

The EU - a divided global actor inside and outside?

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TIME

Where Did Europe Go?

The E.U. needs
to decide if it
wants to be a
world power

BY SIMON ROBINSON



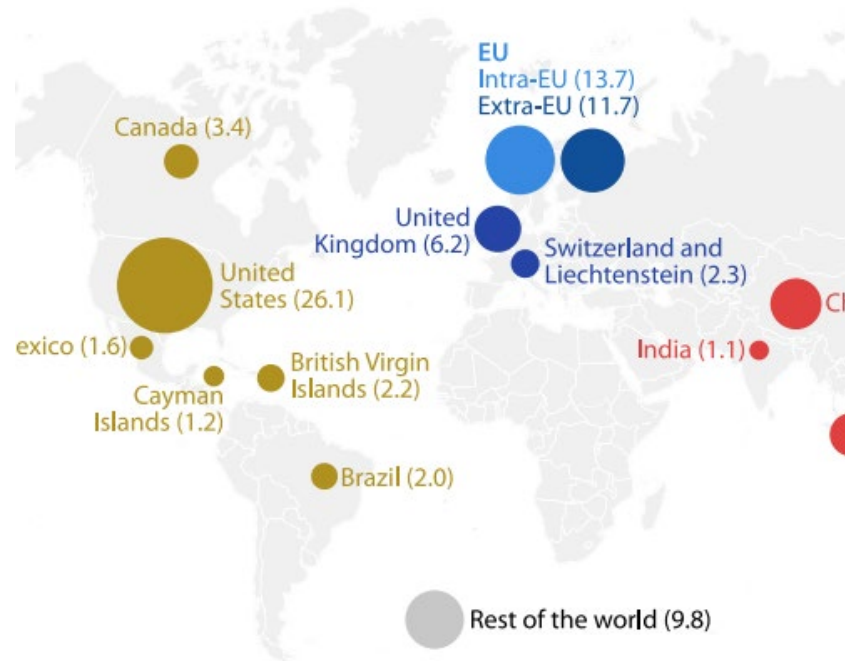
“Instead of becoming a truly global power, Europe remains a beautiful but fragmented kaleidoscope of small and middle powers,”



A trade and development aid giant

of inward foreign direct investment

and stocks, 2023)

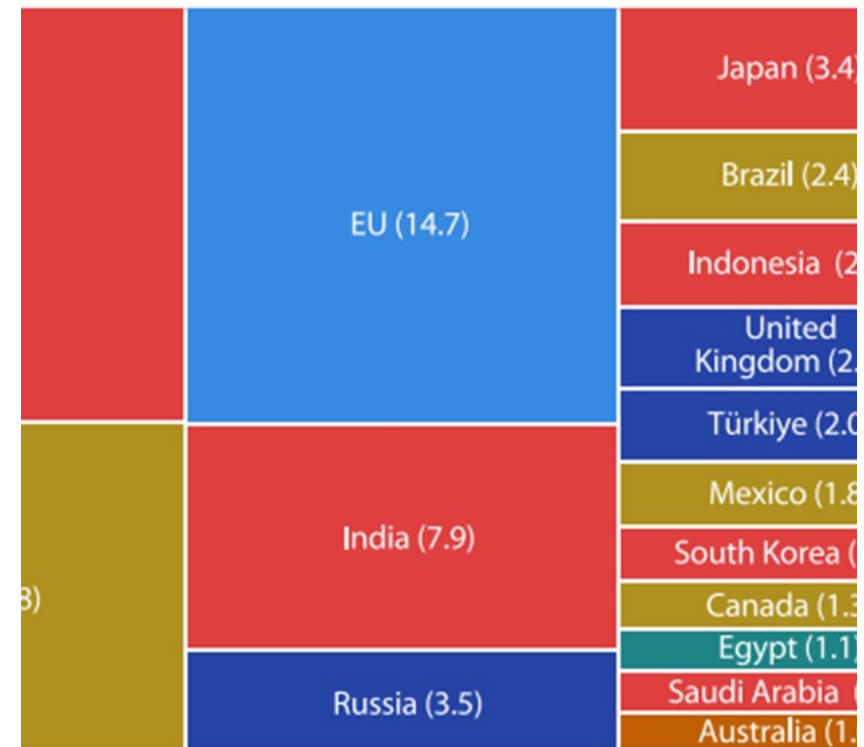


Note: excluding investments of special purpose entities and non-EU countries with a share of at least 1.0%

