European Digital Sovereignty: An Analysis of Authority Delegation

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Abstract: *The European Commission defines the concept of European digital sovereignty as the capacity to make "autonomous technological choices" and the ambition to shape rules and standards at the international level. The idea of "digital sovereignty" responds to the demands of the European public and private sectors to increase the uptake of indigenous technology. However, neither the official policy and discourses, nor the academic literature analyse the actors involved and the power distribution within this process. This article aims to investigate on what is digital sovereignty and who is the "owner" of this new type of sovereignty and the impact of this rhetoric on European integration. It does that by engaging the theoretic lenses of principal-agent framework, drawing on the development path of the European policymaking in the technological area, from the 1980's until today. The paper concludes that the heterogenous preferences of the member states create the impetus to delegate powers to the European Commission. Furthermore, digital sovereignty rhetoric helps overcome the problems of delegation politics by building coalitions and consensus.*

Keywords: *European digital sovereignty, principal-agent theory, historical analysis, EU institutional architecture, digital policy.*

1. Introduction

Ursula von der Leyen presented in the "Political Guidelines for the Next European Commission 2019-2025" the ambition to achieve "technological sovereignty in some critical technology areas" (2019, p. 14). The "digital sovereignty" policy responds to the demands of the European public and private sectors for European information and communication technology (ICT) products to increase the strategic independence from digital products outside this space. The reliance on non-European critical products, especially semiconductors, cloud services and secure connectivity, creates concerns of vulnerability to the security and stability of the bloc. The COVID-19 pandemic abruptly magnified this phenomenon in the context of a dramatic digitalization of all social and economic sectors.

The European Commission (hereafter "Commission") defines the concept of digital sovereignty as the capacity to make "autonomous technological choices" and the ambition to shape rules and standards at the international level[2]. While the political and economic urgency behind this proposal is well understood, the actual implementation of the concept in the European context is not immediately obvious. The idea of digital sovereignty is loaded with such a strong ambition that it is challenging to imagine it happening at the expense of individual member states' efforts. Lately, some member states started national level discussions on digital sovereignty as a main point on the

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[2] European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament, the European Council and the Council: A New EU-US Agenda for Global Change' (2020).

political agenda. However, they are more an exception than a rule. Therefore, the strategic discussion on this topic tends to unfold at the macro-level.

The main "owner" and promotor of the concept at the European-level is the Commission, who introduced the idea in most digital policy pieces in the last years. We are also witnessing public discourses from member states calling for the Commission to take action in materializing the objectives of digital sovereignty. In this context, we can observe instances of delegation of power to the Commission to act on behalf of the member states. The phenomenon can be best analysed through the lenses of principal-agent theory, where the member states as sovereign actors delegate the task of implementing the digital sovereignty policy in Europe to the EU institutions, particularly the Commission. At the same time, it is important to observe that the member states have strikingly different levels of digital development and even more divergent perspectives on the future of Europe in this regard. Therefore, the main question that the article aims to respond is how did the Commission's competences and position in digital policy changed with the adoption of the digital sovereignty rhetoric? A secondary question is to clarify the motivations of the EU member states to delegate powers to the Commission in the digital policy area.

The article begins with a brief overview and definition of the concept of digital sovereignty employed in the rest of the study, followed by a literature review on the principal-agent theory. The next section covers the main elements of the European institutional setting, underpinning the main roles and power relations in the multi-level governance of the process of agenda-setting and policy entrepreneurship[3]. This brief presentation will help identify the hierarchical relations of the main actors in the principal-agent theory. It is essential to understand the historical evolution of the Commission's powers and attributions in the digital sector. Hence, the article takes stock on the origins of the European telecommunications policy in the 1980's. The next section provides an analysis of the principal-agent relations drawing on public discourses from the EU member states and institutions. The final section concludes the article with a discussion on the delegation politics in the context of European digital sovereignty rhetoric. The hypothesis is that, in the context of heterogenic preferences among the EU member states, the concept of digital sovereignty has the role of a "coalition magnet"[4], encouraging further delegation of powers to the Commission.

2. Perspectives on digital sovereignty

There are two major rhetorical trends in the EU regarding the capacity to act and the type of relations the Union should develop with international counterparts, respectively "strategic autonomy" and "digital sovereignty". Both concepts are deliberately underdefined to allow the creation of coalitions around them and the flexibility to compromise on essential European policies. Political leaders provide enough information

[3] Tom Delreux and Johan Adriaensen, 'Twenty Years of Principal-Agent Research in EU Politics: How to Cope with Complexity?' (2018) 17 *European Political Science* 258, 268, http://link.springer.com/10.1057/s41304-017-0129-4 (accessed 5 April 2022).

[4] Daniel Béland and Robert Henry Cox, 'Ideas as Coalition Magnets: Coalition Building, Policy Entrepreneurs, and Power Relations' (2016) 23 *Journal of European Public Policy* 428, 2, https://www.tandfonline.com/doi/full/10.1080/13501763.2015.1115533 (accessed 22 May 2022).

on the two concepts to act as an umbrella for the family of related narratives[5].

While strategic autonomy is out of the scope of the present paper, it deserves a short overview to understand its relation with the concept of digital sovereignty. The concept was born in a context of unpredictable global environment, where gradual dealignment from the post-war international institutions is the optimal choice. Strategic autonomy is about gaining independence and authority over the strategic sectors of the Union, including digital policy. It is therefore a product of rising competition and a form of integration to prepare the EU for the new era[6].

