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Perspectives on international agreements as the main form of external legislation of the European Union

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Abstract: *The paper addresses the issue of international agreements concluded by the EU, which are binding on EU institutions and member states, the member states being obliged to adhere to their provisions. International agreements are an integral part of EU law and fall into a distinct category, being separated from primary and secondary legislation. In practice, it has been accepted that the effect they can have is direct, and as a legal effect it is superior to secondary legislation, which must therefore comply with these agreements. The EU negotiates and concludes international agreements both with non-EU countries and with international organisations (WTO, UN). The Council of the EU has an important role in negotiating and concluding agreements between the EU and non-EU countries or international organisations, being involved in all stages of the procedure, from granting the negotiating mandate to the Commission, to signing the agreement on behalf of the EU and adopting the final decision to implement it in EU law.*

Keywords: *international agreements; exclusive powers; shared powers; negotiation; adoption; consent;*

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Introduction

In a broad sense, the term "*agreement*" is given to any understanding concluded between members of the international community, intended to produce effects of international law, as a result of the manifestation of will of two or more states or other subjects of international law. It establishes relations between them, governed by international law, relations concluded with the aim of creating rights and obligations between the parties, having effects, theoretically, only towards them.

International agreements constitute the main form of external legislation of the European Union and are considered sources of complementary or tertiary law (EU, International agreements, 2025).

International agreements constitute the second source of law in the European Union and allow it to develop economic, social and political relations with other states. They are always agreements between subjects of international law (member states or organizations), which aim to lay the foundations for collaboration at international level.

The EU has legal personality, which makes it a subject of international law, a quality that gives it the ability to negotiate and conclude international agreements in its own name, i.e. it has powers or duties in this area, conferred by the Treaties. If the subject matter of the agreement does not fall within the exclusive competence of the EU, then the EU member states must also sign the agreement, which, in practice, is known as a mixed agreement.

International agreements are considered treaties of public international law, which give rise to rights and obligations between the contracting parties. Unlike unilateral acts, agreements are not the result of a legislative procedure or the sole will of an institution.

International agreements with non-EU countries or international organisations form an integral part of Union law. These agreements are separate from primary and secondary law and form a *sui generis* category (EU, International agreements and the EU's external competences, 2025). It is considered that, in accordance with certain decisions of the Court of

Justice of the EU, international agreements can have direct effect; their legal effect is superior to secondary law, which must therefore comply with these agreements.

The division of competences between the EU and the EU countries also has an impact on the international arena. Thus, when negotiating and concluding an international agreement, the Union has either exclusive competence or competence shared with the EU countries. The focus of the matter lies in Articles 3 and 4 of the Treaty on the Functioning of the European Union (TFEU), Article 207 of the TFEU and Article 216 of the TFEU, which establish the EU's legal competence to negotiate and conclude international agreements, as well as its exclusive or shared competence to participate in such agreements. In addition, Article 207 of the TFEU contains provisions on the EU's trade policy, a key external competence of the EU and a basic element of its relations with the rest of the world.

The exercise of exclusive competence only gives the EU the possibility to negotiate and conclude an agreement in those areas. Thus, Article 3 of the TFEU specifies the areas in which the EU has exclusive competence to conclude international agreements, including trade agreements.

In situations where the EU has a shared competence with EU countries, the agreement must be concluded by both the EU and the EU member states. In these cases, it is a mixed agreement, to which the member states must give their consent. Mixed agreements require an internal EU act to be adopted to divide the obligations between the member states and the EU. Article 4 of the TFEU specifies the categories of competences that are shared.

The procedure for negotiating and adopting international agreements

When negotiating and signing an international agreement, the EU must respect the limits of its competences and the general principles governing its external action, as set out in Article 21 of the Treaty on European Union (TEU). Article 218 of the TFEU lays down the general procedure for the exercise of powers to conclude agreements and treaties.

EU international agreements are part of its external action and are legally binding agreements and are legally *binding agreements* between the Union and one or more countries outside the Union space or international organisations. Article 216 of the Treaty on the Functioning of the European Union (TFEU, Consolidated version, Part Five "The Union's external action", Title V "International agreements") specifies the cases in which the EU is authorised to conclude such agreements. They may be concluded where the Treaties so provide or where the conclusion of an agreement: is necessary to achieve, within the framework of EU policies, one of the objectives referred to in the Treaties; is provided for in a legally binding EU act; or is likely to affect common norms or alter their scope of applicability.

