

Chapter V

Contemporary Issues of Public Administration

European administration and the
EU as a global actor

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READING MATERIAL FOR CHAPTER N° 5

EUROPEAN ADMINISTRATION – A SUI GENERIS ADMINISTRATIVE SPACE

Content

1. The European Union as international organisation: <i>sui generis</i> nature	1
2. The public administration of the EU	3
2.1. Levels of European administration	4
2.2. European administrative networks	5
3. The EU as an actor in global administration	9
3.1. EU as an actor at global sphere	10
3.1.1. Actor of foreign security and defence policy	10
3.1.2. Legitimacy of EU activity as global actor: balancing between the EU and domestic (Member State) foreign policy activity	12
3.2. The EU as an actor of TRNs	14
3.2.1. Input legitimacy.....	19
3.2.2. Output legitimacy	21

1. The European Union as an international organisation: *sui generis* nature

The European Union is an international organization under the general definition:

- it is based on a formal instrument of agreement (*founding treaties*) between the governments of nation-states
- it includes three or more nation-states (27) as parties to the agreement;
- it possesses a permanent secretariat performing ongoing tasks: it has 7 institutions of permanent nature and many other bodies and agencies.

The *ever closer union among the peoples of Europe* has been the main objective of European integration since the Treaties of Rome in 1957, however, the organisation has always balanced between the intergovernmental and the community method of functioning; depending on the policy in question and the competence (transferred by the Member States) of the common legislator.



1. The territory of the EU. Source: <https://op.europa.eu/en/publication-detail/-/publication/ad1a6bb4-837a-11ea-bf12-01aa75ed71a1/language-en>

Inter-governmental method	Community method
the Commission has a monopoly on the right of initiative	the Commission shares the right of initiative
Member States usually, decide by <i>unanimity</i>	qualified majority voting in the Council
the European Parliament is merely informed or consulted	the European Parliament as co-legislator
it is generally beyond the Court of Justice competence	the Court of Justice ensuring uniform interpretation of Community law

2. The difference between the two approaches of international cooperation (author)

Since the entry into force of the last reform treaty ([Lisbon Treaty](#)), the EU has moved towards a **supranational character** by, inter alia:

- it got a *legal personality*, including:
 - EU can conclude international agreements with third countries or other international organizations,
 - has rights and can assume international obligations,
 - can issue claims and claim compensation in the light of international law rules,
 - can establish diplomatic relations
 - can have privileges and immunities concerning national jurisdictions.
- *political leader institution*: [European Council](#) moved from an informal to a formal institution with a president elected for 2,5 years
- formalization of the *rotating presidency*: the leader of the [Council of the European Union \(Council of Ministers\)](#) is one of the Member States according to a previously settled list for 6 months.
- the *ordinary legislative procedure* has become the leading method of adopting binding sources of law: it means that qualified majority voting and the collaboration of the European Parliament and the Council is the main decision-making procedure used for around 85 policy areas. Many of the adopted sources have *direct effect*, which means that the EU is empowered to adopt obligatory legislation which can create right and obligation straight to the individuals, without any implementing act of the Member States.

At present, **all three types** of organisation characteristics **are present under the roof of the EU**.

The common foreign policy and common defence policy are classic examples of the traces of intergovernmental cooperation. It is such a unique area of EU policies that the Treaty on The European Union (TEU) contains its rules. Besides, among the other policies of the EU which do not fall under the ordinary legislative procedure. Special legislative procedures are used in certain sensitive policy areas. Unlike in the case of the ordinary legislative procedure, the Treaty on the Functioning of the EU (TFEU) does not give a precise description of special legislative procedures. The rules for these are therefore defined on a case-by-case basis by the treaty articles that lay down the conditions for their implementation. Under special legislative procedures, the Council is, in practice, the sole legislator. The Parliament is simply associated with the procedure. Its role is thus limited to consultation (such as under Article 89 TFEU concerning cross-border police operations) or consent (such as under Article 86 TFEU concerning the European Public Prosecutor's Office) depending on the case.

2. The public administration of the EU

The EU constitutive treaties or any other official documents of the European Union do not directly and distinctively address administrative structures, administrative norms, principles of functioning, etc., of what can be called *European public administration*. The best notion to describe the EU administration in the *European Administrative Space*: *a common set of standards for action within public administration, which is defined by national law and enforced through relevant procedures and accountability mechanism.*

After almost six decades of successful functioning, the European Union **still lacks** a coherent and comprehensive set of codified rules of administrative procedures at all levels, although it is generally acknowledged that the key for successful application of EU law lies in

administration. The correlation of direct and indirect administration allows describing the EU as a **multilevel administrative system** in which there is an increasing number of policies that require intensive cooperation and direct co-working of the competent authorities at the national and supranational level.

The EU is then a multi-level administrative space with two major levels.

2.1. Levels of European administration

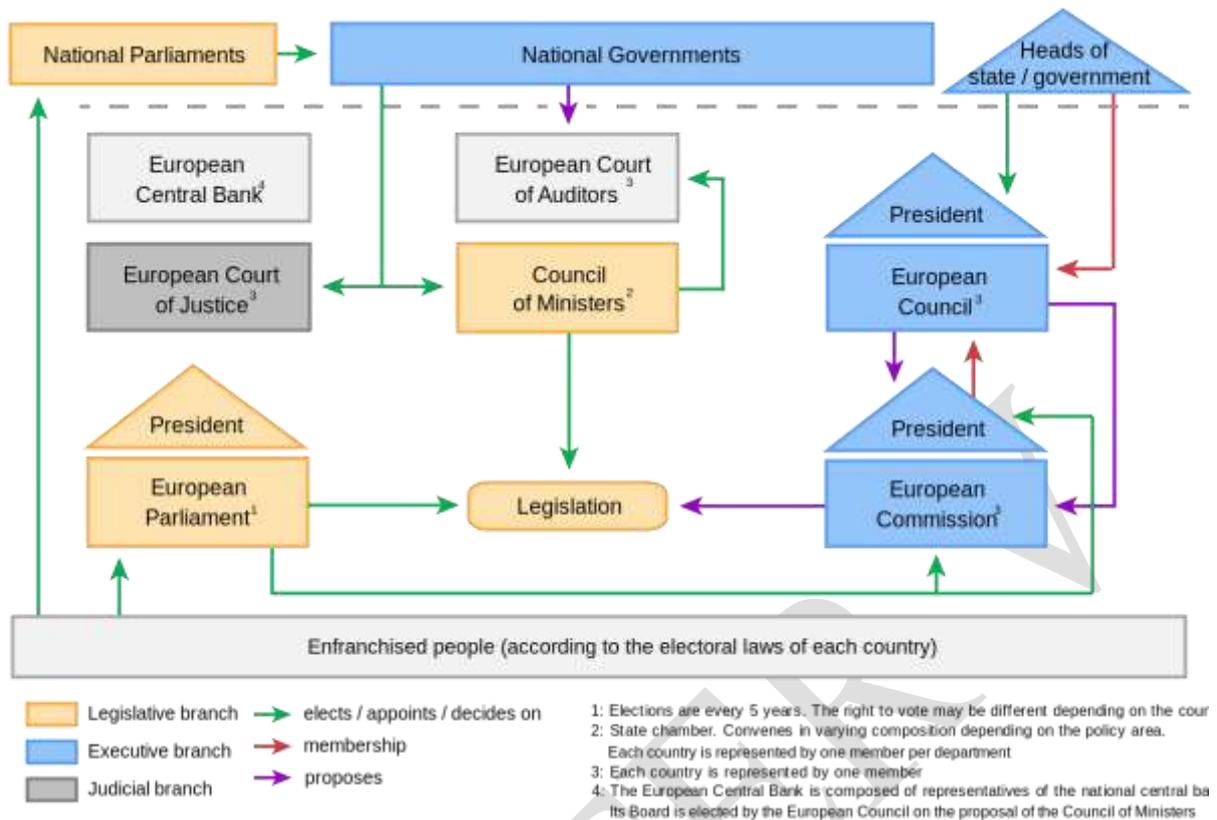
(a) **direct level of administration**: the European Commission is the responsible institution to guard the implementation of EU *acquis* and called the centre of execution, however, it has limited competencies and resources for steering the implementation. It rather monitors and intervenes when the primarily responsible Member States fail to ensure the proper execution of EU law. [*institutions of direct level administration are marked with blue* on the following chart]