A definitive distinction between strategic autonomy and digital sovereignty is not clearly and unanimously researched. While the first includes a palette of domains of action (industrial policy, operational security, and political), the latter mainly bears a political weight[7]. Charles Michel, the President of the European Council, considers the role of digital sovereignty instrumental in the "greater goal of strategic autonomy" of achieving "more resilience, more influence, and less dependence" necessary for "more level playing field and more fairness"[8]. While strategic autonomy has a wide range of policy issues on its agenda, digital sovereignty concentrates on increasing the ability to act in the digital world[9]. However, the rhetoric framing is the fundamental difference between the two concepts. While digital sovereignty idealizes the European room for action and agency, strategic autonomy acknowledges a certain degree of interdependence and even embraces the international cooperation with its newer "openness" rhetoric[10]. Critics underline that strategic autonomy is free from the vices of protectionism and thorny idealism, while offering at the same time operational tools to protect values and interests[11].

The present study tackles the concept of European digital sovereignty, particularly for its greater ambiguity and for its philosophical connotation of aiming for achieving a "European sovereignty". The study began from the intriguing question of who is the

[5] Daniel Lambach and Kai Oppermann, 'Narratives of Digital Sovereignty in German Political Discourse' (2022) *Governance*, 3, https://onlinelibrary.wiley.com/doi/10.1111/gove.12690 (accessed 23 May 2022).

[6] Ulrike Franke and Tara Varma, 'Independence Play: Europe's Pursuit of Strategic Autonomy' (European Council on Foreign Relations 2019) 3; Scott Lavery and Davide Schmid, 'European Integration and the New Global Disorder' (2021) 59 *JCMS: Journal of Common Market Studies* 1322, 1335, https://onlinelibrary.wiley.com/doi/10.1111/jcms.13184 (accessed 22 May 2022).

[7] European Union Agency for Cybersecurity., Cybersecurity Research Directions for EU Digital Strategic Autonomy (Publications Office 2021) 3, https://data.europa.eu/doi/10.2824/43660 (accessed 22 May 2022).

[8] Charles Michel, 'Digital Sovereignty Is Central to European Strategic Autonomy - Speech by President Charles Michel at "Masters of Digital 2021" Online Event' (European Council, 3 February 2021), https://www.consilium.europa.eu/en/press/press-releases/2021/02/03/speech-by-president-charles-michel-at-the-digitaleurope-masters-of-digital-online-event/ (accessed 22 May 2022).

[9] Maxime Lefebvre, 'Europe as a Power, European Sovereignty and Strategic Autonomy: A Debate That Is Moving towards an Assertive Europe' (Foundation Robert Schuman 2021): 7, https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-582-en.pdf (accessed 22 May 2022); Luuk Schmitz and Timo Seidl, 'Protecting, Transforming, and Projecting the Single Market. Open Strategic Autonomy and Digital Sovereignty in the EU's Trade and Digital Policies' (SocArXiv 2022) preprint, https://osf.io/wjb64 (accessed 14 May 2022); MADIEGA Tambiama, 'Digital Sovereignty for Europe' (European Parliamentary Research Service 2020).

[10] Luuk Schmitz, Timo Seidl, *Protecting, Transforming, and Projecting the Single Market*...

[11] Barbara Lippert, Nicolai von Ondarza and Volker Perthes (eds), 'European Strategic Autonomy. Actors, Issues, Conflicts of Interests' [2019] Stiftung Wissenschaft und Politik -SWP- Deutsches Institut für Internationale Politik und Sicherheit 7; Hannes Werthner, 'Geopolitics, Digital Sovereignty…What's in a Word?' in Hannes Werthner et al. (eds), *Perspectives on Digital Humanism* (Springer International Publishing 2022): 247, https://doi.org/10.1007/978-3-030-86144-5_32 (accessed 6 January 2022).

sovereign in "European digital sovereignty"? The remaining of the section provides an analysis of the European approach on the concept and benchmarking against the U.S. and Chinese perspectives.

Depending on the perspective, the concept of digital sovereignty can be interpreted in two ways. The first is the *normative* understanding concerning the manner in which the states conduct themselves in relation to technology, against their values and core principles. The second approach is linked to the traditional principle of sovereignty translated in terms of *capability*. In the digital context, this perspective is about governing and employing material resources in the cyberspace.

Digital sovereignty in normative terms is translated in ideas, and political and metaphoric understandings. The concept is a discursive tool employed in the geostrategic competition of technological supremacy. When states are claiming their sovereignty in the digital space, what they actually imply is the "ability to maintain [their] own model in competition with others, to achieve both competitiveness and normative principles"[12]. The centrepiece of the decade we entered is the competition over the technological model and the values that should inspire it. In the European context, this battle is held on the value-driven technology that respects individual rights and freedoms, and the economic competition[13].

Digital sovereignty is about using the digital sphere to project influence at international level. Currently, there is a geopolitical battle on the digital "model", largely disputed between the European Union, the U.S., and China. These three models resulted from competing views and interests on the role of technology in the interaction between the state, citizens, and the economy. The essence of the digital geopolitical competition is the normative interpretation of the triangular relationship.