An international agreement can only be recognized as a treaty if the signatory parties are states or other subjects of international law, such as international organizations (Niemesch, M. & Berna, M.B., 2020, p.73).

The activity of concluding international agreements involves going through a process consisting of the following stages: document initiation, negotiation, signing and possibly, introduction into domestic law through a secondary act (for example, approval by executive decision or ratification by law).

Following negotiation and signature, and depending on the subject matter, international agreements may require ratification by an act of secondary legislation. They must be applied throughout the EU and have a higher legal value than unilateral acts of secondary legislation, which must comply with the former.

In international law, negotiation is viewed from several points of view, having several meanings, such as: a first phase of the process of concluding agreements/understandings, as the main means of resolving international disputes and a form of work with a view to

adopting a decision or recommendation. Another meaning is related to decision-making within international organizations (EU) or one of the functions of diplomatic missions.

Thus, as an activity, negotiations represent that main phase through which the text of an agreement or treaty is agreed upon, within the process of its conclusion. Negotiations constitute that direct procedure of text formation, within which the competent, authorized bodies of two or more states, meet in a place and on a certain date for this predetermined purpose, for discussion, and, as an outcome of the dialogue, the understanding that takes the form of an international agreement/treaty results.

The procedure for negotiating and adopting international agreements is stipulated in Articles 207 and 218 of the TFEU for the common commercial policy and for the other areas of external action, respectively.

Article 218 of the TFEU lays down a general procedure for the exercise of treaty-making competences. When negotiating and concluding international agreements, the EU, by virtue of its legal personality, has *exclusive competence* to negotiate and conclude agreements alone, as provided for in Article 3 of the TFEU, which specifies the areas in which the EU has exclusive competence (including trade agreements). The Council of the European Union thus draws up a mandate for the European Commission, which then negotiates the agreement, except in the area of common foreign and security policy, where the EU is represented by the High Representative for Foreign Affairs and Security Policy. After the negotiations have been concluded and, depending on the type of agreement, after the European Parliament has given its consent or has been consulted, the Council concludes its agreements on behalf of the EU.

When negotiating and concluding international agreements, the Union also has *shared competence* with its member states, who are also involved in concluding the agreements. The areas of shared competence are listed in Article 4 of the TFEU and include areas such as consumer protection or the environment. Agreements relating to such areas are known as *mixed agreements*. In the case of an agreement in an area where the EU has shared competence with its member states, the member states must also be part of the mandate for which the conclusion of the agreement is initiated.

The international agreements concluded by the EU are *binding* on the institutions and member states of the Union, and the latter are obliged to adhere to their provisions. They form an integral part of EU law and fall into a special category, separate from primary and secondary legislation.

The Council's role in concluding international agreements

International agreements are used to help the EU achieve its policy objectives. They cover broad areas such as trade, cooperation and development, or they can target specific policy areas such as fisheries, customs, transport, science and technology.

The EU negotiates and concludes international agreements both with countries outside the EU and with international organisations, such as the World Trade Organisation (WTO) or the United Nations (UN).

The Council of the EU plays an important role in negotiating and concluding agreements between the EU and non-EU countries or international organisations (Council of the EU, International agreements, 2025). It is involved in all stages of the procedure, from granting the negotiating mandate to the Commission, to signing the agreement on behalf of the EU and taking the final decision to implement it into EU legislation.

In the case of agreements covering areas of shared competence with EU member states, representatives of the member states' governments must also give their mandate for negotiations. This category includes most foreign policy agreements and major trade agreements.

The Council can also adopt a decision to suspend the application of an international agreement or to terminate an agreement. For example, in 2010, the Council suspended Article 96 of the Cotonou Agreement with Zimbabwe, replaced by the Samoa Agreement in 2023, thus blocking the payment of development aid to that country (Draft Council Conclusions, 2018). The Council takes decisions to this effect on the basis of a proposal from the Commission or the High Representative for Foreign Affairs and Security Policy.