Source: Eurostat (online data code: [bop_fdi6_pos](#))

domestic product (GDP)

in billion USD, 2023)



But a military
dwarf?



Strategic autonomy and economic security

Von der Leyen on Trump: EU will be 'pragmatic' but protect its interests

Story by Jorge Liboreiro • 2d • ⌚ 5 min read



Europe's Independence Blueprint At Davos: Mercosur, EU Inc, And A Harder North

By Esther Lansgebbber

January 20, 2026

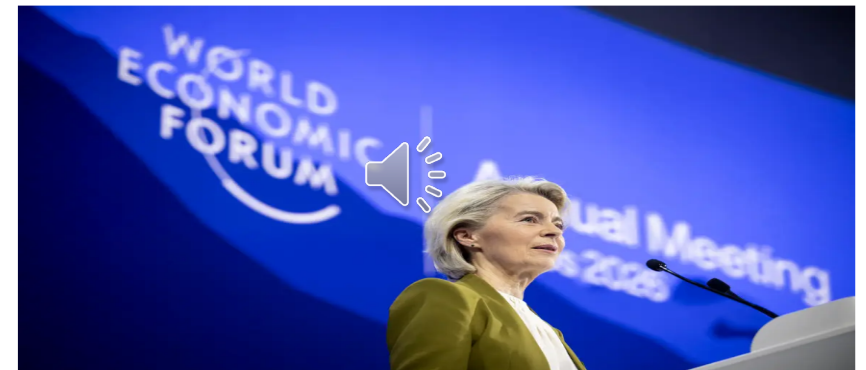
Key Points

1. EU Inc, deeper capital markets, and a unified energy market were pitched as Europe's scale reset.
2. Mercosur and India were framed as the trade spine for a rules-based counterweight to tariffs.
3. Defence spending, Ukraine leverage, and Arctic planning were presented as strategic autonomy in practice.

At Davos, Ursula von der Leyen said the world has changed, so Europe must change too. "European independence," she argued, is now a necessity.

She led with trade. She said she signed the EU–Mercosur agreement in Asunción on Saturday, a breakthrough after 25 years. The pact was described as linking 31 countries, more than 700 million consumers, and over 20% of global GDP.

