

# 1

## The EU as a global legal actor

### 1 CENTRAL ISSUES

- This chapter points to the fact that the EU is an international actor. We define this notion as an entity which interacts with third countries and international organizations (and even its own Member States), in ways which are legally and politically distinguishable from its constitutive Member States. In the global context, this entity thus has a stand-alone identity composed of values, interests and policies which it seeks to define and promote internationally as its own.
- This chapter then indicates the importance of legal rules in organizing EU international action, and shows that EU external relations law consists of an internal and an external dimension. In its internal dimension it consists of the set of rules which govern the constitutional and institutional legal organization of this legal entity in pursuit of its interests in the world. The external dimension comprises the rules governing the relationship of the EU with the international legal order in which it is active.
- In order to study EU external relations law in all its complexity, this chapter provides an overview of the architecture of EU external relations. It outlines the existence of the EU as an international organization with legal personality, which exists legally distinct from its Member States. It also shows that the EU is based on the Treaty on European Union (TEU) and the Treaty on the Functioning of the Union (TFEU), which each contain crucial legal principles constituting the body of EU external relations law.
- Finally, in order to be an international *actor*, the EU needs *agents* to make the decisions and represent the EU on the global stage. These include the EU institutions, but also other key players in the law of EU external relations.

### 2 THE NATURE OF THE EU AS AN INTERNATIONAL ACTOR

#### (i) An international organization or something else?

A textbook on EU external relations law is founded on the premise that the EU can have legal relations with third states and other international organizations. Hence, it is an international actor, with a distinct legal existence just like EU Member States, or international organizations such as the United Nations. What does it mean to say that the EU is an international actor?

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When the 1957 Rome Treaty founded the EEC, this new international organization was explicitly given competence to conduct international trade relations through its Common Commercial Policy (CCP), and to conclude international agreements through which it could associate itself with third countries. As European integration progressed, the EEC, later European Community (EC) and now European Union, acquired powers in other areas such as foreign security policy, environmental policy, energy policy and so on. So how does this amalgam of international policies render the EU an international actor? In political science literature there are a variety of definitions for the nature of the EU in the world, which commonly seek to categorize the 'kind' of power the Union exerts in its external relations: civilian power, soft power, normative power and so on.<sup>1</sup> These concepts often argue that there is something distinctive about EU action in the world, an 'EU-way' of conducting its international relations which is connected to the way post-World War II European integration itself has progressed: avoiding inter-state conflicts through integration on the basis of multilateral legally binding instruments. Other scholars do not seek to classify the EU normatively, and are content with the classification of the EU as quite simply an entity which stands in a category of its own, e.g. a *sui generis* international actor which cannot be defined with any pre-existing terminology.

**C. Bretherton and J. Vogler, *The European Union as a Global Actor* (Abingdon/New York: Routledge, 2006), p. 2**

The EU is not an intergovernmental organization as traditionally understood, nor is it a partially formed state. While it is clearly a regional organization, its degree of integration, and the range of policy competences and instruments it possesses, render comparison with other regional organizations such as the North American Free Trade Agreement (NAFTA) meaningless.

In this legal textbook we are primarily concerned with the rules and principles which govern the legal existence and functioning of this international actor. Consequently we define the EU as an international actor in abstract terms, as *an entity which interacts with third countries and international organizations (and even its own Member States), in ways which are legally and politically distinguishable from its constitutive Member States. In the global context, this entity thus has a stand-alone identity composed of values, interests and policies which it seeks to define and promote internationally as its own.*<sup>2</sup>

The term 'entity' may nevertheless not be too helpful in describing the nature of this 'animal', and the question emerges as to whether we can see the EU as an international organization. To lawyers, being an international actor at least means being an international *legal* actor. This, in turn, means that, although the EU is not a state, it is subject to the rules of international law when it wishes to participate on the global stage. International law, on the other hand, is still quite traditional. Created as 'inter-state' law it continues to struggle with the presence of

<sup>1</sup> Respectively: H. Bull, 'Civillian Power Europe: A Contradiction in Terms?' (1982) 21 *Journal of Common Market Studies*, 2, 149–164; J. Nye, *Soft Power: The Means to Success in World Politics* (New York: Public Affairs Press, 2005); I. Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 40 *Journal of Common Market Studies*, 2, 235–258.