The EU is defending the technological model grounded in "democratic values, respect for the rule of law and fundamental rights"[14]. The Commission pledged to find a "European way" on setting a balance between the data use and security[15]. Artificial Intelligence (AI) plays an important role on EU's global economic agenda. The greatest current challenge is the adoption of fundamental rights and values in the opaque processes of AI applications[16].

In contrast, the U.S. keeps a low level of intervention in the technological development. The American philosophy is to leave the private sector self-regulate and standardize, and have as minimum government intervention as possible. The cyber-libertarian and activist John Perry Barlow envisaged a cyberspace as a "world that is both everywhere and nowhere" and "a civilization of the Mind"[17]. The rising number of users and the creation of assets led to the increase of state intervention in the cyberspace,

[12] Daniel Innerarity, 'European Digital Sovereignty' (Institute of European Democrats 2021): 6.

[13] *Ibidem*: 7.

[14] European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament, the European Council and the Council: The EUs Cybersecurity Strategy for the Digital Decade' (2020): 19.

[15] European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A European Strategy for Data' (2020): 3–4.

[16] Council of the European Union, 'German Presidency Conclusions - The Charter of Fundamental Rights in the Context of Artificial Intelligence and Digital Change' (2020): 7–8.

[17] John Perry Barlow, 'A Declaration of the Independence of Cyberspace' (Electronic Frontier Foundation, 8 February 1996), https://www.eff.org/cyberspace-independence (accessed 22 May 2022).

testified by the Edward Snowden revelations[18]. The U.S. government keeps a low profile when it comes to digital regulation, however it actively employs obstructing practices in the cyberspace.

At the other end of the spectrum, China is a strong supporter of the extension of classical principles of sovereignty in the digital realm. In the 2010 White Paper, China declared the assimilation of the Internet within its national sovereignty and asserted the extension of the national laws in the digital realm[19]. China's first principle of digital sovereignty is the government's exclusive power over the other governments and over all non-state entities that operate in their national cyberspace[20].

Digital sovereignty can be an extension of the classical idea of sovereignty. The recognition of the cyberspace as a new operational domain extends the obligations of the "general principle of sovereignty" to this newly recognized application area[21]. The authors of the Tallinn Manual 2.0 argue that "cyber activities occur on territory and involve objects, or are conducted by persons or entities, over which States may exercise their sovereign prerogatives"[22]. Although individuals do not perceive any borders when they are browsing the Internet, their actions still remain under state jurisdiction. Many states are currently applying the national law to actions performed in the cyberspace, particularly in situations when cybercrimes have a "physical" analogy (i.e., identity and intellectual property theft, financial losses, trafficking, unauthorized access).

The Commission adopted the interpretation of digital sovereignty as control to justify the basis for its Data Strategy. In this context, the EU institutions are creating a "resource regime" with regards to data, by developing a regulatory environment structuring the interactions between the market actors[23]. Data is at the centre of the European industrial policy as result of its economic catalysing effects. In this sense, the Commissions aims to "ensure better access to data and its responsible usage" for the European enterprises[24]. The Data Governance Act (DGA) proposal is intertwined with elements of digital sovereignty in terms of *control* and as a driver for European global digital leadership. The document includes elements of controlling the data access and

[18] Glenn Greenwald and Ewen MacAskill, 'NSA Prism Program Taps in to User Data of Apple, Google and Others' The Guardian (7 June 2013), https://www.theguardian.com/world/2013/jun/06/us-tech-giants-nsa-data (accessed 22 May 2022).

[19] China's Information Office of the State Council, 'Full Text: White Paper on the Internet in China' (China Daily, 8 June 2010), https://www.chinadaily.com.cn/china/2010-06/08/content_9950198.htm (accessed 22 May 2022).

[20] Creemers R.J.E.H. (2020), China's conception of cyber sovereignty: rhetoric and realization. In: Broeders D. & Berg B. van den (Eds.) *Governing Cyberspace: Behavior, Power, and Diplomacy. Digital Technologies and Global Politics*, Lanham: Rowman & Littlefield. 107-142.

[21] Alaa Assaf et al., 'Contesting Sovereignty in Cyberspace' (2020) 1 *International Cybersecurity Law Review*: 115, 118, https://link.springer.com/10.1365/s43439-020-00004-5 (accessed 6 March 2022).

[22] Michael N Schmitt and Liis Vihul (eds), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations: Prepared by the International Groups of Experts at the Invitation of the NATO Cooperative Cyber Defence Centre of Excellence* (2nd edn, Cambridge University Press 2017): 12, http://ebooks.cambridge.org/ref/id/CBO9781316822524 (accessed 6 March 2022).

[23] Pascal König, 'Analyzing EU Data Governance Through the Lens of the Resource Regime Concept' (2022), https://www.ssrn.com/abstract=4050804 (accessed 22 May 2022).

[24] European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Joint Communication to the European Parliament, the European Council and the Council: The EUs Cybersecurity Strategy for the Digital Decade' (2020): 4.

localization[25]. Apart from the lucrative aspects of exploiting European data, the localisation provision of the DGA is partially rooted in the Schrems II case. The European Court of Justice Judgement on this case concluded that the standard data protection clauses where breached, thus invalidating the EU-US Privacy Shield ("Privacy Shield decision")[26]. By consequence, there is a stronger support in Europe for data localisation and an increasing impetus for the market uptake of native technology.

