

Recent developments in EU external relations: The perspective of the Council Legal Service

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Outline

- Introduction: The role of the Council Legal Service
- Recent developments in EU external relations

Jurisprudence:

- 1) Signing international agreements on behalf of the EU
- 2) Jurisdiction for the review of CFSP acts

Policy:

- 3) Case study: Ukraine



Introduction

The Council's Legal Service

- ✓ **Legal adviser to the Council, the European Council and Intergovernmental Conferences**
 - Legal aspects of EU policy-making (Council and European Council Conclusions, Statements, Declarations)
 - International agreements and Non-binding instruments (Article 218 TFEU & the *Swiss MoU case*)
 - Revision of the Treaties – accession negotiations

- ✓ **Ensures the legality and drafting quality of legal acts**
 - Recent examples: restrictive measures, Western Balkans Growth and Reform Facility, European Defence Industry Programme

- ✓ **Represents the Council and the European Council before the Court of Justice of the EU**



1) Signing of international agreements

The lifecycle of international agreements

An overview of Article 218 TFEU

- Recommendations by the Commission or the High Representative
- Decision to open negotiations
- Signing and, if necessary, the provisional application
- Conclusion of the agreement
- Suspension and termination of the agreement



1) Signing international agreements – Case C-551/21 *Commission v Council (Gabon Fisheries Protocol)*

Summary of the facts and arguments of the parties

- The scope of Article 218(5) TFEU: “*The Council, on a proposal by the negotiator, shall adopt a decision authorising **the signing of the agreement** and, if necessary, its provisional application before entry into force.*”
- The relationship between Article 16(1) TEU (“*The Council ... shall carry out **policy-making** and coordinating functions as laid down in the Treaties*”) and Article 17(1) TEU (“*With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union’s **external representation***”).)
- Article 13(2) TEU and the principle of institutional balance



1) Signing international agreements – Case C-551/21 *Commission v Council (Gabon Fisheries Protocol)*

Findings of the Court

- “*The decision authorising the signing of an international agreement does not include, however, the later act of the signing itself of that agreement.*” (paragraph 67).
- “*... the legal concept of ‘representation’ implies an action taken on behalf of a subject towards a third party and such an action may be, ..., a declaration of the intent of that subject with regard to that third party.*” (paragraph 71)
- “*Article 17(1) TEU ... confers on the Commission the power to take, outside of the CFSP and unless the Treaties provide for a different allocation of powers on that point, any action that, following a decision of the Council authorising the signing of an international agreement on behalf of the European Union, ensures that that signature is given*” (paragraph 73)



1) Signing international agreements – Case C-551/21 *Commission v Council (Gabon Fisheries Protocol)*

Findings of the Court (2)

- “*That literal interpretation of the sixth sentence of Article 17(1) TEU is in line with customary international law. ... The signing, by such a person, of an international agreement on behalf of the European Union thus falls within the scope, from the perspective of the rules of customary international law, of the latter’s ‘representation.’*” (paragraphs 74, 76).
- “*... Therefore, .. the steps necessary for the purpose of the signing of an international agreement after that signing has been authorised by the Council, including the step of designating the signatory, outside the CFSP, fall within the scope of the Commission’s power to ‘ensure the Union’s external representation’....*” (paragraph 77)
- “*... As regards the designation of the signatory of an international agreement, Article 218(5) TFEU does not lay down, in favour of the Council, an exception to the competence that the Commission derives from the sixth sentence of Article 17(1) TEU....*” (paragraph 80)



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Findings of the Court (3)

- “... Lastly, it should be observed that, in accordance with the first sentence of Article 17(1) TEU, the Commission must exercise its competence relating to the signing of international agreements in the general interest of the European Union. It is, in addition, required to comply with the duty of mutual sincere cooperation provided for in Article 13(2) TEU. Accordingly, it is incumbent upon that institution to ensure in particular that, once the Council decision authorising the signing of an agreement has been adopted, that signing takes place within the shortest possible time and in circumstances that reflect appropriately the importance of that agreement. Furthermore, in the event of a fundamental change of circumstances arising after the adoption of the decision authorising the signing, it is incumbent upon the Commission to consult the Council so that it may, if appropriate, within the framework of exercising its powers enshrined in Article 16(1) and (6) TEU and Article 218 TFEU, draw the consequences of that fundamental change of circumstances before the signature is given..” (paragraph 83)



1) Signing international agreements – Case C-551/21 *Commission v Council (Gabon Fisheries Protocol)*

Analysis of the judgment

- *The judgment in the case-law of the Court of Justice*
- *International law as an interpretative tool for the interpretation of Union primary law*

Implementation

- *Short-term solutions*
- *Medium-term adaptation*
- *Long-term prospects*



2) Jurisdiction for the review of CFSP acts

- **Judgment of the Court of Justice in Case T-235/22 Russian Direct Investment Fund v Council, judgment of 15 May 2024**
- Jurisdiction

“.. the restrictive measures provided for by Decision 2014/512 are measures of general application as regards the unidentified persons who are prohibited from investing in, participating in or otherwise contributing to investment projects co-financed by the applicant. By contrast, those measures must be considered to be of individual application vis-à-vis the applicant, since they expressly target and name it 27. It follows that Decision 2014/512, as amended, contains, as regards the applicant, ‘restrictive measures against natural or legal persons’ within the meaning of the second paragraph of Article 275 TFEU.” (paragraphs 26-27)