<sup>2</sup> This definition is inspired by Cremona's description of the different roles of the EU in the world. See M. Cremona, 'The Union as a Global Actor: Roles, Models and Identity' (2004) 42 *Common Market Law Review* 553–573.

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non-state actors in the international order. Yet, international organizations obviously found their place as international legal actors, and other forums and networks are also increasingly recognized as legally relevant. It is a truism that the EU is not a regular international organization. From the outset Member States have been prepared to transfer competences to the Community and later the Union. The current Treaties again herald a new phase in which the Union's international 'actorness' in the global legal order will be further developed.

This is exactly why it is important to classify the EU under international law. Most international rules apply to states, some to international organizations and a limited set also to other internationally active entities (such as liberation movements or multinationals). Few would argue that the EU is a state; many would say that it is an international entity *sui generis*. International law, however, only works when it is applied across the board for certain categories of international actors. While it may be possible to create special rules for *sui generis* entities (compare the clauses on Regional Economic Integration Organisations (REIOs) in some multilateral agreements),<sup>3</sup> the rationale behind a legal system is that its rules should allow for a smooth cooperation between the different subjects.

The Treaties are still silent on this issue. Article 1 TEU merely refers to the fact that 'the High Contracting Parties establish among themselves a European Union' and that this Union 'shall replace and succeed the European Community'. Thus, it still does not give an answer to the classic question of whether the EU is an international organization or something else. This may also be the reason that textbooks are still uncertain about the legal nature of the Union and seem to have a preference for more political notions. Chalmers *et al.* refer to the EU as 'amongst other things, a legal system established to deal with a series of contemporary problems and realize a set of goals that individual states felt unable to manage alone'.<sup>4</sup> And, the 'nature of the Union's international presence' is related to its international legal personality only, whereas the nature of the entity as such is left open.<sup>5</sup> In its famous ruling on the Lisbon Treaty, the German Constitutional Court held that the Union was 'designed as an association of sovereign states (*Staatenverbund*) to which sovereign powers are transferred'. Yet, the further description by the Court comes close to generally accepted definitions of an international organization:

The concept of *Verbund* covers a close long-term association of states which remain sovereign, an association which exercises public authority on the basis of a treaty, whose fundamental order, however, is subject to the disposal of the Member States alone and in which the peoples of their Member States, ie the citizens of the states, remain the subjects of democratic legitimization.<sup>6</sup>

Indeed, the Union's nature is mostly defined on the basis of internal considerations. Not so much has been written on how it would be perceived by third states. A possible reason was presented by Tsagourias: 'By appropriating the instruments of its creation, the Union liberated

<sup>3</sup> See for example the 2004 Energy Charter Treaty (Article 3). See also E. Paasivirta and P. J. Kuijper, 'Does One Size Fit All? The European Community and the Responsibility of International Organisations' (2005) 36 *Netherlands Yearbook of International Law* 169–226 at 205; and Chapter 8 of this book.

<sup>4</sup> D. Chalmers, G. Davies and G. Monti, *European Union Law*, 2nd edn (Cambridge: Cambridge University Press, 2010), p. 3.

<sup>5</sup> *Ibid.*, p. 632.

<sup>6</sup> *Entscheidungen des Bundesverfassungsgericht*, 30 June 2009; available at [www.bundesverfassungsgericht.de/entscheidungen](http://www.bundesverfassungsgericht.de/entscheidungen). See also A. Steinbach, 'The Lisbon Judgment of the German Federal Constitutional Court – New Guidance on the Limits of European Integration' (2010) 11 *German Law Journal*, 4, 367.