The territorial digital sovereignty is also manifested on the topic of cloud security, where the European member states are demanding immunity to non-EU laws on issues of data processing and storage. In this regard, cloud security should ensure that the maintenance, operations of the cloud service and process, and data are located within the EU[27].

3. The principal-agent theory

The intriguing aspect of "European digital sovereignty" is the source that projects this power. In essence, the principle of sovereignty implies the delegation of authority to the state, which in turn will control the territory and the assets in the given space. In the European digital context, the delegation setting is not immediately obvious. There are still looming questions regarding the identity of the agent and the principal.

The bare-bones model of delegation is the principal-agent theory. Hawkins defines delegation as "a conditional grant of authority from a principal to an agent that empowers the latter to act on behalf of the former. This grant is limited in time/scope and must be revocable by the principal"[28]. An act can be considered a delegation when a hierarchical and dyadic relationship is identified. The act of delegation involves the principal and agent as main actors. Moreover, they are mutually constitutive in the sense that it is a relational situation where the two actors create each other.

It is also a hierarchical situation because "principals retain the power to cease the contractual relationship and to undo the delegation of authority to the agent"[29]. Thus, the principal has superior ex ante and ex post powers, and the agent acts under and within the principal's authority. This relationship is built in a sequence of actions, beginning with the principal selecting an agent, then the principal drafting the delegation contract and the agent accepting or rejecting it.

In this context, a conditional grant means that the authority is offered within the limits of a given mandate and specific discretion limitations. An agent has only a certain level of freedom in the activities entrusted by the principal. In theory, if the agent does not comply with the rules set in the mandate, the authority can be rescinded.

Efficiency and specialization are the essential reasons why the principal resorts to delegation to an agent. Authority delegation also increases the legitimacy of the

[25] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council on European Data Governance (Data Governance Act)' (2020): 15.

[26] Xavier Tracol, "'Schrems II": The Return of the Privacy Shield' (2020) 39 *Computer Law & Security Review* 105484: 5, https://linkinghub.elsevier.com/retrieve/pii/S0267364920300893 (accessed 15 December 2021).

[27] Yann Lechelle, 'It Is Time to Strengthen Our EU Data Sovereignty - Open Letter to EU Institutions | LinkedIn' (LinkedIn, 23 March 2021), https://www.linkedin.com/pulse/time-strengthen-our-eu-data-sovereignty-open-letter-yann-lechelle/ (accessed 7 March 2022).

[28] Darren G Hawkins et al. (eds), *Delegation and Agency in International Organizations* (Cambridge University Press 2006): 7.

[29] Tom Delreux and Johan Adriaensen, *Twenty Years of Principal-Agent Research....*

policy. Delegating the task to an independent body will ensure that sensitive policies are not subject to biased policy-makers. The act of delegation answers to the issue of policy continuity and consistency. Hawkins et al.[30] identified other benefits of delegation, respectively the ability to manage policy externalities (addresses the coordination and collaboration dilemmas), collective decision-making facilitation, dispute resolution, credibility and policy bias.

In the European context, the collective principal consists of separate actors which have heterogenous preferences, making it difficult to take decisions in certain situations. As a collective actor, members are likely avoiding gathering their efforts around common interests and objectives because they are attracted to the option of free-riding[31]. The main solution to this problem is investing an agent with agenda-setting powers to reduce the instability of majority rule.

However, delegation also incurs costs on the principal. The most striking is the control loss over the agent's actions. This occurs in situations of conflict of interest (when the two actors diverge on their policy perspectives or values) and agent's opportunism (the agent hides beneficial information). These risks can be mitigated through contractual controls in the form of incentives (remuneration), opportunities, and sanctions[32].

With the adoption of digital sovereignty rhetoric at the European level, the literature misses a mapping of the main actors and power relations. An obvious question is who is the sovereign? And which are its objects and assets? The principal-agent theory combined with the longitudinal analysis of historical institutionalism, provides the right framework to trace the evolution of the Commission's powers. Furthermore, by adding the digital sovereignty rhetoric as independent variable, the analysis could offer the right tools to trace the change and continuity of the Commission's powers, respectively an evolution towards the federalization of the EU[33].

Additionally, the principal-agent theory helps with understanding the EU member states motivations to delegate further powers to supranational institutions. The main reasons we engage in this article are the transaction costs (informational, bargaining, and enforcement costs) and credibility of policy commitments (create long-term commitment to an important piece of legislation)[34]. In the same vein, the rhetoric of digital sovereignty is a coalition magnet providing further incentives to delegate powers. Hence, the concept facilitates compromise on sensitive policy areas.

4. The European institutional setting

There is a complex set of entities involved in the process of projecting digital sovereignty. Anu Bradford argues that the EU is a regulatory superpower that "shapes the world according to its own image" and Europeanised the global markets, especially with the General Data Protection Regulation (GDPR). The EU wants to become a global digital

[30] Darren G Hawkins et al. (eds), *Delegation and Agency in...*

[31] Kenneth A Shepsle, *Rational Choice Institutionalism* (Oxford University Press 2008) 6, http://oxfordhandbooks.com/view/10.1093/oxfordhb/9780199548460.001.0001/oxfordhb-9780199548460-e-2 (accessed 22 May 2022).