As for governing function, it is primarily exercised by those institutions of the EU which consist of the heads of states/government leaders of the Member States, and not by one supra-state institution. Such tasks are dispersed.

It is very rare that a direct level institution possesses hierarchical tools (i.e. giving orders for the indirect level authorities) and/or practices authority power in concrete, individual cases. So, in the administrative law aspect, the EU is not a supra-national authority.

However, the Commission has certain rights to adopt normative rules on executive issues, but it is restricted and in individual cases, it can issue decision only in certain competition law cases.

(b) **indirect level of administration**: the EU institutions cannot be substituted with national institutions, but they are obliged to cooperate. National administrations are responsible for the implementation and execution of EU law. National administrations have to be reliable, transparent and have to function democratically.



3. The basics of the EU institutional relationship. Source: https://www.pngfind.com/mpng/hbxJTtoI_the-basics-european-union-structure-hd-png-download/

2.2. European administrative networks

The European Union is constantly working on a sphere where national borders are invisible for the [four freedoms](#) (a single market in which the free movement of goods, services, capital and persons is assured, and in which citizens are free to live, work, study and do business) and the EU law can be enjoyed everywhere according to the same content and with the same guarantees.

To overcome the deficiencies of the EU which does not have its own administrative authorities' structure, European **administrative networks** (EANs) are established. They consist of institutional representatives of national executives – primarily departments and/or agencies – with tasks in the realm of national implementation or enforcement of EU policies. It includes horizontal and vertical cooperation among the competent organs and authorities and the nature and normative background of such co-work depends on the Europeanisation of the policy in question.

Due to the immediate connection with the competent authorities, their problem-solving abilities so fulfil an important role in facilitating the implementation and enforcement of EU policies. As the [European Union's legislative competencies](#) are different, the EU *acquis* is also different in different legal areas, the implementation and executive task of Member State administration are different, so as the level of their networking. Due to the lack of EU legislative competencies to regulate administrative issues for decades, administrative cooperation has led to intensive and often seamless cooperation between national and supranational administrative actors and activities.

Therefore, networks under the scope of the EU and their tasks and capacities are also different, however, some features make some basic categorisation possible. There is no general normative background for the networks, therefore these categories are the product of legal literature. It also follows that the borders between the categories are not rigid; they are traversable, so one network may fill in more than one.

a) Information networks are established to channel and coordinate the generation and editing of data relevant to an administrative activity. These are *constant channels for systematic cooperation* to share information and ensure data flow automatically, without the possibility of rejecting collaboration or retaining information.

*The [Visa Information System \(VIS\)](#) allows the Schengen States to exchange visa data. It consists of a central IT system and of a communication infrastructure that links this central system to national systems. VIS connects consulates in non-EU countries and all external border crossing points of Schengen States. It processes data and decisions relating to applications for short-stay visas to visit, or to transit through, the Schengen Area. The system can perform biometric matching, primarily of fingerprints, for identification and verification purposes. The [Entry/Exit System \(EES\)](#) is a new scheme that will be established soon (according to the European Commission, it will contribute to achieving full interoperability of EU information systems by 2020), by the European Union. The main purpose behind the founding of the EES is to register entry and exit data of non-EU nationals crossing the external borders of EU Member States to strengthen and protect the external borders of the Schengen Area and to safeguard and increase the security for its citizens. The EES will consist of the following: The EES will be composed of a **Central System**. Each of the member states will have its own **National Uniform Interface (NUI)** connected to the Central system through a secure and encrypted Communication Infrastructure. A **Secure Communication Channel** will connect the EES Central System and the VIS Central System. **Web Service** – through which third-country nationals travelling to the Schengen area will be able to check how many days longer they can remain in the Schengen territory.*

b) Enforcement/executive networks that establish a channel for cooperation to the aim of producing one single decision of one of them, so it is like a mixture of a systematic discussion forum and of mutual assistance without the limits and restrictions of the latter. In composite administrative procedures when the case has an international element, and the relevant authorities need to contact each other, share information, handle documents or other evidence that the other authority in a different Member State needs it to decide upon a case.

The [Schengen Information System \(SIS\)](#) is the most widely used and largest information sharing system for security and border management in Europe. SIS enables [competent national authorities](#), such as the police and border guards, to enter and consult [alerts](#) on persons or objects. An SIS alert does not only contain information about a particular person or object but also instructions for the authorities on what to do when the person or object has been found. Specialised [national SIRENE Bureaux](#) located in each Member State serve as single points of contact for the exchange of supplementary information and coordination of activities related to SIS alerts. The Schengen Information System is an information network, but it also supports police and judicial cooperation by allowing competent authorities to create and consult alerts on missing persons and persons or objects related to criminal offences. therefore, in certain aspects, it is also the basis of law enforcement cooperation among authorities. Another example is The Rapid Alert System for dangerous non-food products (RAPEX) allows the 31 participating countries (EU countries, Norway, Iceland and Liechtenstein) and the

European Commission to exchange information on products posing a risk to the health and safety of consumers and on the measures taken by these countries to do away with that risk. The system also covers products posing risk to the health and safety of professional users and other public interests protected by relevant EU legislation (e.g. environment and security). It does not cover food, pharmaceuticals and medical devices, which are covered by other mechanisms. National authorities take measures to prevent or restrict the marketing or use of those dangerous products. Both measures ordered by national authorities. Every Friday, based on this information provided by the national authorities, the Commission publishes a weekly overview of the latest alerts. The published alerts include information on the product, identified risk and measures taken in the notifying country; list of other countries where the notified product was found on their market and where measures were also taken; notifications on products posing serious risk and less than serious risk; notifications on professional products and those posing risk to other public interests. RAPEX was established by the General Product Safety Directive (GPSD) in 2004. Based on the decision of the dangerous products can thus be withdrawn from the market and recalled from consumers everywhere in the European Economic Area thus the same level of EU law enforcement can be achieved without carrying out the same administrative procedure everywhere, so it also serves as an enforcement network. This mechanism contributes to the activity of the national consumer protection authority as an alerts substitute for the whole procedure of official control and decision-making. Namely, rules concerning the safety of products under the scope of the General Product Safety Directive shall be the same everywhere in the EU (and in the European Economic Area) thus in the particular case when a national authority declares that a product is not in conformity with the EU law, this decision is therefore normative for all the national authorities in all the Member States in which that product is on the market. In Hungary, the Hungarian Authority for Consumer Protection is responsible to cooperate in the RAPEX system. Just for illustration: a toy pushchair named „Love Baby My Lovely” was withdrawn from the market because the product does not comply with the requirements of the Toy Safety Directive and the relevant European standards. The safety lock and the frame are not sufficiently resistant to load and can easily release and break respectively; causing the pushchair to collapse and thus this may cause injuries to children. So, it was reported and then, based on an authority act issued in one Member State, all the countries had to withdraw the product from the market. Therefore, the act (decision) was not only a piece of information but a source of obligation, the same as it would have been issued by the authority of all the States who are members of the network.