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itself from external – international – contingencies and also moved the source of its validation from the international legal order to the Union.<sup>7</sup>

Yet, irrespective of the inward-looking basis for its creation and its ‘liberation’ from international contingencies, the current ambitions of the Union reveal the need to exist and be recognized as an international legal entity that somehow fits the fundamental starting points of the international legal order.

So, could the EU qualify as an international organization? Well, when it looks like a banana and smells like a banana, it may very well be a banana.<sup>8</sup> Indeed, many would agree with Curtin and Dekker that ‘the legal system of the European Union is most accurately analysed in terms of the institutional legal concept of an international organization’.<sup>9</sup> But even this quote reveals how difficult it is to argue that the EU is an international organization (albeit a very special one).<sup>10</sup> Throughout their handbook on the law of international organizations, Schermers and Blokker nevertheless treat the EU as an international organization, while noting of course the ‘far-reaching forms of cooperation’ and the ‘supranational features’.<sup>11</sup> The EU is indeed ‘considered special not because of its identity problems but because of the high degree of “constitutional” development, supranational components and the rule of law features within this organization making it look almost like a federation of states’, as argued by Bengoetxea in one of the few publications focusing on this question.<sup>12</sup>

As an international organization, the EU is subject to international law in its relations with third states and other international organizations. While international law can also be part of the internal set of rules (see Chapter 7), this chapter’s focus is on the external dimension. There we would need to start from the presumption that the EU is bound by the international agreements to which it is a party as well as to the customary parts of international law. As more recent international law shows, it is capable of taking the differences between states and international organizations into account (see for instance the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations; or the 2011 Articles on the Responsibility of International Organizations (ARIO)).<sup>13</sup> Yet, for third states

<sup>7</sup> N. Tsagourias, ‘Conceptualizing the Autonomy of the European Union’, in R. Collins and N. D. White (eds.), *International Organizations and the Idea of Autonomy: Institutional Independence in the International Legal Order* (London/New York: Routledge, 2011), pp. 339–352 at 340.

<sup>8</sup> As we will see in Chapter 10, the choice for ‘banana’ as a metaphor in a textbook on EU external relations law is less random than it seems.

<sup>9</sup> D. M. Curtin and I. F. Dekker, ‘The European Union from Maastricht to Lisbon: Institutional and Legal Unity Out of the Shadow’, in P. Craig and G. de Búrca (eds.), *The Evolution of EU Law* (Oxford: Oxford University Press, 2011), pp. 155–185 at 163.

<sup>10</sup> Compare the qualification as ‘eine internationale Organisation eigener Art’, by W. Schroeder, ‘Die Europäische Union als Völkerrechtssubjekt’ (2012) Beiheft 2 *Europarecht* 9–23 at 18. In general, the status of the EU as an ‘international organization’ seems to be accepted implicitly by many authors. Cf. P. Eeckhout, *EU External Relations Law*, 2nd edn (Oxford: Oxford University Press, 2011), who does not at all address the external legal nature of the EU, but merely refers to the fact that ‘[t]he EU is also a member of a number of other international organizations’ (at 3, emphasis added).

<sup>11</sup> H. G. Schermers and N. M. Blokker, *International Institutional Law: Unity in Diversity* (Leiden/Boston: Martinus Nijhoff Publishers, 2011), pp. 55 and 57.

<sup>12</sup> J. Bengoetxea, ‘The EU as (More Than) an International Organization’, in J. Klabbers and Å. Wallendahl, *Research Handbook on the Law of International Organizations* (Cheltenham/Northampton: Edward Elgar Publishing, 2011), pp. 448–465 at 449. The author argues that it is above all the ‘transitional’ status of the EU (from international organization to federation) that justifies its ‘specialness’ (p. 450).

<sup>13</sup> Respectively to be found at [http://untreaty.un.org/ilc/texts/instruments/english/conventions/1\\_2\\_1986.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_2_1986.pdf); and [http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9\\_11\\_2011.pdf](http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_11_2011.pdf). Obviously, the extent to which these instruments successfully take the complex position of international organizations into account may be subject to debate.