[32] Darren G Hawkins et al. (eds), *Delegation and Agency in...*

[33] Maxime Lefebvre, *Europe as a Power, European Sovereignty...*:6

[34] Renaud Dehousse, 'The Politics of Delegation in the European Union' in Dominique Ritleng (ed), *Independence and Legitimacy in the Institutional System of the European Union* (Oxford University Press 2016): 6, https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780198769798.001.0001/acprof-9780198769798-chapter-3 (accessed 5 April 2022).

leader and largely achieved that objective through regulation and standardization[35].

Historically, the Commission argued for a European approach in the technological sector and asserted its role of policy entrepreneur. The reasons for this tendency are largely related to the functionalism of the opportunities provided by the supranational setting. "Digital sovereignty" in the European context should be viewed from the perspective of shared responsibilities. The source of normative guidance and the capability of projecting power and influence varies across sub-topics, depending on the impact at the national level or on the single market. The EU institutions enjoy considerable power on normative and value-driven issues that have extra-territoriality application, such as the competition policy or data protection. However, EU member states will have the capability and power to implement regulations on issues with high political salience, such as the security of the networks and information systems.

The EU treaties do not include any explicit provisions for the information and communication technologies. However, the EU institutions have the power to adopt sectoral and horizontal policies. This power is grounded in Article 114 of the Treaty on the Functioning of the EU (TFEU) that addresses issues regarding the harmonization of practices that impact the functioning of the internal market.

The EU's interdependent and hybrid system of governance presents a set of intricate legislative decisional layers. The current institutional setting is inherited from the Treaty of European Union (TEU, signed at Maastricht in 1992), and developed in the Treaty on the Functioning of the European Union (TFEU, signed at Lisbon in 2007). The resulting inter-institutional distribution of responsibilities is shared among a handful of actors, varying between intergovernmental and supranational powers. The EU key institutions in the digital area are the European Council, the European Union Council, the European Parliament, and the European Commission.

The European Council and the Commission are highly interdependent and they mutually influence each other in the agenda-setting phase. It is considered the most important stage of the legislative train because of the attention given by the agenda-setters to a salient issue and their influence is projected on the resulting policy[36]. The European Council does not have any legislative functions, however the Art. 15(1) of the TEU provides its authority on defining the "general political directions and priorities" of the Union.

The European Council must request the Commission to initiate legislative proposals. Thus, it has informal agenda-setting powers and its influence is translated in the form and content of the request. The Commission enjoys, under Art. 17(2) of the TEU, the exclusivity of legislative proposal in the Union. It is the formal agenda-setter and has the power to draft and influence the subsequent steps of the adoption. The distribution of responsibilities on agenda setting is subject to the area, varying from high politics (through the heads of governments in the European Council) to low politics (through the technical expertise of the Commission)[37].

The Commission submits its proposal for discussions in the Council and

[35] Anu Bradford, *The Brussels Effect* (Oxford University Press 2020): 18, https://oxford.universitypressscholarship.com/view/10.1093/oso/9780190088583.001.0001/oso-9780190088583-chapter-3 (accessed 4 April 2022).

[36] David Moloney, 'Who Sets the Agenda? The Influence of the European Commission and the European Council in Shaping the EU's Response to the European Sovereign Debt Crisis' (2021) 29 Journal of Contemporary European Studies: 112, https://www.tandfonline.com/doi/full/10.1080/14782804.2020.1823342 (accessed 12 March 2022).

[37] *Ibidem*: 4.

Parliament that act as two parliamentary chambers. The co-legislators should adopt the act based on the ordinary legislative procedure described under Article 294 TFEU. The Council and Parliament draft their internal positions which are presented in the trialogue negotiations. The co-legislators must agree on the same text. Thus, the final piece is a sum of concessions and compromises.

5. The origins of delegation in the EU telecommunications sector

To answer the challenge of navigating the geopolitical competition, the Commission set the ambition to achieve "technological sovereignty in some critical technology areas"[38]. However, from this statement, it seems Brussels is not clear about the direction it plans. Luckily, the EU can learn from its experience of external competitive pressures and the development of antitrust policies. The most notable example is the period of 1980 – 2000 when the European Community was challenged by the Japanese and U.S. dominating strategies on trade, including technology sectors such as computer, telecommunications, and semiconductors.

The development of telecommunications policy on the EU agenda coincides with the process of European integration. With the liberalization of the telecommunications sector, the Commission experienced an increasing foothold in the institutional setting through the adoption in the 1980s of the first acts in the area of antitrust policy *Terminals Directive* (1988) and the *Services Directive*[39]. These two documents are important pieces in the history of European integration because they mark the beginning of European level policy in the digital sector and delegation of tasks to the Commission in a traditionally nationalized area. The digital sector witnessed a succession of iterative and incremental changes, both in terms of institutional powers and regulatory approaches. The added value of this historical perspective is tracing the longitudinal evolution of the Commission's competences. By tracing the development path of the European integration, the independent variable of digital sovereignty rhetoric will add another layer of arguments explaining the policy change.

Historically, telecommunications were a matter of national sovereignty marked by considerable national monopoly. The member states preferred to maintain the status quo of the intergovernmental institutional setting and preserve their authority on the telecommunications discussions. The Post, Telephone and Telegraph Administrations (PTTs)[40] wanted to prevent the inclusion of the telecommunications field on the European level agenda. Although there were international pressures to liberalize the market (notably

[38] 'A Union That Strives for More: My Agenda for Europe. Political Guidelines for the Next European Commission 2019-2024' (European Commission 2019): 14, https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_ro.pdf (accessed 12 March 2021).