2) Jurisdiction for the review of CFSP acts

- **Judgment of the Court of Justice in Case T-235/22 Russian Direct Investment Fund v Council, judgment of 15 May 2024**
- Locus standi

“Since that prohibition prevents EU economic operators from entering into such projects with the applicant, it directly affects the applicant’s legal situation”
(paragraph 32)

“The measures at issue in Decision 2014/512, as amended, and in Regulation No 833/2014, as amended, expressly target and name the applicant, with the result that it must be regarded as being individually concerned by those measures.”
(paragraph 35)

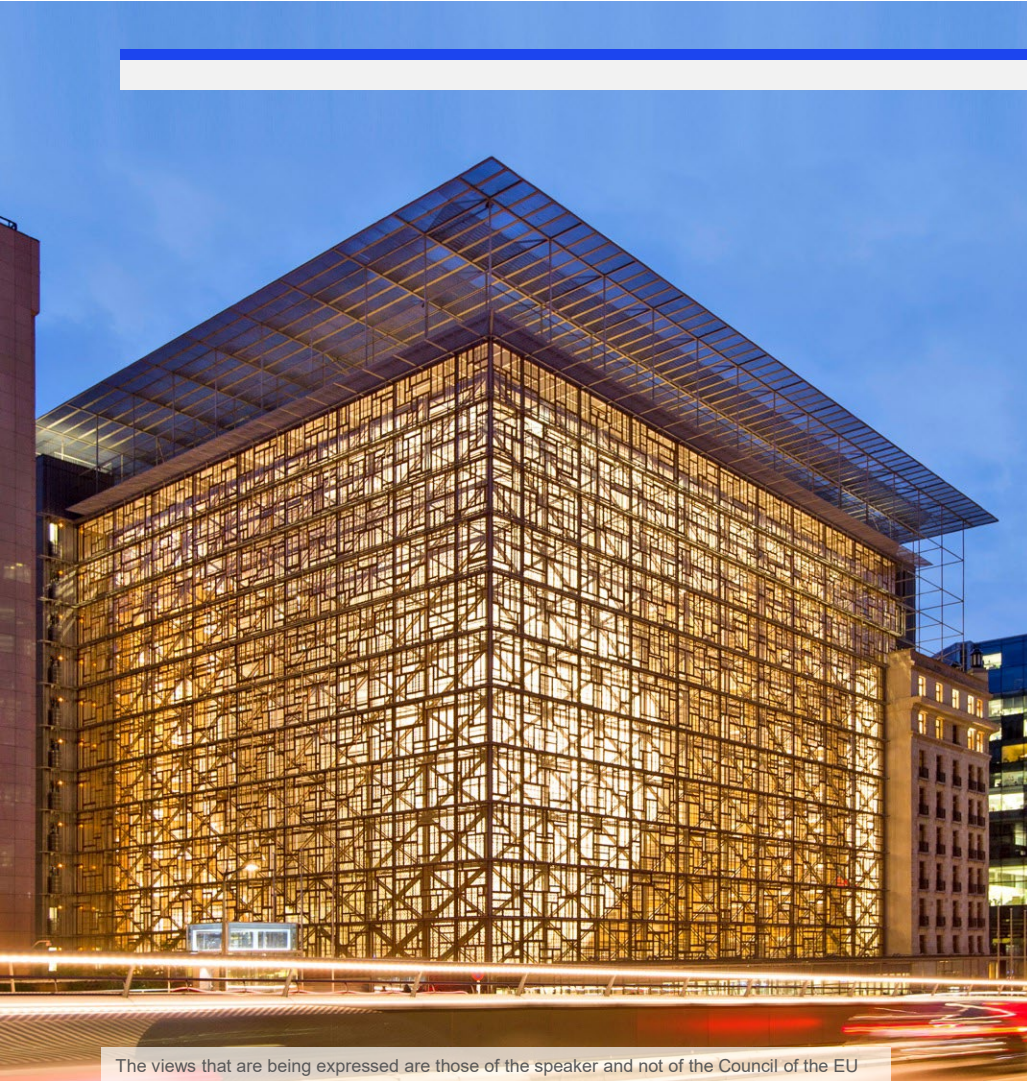
“Any other approach would infringe Article 263 and the second paragraph of Article 275 TFEU and would therefore be contrary to the system of judicial protection established in the FEU Treaty, and to the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union” (paragraph 36)



3) Case study: Ukraine

- 1) Accession negotiations (IGC on 25/6)
- 2) Restrictive measures (14th package on 24/6)
- 3) Windfall profits from immobilised assets
- 4) European Peace Facility – Ukraine Assistance Fund
- 5) Ukraine Facility
- 6) International Court of Justice (*Ukraine v Russia*)
- 7) Accountability
 - a. International Criminal Court – Special Tribunal for the Crime of Aggression
 - b. Register of Damage
 - c. International Centre for the Prosecution of the Crime of Aggression (ICPA)





The views that are being expressed are those of the speaker and not of the Council of the EU

Questions and comments?