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the EU remains special. It may be an international organization, but the fact that it is exclusively competent to act in certain areas is unprecedented, as is the rule that EU Member States feel that, in the end, they should give priority to EU law in cases of a conflict with international law. Indeed, as underlined by case law, the *Gemeinschaftstreue* is believed to take precedence over international law obligations.<sup>14</sup> While for EU Member States (and most EU lawyers) these may be logical consequences of a dynamic division of competences, third states (and most public international lawyers) would remind us of the rule of *pacta tertiis nec nocent nec prosunt*; third states are in principle not bound by the EU Treaty as to them it is an agreement between others.<sup>15</sup> From a legal perspective they should not be bored with a complex division of competences that was part of a deal between the EU and its own Member States. Yet, these days one may expect a certain knowledge of the division of competences on the part of third states.

### (ii) The EU and its Member States in the international legal order

Whereas the above discussion may seem like a purely semantic exercise, it points to the core difficulty of EU external relations: who represents the 'European interest' on the international scene – the EU or its Member States? How do these actions relate to each other – are they coherent, mutually supportive or perhaps contradictory? The following excerpt provides a good illustration of the diverse policy areas encompassed by the EU as an international actor. In this Communication, the European Commission provides a succinct summary of the diverse challenges facing the EU in the twenty-first century. Subsequently, it indicates the wide range of policies and instruments the EU has developed in the past sixty years in response, and how they could be improved.<sup>16</sup> Notice how the excerpt makes the distinction between 'Europe' and 'EU'. The latter is a reference to the international organization of which the Commission is an institution, the former is a reference to the EU and its Member States acting together across a vast range of subjects in a challenging global environment.

**Communication from the Commission, *Europe in the World – Some Practical Proposals for Greater Coherence, Effectiveness and Visibility*, Brussels, 8 June 2006, COM(2006) 278 final, p. 2**

Since the end of the Cold War, the world has changed very fast. Europe faces strong economic competition and new threats to its security. While Europe's mature economies have many strengths, they also suffer from sluggish growth and ageing populations. The economic balance of power has shifted. Countries such

<sup>14</sup> Examples include the *Open Skies* cases (e.g. Case C-469/98 *Commission v. Finland* [2002] ECR I-9627), *BITs* cases (Cases C-205/06 *Commission v. Austria* [2009] ECR I-1301; C-249/06 *Commission v. Sweden* [2009] ECR I-1335; C-118/07 *Commission v. Finland* [2009] ECR I-10889), or the *PFOS* case (Case 246/07 *Commission v. Sweden* [2010] ECR I-3317). From a more constitutional point of view, similar arguments that international law should be applied in a way that would not harm the constitutional principles of the EU legal order were made in the *Kadi* case (Joined Cases C-402/05 P and C-415/05 P *Yassin Abdullah Kadi and Al Barakat International Foundation v. Council and Commission* [2008] ECR I-6351).

<sup>15</sup> This rule is laid down in Article 34 VCLT, adopted in Vienna, 22 May 1969 (hereinafter VLCT): 'A treaty does not create either obligations or rights for a third State without its consent.'

<sup>16</sup> The quoted Communication followed in the wake of the Dutch and French referenda rejecting the Draft Constitutional Treaty, and through this document the Commission sought to stimulate pragmatic advances in EU external relations without the need for changes to EU primary law.

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as China and India are growing fast, and there is increasing competition for access to raw materials, energy resources and markets. Terrorism, the proliferation of weapons of mass destruction, regional conflicts, failed states and organised crime remain as pressing as ever.

Europe has the potential to rise to these challenges and to share in the new opportunities created by emerging markets and globalisation. It has an open society that can absorb people, ideas and new technologies. Successive enlargements over the last three and a half decades have demonstrated the EU's ability to promote stability and prosperity and the success of this model of regional integration. With a combined population of 470m and a quarter of the world's income, the EU now accounts for over a fifth of world trade. We provide more than half of development and humanitarian assistance worldwide. European countries make a central contribution to all the important global institutions. The EU model of co-operation and integration is a pole of attraction for countries in our neighbourhood and beyond.