c) Regulatory networks: covers the systematic cooperation of competent authorities to identify the best practice and help the interpretation of EU law and the application of EU norms to achieve its purposes with a normative content. Due to strict legislative competency rules, the network is not empowered to legislate, thus the norm established this way is *soft law*. Even if practical concerns would support the self-regulation of a legal area and while improving effectiveness and rule harmonization, EANs may seriously damage EU legitimacy.

The European Commission and the national competition authorities in all EU Member States cooperate through the [European Competition Network \(ECN\)](#). This creates an effective mechanism to counter companies that engage in cross-border practices restricting competition. As European competition rules are applied by all members of the ECN, the ECN provides means to ensure their effective and consistent application. Through the ECN, the competition authorities inform each other of proposed decisions and take on board comments from the other competition authorities. In this way, the ECN allows the competition authorities to pool their experience and identify best practices. The objective of the European Competition Network is to build an effective legal framework to enforce EC competition law against companies who

engage in cross-border business practices which restrict competition and are therefore anti-consumer. Therefore, their soft law – as they are not vested with legislative powers – is supposed to be treated as obligatory.

It should not be mixed with comitology work. EU law sometimes authorises the European Commission to adopt implementing acts, which set conditions that ensure a given law is applied uniformly. [Comitology](#) refers to a set of procedures, including meetings of representative committees, that give EU countries a say in the implementing acts. During the procedure, the Member State work together, form an opinion on the Commission's draft but the Member States' opinion has no coercive force on the Commission's further actions.

Regulatory networks are often seen in other legal areas of a less prominent networking structure. As the basic EU norms that call the competent authorities to cooperate does not go beyond this and contains no details for the normative background of the cooperation and until the Lisbon Treaty, there was no legislative competence for the EU to rule administrative cooperation, the cooperating authorities have started to regulate their work and while they are performing their task related to the proper implementation of an EU policy, they adopt *common guidelines, recommendations, guides, communications, work reports, statements*, etc. to help legal practice, therefore to produce a legal effect without the formal legal force of such documentation. From the point of view of proper application of EU law, it is useful and seems efficient. Meanwhile, both sides of *legitimacy and accountability* are challenged.

European regulatory networks (ERNs) is an important expression of the institutionalization of a European Union (EU) multilevel regulatory administration.

Speaking about the normative background of the networks of European administration, three key factors shall be settled:

- ***the co-operation between network members:*** *for procedural aspects, the EU acquis often has taken the form of soft law due to the lack of legislative competence for long;*
- ***the Commission's control of the network:*** *EU law according to the competence of the EU in a certain field of law but never as a superior administrative authority above the member state administration; the Commission, in general, has not authority power, it has a certain level of supervision but no right to give orders/amend decisions and/or withdraw the power of the national authorities)*
- ***and the autonomy of the network members vis-à-vis national governments:*** *it is based on domestic law.*

Concrete answers for these questions should be laid down in ***binding sources of EU law***, but it is often missing as the necessity called to live the networks, but the legal background has not yet reached the traces, so the majority of these issues are found in *soft law*. The European Union is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all EU member countries and the regulatory power is not directly vested to authorities.

As for the cooperation of the authorities to effectively implement EU law, it was only the Lisbon Treaty that introduced a competence for regulation of ***administrative cooperation***.

TFEU Article 197

1. *Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.*

2. *The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting using regulations by the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.*

3. *This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union.*

In case of administrative cooperation issues, the EU can only intervene to support, coordinate or complement the action of EU Member States with legally binding EU acts.

The relevance of a binding source of law to adopt is a key to not just the proper functioning of EU law in conformity with the rule of law, but also significant in the point of view of citizens whose legal cases are handled according to EU law in composite administrative procedure. The EU law, inter alia, ensures the [*right to good administration*](#) as a fundamental right. To enjoy the benefits of this right/to fulfil the obligation by the authority, the proper structural and procedural normative background for the complete procedure including the cooperation of the authorities of different jurisdiction is indispensable. Soft law cannot fill such a gap as it cannot create obligation with legal force, therefore, it cannot be invoked in legal disputes as argumentation.

3. The EU as an actor in global administration

The thickening density of international interdependence marked by cross-border information flows, trade liberalization, and global financial markets influence the EU and *vice versa*. Therefore, the EU also wishes to take part in the mainstream of international relations and take part as an actor, an active player to represent EU values and interest while contributing to the formulation of world politics and answering global challenges. During the development of the European integration, the European Union has not just grown in the number of its Member States but has expanded its regulatory (legislative) power to different fields and has developed many policies which lead to its status as a significant entity in global affairs.

It supposes the power to act as an international actor, although it was only the Lisbon Treaty that granted legal personality to the EU. Meanwhile, it shall be noted that the EU as an entity – and its institutions on behalf of it – can act only upon empowerment by ***treaty-based provisions*** or ***implied powers*** in external relations.

The concept of "implied powers" give the EU the possibility to regulate without explicit competence in the treaties. The concept of internal competence is used to give the EU the ability (competence) to negotiate international treaties in areas where the EU has the right to decide laws within the EU (internal competence to legislate). The Lisbon Treaty introduced "implied power" as a general rule by giving the European Union legal personality. Legal personality will allow the EU to represent the member states in negotiations with non-EU countries and international organisations in all questions where the EU can legislate internally.

The EU's role in the international sphere heavily depends on the treaty-based provisions that empower the European Union to act. In European policy areas, it depends on its legislative competence: the powers of the EU outside its borders **adjust** its competencies that exist inside the EU.

If the EU has exclusive competencies it means that the EU alone can legislate and adopt binding acts. EU countries can do so themselves only if empowered by the EU to implement these acts. Therefore, in external relations, the EU is also a sole actor to assume obligations in the following areas: customs union; the establishing of competition rules necessary for the functioning of the internal market; monetary policy for euro area countries; conservation of marine biological resources under the common fisheries policy; and common commercial policy. In all the other policies in which the EU has any power, it shall always be carefully examined what are the limits of the empowerment, thus in international relations, it is also significant if the EU acts within its powers or goes beyond it (=violate the sovereignty of its Member States).

Security and defence policy, however, is a unique field and uniquely regulated by the EU Treaties. It is still basically an intergovernmental area of law as the Member States are strictly attaching to their external independence. Meanwhile, being a stronger global actor to strengthen the global role of Europe is a key priority of the Commission. The EU needs a strong common foreign policy to

- respond efficiently to global challenges, including the crises in its neighbourhood;
- project its values;
- reject protectionism and keep EU trade standards;
- contribute to peace and prosperity in the world.