In the procedure for negotiating and adopting international agreements, laid down in Articles 207 and 218 of the Treaty on the Functioning of the European Union, the Council adopts its decisions in most cases by *qualified majority voting*. However, it acts unanimously in areas where unanimity would normally be required, such as taxation.

In the case of agreements covering areas of shared competence, decisions are taken together with the Council by common accord (agreement of all member states).

The stages of the negotiation procedure result from Articles 207 and 218 of the TFEU:

1. *The European Commission shall be empowered to submit recommendations to the Council* in respect of each specific agreement. Where the agreement relates primarily to the common foreign and security policy, the recommendations shall be submitted by the High Representative for Foreign Affairs and Security Policy.

2. *The EU Council must adopt a decision authorising the opening of negotiations*. In practical terms, the Council also adopts negotiating directives intended to set out the general objectives to be achieved during the negotiations.

3. During negotiations, *the Commission represents the EU*, except when the agreement concerns foreign and security policy, in which case the EU is represented by the High Representative. Negotiations between the EU and third parties or international organisations usually take place in several "rounds".

4. Certain types of agreements require *the Council to appoint a special committee*, which consults the Commission during the negotiations. The Commission must regularly report to this committee and to the European Parliament on progress made in the negotiations.

5. At any time during the negotiations, *the EU Council may adopt revised or new negotiating directives*. The need for these directives is determined by a change in the negotiating position or when the negotiator (Commission) wishes to deviate from the previously agreed position.

6. The Council and the Commission have the power to check whether negotiated agreements are *compatible with EU internal policies and rules*.

7. At the conclusion of the negotiations, the Council *adopts a decision on the signing of the agreement*. In certain cases, the Council takes a decision on *the provisional application* of an agreement, based on a proposal from the Commission.

8. *The Council takes the final decision to conclude the agreement* after the European Parliament has given its consent and the agreement has been ratified by all EU Member States. This applies to association agreements and to areas subject to either the ordinary legislative procedure or the consent procedure. In other areas, except for agreements relating to the common foreign and security policy, the European Parliament must be consulted.

Typology of international agreements

Until the entry into force of the Treaty of Lisbon on 1 December 2009, when the three-pillar structure was abandoned, creating a single European legal space, the agreements concluded by the European Union under the first pillar (European Communities) connected the Union institutions and the member states; the agreements concluded by the European Union under the second (Common Foreign and Security Policy - CFSP) and the third pillar (Justice and Home Affairs - JHA) bound the Union institutions, but did not always bind the member states.

In the first category of agreements, two subcategories could be distinguished: international agreements with third countries or international organisations, or agreements and conventions between member states respectively. Agreements with third countries or international organisations were concluded either by the Union or by the Union with the member states (mixed agreements). These agreements entailed the liability of the Union and the member states, entailing obligations at international level.

In the specialized literature, three forms of agreements are distinguished:

1. *Association agreements*. Association implies close economic cooperation, associated with extensive financial support from the Union in favour of the partners to the agreement. As an example, the following can be mentioned here: agreements with overseas territories, agreements aimed at preparing integration and aiming at the achievement of the customs union, agreements on the European Economic Area.

2. *Cooperation agreements*. Cooperation agreements do not have the same meaning as association agreements, insofar as they only aim at intensive economic cooperation. Such agreements are those between the community and the Maghreb States (Algeria, Morocco, and Tunisia), the Mashreq States (Egypt, Jordan, Lebanon and Syria) and Israel.

3. *Trade agreements*. These are legal acts which commit the member states to respond to matters which are directly linked to the EU activity, but for which no competence has been entrusted to the European institutions, in order to allow the territorial limits of national provisions to be extended with a view to creating a uniform law for the Union (for example, the agreement on European patents).

In practice, the most common types of international agreements include *trade agreements* (association agreements, free trade agreements, or economic partnership agreements) and *partnership and cooperation agreements*.

Trade agreements are designed to create better trading opportunities and remove barriers to trade. EU trade policy also serves as a means of promoting European principles and values, from democracy and human rights to the environment and social rights.

The Council of the EU adopted conclusions on 22 May 2018 addressing the way trade agreements are negotiated and concluded. These conclusions set out the key principles underpinning the Council's approach to trade negotiations in the coming period.