Over the last fifty years the EU has developed a series of external policy instruments, political, economic, commercial and financial, which help us to protect and promote our interests and our values. More recently these instruments have been diversified in areas where member states felt they needed to work in common, and a High Representative for Common Foreign and Security Policy was appointed, to enhance the scope and effectiveness of the EU's external action. Military instruments have been created to reinforce civil instruments of crisis management.

Increasingly the EU's internal policies – for example the environment, energy, competition policy, agriculture and fisheries, transport, the fight against terrorism and illegal migration, dealing with global pandemics – impact on international relationships and play a vital part in the EU's external influence. Conversely, many of Europe's internal policy goals depend on the effective use of external policies.

This paper seeks to . . . make pragmatic proposals to enable the Union to define a strong sense of collective purpose in our external action and to ensure that this is backed by the necessary policy instruments.

The first two paragraphs are a highly dense summary of the vast range of policies pursued by the EU as an international actor. To name but three of them: first, it starts out by referring to access to raw materials and markets in a global competitive environment, which is generally within the purview of the EU's CCP (Article 207 TFEU; see Chapter 9); second, the Communication mentions the challenge of terrorism and the proliferation of weapons of mass destruction, which falls within the scope of the EU's CFSP (Article 24 TEU; see Chapter 11), but certainly also within the scope of Member States' own foreign policies; third and finally, the excerpt refers to the fact that 'we' provide more than half of global development and humanitarian aid, by which the document refers to funds dispersed by the Union and its Member States within their respective development policies (Article 208 TFEU; see Chapter 10). In sum, the excerpt illustrates that the EU 'as an international actor' is an umbrella term for a set of external policies, instruments and actors across a vast range of substantive domains. It also illustrates the ambiguity as to who is acting: the EU alone, the EU Member States, or both simultaneously.

### Article 47 TEU

The Union shall have legal personality.

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Yet, from a legal perspective it makes sense to continue to distinguish between the EU as an international organization of which states can be members, and the (Member) States themselves. In that sense the EU is clearly something different from a collection of twenty-eight states. It has a distinct legal status, both in relation to its own members as well as towards third states. The EU as an international actor then refers to the entity which has express legal personality and capacity to act in the international legal order. What is then characteristic of this international actor, and what makes some define it a '*sui generis*' international actor, is that the EU is neither a state with 'full international powers', nor is it a traditional international organization with limited powers to go against the will of its members. Yet, like any other international organization, the EU is based on the principle of conferred powers, e.g. it can only act where its Member States have given it the competence to do so. But, importantly, the Member States may no longer be allowed to act once competences have been transferred and have been placed 'exclusively' in the hands of the Union. As a consequence, depending on the legal existence, scope and nature of the EU's external powers (a synonym for competence, see Chapters 3 to 5), the Member States have to a lesser or greater degree a prominent role in the formation and execution of international action in the relevant area. Conversely, the role of the EU (as the legal person) and its supranational institutions will then shift depending on the policy area at issue. This is why it possesses significant legal competences and political clout which are distinct from those of its Member States. However, it is not a state, and its Member States remain equally significant on the international scene; the core of EU external relations law is based on this phenomenon.

## 3 THE ARCHITECTURE OF EU EXTERNAL RELATIONS IN THE TREATIES

The EU is a single legal person, but it is not based on a single constitutive document. In the following sections we explain the legal structure of the TEU and the TFEU, with specific emphasis on how external relations are organized in EU primary law. We have pointed to the notion of the EU as an international actor functioning as an umbrella term for a set of external policies, instruments and actors across a vast range of substantive domains pursued by a *sui generis* entity. Figure 2 schematically sets out the most important legal components of this entity to visualize its constitutive legal parts, both Member States and EU Treaties.<sup>17</sup>

Figure 2 illustrates that the EU is an international organization with legal personality (Article 47 TEU), which exists legally distinct from its Member States. It also shows that the EU is based on the TEU and the TFEU. These are not in a relationship of hierarchy, but have the same legal value, and together they constitute 'the Treaties' on which the Union is founded (Articles 1 TEU and 1 TFEU). Not included in the figure are the Charter of Fundamental Rights ('the Charter') and the Treaty establishing the Atomic Energy Community ('EURATOM'). The latter still exists as a separate legal instrument which has not been merged with the TEU and TFEU. Though it shares the EU's institutions, EURATOM exists as a distinct legal personality from the EU. In this book the focus is on the Union as based on the TEU and TFEU, and we only discuss EURATOM and the Charter in an ancillary fashion.