3.1. EU as an actor in the global sphere

3.1.1. Actor of foreign security and defence policy

In the case of States, self-interest strategies to safeguard its national interests and to achieve goals within its international relations is called **external (foreign) policy** and the main actor is the *government*, the leader of executive power. The EU's role as an international actor goes beyond merely the *Common Foreign and Security Policy (CFSP)* and the *Common Security and Defence Policy (CSDP)*; it also includes policy areas, such as development, environment, and trade and often the policy areas cannot be sharply divided as they overlap each other. Furthermore, through these policies, the EU has built up an extensive network of relations across the globe, ranging from its immediate neighbourhood to Africa, Asia, Latin America, and North America.

The *Union's action on the international scene shall be guided* by the principles which have inspired its creation, development and enlargement, and which it seeks to advance in the wider world: **democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity,** and respect for the **principles of the United Nations Charter and international law.**

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in the first subparagraph. It **shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.**

TEU Article 21

2. The Union shall define and pursue common policies and actions and shall work for a high degree of cooperation in all fields of international relations, to:

- ✓ *safeguard its values, fundamental interests, security, independence and integrity;*
- ✓ *consolidate and support democracy, the rule of law, human rights and the principles of international law;*
- ✓ *preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;*
- ✓ *foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;*
- ✓ *encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;*
- ✓ *help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;*
- ✓ *assist populations, countries and regions confronting natural or man-made disasters; and*
- ✓ *promote an international system based on stronger multilateral cooperation and good global governance.*

EU's foreign policy field the *main* global actors who can speak on behalf of the EU are:

- **President of the European Council**
Represents the EU externally on foreign and security issues.
- **President of the European Commission**
Represents the EU at G7 and G20 summits and bilateral summits with third countries. The competent commissioner in certain foreign-related issues are also mandated to participate in international negotiations in their special field, like in international trade issues, neighbourhood and enlargement policy, humanitarian aid & crisis management, international cooperation & development, or European civil protection and humanitarian aid operations.
- **The High Representative** of the Union for Foreign Affairs and Security Policy (and Vice-President of the European Commission; HR/VP)
The chief coordinator and representative of the Common Foreign and Security Policy (CFSP) can speak for the EU in that area. The HR/VP represents the EU for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences

The decision-making concerning the European point of view of a certain issue, however, shall respect the empowerment of the Member States, and ***stick closely to the treaty provisions*** to avoid *ultra vires* (beyond the powers) acts. All the statements on behalf of the EU and the votes done in the name of the EU shall be consistent with the EU policy and the EU norms legislated in a certain issue. Positions taken at the international sphere shall also be coordinated among those institutions and other organs whose competency is concerned. To ensure that, the acts at

the international sphere, during negotiations etc. shall be done according to rules which ensure **legitimacy (input and output), accountability and transparency**.

For example, in trade issues, the EU has exclusive competence, but there are many policies where the EU and the Member States legislative competence is shared, therefore, if the EU steps into a global sphere, its representative shall also respect the limits of its competences and the same of true for the Member States when their foreign ministers are representing state interest: they shall also take not account their obligations deriving from EU membership.

3.1.2. Legitimacy of EU activity as a global actor: balancing between the EU and domestic (Member State) foreign policy activity

As previously mentioned, the EU's capacity to act as a global actor and perhaps assume obligation on behalf of the whole community of its Member States is **strictly based on** its competencies; **the power transferred by its Member States** (provisions of the Treaties).

Chapter V of the *Treaty on the European Union* discusses the EU's external action as a **member of international organizations** which are open for a non-State participant.

For example, the Commission takes part in the work of the [Organisation for Economic Co-operation and Development](#) (OECD) and its participation goes well beyond that of a mere observer. At the same time, the EU undertook to co-operate fully in achieving its fundamental goals. The European Union works closely with the numerous [United Nations](#) bodies to promote international peace, human rights and development, and the European Commission is also a significant UN partner, contributing over €1 billion in support of external assistance programmes and projects. Under the auspice of the [World Bank](#), A strong and wide-ranging partnership has developed between the World Bank Group (WBG) and the EU institutions, including the European Commission, EU Council, European Parliament and European Investment Bank (EIB). The [Council of Europe](#) is the continent's leading human rights organisation which includes 47 member states, 28 of which are members of the European Union, and since the Lisbon Treaty, the EU

Besides competency issues related to the EU's legislative competencies, in this context, it is essential to focus on those situations when the Member State(s) and the EU are parties to the same international organization.

Member States shall:

- **support** the EU's **external and security policy actively** and unreservedly in a spirit of **loyalty and mutual solidarity** and shall comply with the EU's action in this area.
- shall **coordinate their action** in international organisations and at international conferences;
The HR/VP shall organise this coordination. Even if the Member states are sovereign States and the EU has no exclusive competency on foreign policy, the Member States are required to always act according to EU values and in a way that promotes the interest of the common.
- take part in the coordination of **diplomatic and consular missions** and the **EU delegations** in third countries and

- coordinate their acts at international conferences,
- their representations to international organisations,
- cooperate in ensuring that decisions defining EU positions and actions,
- step-up cooperation by exchanging information and carrying out joint assessments,
- contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries (*they shall cooperate and support Member States' consular authorities to ensure consular protection to EU citizens in third states*)

States have external diplomatic and consular services in foreign countries to ensure their state interests and the availability of protection for their citizens abroad. These organs and authorities are placed in the territory of the foreign State but under the direction of the foreign ministers. Ius legationis, the right to send and receive ambassadors is generally accepted by international law. The EU as an international organisation also has a sort of diplomatic service: the [European External Action Service](#) (EEAS) and the EU delegations are placed in States beyond the EU and to international organisations.

- shall **uphold the EU's positions** in such forums;
The TFEU contains explicit provision only in one specific case: the [UN Security Council](#). The Security Council has primary responsibility for the maintenance of international peace and security. It has 15 Members, and each Member has one vote. Among the 15 members, 5 are permanent since 1945: they may use their veto to prevent a resolution from being adopted. Under the Charter of the United Nations, all Member States are obligated to comply with Council decisions. The Security Council takes the lead in determining the existence of a threat to the peace or act of aggression. It calls upon the parties to a dispute to settle it by peaceful means and recommends methods of adjustment or terms of the settlement. In some cases, the Security Council can resort to imposing sanctions or even authorize the use of force to maintain or restore international peace and security. Member States which are also members of the United Nations Security Council (among the 5 permanent members: France¹ and UK, and currently Poland until 2019, Belgium and Germany until 2020) shall concert and keep the other Member States and the HR/VP fully informed. Member States which are members of the Security Council will, in the execution of their functions, defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter. When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the HR/VP be invited to present the Union's position.
- Where not all the Member States participate, they shall **keep the other Member States and the HR/VP informed** of any matter of common interest.