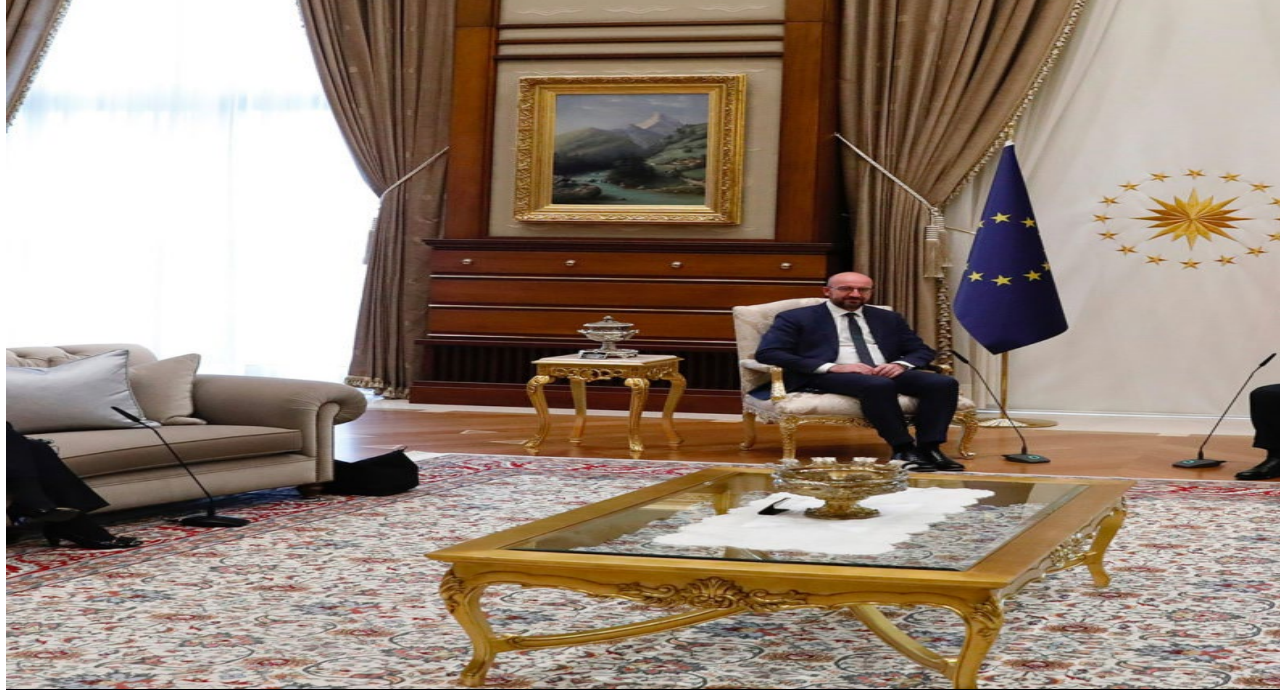
India was the next anchor. She said she will travel there after Davos and that a near-term pact could be historic. Some call it the "mother of all deals," spanning 2 billion people and almost a quarter of global GDP.



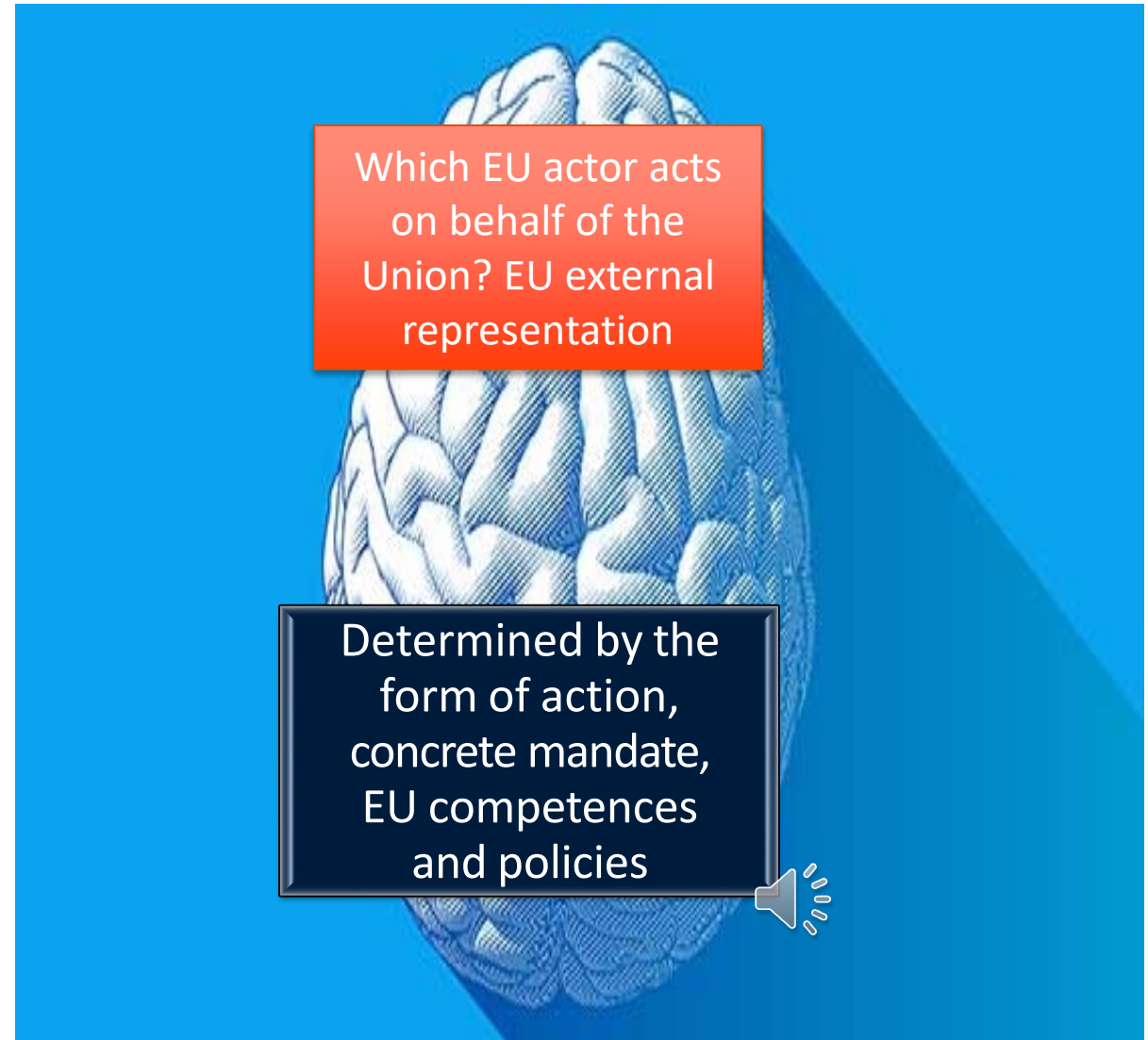
Europe's Independence Blueprint At Davos: Mercosur, EU Inc, And A Harder North. (Photo Internet reproduction)