[39] 'Commission Directive of 28 June 1990 on Competition in the Markets in Telecommunications Services' (Official Journal of the European Communities 1990), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31988L0301&from=EN (accessed 22 March 2022).

[40] The PTTs were national state-run telecommunication networks and services, managed as natural monopolies. Until the adoption of the *Terminals Directive* (1988) and the *Services Directive* (1990), they have enjoyed exclusive rights over the supply of telecommunications services. The natural monopoly was motivated on the need to limit the operation of the public network to a single operator to ensure the continuity and quality of the service. These companies were often owned by the national telecommunication regulatory entity. Thus, they were managed and regulated by the same authority. Without surprise, the member states were keen on perpetuating this operating model, until international and European pressures triggered the liberalization. For more information, see Joseph Goodman, *Telecommunications Policy-Making in the European Union* (Edward Elgar Publishing 2006), http://www.elgaronline.com/view/9781843768067.xml (accessed 12 March 2022).

from the U.S.), the European PTTs were keen on maintaining their *status quo*. PTTs wanted to minimize the Commission's action, hence they continued to use until 1980s the European Conference of Postal and Telecommunications Administrations (CEPT) as the main forum of "coordination of cross-border European telecommunications issues"[41]. The Commission frequently overlapped and contradicted CEPT on their respective competencies. To counter the member states' resistance to change, the Commission developed an epistemic community to mobilise and support its strategies of institutionalizing the telecommunications on the European agenda. The Commission sought to expand its policy competence and increase its power and legitimacy in this sector. However, until the 1980s, the external economic and technological pressures were mild to incentivize the member states to engage on a policy change track. The Commission lacked the "policy window" that would escalate the need for a coordinated approach. This all changed with the escalation of the Japanese and U.S. dominance in the digital sector and increased pressures to open the telecommunication market[42]. With the geopolitical challenge resulted the need to address the scale effects through a concerted response motivated in the Green Paper on the Development of the Common Market for Telecommunications Services and Equipment[43]. This document was the first "major threshold [event] in the evolution of European telecommunications markets"[44]. By setting the telecommunications regulation at the European level, the Commission was proposing innovative policy in the service of the common interest and changing the nature of national cooperation.

The appointment in 1977 of Étienne Davignon in the position of European Commissioner for Industry and Commission and Vice-President marked the beginning of the change in the European telecommunications policy. Additionally, Davignon's appointment was a window of opportunity for raising the issue of telecommunications at the Community level. His strategy was to transform the Commission into an informal agenda-setter in the telecom sector, first through the epistemic community[45], and then through policy entrepreneurship[46]. Confronted with the resistance of the PTTs, he suggested that the Commission ought to focus on the computer and microelectronics industries, which would become the backbone of the society a few years later.

Furthermore, the Commission sought to develop a central role in the Research and Development in Advanced Communications Technologies in Europe (RACE). While CEPT continued to act as a "damage control" actor (protect national sovereignty in this sector), the beneficiaries of the RACE program supported the Europeanisation of this policy domain and consolidated the Commission's legitimacy. Some argue that this program was the most important development in the European telecommunications

[41] *Ibidem*: 50.

[42] Cosmina Moghior, 'Fear of Technological Dominance: A Longitudinal Analysis of the European Policy Change' (Unpublished manuscript, 2022).

[43] Commission of the European Communities, 'Towards a Dynamic European Economy: Green Paper on the Development of The Common Market for Telecommunications Services and Equipment' (1987) 3, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51987DC0290&from=en.

[44] Lawrence Garfinkel, 'The Transition to Competition in Telecommunication Services' (1994) 18 *Telecommunications Policy*: 427, https://linkinghub.elsevier.com/retrieve/pii/0308596194900116 (accessed 22 May 2022).

[45] Volker Schneider, Godefroy Dang-Nguyen and Raymund Wrle, 'Corporate Actor Networks in European Policy-Making: Harmonizing Telecommunications Policy' (1994) 32 JCMS: *Journal of Common Market Studies*: 473, https://onlinelibrary.wiley.com/doi/10.1111/j.1468-5965.1994.tb00510.x (accessed 18 March 2022).

[46] Joseph Goodman, *Telecommunications Policy-Making...*

policy, because it was the product of supranational efforts. It established the Commission as "the leader to which diverse liberalizing interests would rally"[47].

The policy window that the Commission needed was the early 1980s Information Technologies Task Force (ITTF) report on the threat of the U.S. and Japanese dominance in the digital sector. The issue was framed in terms of Europe's overdependence on foreign technology and on the monopolistic behaviour from the third-countries companies. In other words, it was an issue which called for a concerted response. The Commission stressed that the required "capacity to meet [the US and Japanese] challenges, and to cope in a timely manner with the opportunities born out of telecommunications, is outside the capability of national operators on their own"[48]. It is argued that the Commission's capability to raise this threat marks the beginning of the EU telecommunications policy and the increase of the European Community impact on the national telecommunication sectors[49].