Meanwhile, the treaty provisions covering the CFSP, CSDP including the creation of the office of HR/VP and the establishment of an external action service, **do not affect the responsibilities**

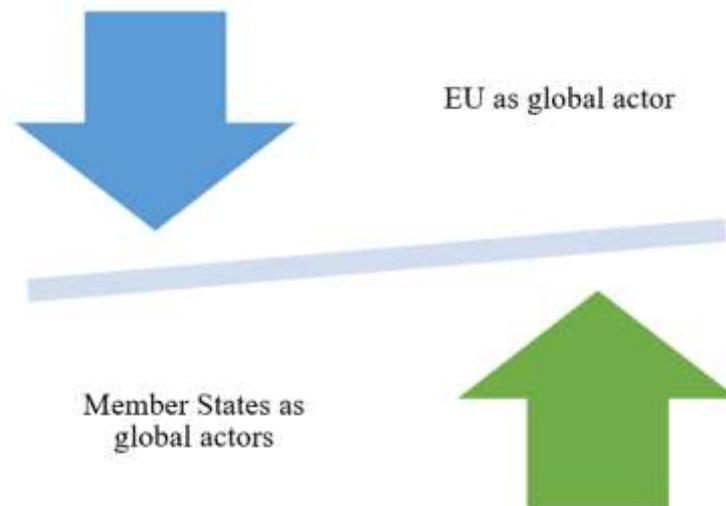
¹ Thought-provoking reading in this context: One Voice, But Whose Voice? Should France Cede Its UN Security Council Seat to the EU? <https://www.fpri.org/article/2019/03/one-voice-but-whose-voice-should-france-cede-its-un-security-council-seat-to-the-eu/>

of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations. The Conference also recalls that the provisions governing the CSDP do not prejudice the specific character of the security and defence policy of the Member States.

In addition to the specific rules and procedures relevant for CFSP and CSDP, the Treaties will **not affect the existing legal basis, responsibilities, and powers of each Member State concerning**

- the formulation and conduct of its foreign policy,
- its national diplomatic service,
- relations with third countries
- and participation in international organisations, including a Member State's membership of the Security Council of the United Nations.

Therefore, on one hand, the EU is a global actor within its policies, for the promotion of the European Union values and interests, on the other hand: Member States' sovereignty and competencies to formulate their policies concerning their foreign and defence policy is ensured.



4. The dichotomy of acting as a global partner (author)

3.2. The EU as an actor of TRNs

Besides internal networking, the EU is an active player of global governance and participates in transnational regulatory networks *harmonisation networks/trans-governmental networks/transnational networks/TRNs* informal multilateral forums that bring together representatives from national regulatory agencies or departments to facilitate multilateral cooperation on issues of mutual interest within the authority of the participants. Probably the collaboration is the most effective within the **BCBS** (cf. TFEU Protocol no. 4. Article 6; or the **ICH**, (cf. TFEU Article 168. 3.) but despite the practical successes, the phenomenon has its legitimacy, transparency and accountability challenges as they lack usual legitimacy and accountability mechanisms.

The International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) aims to achieve harmonisation in the form of guidelines via a process of scientific consensus with regulatory and industry experts working side-by-side worldwide to

ensure that safe, effective, and high-quality medicines are developed and registered. The key to the success of this process is the commitment of the ICH regulators to implement the final guidelines. The European Commission is a founding member and also the only supranational regulatory member which stands for the regulatory framework on pharmaceuticals is applicable across all the Member States of the EU and the European Economic Area. The European Medicines Agency the EU's relevant agency (established in 1995), underpins the centralised authorisation procedure and supports coordination between national competent authorities. It is a European medicines network comprising over 40 national regulatory authorities guaranteeing a constant exchange and flow of information regarding the scientific assessment of medicinal products in the EU and it is providing the Commission with its technical and scientific support and is coordinating the scientific expertise put at its disposal by the EU Member States, notably through EMA's main scientific committee, the Committee for Medicinal Products for Human Use (CHMP). See <https://www.ich.org/about/members-observers/ec-europe.html>. The legitimacy of the ICH guidelines we have discovered deficiencies regarding all requirements of acceptability: stakeholder participation, transparency, accountability and control. (Dorbeck-Jung, 2008, p. 69; in details: 65-66.)

The Basel Committee on Banking Supervision (BCBS) is a non-governmental international organisation englobing non-State actors to produce standards for banking supervision. One of its achievements is the Single Supervisory Mechanism (SSM). The EU has the competence to regulate banking supervision for eurozone Member States, so it contributed to the preparation of the SSM and then implemented it to its policy. Currently, 9 Member States of the EU are represented via their banking authorities in the BCBS (BE, FR, DE, IT, LU, NL, ES, SE, UK) alongside the ECB which represents the EU as an entity. The ECB holds two seats as it represents the EU in both its central banking and supervisory capacity (SSM). The European Commission (Commission) and the European Banking Authority (EBA) are invited as observers.

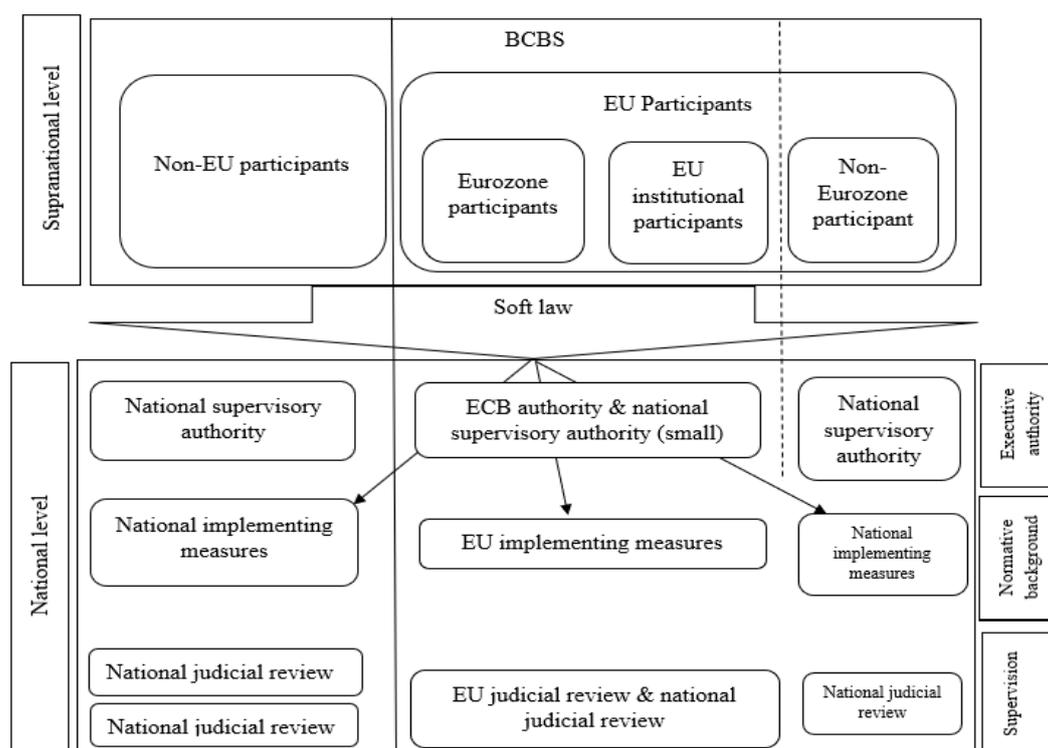
All euro area States participate automatically in the singly supervisory mechanism (SSM) and under this system, the ECB is enabled to take harmonised supervisory actions and corrective measures, therefore the ECB works as a public authority. in the BCBS, while the present composition of ECB (and SSM) delimits Member State participation in the formulation of the policy at the participatory phase for those who are members of the eurozone and voluntarily assume the SSM, however, the consequences will affect directly or indirectly everyone. On the other hand, it also put the accountability and of the ECB and its actions within the BCBS in focus, as the documentation of meetings and discussions are not public although the EU emphasized this value and requirement in its functioning