Outline

- EU competences and their evolution: why complex and disputed
 - Categories of competences
 - How it started and the look back: The ERTA judgment
 - Codification and criticism
 - Current cases
- EU external representation: why fragmented



EU global actorness: External representation and competences – what is the difference?



A mix of recent examples

COUNCIL DECISION (EU) 2024/...

of ...

**on the conclusion, on behalf of the European Union,
of the United Nations Convention on Transparency
in Treaty-based Investor-State Arbitration**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(6), second subparagraph, point (a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

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Joint Statement by High Representative/Vice-President Kaja Kallas and Commissioner Marta Kos on Georgia's Foreign Agents Registration Act

NEWS ARTICLE | 31 May 2025 | Directorate-General for Enlargement and Eastern Neighbourhood | 1 min read

Joint Statement by High Representative/Vice-President Kaja Kallas and Commissioner Marta Kos on Georgia's Foreign Agents Registration Act

Council Decision (EU) 2023/2861 of 20 July 2023 on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organisation of African, Caribbean and Pacific States, of the other part

ST/8371/2023/DCL/1

Available languages: English

STATEMENT | Sep 26, 2024 | Brussels | 1 min read

Joint Statement by the European Union, Australia, Canada, France, Germany, Italy, Japan, Qatar, Saudi Arabia, United Arab Emirates, the United Kingdom, the United States

Competences and primary law



Consolidation and contestation: Two questions

Why do (external) competences matter ?

Why does so much case law on EU competences exist?

The dilemma of the EU's autonomous legal order

The friction between the conferral of powers and attaining the objectives of the EU (Art.5 TEU and 216 (1) TFEU)

Treaty text: conferral of powers v. attaining the EU's objectives

Article 5 TEU

1. The limits of Union competences are governed by the **principle of conferral**. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only **within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein**. Competences not conferred upon the Union in the Treaties remain with the Member States.