6. The preference heterogeneity in the EU (digital) context

The EU institutional architecture presents a peculiar political setting that lacks a unitary principal. The history of European Union construction is the result of a number of countries that decided to yield parts of their sovereignty in specific domains to supranational institutions. The EU institutional framework is built on balance and consensus with the aim of creating order without empowering a hierarchical structure. Largely, the EU member states kept their foremost position regarding the treaties, while they have also granted consistent discretionary powers to the executive (the Commission) and the judicial (CJEU) European bodies.

The unique aspects of the delegation politics in the European context are the plurality of the principals and their preference heterogeneity[50]. The discourse on European digital sovereignty is mainly dominated by French, German and EU institutional policy makers.

In the Franco-German context, digital sovereignty firstly emerged as a form of digital security pledge at their Council of Ministers of 7 April 2016. The joint declaration underlined their priority to promote European digital sovereignty around the capacity to defend the European networks, strengthen industry and the ability to take autonomous decisions regarding data security in the context of trade agreements negotiations[51].

While in the smaller EU member states the concept of digital sovereignty does not occupy the priorities on the public agenda, it is considered in the wider debate on "strategic autonomy". Mainly, policymakers framed the concept of "digital sovereignty" in terms of digital capabilities, regulation and policy, and protection of the territorial (traditional) sovereignty[52].

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[47] Wayne Sandholtz and Alec Stone Sweet (eds), *European Integration and Supranational Governance* (Oxford University Press 1998): 150.

[48] Commission of the European Communities, 'Progress Report on the Thinking and Work Done in the Field and Initial Proposals for an Action Programme. Communication from the Commission to the Council on Telecommunications' (1984) EU Commission - COM Document, http://aei.pitt.edu/3673/ (accessed 22 May 2022).

[49] Volker Schneider, Godefroy Dang-Nguyen and Raymund Wrle, *Corporate Actor Networks...*

[50] Renaud Dehousse, *The Politics of Delegation...*

[51] Conseil franco-allemand de sécurité et de défense, 'Déclaration Ur Les Questions de Sécurité et de Défense' (7 April 2016), https://www.diplomatie.gouv.fr/IMG/pdf/_16-04-07_declaration_cfads__cle8eaec8.pdf (accessed 22 May 2022).

[52] Seamus Allen, 'European Sovereignty in the Digital Age' (Institute of International and European Affairs 2021) 5.

During Germany's Presidency of the Council of the EU, the 27 ministers responsible for digital transformation signed the "Berlin Declaration on Digital Society and Value-Based Digital Government", underlying that "strengthening Europe's digital sovereignty and interoperability" is a value at the foundation of the European Union[53].

French President Emmanuel Macron stressed the need for a European solution to the issue of dependence on US digital giants, arguing for the need for a further integration of the European Union[54]. The European digital sovereignty has a strong political importance, because those who gain power in the digital domain set the type of life we live in[55].

Some member states expressed their concerns regarding the evolutions on digital sovereignty and strategic autonomy. The D9+ states[56] published a Joint Declaration stressing that "We should leverage our global competitive advantage in these areas to ensure our technological leadership in the long term while maintaining an open single market, strengthening global cooperation and the external trade dimension"[57]. Two months later, Estonia, Denmark, Finland, and Germany co-signed a letter sent to the European Commission's President, Ursula von der Leyen, underlining that digital sovereignty should be centred around self-determination, jointly with democratic partners, while building on a strong transatlantic relationship. The letter further mentioned that digital sovereignty should reduce weaknesses, while avoiding protectionist approaches[58].

Through these documents, the EU member states have stated their support for capacity building, cooperation, openness and regulation. They further specify that these efforts are aimed at upholding the European values. The link between digitalization and sovereignty occupies a primary position in the priorities of the most pro-liberal market countries. The Netherlands is actively supporting the initiatives on competition and platform regulation[59]. Estonia, the most aversive European country towards the strategic autonomy concept, is vocal with regards to regulation on disinformation, cybersecurity, and digital taxation.

The European Council conclusions in October 2020 asserted that technological

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[53] German Federal Ministry of the Interior, Building and Community, '"Berlin Declaration on Digital Society and Value-Based Digital Government" Signed' (*Federal Ministry of the Interior and Community*, 8 December 2020), http://www.bmi.bund.de/SharedDocs/pressemitteilungen/EN/2020/12/berlin-declaration-digitalization.html;jsessionid=33D6519AAAA44CCDA9901B840C1C6DA8.1_cid373?nn=9384552 (accessed 22 May 2022).

[54] Ryan Browne, 'France's Macron Lays out a Vision for European "Digital Sovereignty"' (*CNBC*, 8 December 2020), https://www.cnbc.com/2020/12/08/frances-macron-lays-out-a-vision-for-european-digital-sovereignty.html (accessed 22 May 2022).

[55] Luciano Floridi, 'The Fight for Digital Sovereignty: What It Is, and Why It Matters, Especially for the EU' (2020) 33 *Philosophy & Technology*: 369, 377, https://link.springer.com/10.1007/s13347-020-00423-6 (accessed 6 March 2022).

[56] D9+ gathers the European countries with the highest ranking in the Annual Digital Economy and Society Index (DESI), with the objective of promoting and exchanging best practices on digitization. The Joint paper referred in this article was signed by Belgium, Czech Republic, Denmark, Estonia, Ireland, Luxemburg, the Netherlands, Poland, Portugal, Spain, and Sweden.