<sup>17</sup> In referring to the Treaties, this book will use the following acronyms: For the pre-Lisbon, post-Nice situation this text refers to 'TEC' for the EC Treaty, and 'EU' for the EU Treaty. For the post-Lisbon situation the text uses 'TFEU' for Treaty on the Functioning of the Union, and 'TEU' for the Treaty on European Union.

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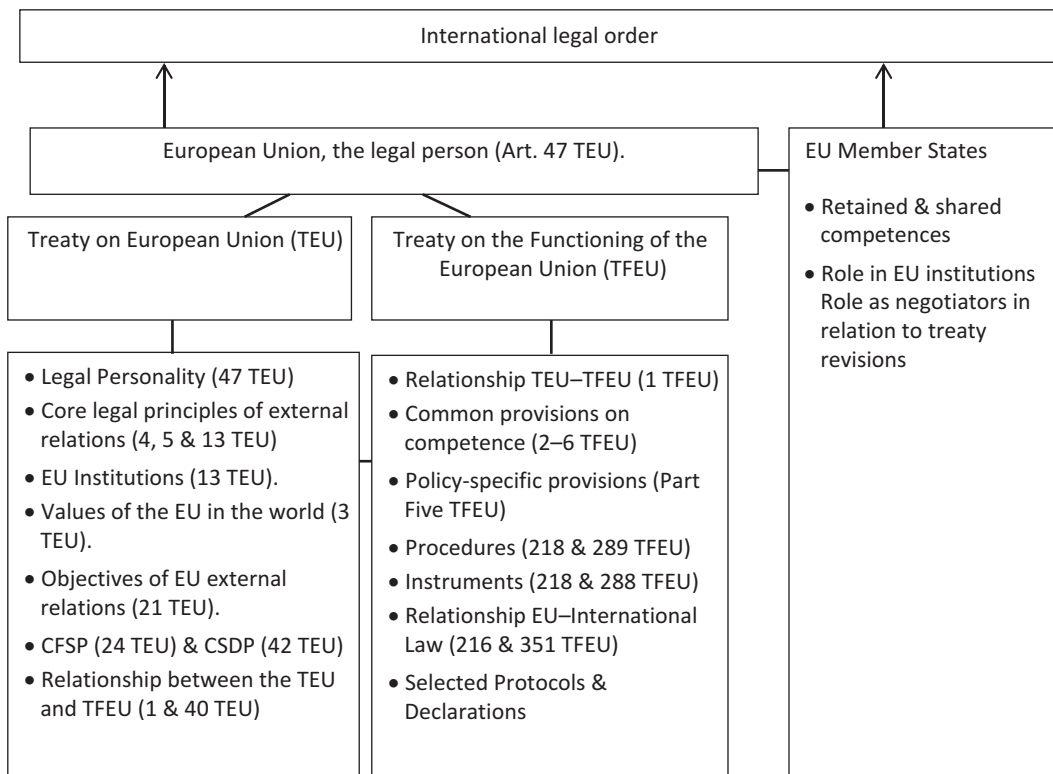


Figure 2 Treaty architecture of EU external relations

The TEU with its fifty-five articles is the shortest of the two, and is considered the framework treaty. Namely, the legal instrument which sets out the most fundamental legal properties of the EU: the aims and objectives for which it was set up, which of its organs has what role in making decisions binding the legal person, essential principles of conduct within the organization, how to leave or become a member of the Union, and how its constitutional rules can be changed. In the TEU the key provisions of EU external relations are those stating the core legal principles governing all EU action, including its international relations; the values and objectives of the EU in conducting its international relations; the EU institutions' roles in pursuing EU foreign policy; and the relationship between the TEU and the TFEU. For historical reasons (examined in Chapter 11), the TEU also contains the rules and procedures governing the EU's CFSP, the only substantive EU competence to be found in the TEU. Similarly, for reasons pertaining to the drafting of the Treaty of Lisbon following the failed Constitutional Treaty, the TEU contains an article on the European Neighbourhood Policy (ENP), examined in Chapter 15.