The conclusions focus on the role of the Council in the negotiations, in particular its involvement throughout all stages of the negotiation process, as well as on the importance of trying to reach consensual decisions as much as possible, to ensure that the interests and concerns of all member states are adequately respected in trade agreements (Draft Council Conclusions, 2018).

Given that the EU manages its trade relations with third countries through trade agreements, the Council focused on two aspects in particular (Council of the EU, How trade agreements are negotiated, 2025): the first concerns the intention of the European Commission to recommend splitting the agreements into two separate agreements, one on investment protection and one on trade provisions; the second concerns the role of the Council in trade negotiations.

Commercial agreements differ according to content (Council of the EU, Commercial Agreements, 2025):

- *Economic partnership agreements (EPA)* - supports the development of trading partners in countries in countries from Africa, the Caribbean and the Pacific.
- *Free trade agreements (FTA)* - allow for the mutual opening of markets with developed countries and emerging economies by granting preferential market access.
- *Association agreements (AA)* - give impetus to broader political agreements.

Trade agreements are negotiated in accordance with the rules laid down in Article 218 of the Treaty on the Functioning of the European Union (European Commission, Negotiations and agreement, 2009). Trade agreements are generally very complex, as they are legal texts covering a wide range of issues, from agriculture to intellectual property. A complete inventory of the trade agreements to which the European Union is party can be found on the website of the European Commission's DG Trade (European Commission, Agreements, 2025). They all share a number of fundamental principles, with the EU respecting the principles of the World Trade Organisation (WTO).

In practice, the name of *the EU preferential trade agreement* is also used. Preferential trade agreements, of the "free trade agreements" type, are those agreements through which the parties have proceeded to grant mutual concessions (reductions or eliminations of import customs duties, tariff quotas, etc.) (EU preferential agreements, 2025). Based on these agreements, export products originating in a country benefit from additional access facilities on the market of the partner country. Since January 1st 2007, Romania has also benefited, as an EU member state, from the provisions of the preferential trade agreements to which the EU is a party.

The EU also concludes non-preferential trade agreements as part of wider agreements, such as *Partnership and Cooperation Agreements (PCAs)*. These agreements are generally concluded for an initial period of ten years, but after this period they are automatically renewed annually, unless one of the parties objects.

The agreements between the European Union and its partners generally aim at four directions (EU, Partnership PCAs, 2025): providing a basis for political dialogue; supporting the efforts made by these countries to consolidate their democracies and develop their economies; assisting them in the transition to a market economy; promoting trade and investment.The partnerships also aim to lay the foundations for cooperation in the areas of legislative, economic, social, financial, scientific, civil, technological and cultural cooperation.

The EU has concluded 8 Partnership and Cooperation Agreements (PCAs) or Enhanced Partnership Agreements with non-EU countries: Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Russia, Uzbekistan and Turkmenistan.

International agreements concluded by the EU under Articles 216 and 217 of the TFEU

The Union may conclude, within the scope of its competences, *international agreements with third countries or international organisations* (Article 216(1) of the TFEU). These agreements are binding on the Union and the member states and form an integral part of the Union's legal framework (Article 216(2) of the TFEU).

In accordance with Article 217 of the TFEU, the EU may also conclude *agreements establishing an association* involving reciprocal rights and obligations, joint actions and special procedures.

The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and *the United Kingdom of Great Britain and Northern Ireland,* of the other part, was concluded on 30 April 2021 in accordance with this provision. On 28 April 2021, the Parliament gave its consent under Article 218(6)(a) of the TFEU. According to the case-law of the CJEU, international law takes precedence over (secondary) EU law: "Under Article 216(2) TFEU, when the Union concludes international agreements, those agreements are binding on the Union institutions and, consequently, take precedence over Union acts". The EU has concluded over 40 agreements with over 70 countries and regions, and for around 20 more agreements negotiations have been concluded, but the adoption and ratification are ongoing (Council of

the EU, *Negotiations and agreements, 2025)*; there are several more agreements under negotiation.

The relevance of some agreements concluded by the EU

On 24 December 2020, EU and UK negotiators agreed upon the *Trade and Cooperation Agreement* setting out the terms of future cooperation between the EU and the UK. To minimise disruption, the agreement was provisionally applied from 1 January 2021, with the consent of the European Parliament required for it to enter into force permanently before 30 April 2021.