Article 216 TFEU

1. The Union may conclude **an agreement** with one or more third countries or international organisations where the Treaties so provide or **where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties**, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

Article 4 TEU

1. In accordance with Article 5, **competences not conferred upon the Union in the Treaties remain with the Member States.**

3. Pursuant to the **principle of sincere cooperation**, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

The Member States shall take **any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.**

The Member States shall facilitate the **achievement of the Union's tasks** and refrain from any measure which could jeopardise the attainment of the Union's objectives.

Consolidation of competences: the road to codification by Lisbon (TEU/TFEU)

The road to the Lisbon Treaty competence codification

Delimitation of competences a top-priority: Competence catalogue

Growing amount of case law on existence, scope and nature of competences

Laeken Declaration 2001: To clarify, simplify and adjust the division of competences

- By defining competences forestalling creeping competences
- No Kompetenz-Kompetenz: attribution of competences, Art.5(1) TEU)

Implemented by Art.216 TFEU (see previous slides) and Art.2 to 6 TFEU (competence catalogue)

Art.216 TFEU (treaty-making power) and Art.3 (2) TFEU (exclusive competences)

Article 216 (1) TFEU: The Union may conclude an agreement with one or more third countries or international organisations **where the Treaties so provide** or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, **or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.**

Art.3 (2) TFEU: The Union shall also have exclusive competence for the conclusion of an international agreement when **its conclusion is provided for in a legislative act of the Union** or is necessary to enable the Union to exercise its internal competence, or **insofar as its conclusion may affect common rules or alter their scope.**

Categories of competences

Categories of competences

Competences

Exclusive

Shared

Complementary
or supporting

*CFSP
compet
ence
sui
generis*

Categories of competences

Competences, Art.2 TFEU

Exclusive, Art.3 TFEU

- *A priori* exclusive (monetary policy countries with Euro currency, common commercial policy)
- By certain condition (Art.3 (2) TFEU)
- By *preemption(?)* (Art.2 (2) TFEU)

Shared, Art.4 TFEU

- Shared competences (internal market, environment i.a.)
- Parallel competences (development), pre-emption does not apply
- Not exhaustive Art.4 (1) TFEU

Complementary, Art.6 TFEU

- Harmonisation excluded
- Tourism, protection and improvement of public health, education

CFSP competence
sui generis,
Art.2(4) TFEU
*(pre-emption
does not apply)*

How it started and the look back: the ERTA case

ERTA or AETR case 1971: a constitutional moment in EU external relations law



Underlying question in the ERTA case (1971)

- Can the EEC only act in EU external relations and conclude international agreements, conduct negotiations in the policy field of explicit external competences (trade and association) or also in an area which is covered by an internal competence (competition or transport)?

UNITED
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ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

Working Party on Road Transport

One hundredth session
Geneva, 17-19 October 2006
Item 4 of the provisional agenda

**HARMONIZATION OF REQUIREMENTS CONCERNING INTERNATIONAL ROAD
TRANSPORT AND FACILITATION OF ITS OPERATION**

Consolidated text of the European Agreement Concerning the Work of Crews of Vehicles
Engaged in International Road Transport (AETR)

INTRODUCTION

In order to facilitate the understanding and reading of the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR), done on 1 July 1970, the secretariat has prepared a consolidated version of the Agreement in which the relevant amendments adopted since its origin have been incorporated. **No legal value should be attached to this consolidated version.**

ERTA: When does the EU have treaty-making power (and when are Member States excluded from acting)?

- Member States negotiate the ERTA agreement with third countries, they discussed it **within the Council** with each other and agreed on a common negotiation position outside the EU framework. **At the same time already EU law adopted on this matter.**



Transport policy (ERTA case): solely internal competence

Article 90 TFEU (ex Article 70 TEC)

The **objectives of the Treaties** shall, in matters governed by this Title, be pursued **within the framework of a common transport policy**.

Article 91 TFEU (ex Article 71 TEC)

1. For the purpose of implementing Article 90,, **the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure..... lay down:**
 - (a) **common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;**

.....

