keeping a close eye on potential risks of conflicts of interest. It might be worth considering how to reconcile the need for transparency in public life with considerations of sovereignty.

Lastly, **France must continue to invest in basic research and R&D if it is to meet or even exceed the target of 3% of GDP set for such spending.** Given the risks of interference in this sector, it would also be useful to continue to protect France's scientific and technical heritage, including in the social sciences and humanities. Finally, France would benefit from being more active in the area of setting technical standards, the prescriptive importance of which applies to both the economy and sovereignty.

The study's tenth and final proposal is to outline ways of responding to the global challenges facing France. With the development of artificial intelligence and the boom in neurotechnologies, it seems vital to **contribute to improving the protection of human rights in the digital age**, firstly by giving the European bodies responsible for implementing the regulations governing artificial intelligence and social media the necessary resources, and secondly by starting a debate on the ethical and legal challenges posed by neurotechnologies.

The issue of an ageing population calls for an action plan to deal with its long-term consequences, not only on the health and pensions system, and therefore on public finances, but also on housing and support for the people affected. **The response to the challenges posed by migration must also be considered at different levels**: at national level, in terms of making the instruments available to public-sector stakeholders by the legislator more effective; at European level, with the Pact on Migration and Asylum; and even at global level, through closer partnerships with the countries receiving official development assistance and from which migrants come or through which they transit.

In tackling climate change, it seems essential for everyone to work together, not only by governments effectively implementing the climate commitments made under the Paris Agreement through the cooperative exercise of their sovereignty, but also by involving non-state actors and citizens themselves to a greater extent. Finally, it is important to pursue the protection of common goods at all levels (global, national and even local) and to reflect on how to give real substance to the "right of future generations" and the "principle of ecological solidarity".

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In conclusion, **sovereignty is the freedom to choose**, the ability to decide to not be a pawn of fate, and the foundation of a freely chosen way of living together. In France, it belongs to the people, who exercise it directly or through their representatives.

Sovereignty is expressed and structured according to the specific character of the nation's people and the constitutional rules that each state has defined for itself. Its components depend not only on history, geography and culture, but also on military and economic power, legal traditions and systems, and international partnerships and commitments.

The exercise of sovereignty cannot be separated from the strength of citizenship and the conditions under which the rule of law operates. It is rooted in history and based on a **long-term vision**. Guaranteeing sovereignty means defining and implementing a long-term strategy for each of its components, tailored to the country's specific characteristics.

This strategy involves fundamental choices, alliances, red lines that must not be crossed, budgetary priorities and, in some cases, shared jurisdiction.

Undoubtedly the most important question which then arises is: what collective project will the exercise of sovereignty serve? The answer is clearly a political choice, and in a democracy like France, it is the choice of the sovereign people.