If it is about Basel standards and the EU Member States, there are three categories of public law framework to describe the issue of financial supervision:

(a) States that are outside the scope of the Eurozone, therefore also out of the scope of the ECB and its financial supervision rules. Such States are also bound by the aims and spirits of the EU, they are obliged not to endanger its aims, but are not explicitly;

(b) States that are participating in the eurozone and can take part in the decision - making procedure and international representation of the ECB;

(c) States that are not in the eurozone but voluntarily participates in the SSM and their close cooperation is established by a decision of the ECB, the Member State undertakes to ensure that its national competent authority and national designated authority will adhere to any instructions, guidelines, measures or requests issued by the European Central Bank in respect of supervised entities, but this Member State will not be given the right to take part in the ECB. The following figure summarises the multilevel system of banking supervision from an administrative system point of view. Even if different legal regimes seem to be applied for EU Member States financial regulations, these regimes cannot be purely separated as first, the same aim and point of view is echoed in all the EU legislation concerning banking union; second, the European administration of all the policies shall correspond to the same constitutional public law principles.



5. Multi-level administration of banking supervision (author)

The nature of trans-regulatory networks allows the EU as an actor in their work, but the EU is **strictly connected to its competencies** laid down in the Treaties (TFEU, art.1; 2-6.).

TFEU Article 1

1. This Treaty organises the functioning of the Union and determines the areas of, delimitation of, and arrangements for exercising its competencies.

TITLE I

CATEGORIES AND AREAS OF UNION COMPETENCE

Article 2

1. When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

2. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.

3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have the competence to provide.

4. The Union shall have competence, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations.

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area.

Article 3

1. The Union shall have exclusive competence in the following areas: (a) customs union; (b) the establishing of the competition rules necessary for the functioning of the internal market; (c) monetary policy for the Member States whose currency is the euro; (d) the conservation of marine biological resources under the common fisheries policy; (e) common commercial policy.

2. 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 in so far as its conclusion may affect common rules or alter their scope.

Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.

2. Shared competence between the Union and the Member States applies in the following principal areas: (a) internal market; (b) social policy, for the aspects defined in this Treaty; (c) economic, social and territorial cohesion; (d) agriculture and fisheries, excluding the conservation of marine biological resources; (e) environment; (f) consumer protection; (g) transport; (h) trans-European networks; (i) energy; (j) area of freedom, security and justice; (k) common safety concerns in public health matters, for the aspects defined in this Treaty.

3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

Article 5

1. The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.

Specific provisions shall apply to those Member States whose currency is the euro.

2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.

3. The Union may take initiatives to ensure coordination of Member States' social policies.

Article 6

The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health; (b) industry; (c) culture; (d) tourism; (e) education, vocational training, youth and sport; (f) civil protection; (g) administrative cooperation.

In European policy areas, it depends on its legislative competence: the powers of the EU outside its borders adjust its competencies that exist inside the EU (implied powers) except for the common foreign and security policy area. In the international sphere, the EU shall act according to serve **input and output legitimacy**. When it enters the global space, the distance between the source of power and the place of activity extends, and the detailed rules on the external action are crucial to maintaining the democratism in the course of action. When institutions and bodies act on behalf of the EU, their **accountability and transparency** on the input and output phase of the procedure are evaluated. Even if on the EU's side the procedural details would be available to that end (which is often not the case), the transparency of the TRN's functioning is not ensured or due to economic-political reasons, are confidential.

Accountability has two sides:

(a) **Internal accountability** refers to the decision-making processes within the organisation, including checks and balances and a clear division of roles and responsibilities.

(b) **External accountability** consists of the supervisors' obligation ability to explain to external stakeholders the impact of their activities. Enabling stakeholders to seek and receive a response for grievances and alleged harm is a critical aspect of accountability. This is the mechanism through which stakeholders can hold an organisation to account by querying a decision, action or policy and receiving a proper review and act upon their claim. Effectivity of global institutions would also require that the standards they established are treated as an obligation, and there is a mechanism that monitors the compliance and enforce them is necessary. Due to the non-State actors and soft law nature of their rule-making result, the answers to the assumptions are available below a global level and depend on domestic acceptance.

In the case if the **EU appears as an actor**, the EU is bound by its internal requirements in external dimension, therefore, EU legislation shall establish the legal background to fill out the gaps of democratic legitimacy. It means mainly procedural rules strengthening transparency and accountability of the external activity of the institution acting on behalf of the EU. On the other hand, it continues with the incorporation of the soft law into the decision-making procedure to make the legitimacy line unbroken and traceable.

The nature of trans-regulatory networks allows the EU as an actor in their work. On the other hand, the EU is strictly connected to its competencies laid down in the Treaties. Therefore, the EU shall act according to serve **input and output legitimacy**. When institutions and bodies act on behalf of the EU, their **accountability** and the **transparency** on the input and output phase of the procedure shall also conform with the rule of law principle. Even if on the EU's side the procedural rights would be available to that end (which is often not the case), the transparency of the TRN's functioning is not ensured or is confidential.

3.2.1. Input legitimacy

Both the determination of the Union negotiator or negotiating team, and that of the legal bases of international agreements have seen internal friction among EU institutions and the Member States. The trans-regulatory networks are standard setters who are neither vested with legislative power nor are entitled to assume obligation for a State, although their product acts as a normative act in a non-conform way defined by the classical Westphalian regime. The spreading practise of such trans-regulatory networks and their growing importance reveals the necessity of the articulation of a new legal order and re-thinking of the current one. The EU faces the same challenges while it is trying to improve the effectiveness of its policies and at the same time, it should improve the democratic deficit within its institutional structure. Both tasks are heavily connected to the question of administrative procedural improvement.

To respond to challenges in the global context, *Cassese* reveals, that the **key might be the change of conception** of the current legal order. It considers the **State as the locus of democracy**. If the State is taken out of the equation, shifting decision-making from the national to the global level deprives citizens and corporations of these participatory rights. So, the top-down legitimacy could be, at least partially, compensated using reinforced guarantees for civil society. **Greater participation** in the formation of the national position ahead of global administrative negotiations, or actual participation in these negotiations, directly or through (similar global) non-governmental organizations are the key. The EU is keen on improving the participation, the direct involvement of stakeholders in decision-making procedures, but not in those which are the preparatory phases of its participation in the global sphere as highlighted in the case of trans-regulatory networks' work.