In comparison, the TFEU, as is clear from its name and with its 358 articles, 'fleshes out' the functioning of this international organization: in which areas the EU institutions can adopt measures in pursuit of the external objectives set out in the TEU, which procedures should its institutions adhere to and which (legally binding) instruments can they use. Furthermore, the TFEU contains crucial provisions governing the relationship between the EU and international law both as regards itself and its own international agreements, and the legal position of the



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Member States and their international commitments. Finally, relevant to both the TEU and the TFEU are the legally binding Protocols attached to the TFEU, and the political Declarations, which serve to interpret or contextualize some of the provisions in the TEU and TFEU.

The following two sections provide a broad overview of these essential provisions, first of the TEU and then of the TFEU. This will provide the reader with an essential roadmap to understanding the remaining chapters of this book.

### (i) The Treaty on European Union: a bird's-eye view

#### (a) Conferral, loyalty and institutional balance

While one should be aware that all principles of EU constitutional law remain pertinent for EU external relations, three in particular are the cement of the structure underpinning EU external relations: the principle of *conferral*, the obligation of *loyalty* and the principle of *institutional balance*.

First, the EU is established amongst the Member States as High Contracting Parties, and the Member States *confer competences* on the EU to attain *objectives they have in common* (Article 1 TEU). This means that while the EU has a fully fledged legal personality to act and contract in the world, it is legally permitted to act only where the Treaties give the EU powers to do so<sup>18</sup> (Articles 1; 4(1); 5(2) TEU).<sup>19</sup> It is thus a key defining feature of EU external relations that the Union shares external objectives with its Member States, but that it has limited legal capacity to pursue these objectives: the principle of conferral.

The second fundamental principle is the *loyalty obligation* of Article 4(3) TEU.<sup>20</sup> The loyalty obligation is crucial because it 'reflects a more general federal principle according to which each level and unit of government must always act to ensure the proper functioning of the system of governance as a whole'.<sup>21</sup> Looking at Figure 3 below, the loyalty obligation is thus the legal 'glue' which holds all composite parts together. The general provision of Article 4(3) TEU requires that Union and the Member States loyally and reciprocally cooperate in carrying out the tasks that flow from the Treaties. Article 13(2) imposes a similarly reciprocal obligation between the institutions, and Article 24(3) reiterates the same obligation in the field of CFSP.

The third principle which time and again rears its head in EU external relations is also stated in Article 13(2) TEU, the *principle of institutional balance*. In Article 13(1) TEU we find the list of seven institutions: the European Parliament, the European Council, the Council of Ministers, the European Commission, the Court of Justice of the European Union (CJEU), the European Central Bank and the Court of Auditors. The principle of institutional balance then does not mean that there is a 'balance of powers' whereby each of these seven institutions can be labelled as being part of the executive, legislative and judicial branch.<sup>22</sup> Rather, its meaning is more formal in nature and entails that each of these institutions has been given a 'specific function' and set of

<sup>18</sup> The words 'power' and 'competence' of the EU are synonymous and used interchangeably.

<sup>19</sup> Underlining its fundamental nature, the principle of conferral is repeated in different formulations dozens of times throughout the TEU and TFEU.

<sup>20</sup> With *lex specialis* provisions in Articles 13(2) (institutions) and 24(3) TEU (CFSP), as well as the specific iterations of the loyalty obligation in the articles on development policy, technical cooperation and humanitarian aid in Part V TFEU.