Certain matters have already been addressed in the *Withdrawal agreement*, agreed between the EU and the UK at the end of 2019 (on 17 October 2019). This Agreement set out the terms of the orderly withdrawal of the United Kingdom from the EU, in accordance with Article 50 of the Treaty on European Union. The Withdrawal Agreement, which entered into force on 1 February 2020, included, among other things, a Protocol on Ireland and Northern Ireland. The Agreement contained provisions related to the protection of the rights of EU citizens in the UK and of British citizens residing in the EU, to the financial commitments undertaken by the UK as a member state, as well as to border issues, in particular on the island of Ireland.

The United Kingdom's official exit from the European Union took place on January 31st 2020, with a transition period until December 31st 2020, which allowed this country to enjoy the single market and customs union.

The relationship between the EU and the UK was regulated, after Brexit, by *agreements* regarding respect for citizens' rights, fair competition and continued cooperation in areas of mutual interest.

The first EU-UK Summit, five years after Brexit, took place in London on 19 May 2025 to lay the foundations for a new strategic partnership between the two parties (EU Council, The EU-UK Summit, 2025). The Summit, which marks a new chapter in the relationship between the United Kingdom and the European Union, was attended by António Costa, President of the European Council, Ursula von der Leyen, President of the European Commission, and Keir Starmer, Prime Minister of the United Kingdom.

Extensive negotiations, which lasted six months, led to the conclusion of a major agreement with the European Union on May 19th, following those with the US and India. This agreement will have no time limit, providing "vital certainty for businesses", according to statements of the British government.

The Prime Minister noted that reducing the migration remains an absolute priority, which is why the agreement also focuses on continuing efforts to find solutions to combat illegal migration, including those regarding the returns and a joint commitment to addressing Channel crossings.

The UK and the EU have also reached a new twelve-year agreement that protects the access of the UK to fisheries, fishing rights and fishing zones, without increasing the amount of fish that EU vessels can catch in British waters, providing stability and certainty to the sector.

Although the British Prime Minister Keir Starmer and European Commission President Ursula von der Leyen agreed in May to explore the option of the UK participating in the internal energy market, the document did not explicitly mention the need for a financial contribution. Subsequently, several states, including Germany and Belgium, warned that London could not "select only the benefits" of the single market without respecting common rules. Commission officials described the UK as a "complicated and challenging partner", highlighting that the discussions required "nerves of steel and unity" among member states.

EU and UK leaders welcomed a renewed agenda for cooperation between the European Union and the United Kingdom, agreed between the United Kingdom and the

European Commission, which explores areas with the potential to strengthen bilateral cooperation between the EU and the United Kingdom (European Commission, Statement, May 19th 2025, Brussels).

The EU Council statement (May 19th 2025, Brussels) said the meeting "will be an opportunity to demonstrate a common position on working together for peace and security in Europe and to establish *a new strategic partnership*"; "EU and UK leaders are expected to reaffirm their commitment to addressing strategic and geopolitical issues and to further deepen cooperation in the field of foreign and security policy. They will also discuss ways to strengthen bilateral engagement in various areas of cooperation".

Conclusions

International agreements are the main form of external implementation of the EU's objectives set out in the Treaties, and among the European institutions, the Council of the EU plays a key role in shaping these agreements. When negotiating and signing an international agreement, the EU must respect both the limits of its competences and the general principles governing its external action, which are set out in Article 21 of the Treaty on European Union.

It is therefore necessary to supplement the existing legal framework in Part Five of the Treaty on the Functioning of the European Union (TFEU), "The Union's external action", with rules relating to the participation and representation of the Union in international organizations, which take into account their procedural rules, more precisely those regarding subjects derived from international law (Fuduli, A. V., 2014, p. 96).

EU international agreements are legally binding agreements between the European Union and one or more non-EU countries or international organisations, provided that they are concluded in order to achieve the objectives incumbent on the EU under the Treaties. International agreements concluded with non-EU countries or international organisations form an integral part of EU law and must be respected as such. Their number is constantly increasing, due to the complexity of the issues facing the EU as a global partner.

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