[57] 'D9+ Declaration: Leading the Way to Europe´s Digital Decade' (2021), https://tem.fi/documents/1410877/53440649/D9%2B+Declaration.pdf/536c1b37-2b93-57d6-1313-bfe943f3c17e?t=1611759617528.

[58] Germany, Denmark, Finland, and Estonia, 'Letter to Commission President Ursula von Der Leyen on Digital Sovereignty' (1 March 2021), https://www.politico.eu/wp-content/uploads/2021/03/01/DE-DK-FI-EE-Letter-to-COM-President-on-Digital-Sovereignty_final.pdf.

[59] Foo Yun Chee, 'Germany, France, Dutch Want More Say over Tech Giants' Start-up Deals' Reuters (27 May 2021), https://www.reuters.com/business/retail-consumer/germany-france-dutch-want-more-say-over-tech-giants-start-up-deals-2021-05-27/ (accessed 22 May 2022).

sovereignty must be built on a digital single market where the EU has the "ability to define its own rules, to make autonomous technological choices, and to develop and deploy strategic digital capacities and infrastructure". Moreover, the conclusions mentioned that the European market is open to "all companies complying with the European rules and standards". Finally, the document stipulated that technological sovereignty will be projected at the international level through the "EU tools and regulatory powers" with the aim of shaping "global rules and standards"[60].

7. Conclusions: The politics of delegation in the EU digital context

The emergence of the European digital sovereignty rhetoric and the increased foothold of digital policy on the Union's agenda mark a turning point in the evolution of European integration. The concept fosters coalitions and consensus, while creating divergences among the member states at the same time. Who is the *sovereign*? This was the zeitgeist of the present article. Through the literature review and policy and discourse analysis, the study offers an alternative perspective. The concept of digital sovereignty is an idea beyond the traditional Westphalian concept. It is not really about the Leviathan, subjects, assets, and control. It is rather a discursive act instrumentalized (primarily by the Commission) to advance bold policy proposals and encourage consensus around them.

The main objective of the article was to trace the Commission's competence evolution in a longitudinal analysis, and to take stock of the impact of the new rhetoric of digital sovereignty on this process. A secondary objective of the study was to identify the EU member states' motivations to delegate the tasks and powers at the supranational level. The emergence of the digital sovereignty rhetoric highlights two key-aspects of the delegation politics in the European digital framework. First, the decentralized nature of the institutional setting in the EU underlines the difficulties created by the absence of a clear centre of power. The European system features a set of multiple principals that sometimes present heterogenous preferences. Digital sovereignty is an ambition which requires strategic thinking and decision-making. The ambiguity of the concept, as well as the aspiration of the EU member states to achieve the objectives of this rhetoric encourages coalitions and compromise on sensitive topics. The lack of alignment between the EU member states is the foremost motivation for delegating this task to an independent body. In the vein of the principal-agent theory, the former decides to delegate powers to the latter in situations of difficulty to compromise on vital topics. In this way, the agent, through its expertise, independence, and access to resources, achieves the set objectives of digital sovereignty at a reduced transaction cost. Otherwise, unilateral action would have a considerable increased cost and low efficiency. In other words, the EU stands stronger together in the context of geopolitical competition.

Second, the relationship developed between the principals will influence the type of discretion they would apply towards the agent. The member states are aware of their preference heterogeneity, leading them to fear that the other partners will defect, or will capture the agent, or the agent itself will display policy drift. These three elements are the main challenges in the principal-agent theory. Nevertheless, the rhetoric of digital sovereignty comes to rescue the relation between the two sides of the matrix (principal and agent), through its consensus building. Having the confidence of a greater objective,

[60] European Council, 'Special Meeting of the European Council (1 and 2 October 2020) – Conclusions' (2020).

the EU member states decided to delegate the task of achieving it, while ensuring credibility of policy commitments (create long-term commitment to an important piece of legislation). On the other hand, the Commission is not depleted of its agency to act at its own will. Its rational behaviour of seeking to maximize its power is the greatest risk that the principals (the EU member states) are subjected to.

Nevertheless, the EU member states decided to delegate additional powers as a result of increasing external pressures from the geopolitical competition. It is a challenge that they just cannot tackle by themselves and this aspect has two implications. First, the literature acknowledges the effects of the external pressures on creating divergences between the EU member states[61]. One of the many vices of the EU is that it has a difficulty to foster consensus in contexts of crisis. Second, external pressures incentivise further European integration, but not in the classic neoliberal vein. However, it takes a neo-mercantilist or even a protectionist turn, for example through foreign direct investments control[62]. The two elements are indicating an integrated strategic approach at the European level to achieve autonomy and sovereignty. Much of the merits are ascribed to digital sovereignty giving a new objective for European integration. Its main contributions are, as mentioned before, the coalition and consensus builder, with such a strong force that it manages to achieve all this in a context of heterogenous preferences.

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[61] Scott Lavery and Davide Schmid, *European Integration...*; Dorothee Bohle and Béla Greskovits, *Capitalist Diversity on Europe's Periphery* (Cornell University Press 2012); Alison Johnston and Aidan Regan, 'Introduction: Is the European Union Capable of Integrating Diverse Models of Capitalism?' (2018) 23 *New Political Economy*: 145, https://www.tandfonline.com/doi/full/10.1080/13563467.2017.1370442 (accessed 23 May 2022).

[62] Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Routledge 2005); Sandholtz and Stone Sweet (n 46).

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