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## EUROPEAN SOVEREIGNTY AND SUSTAINABLE DEVELOPMENT: DISENCHANTED ANALYSIS OF A CLEAR-OBSCURE POLITICAL SPEECH

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**This article demonstrates the new innovative approach to the significant legal and political correlations and is been written in the form of Presidential political speech analysis, which foresees the deep synthesis and knowledge of legislative provisions, reflections on national sovereignty, ecological transition, climate change and European Union legislation.**

*“The fourth key to our sovereignty is being able to address the first of the major global transformations, the ecological transition” (Sorbonne Speech of the French President “Initiative for Europe”, 2017).*

How could we not share the French President’s ambition expressed during his speech at the Sorbonne in September 2017 [1]? His desire to revolutionize *“the way we produce, redistribute and behave”* but also to ensure a *“demanding vision of sustainable development”* generates an enthusiasm filled with relief and hope. It is a relief to think that this speech would finally translate into an awareness of the environmental emergency and the need for transnational and transgenerational solidarity. It is also a hope to imagine the design of a *“new production model that will not only be a model for the economy, but also a model for society and civilization, enabling a fresh perspective on inequalities”*.

Following his Athens speech, the French President is showing his determination to play a major role on the European and international scene. His initiative *“Make our planet great again”* [2] or his choice to bring before the UN, among the existing French projects (the draft Universal Declaration of Humankind Rights or the draft International Convention on Human Rights to the environment), the Global Pact for the Environment [3] supported by the European Commission [4] illustrates this presidential dynamic.

According to the French President, the *“only way”* to build this sustainable future is to build a European sovereignty in the sense of our ability to *“take action”* and *“exist in today’s world”*, in order not to suffer *“the survival of the fittest”* or the undermining of the founding values of the European project.

Beyond the question of the presidential sincerity in favor of a Europe that is *“a pioneer of an effective and equitable ecological transition”*, the opportunity to use the expression *“European sovereignty”* in a context of *“polycrisis”* exacerbated by a *“fall back”* raises questions. If the final objective of the speech

was to provoke a shock wave, this Pascal's bet is very risky and is full of contradictory interpretations. It should be remembered that the construction of Europe is part of a process going beyond the Westphalian conception of State sovereignty without however sealing the end of national sovereignty. As Advocate General J. Kokott reiterates, "*the Union was established by still sovereign States*" and "*the principle of conferred powers in order to define the competences of the Union is both an expression of that sovereignty and a safeguard of it*" [5]. Unsurprisingly, the term "European sovereignty" cannot be found in case law unlike the many cases where issues of limitations, transfers and protection of national sovereignty were at the heart of the complex and evolving relations between national and European competences. Did the President want to refocus the role of the Union on major challenges in the light of a revisited subsidiarity principle? Did he want to expand the limited scope of the EU's exclusive competences (...)? The speech remains silent on the scenarios needed to redesign the powers and competences attributed and exercised by the Union. However, a clarification will be needed to provide an operational translation, especially for this fourth key to European sovereignty.

### ***European sovereignty and ecological transition: an ambivalent relationship***

Intended to enable the Union to respect its internal [6] and external [7] commitments in favor of sustainable development, this fourth key is not without ambivalence. Facing the unique spatio-temporal dimension of environmental challenges, sovereign States are forced to build international cooperation to manage these socio-ecological interdependencies and dependencies that ignore this holy concept of state sovereignty. In that regard, it is important to recall that the research of the establishment of "*the level of action (local, regional, national, Community, international) that befits the type of pollution and the geographical zone to be protected*" constitutes, since 1973, the guiding principle giving priority to community actions that are able to bring an environmental added value compared to other legal scales. This research of the environmental added value based on this division of competences between the Union and the Member States will not be called into question while at the same time it provides for procedures that will preserve the sovereign sensitivities of the Member States (Unanimity: taxation, town and country planning, quantitative management of water resources, land use, choice of energy sources (Article 192 TFEU) and national measures for enhanced protection (Article 193 TFEU)). Should the ambition to "revolutionize" our development model lead to a rethinking of competences' division attributed to the Union and their methods of exercise? Should it go beyond environmental policy while at the same time respecting the principle of integration of environmental requirements (Article 11 TFEU and Article 37 Charter of Fundamental Rights of the European Union [9])? One can question the willingness of States to break with the questionable political interpretation of the subsidiarity's principle which for example has led to the withdrawal of two proposals for directives in 2014 (on access to justice and soil protection [10]).

### ***Carbon price, European industrial programs (...): Nothing new under the sun, or almost?***

Is the Union committed to transforming its development model for a high level of environmental protection (TFEU) and its international commitments such as the Aarhus Convention [11] on access to information, public participation in decision-making and access to justice in environmental matters (Council Decision (EU) 2017/1346 [12], Open Letter from ClientEarth and BEE to European Environment Ministers in April 2018 [13])?

The French President insists on the "*climate change*" which "*is threatening our security like never before*" asking for radical changes of the modes of production and consumption. However, environmental challenges are not just about climate; the erosion of biodiversity and the vulnerability of high seas, areas outside national jurisdiction, highlight the need for an integrated ecosystem approach that is including in the ecological transition and sustainable development. As necessary is the defensive philosophy underlying the President's speech and the need for a Europe that protects (echoing the White paper on the future of Europe 2017 [14]), it seems unfortunate to leave in the shadows the

responsibility of the Union and its Member States in the global environmental degradation. Europe must “*fundamentally reduce the environmental footprint of its economy*” and “*ensure that economic development and growth respect the planet’s limitations*” [15].

Obviously, this transformation of the production model not only requires substantial investment but also to reform all financial support. Despite the President’s choice to “*say hardly anything about tools*” and focus on this project of refoundation, the proposed measures disappoint by their lack of audacity. Their economic classicism underscores the importance of weak sustainability model whereby environmental policies are confined to provide support roles to the market. As the reading of the speech progresses, the gap between the ambitious objectives and their realization becomes more pronounced. If the French President reiterates the importance of having “*confidence in the experts*” in view of recent controversies over glyphosate [16] or the definition of endocrine disruptors [17], why has not he suggested the recognition of a principle of non-regression that could have been based on French environmental law? (L110-1.9 of the French Environmental Code [18]). One could have proposed deepening the process of democratization of the European system, the recognition of a right to the environment or the construction of climate [19] and environmental justice. It is also difficult to appreciate the results of the President’s proposal to hold “*democratic conventions*”, renamed “*Citizens’ Consultations for tomorrow’s Europe*” [20], that will take place from April to October 2018 in 27 Member States.

“*France’s time for making proposals has returned*”. Hence, in spite of these paradoxes and grey areas, we may hope that the Sorbonne’s speech will constitute a great political platform that will contribute to the construction of a future European socio-ecological pact based on solidarity sovereignties [21].

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