To ensure the ECB fulfils its mandate properly, ECB policymakers need to be informed about developments in the global economic and financial environment. To that end, the ECB president takes part in the G30 meetings.² There was a European Ombudsman investigation about how to ensure the participation of members of decision-making bodies of the ECB in the G30 while avoiding any possible impact on its integrity, reputation, and independence, or a perception that there could be such an impact. The European Ombudsman's Decision is based on concerns that G30 membership could create a possible perception of a close relationship between supervisor and supervisee and undermine public confidence in the independence of the ECB. The Ombudsman revealed that participation does not generate the same potential difficulties as does membership although she highlighted that there is increased public awareness, expectation and demand that public institutions should comply with the highest possible standards of ethical conduct and transparency, legitimacy and accountability. These standards must apply irrespective of the forum or context within which such dialogue takes place. If the G30 is not yet ready to be more transparent, to meet these standards, together with the requirement of an "open, transparent and regular dialogue" with representative associations and civil society set out in Article 11(2) TEU, it is the ECB that should consider proactively informing the public about the content of meetings in which members of the ECB decision-

² The G30 gathers current and former central bank governors, ministers of finance, academics and private sector representatives, including bankers from the largest and most important economies which make it a relevant and useful forum in view of information- and intelligence-gathering.

making bodies participate. To that end, the Guiding Principles which refers to the procedural steps shall be clarified and add more details and broaden the scope of the Guiding principles for external communication of application in the view of the subject and the object as a lack of transparency could create a public impression of secrecy, which would reflect negatively on the image and reputation of the EU's decision-making bodies, including the ECB. clarity and legal certainty and to contribute to the full and proper application of the rules of ethical conduct. Following the European Ombudsman's recommendation, the ECB has encouraged the G30's recent initiatives to increase transparency. In that spirit, when the ECB announces, on its website, the participation of its decision-makers at G30 events will include a link to the G30's website. The ECB has also informed the G30 of the European Ombudsman's suggestion to publish the names of the members of the G30 Board of Trustees and now this information is available on the G30's website

The principle of **sincere cooperation** is a reciprocal obligation to the EU institutions and the Member States and the institutions among each other. The ultimate duty of the EU to ensure participation is an obvious consequence of the obligation of the Member State to consult its position even in those international organisations in which the EU is not a party to, but EU law expands to the scope of action.

TEU Article 4.

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.

The **duty of sincere cooperation** obliges the Member States to refrain from certain autonomous actions within international bodies or fora, both in areas of exclusive and shared Union competence. When the EU is exclusively competent, the Member States are under an obligation of result, meaning either following an established EU position or refraining from act at all (*duty to remain silent*). Regarding shared competencies, the duty of cooperation implies an obligation of conduct. However, sincere cooperation is **not** to be understood as a duty of **blind obedience** for the Member States. procedural rules on participation shall make prior coordination available depending on the nature of the EU's competence at stake and there shall be available *options for judicial review* if the EU breaches its obligations.

The Member States and even individuals against the European Parliament, the European Council, the Council, the Commission or the European Central Bank or to bodies, offices, and agencies of the Union may invoke Article 265 TFEU and there could be a place for an action for annulment if an international legal norm is incorporated into EU legislation with the violation of the previous coordination obligation concerning the formulation of position for the Member States that are parties.

Besides exclusive competencies, the **EU also can act at the international level as soon as there is a link with the realisation of the Treaty objectives in a particular policy area** and it can **adopt a position** even if it is not a party to the agreement. (CJEU C-399/12, para. 52.) In

many IOs the EU will be left with no formal representation, even though it exercises significant competencies in the field. It does not mean that the achievement of such bodies is without influence on the EU. This shall be emphasised as Article 218 TFEU regulates the roles but once the EU participates in a TRN or just relies on/accepts its achievements and for such external activity, there are no explicit treaty provisions.

Article 218 TFEU governs the procedure for negotiating and concluding an agreement between the European Union and third countries or international organisations. It is the Council, as the institution representing the interests of the Member States, which is the primary decision-making body in that procedure. As such, it is to authorise the opening of negotiations while it is usually the Commission that conducts negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them. Article 218 TFEU also governs the degree of involvement of the European Parliament, whether in the form of consent in the cases listed exhaustively or, alternatively, consultation. In the remaining cases, the Parliament is to be informed at all stages of the procedure. Throughout the procedure, the Council is to act by a qualified majority except where otherwise provided. (Opinion of Advocate General Szpunar, 2017, para. 54.)

The requirements of sincere cooperation require the **possibility of opinion exchange**. It follows, that procedural rules should ensure the EU institutions **organise the procedure for the adoption of the EU's position** in such a way that the Member States have enough time to seek clarification on the competence questions. The EU institutions should work together in good faith, to clarify the situation which might lead to disagreement with the Member States in the international sphere and to overcome difficulties that arise internally. Accordingly, the procedure for the adoption of a legal instrument on common position shall ensure that “*a Member State that challenges the competence of the European Union may bring proceedings before the Court sufficiently early to permit clarification on the question of competence to be obtained*”. (C-600/14, para 95.)

So, it seems that the EU tends to adapt to the reasonable advantages of global governance and profit from its achievements, but it has not implemented a legal background for input legitimacy.

3.2.2. Output legitimacy

The other problematic issue is the output legitimacy phase: the *soft law* created by the TRN. The EU has a strict decision-making procedure and the adaptation of a soft law shall also go through the same drafting and legislative procedure. International soft law shall not be directly applicable or rely on.

Meantime, according to the jurisprudence of the CJEU, ***even non-binding acts of international law may produce legal effects*** on the EU legal system. Even the fact that the EU as an organisation as a whole is not a party to another organisation, does not prevent it from formulating its position to be represented by those Member States who are parties to the organisation. It is accepted by the CJEU to incorporate useful achievements appearing in non-binding sources of such international organisations given their direct impact on the European Union's *acquis* in that area.

“Where an area of law falls within a competence of the European Union, the fact that the European Union did not take part in the international agreement in question does not prevent it from exercising that competence by establishing, through its institutions, a position to be adopted on its behalf in the body set up by that agreement, in particular through the Member States which are party to that agreement acting jointly in its interest.” (CJEU C-45/07 Commission v Greece, ECR 2009 I-00701, para. 30 and 31; see also, to that effect, Opinion 2/91) ECR 1993 I-01061, para. 5). CJEU C-399/12, Federal Republic of Germany v Council of the European Union. ECLI:EU:C:2014:2258, para. 50.)

So, it seems that the EU tends to adapt to the reasonable advantages of global governance and profit from its achievements, but it has not implemented a legal background for input legitimacy.

The **detailed provisions** on the formulation of this one voice and the accountability for acts on the supranational area in a proper, binding, clear and predictable legal norm of the EU would be the key for a proper public law framework.

The ECB shall function independently without any intervention from any other institutions or bodies of the EU and also, there is no feedback mechanism for the ECB or the SSM to report back to the Council of the European Parliament on the state of play of the BCBS discussions, it may seem that the BCBS can act independently without being accountable and thus responsible. Its independent act is ensured by the possibility of developing contacts and entering into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries, subject to appropriate coordination with EBA. Although on the other hand, without proper and detailed procedural rules, such guarantees of independence endanger accountability and thus, legitimacy. Accountability, meantime, is the link to the people and a guarantee of acting according to the general interest of the people, and at last, it is about the people’s Europe.