ERTA doctrine: Two questions addressed – treaty-making power and exclusive power

ERTA reasoning

- Effet utile + Art.4 (3) TEU principle applied
- Parallelism of internal-external competences

1st question (existence of a competence)

- Can Treaty-making power (legal basis for action) derive only from express powers or can be based on other norms (primary and secondary law)?

2nd question (nature and scope of competence)

- Is this competence exclusive and MS prevented from acting?

ERTA doctrine (2nd question addressing exclusivity)

Common rules adopted - ERTA judgment (para.17 of judgment)

- Example: Common transport policy

And adoption of secondary law/harmonisation - ERTA judgment (para.28)

Existence of treaty-making competence: Art.216 (1) TFEU

- **1. Treaty provides for it**
 - Examples: Art.207 TFEU CCP, Art.191 (4) TFEU (environment), Art.78 (2) g TFEU (AFSJ)
- **2. Where conclusion of an agreement is necessary in order to to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties** (see ERTA case or COTIF I case)
- **3. Provided for in a legally binding act** (“empowering institutions to negotiate with third countries”), WTO opinion (1/94)
 - Example: legislation containing clauses in relation to third-country nationals or power transferred to institutions to negotiate with non-member countries
- **4. Likely to affect common rules or alter their scope (overlap with Art. 3(2) (3.alternative))**

Is the competence exclusive (nature and scope of competence?)

- **A priori exclusive: Art.3.1 TFEU**

- Customs union
- Competition policy internal market
- Monetary policy
- Conservation of marine biological resources under the common fisheries policy
- Common commercial policy

- **General conditions. Art.3.2 TFEU**

- 1. Its conclusion is provided for in legislative act of the Union
- 2. Necessary to enable the Union to exercise its internal competence
- 3. Its conclusion may affect common rules or alter their scope

Criticism: Lack of clarity and unfinished job

Missing competences

- Association/ENP policies, Art.217 TFEU
- Combatting discrimination, Art.19 TFEU,

Hybrid policies (social policy, employment and economic policy)

- Social policy split up into three categories of competences, depending on the concrete norm (Art.151 -161 TFEU)

CFSP as a unique policy (Art.24 TEU)

Role of pre-emption, Art.2(2) TFEU in relations to exclusivity Art.3(2) TFEU

Remaining conflicts and resistance by Member States

Scope of (exclusive)competences

Implied (external) competence

Another recurring conflict

Exclusive competence: How to define may affect common rules in Art.3 (2) TFEU

Interpretation of Art.3(2) TFEU: “may affect common rules or alter their scope”

Less than complete harmonisation but more than minimum harmonisation

- Minimum harmonisation defined in case law as provisions of EU law and international convention in question lay down only minimum requirements

(Broadcasters, Case C-114/12), Marrakesh Treaty Opinion 3/15) confirmed by Singapore Opinion (2/15)

A risk assessment that common EU rules are affected by MS international commitments or whether the risk exists that EU rules are altered by those MSs commitments (broad assessment, future developments, meaning, scope)



Comparison between the EU's envisaged international agreement and existing or foreseeable EU secondary rules



Sufficient if area of international agreement is **largely covered by EU rules**

Pending cases in the field of competences

ERTA Pre-emption: The Italy-Albania Protocol Trilogy

Background

2023 Italy-Albania Protocol: extraterritorial migration management — third-country nationals subject to expulsion transferred to detention centres in Albania under Italian jurisdiction. Asylum seekers there applied for international protection; detention orders referred to the Rome Court of Appeal.

The Trilogy

C-414/25 Sedrata

Return Directive & Asylum Procedures Directive compatibility (AG Emiliou, 23 Apr 2026: conditionally favourable to Italy)

C-706/25 Comeri

C-707/25 Sidilli

Competence question squarely raised: ERTA exclusivity — can Italy conclude the Protocol?

