

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

Court-related:

1) Implementation of the Court's judgments

Joined Cases C-779/21 P and C-799/21 P *Front Polisario*

Case C-551/21 *Commission v Council (Gabon Fisheries Protocol)*

2) Pending cases in the field of restrictive measures

Case C-883/24 *European Parliament v Council*

Case C-84/24 *EM System*

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**

Implementation of Court judgments

The lifecycle of international agreements

An overview of Article 218 TFEU

- Recommendations by the Commission or the High Representative
- Decision to open negotiations – address negotiating directives
- Signing and, if necessary, the provisional application
- Conclusion of the agreement
- Establishment of the Union position in a body set up by agreement
- Suspension and termination of the agreement

Article 13(2) TEU and the principle of institutional balance

The role of the institutions in the opening of negotiations – *Front Polisario*

- agreements with Morocco (the question of Western Sahara)

“185. In this instance, the annulment of the decision at issue, without its effects being maintained for a limited period, would be liable to give rise to serious negative consequences for the external action of the European Union and to call in question the legal certainty of the international commitments to which it has agreed and which are binding on the EU institutions and the Member States. The purpose of the decision at issue was to approve the agreement at issue on behalf of the Union, with that agreement entering into force on 19 July 2019.”

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)

Signing international agreements – *Commission v Council (Gabon Fisheries Protocol)*

Implementation

- *Short-term solutions – signing ceremonies*
- *Medium-term adaptation – notifications and templates*
- *Long-term prospects – depositary*
 - 1) *Administrative arrangement*
 - 2) *The rules of procedure under the Samoa agreement and the role of the High Representative*

2) Pending cases in the field of restrictive measures

- **Case C-883/24 European Parliament v Council**

Unanimity v QMV for individual listing decisions

Article 31 TEU

- **Case C-84/24 EM System**

Effectiveness of restrictive measures v effective judicial protection

Opinion of AG Capeta on 3/7/2025

3) Case study: Ukraine

- 1) Accession negotiations (Fundamentals cluster and clusters 2 & 6)
- 2) Restrictive measures (18th package)
- 3) Windfall profits from immobilised assets – confiscation of assets
- 4) European Peace Facility – Ukraine Assistance Fund
- 5) Ukraine Facility - EDIP
- 6) International Court of Justice (*Ukraine v Russia*)
- 7) Accountability
 - a. International Criminal Court – Special Tribunal for the Crime of Aggression under the auspices of the Council of Europe
 - b. Register of Damage – International Claims Commission
 - 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?