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SIGNIFICANT DEFINITIONS

Accountability	responsibility for the results of action
Agency	are distinct bodies from the EU institutions separate legal entities set up to perform specific tasks under EU law
Comitology	procedure when the Commission has been granted implementing powers in the text of a law to adopt executive acts of the EU.
Enforcement/executive networks	networks that complete and supports composite administrative procedures when the case has an international element, and the relevant authorities need to contact each other, share information, handle documents or other evidence that the other authority in a different Member State needs to decide upon a case.
Four freedoms	the free movement of goods, services, capital and persons that allows interpreting the market of the EU Member States as a single one.
Implied powers	possibility to regulate without explicit competence in the Treaties which flows by explicit empowerment in a certain policy and that certain policy's success requires the extended interpretation of the empowerment
Information networks	are constant channels for systematic cooperation to share information and ensure data flow automatically, without the possibility of rejecting of collaboration or retaining information
Regulatory networks	systematic cooperation of competent authorities to identify the best practice and help the interpretation of EU law and the application of EU norms to achieve its purposes with a normative content
Right to good administration	<p>is a fundamental right of every person to have his/her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the EU (incl. Member State organs that execute EU law).</p> <p>This right includes:</p> <ul style="list-style-type: none"> - the right of every person to be heard, before any individual measure which would affect him or her adversely is taken; - the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; - the obligation of the administration to give reasons for its decisions. <p>Every person has the right to have the EU make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.⁴ Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.</p>
Sincere cooperation	the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks that flow from the Treaties. The Member States shall take any appropriate measure, general or, 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.
Sui generis international organisation	an international organisation that is so special that it is not similar to any other international organisations
The Treaties	the current basic international agreements in force that are the fundamentals of the EU: the Treaty (TEU) on the European Union and the Treaty on the Functioning of the European Union (TFEU)
Transparency	clear and visible line of action among the source of power, the actor and the result of acting which enables to check accountability

CHAPTER V

EXERCISES TO PRACTICE

1. Support the argumentation with facts and examples:

The EU is	
a supranational international organisation	an intergovernmental organisation

2. How would you describe the EU’s public administration? Can the following characteristics be mentioned about it? Explain why!

- a) multi-level:
- b) centralised:
- c) decentralised:
- d) de-concentrated:
- e) strictly regulated by EU law:
- f) cooperative:
- g) networking:
- h) policy dependent:

3. Analyse the following press release concerning the declaration of the HR/VP! What can you tell from this about the EU as a global actor?

2/8/2019 | PRESS RELEASE³

Declaration by the High Representative Federica Mogherini on behalf of the EU on the support to the UN-facilitated political process in Libya

The European Union and its Member States are united in demanding that all Libyan parties commit to a permanent ceasefire and return to a UN-facilitated political process. The European Union and its Member States welcome the proposal by Special Representative of the Secretary-General of the United Nations Ghassan Salame for a truce on

³ https://www.consilium.europa.eu/en/press/press-releases/2019/08/02/declaration-by-the-high-representative-federica-mogherini-on-behalf-of-the-eu-on-the-support-to-the-un-facilitated-political-process-in-libya/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Declaration+by+the+High+Representative+Federica+Mogherini+on+behalf+of+the+EU+on+the+support+to+the+UN+facilitated+political+process+in+Libya

the occasion of the Eid al-Adha is an important step in this regard. These measures could constitute the first step towards peace.

The European Union and its Member States recall that there is no military solution to the crisis in Libya. It is necessary to relaunch the UN-led mediation process, taking into account the full and equal representation and participation of both women and men, to promote an inclusive government, prepare for democratic parliamentary and presidential elections as soon as possible, ensure a fair and transparent distribution of the national wealth and advance the reunification of all Libyan sovereign institutions, including the Central Bank and the national security forces under civilian oversight as agreed in Paris in May 2018, in Palermo in November 2018, and in Abu Dhabi in February 2019. In this vein, the European Union fully supports the Special Representative's proposal in three steps to relaunch the political negotiations and in particular to implement the truce.

The European Union and its Member States urge all parties to protect civilians, including migrants and refugees, by allowing and facilitating a safe, rapid and unimpeded delivery of humanitarian aid and services to all those affected, as stipulated under International Humanitarian Law and International Human Rights Law. The indiscriminate attacks on densely populated residential areas may amount to war crimes and those breaching International Humanitarian Law must be brought to justice and held to account. The European Union and its Member States demand all parties to cease the targeting of humanitarian workers and medical staff as well as hospitals and ambulances and protect national infrastructure.

The European Union and its Member States call all UN Member States to fully respect their obligations to contribute to Libya's peace and stability, safeguard Libya's oil resources and protect its infrastructure in full compliance with the relevant UN Security Council resolutions. The European Union and its Member States also call all UN Member States to respect the arms embargo, in line with UN Security Council Resolution 2441. The ongoing conflict is destabilising Libya and the entire region has fuelled the intentional use of false news and disinformation and has increased the risk of terrorism and the tragic loss of human lives, also at sea. It urges all parties to dissociate themselves, both publicly and on the ground, from terrorist and criminal elements involved in the fighting, and from those suspected of war crimes, including individuals listed by the UN Security Council.

4. Analyse and interpret the decision of the CJEU! What kind of information does it give you from the EU as an international actor and its administration?

“Where an area of law falls within a competence of the European Union, the fact that the European Union did not take part in the international agreement in question does not prevent it from exercising that competence by establishing, through its institutions, a position to be adopted on its behalf in the body set up by that agreement, in particular through the Member States which are party to that agreement acting jointly in its interest.” (CJEU, Case C-45/07 Commission v Greece, ECR 2009 I-00701, para. 30 and 31.)

TEST OF MULTIPLE CHOICES/QUIZ

1. The EU as a sui generis international organization

- a) amounts features of supranational, intergovernmental and non-governmental organizations.
- b) amounts features of supranational and intergovernmental organizations.
- c) is a global international organization.

2. The European Commission

- a) is the ultimate administrative authority of the EU.
- b) is the ultimate administrative institution of the EU.
- c) is the major administrative institution of the EU along with other organs and bodies with an administrative function.

3. Unanimous decision-making

- a) is a feature of the community method.
- b) is a feature of the inter-governmental method.
- c) is a feature of supranational organizations.

4. The European Administrative Space

- a) is a common set of standards for action within public administration.
- b) is defined by the founding treaties of the EU.
- c) means the homogeneous administrative system of the EU.

5. The EU

- a) relies only on the administration of the Member States.
- b) relies on its administration and pushes execution on the Member States only when the principle of subsidiarity requires so.
- c) relies on the administration of the Member States although it also has its administrative background as an organisation and establishes cooperation forms horizontally and vertically.

6. Transparency and procedural rules

- a) determine the EU's external activity
- b) should determine the EU's external activity's administration.
- c) has no significance for the EU's external activity as it is a political activity falling beyond administration.

7. Which statement is correct?

- a) The Member States and the EU shall coordinate their external activity due to the principle of sincere cooperation.
- b) The Member States are always obliged to follow the EU's common position in external activity as the EU is superior to its Member States.

8. The EU as an entity – and its institutions on behalf of it – can act in external relations.

- a) upon the approval of Member States.
- b) upon empowerment by treaty-based provisions or implied powers.
- c) upon empowerment by treaty-based provisions.

9. The capacity of the EU as a global actor

- a) depends on only its competencies laid down in the treaties.
- b) depends on the ratification of Member States.
- c) depends on the Commission who represents the interest of the community and is empowered to act on behalf of the EU which has a legal personality.

10. Within TRNs, the output legitimacy phase is challenged...

- a) by the non-State actors' professionalism.
- b) by the soft law nature of the *acquis* achieved.
- c) by the monitoring of the evaluation of the adopted resolutions.