The ERTA/Competence Question (Art. 4(3) TEU + Art. 3(2) TFEU + Art. 216(1) TFEU)

Do EU harmonisation rules (Return Directive; Asylum Procedures Directive) preclude a member state from concluding an international agreement for extraterritorial migration management? AG in Sedrata: the directives do not cover this situation — matter may remain within MS competence. Judgment expected later 2026 — landmark ruling on externalisation. AG Messina in Comeri case (11 June 2026) addressing Art.3 (2) TFEU and field and obstacle preemption

Wider context: EU 'return hubs' debate and external asylum processing — stakes extend well beyond Italy.

Aviation Policy: Opinion 1/24 (EU-Oman CATA)

Background & Structure

Two types of EU air services agreements:

- ① Horizontal agreements (existing bilaterals in line with EU law)
- ② CATAs — new mixed agreements (EU + MS + third country)

Open Skies rulings: certain parts of bilateral air transport agreements = EU exclusive; but traffic rights remain contested as inherent MS sovereignty over airspace.

Pending: CATAs with China, Turkey, Saudi Arabia, Oman (Opinion 1/24). First bloc-to-bloc: ASEAN-EU CATA (2021/signed 2022).

AG Capeta — ERTA Analysis

Commission:

Area completely/almost completely covered → field pre-emption.

Council/MS:

Real risk of affectation must be established, rule-by-rule basis; overlap required.

AG Capeta:

Absence of overlap between common EU rules and international commitment = no affectation. Comprehensive comparison with internal rules (cf. Marrakesh Treaty: minimum harmonisation, MS

Art. 19 Air Services Reg.:

NOT minimum harmonisation. A conditional, Commission-supervised carve-out — tightly bounded regulatory space, prior approval required. Ceiling not a floor.

Conclusions competences

The politics of competences

- Competences and legal basis disputes are power struggles between institutions and EU v. MS (mixed agreements, see lecture Prof Chamon)

Failed competence clarification

- Failure by legal drafters and EU judges

Judicial attempts of consolidation

- Broad external powers v. sectoral internal powers
- Preference for one legal base and wide scope of express external competence and normalised CFSP competence

EU external representation: speaking with one voice?





The eternal Henry Kissinger question



Opinion

**Who's actually running EU
foreign policy: von der Leyen,
Kallas or Costa?**

▲ Ursula von der Leyen (left, with Kaja Kallas) also announced the convening of a “Security College”, a new commission format announced last year with unclear mandate, scope, or capacities, that seems to duplicate the Political and Security Committee

Tonies

Too many EU external actors and why ?

- Who acts on behalf of the EU externally?
- Which external actors are mentioned in the EU Treaties?
- Why do we have so many actors?



EU actors acting on behalf of the Union (external representation)

Which EU actor acts on behalf of the Union?

Determined by the form of action, EU competences and policies

Limited by Art.13(2) TEU, delegation of powers, and sincere cooperation (Art.4(3))

Example Treaty-making Art.218 TFEU

- Actors: Council and EP (except CFSP agreements information right)
- Supported by Com or High Representative
- Institutional balance determined by detailed Art.218 TFEU

EU non-treaties or informal arrangements



Example non-binding MoUs

- Art.218 TFEU? No
- Art.16 and 17 TEU but procedure?
- Practice and case law (MoU Switzerland case)
- Acting on behalf of the Union and policy-making (difference to administrative arrangements)
 - Non-CFSP policy field:
 - COM acts and endorsed by the Council
 - Practice: [pdf](#)
 - Problems: role of the EP, role of MS arrangements (EU-Turkey statement)

Other forms of actions: Conclusions, statements, decisions

- Actors
 - CFSP: HR, Council, President of the European Council
 - Non-CFSP: COM, Council
 - Other actors: EEAS, agencies, EP, ECB, Rotating presidency, Member States
- Provisions: Art.15 (6),16, 17, 18 (2), 26 (2), TEU ; Art.220 TFEU



Šuica to face n peace board a backlash



and updates, you can create anytime.

Later

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Governments were irritated by what they saw as the Commission stepping into sensitive geopolitical talks without clear backing

Nicoletta Ionta  Euractiv



Thank you

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