<sup>21</sup> G. de Baere, *Constitutional Principles of EU External Relations* (Oxford: Oxford University Press, 2008), p. 253.

<sup>22</sup> J.-P. Jacqué, 'The Principle of Institutional Balance' (2004) 41 *Common Market Law Review*, 2, 383.

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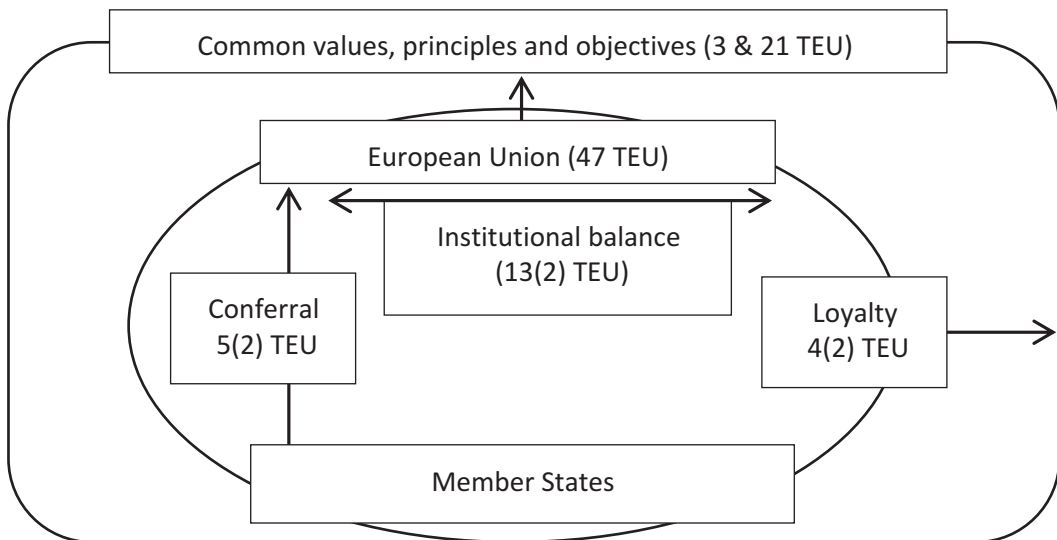


Figure 3 Conferral, institutional balance, loyalty and objectives

competences in the decision-making process of the Union (Articles 13–19 TEU). The principle of institutional balance simply means that this division of powers established by the Treaties is to be respected.

These three principles are deeply intertwined in the daily life of EU foreign policy-making. We have seen previously in this chapter that EU external relations are a quilt of different policies in areas ranging from international trade through migration to terrorism and global security. Within this policy quilt, the EU as a legal person has been *conferred* a limited set of competences by its Member States. Subsequently, in the exercise of these competences, the Treaties give specific roles to each of the EU institutions to exercise these competences in light of Treaty objectives. Finally, while exercising their respective competences, not only the institutions have to cooperate loyally between themselves, but also the EU and its Member States. Looking at these legal principles through the prism of coherence (see Preface), we can say that conferral is a principle relating to vertical coherence (assigning who does what in the EU–Member State relationship), institutional balance relates to horizontal coherence (who does what within the Union itself), and the duty of cooperation pertains to horizontal and vertical coherence at the same time (all have to be loyal to each other).

Figure 3 illustrates how the three main principles are positioned vertically and horizontally, and how they interact with each other. It adds an important element to the functioning of the three fundamental principles of EU external relations law: *values*, *principles* and *objectives*. While the EU has been given competences to act in certain fields, it cannot use those competences for any objective it pleases. Indeed, the EU has been set up for a specific purpose. The TEU sets out that purpose in Articles 2, 3 and 21 TEU, which list the set of values, interests, principles and objectives on which the Union is based, and in pursuit of which it has been conferred certain competences. Article 2 TEU defines the Union's self-perception – its identity, namely that it is based on a number of foundational values such as respect for human dignity, freedom, democracy, equality, the rule of law and so on. This provision is not specific to EU external relations, and for our