1 The EU's Normative Control and International Responsibility

1.1 Introduction

Whereas article 47 TEU might have put to rest the discussions on the international legal personality of the EU,[1] its scope continues nevertheless to be contested given its limited nature.[2] This becomes especially clear in relation to the debates on the EU's international responsibility.[3] The extent to which the EU can be considered an autonomous international subject seems to rest on its responsibility under international law.[4] Therefore, because the EU's international responsibility is inextricably linked to its international personality, it is necessary to analyse certain aspects of the latter to fully comprehend how the former should be articulated. More specifically, it is fundamental to understand how the EU assumes an international obligation, and how it implements it.

By examining how the EU becomes bound by an international obligation and the consequences that follow from it, this chapter hopes to draw a picture of how the relations between the EU and its Member States

[1] Panos Koutrakos, *EU International Relations Law* (2nd edn, Hart 2015) 14.

[2] On the limited nature of the personality of the EU and other individual organizations (IOs): Henry G. Schermers and Niels M. Blokker, *International Institutional Law: Unity within Diversity* (4th edn, Martinus Nijhoff 2003) 993 – 'to be an international person means only to be capable of bearing rights and duties. No answer is given to the question of what rights and duties individual organizations have.' Cf. Jan Klabbers, *An Introduction to International Institutional Law* (Cambridge University Press 2009) 50.

[3] Gleider I. Hernández, 'Beyond the Control Paradigm? International Responsibility and the European Union' [2014] 15 *Cambridge Yearbook of European Legal Studies* 643, 648. Ottavio Quirico, 'The International Responsibility of the European Union: A Basic Interpretative Pattern' [2013] 63 *Hungarian Yearbook of International and European Law* 63.

[4] Daniel Müller, 'Union Européenne et Responsabilité International' in Myriam Benlolo-Carabot, Ukas Candas and Eglantine Cujo (eds), *Union Européenne et Droit International En l'honneur de Patrick Dlaillier* (Pedone 2012) 340.

influence their international responsibility. In other words, if first we understand when and to what extent the EU and its Member States are bound by the international obligation they have violated, it will be easier to understand when the EU, in implementing its law, simultaneously breaches an international obligation binding upon on it.

For that reason, this chapter is divided into four sections. The first section sets up the debate by entering into the general discussion on the international legal personality of the EU and the consequences both for the EU and its Member States. The second section focuses on how the EU becomes bound by international agreements and the effects that those agreements have within the EU legal order. The third section examines how the EU's multi-level system of implementation operates, because only by understanding how EU law is implemented will it be possible to comprehend how the rules of attribution should work when confronted by an EU and/or a Member State's breach of an international agreement. The fourth part of this chapter provides some concluding thoughts on the EU's responsibility in light of its international personality as described in the previous sections.

1.2 The International Legal Personality of the EU and Its Member States

1.2.1 The EU as a Person under International Law as a Possible Way to Establish the International Responsibility of the EU

Like most IOs,[5] the EU's legal personality can be described as a sort of transparent veil[6] that leaves its institutional structure with its Member

[5] In *Opinion 2/13*, while the CJEU recognized that the EU is, under international law, precluded by its very nature from being considered a state, it has still to provide a positive definition of what the EU might be if not a state, *Opinion 2/13* Re: Accession of the European Union to the ECHR [nyr] ECR para. 156. Van Vooren and Wessel argue that, in principle, it should be considered an IO, Bart Van Vooren and Ramses A. Wessel, *EU External Relations Law: Text, Cases and Materials* (Cambridge University Press 2014) 4. Klabbers mentions how the EU is often defined as the most developed form of IO, Jan Klabbers, 'Contending Approaches to International Organizations: Between Functionalism and Constitutionalism' in Jan Klabbers and Asa Wallendahl (eds), *Research Handbook on the Law of International Organizations* (Edward Elgar 2011) 24. Cf. Marjorie Beulay, 'L'Union européenne comme organisation international' in Myriam Benlolo-Carabot, Ulas Candas and Eglantine Cujo (eds), *Union européenne et Droit international* (Pedone 2012) 95; Pierre Klein, *La responsabilité des organisations internationales dans les ordres juridiques internes et en droit de gens* (Bruylant 1998) 6. By contrast, De Baere argues that 'the European Union is unique as a polity organized along federal lines but with fully fledged States as its component political entities. The tension between the self-consciousness of the Member States and their constitutional relationship within the

States partially visible to third parties.[7] Depending on how the relationship between the EU and its Member States is construed, the EU's veil will be more transparent or opaque. The more transparent the veil is, the less autonomy the IO would have from its Member States. By contrast, the opaquer the veil of the legal personality is, the more autonomous the IO will be, and consequently a stronger case for its sole responsibility under international law could be made. Therefore, which elements must be present in an IO so as to make its legal personality more opaque and, consequently, more independent from its Member States?

The explicit endowment of that legal personality in the constituent instrument could be seen as a useful guideline in this respect. Inasmuch as the Member States of an IO have granted the latter with personality, this would indicate that they wished to create an entity separate from them, and that may play a role when deciding whether the former should be held responsible for the activities of the IO.[8] The granting of international legal personality to an IO would mean that its institutional veil would allow

Union is specially pronounced in the foreign policy field', Gert De Baere, *Constitutional Principles of EU External Relations* (Oxford University Press 2008) 1. Similarly, Schütze argues that the EU is a federation of states, Robert Schütze, *Foreign Affairs and the EU Constitution* (Cambridge University Press 2014) 46. The international practice of the EU is not of much help in establishing its international nature either. On one hand, the EU has contributed to the works of the ILC in relation to the responsibility of IOs since it holds that the outcome of the ILC's works may have particular relevance to its own activities (56th sess., 25 June 2004) UN Doc A/CN.4/545, 5. On the other hand, in its day-to-day practice, the EU does not refer to any international instrument regulating the conduct of IOs. For instance, it refers to the 1969 Vienna Convention on the Law of the Treaties between States (VCLT) and not to the 1989 Vienna Convention on the Law of the Treaties between States and International Organizations or between International Organizations (VCLT II). It is noteworthy that the CJEU explains that it applies the VCLT insofar as the rules are an expression of general international customary law. Yet, it avoids referring to the EU as an IO: 'the fact that the Vienna Convention does not apply to international agreements concluded between States and *other subjects of international law* [emphasis added] is not to affect the application to them of any of the rules set forth in that convention to which they would be subject under international law independently of the convention,' Case C-386/98 Brita GmbH v Hauptzollamt Hamburg-Hafen [2010] ECRI-01289 para. 40. See Jan Klabbers, *The European Union in International Law* (Pedone 2012), 7.

6 Cf. Catherine Brölmann, *The Institutional Veil in Public International Law: International Organisations and the Law of Treaties* (Hart 2007), Prosper Weil, 'Le droit international en quête de son identité: cours général de droit international public' [2015] 237 *Recueil de Cours de la Académie du Droit International* 370.

7 Catherine Brölmann, 'International Organizations and Treaties' in Jan Klabbers (ed), *Research Handbook on International Organizations: Contractual Freedom and Institutional Constraint* (Edward Elgar 2011) 286.

8 Klabbers, (n 2) 50; C. F. Amerasinghe, *Principles of the Institutional Law of International Organizations* (Cambridge University Press 2005) 68.

the IO to bear responsibility in certain circumstances. On the contrary, the absence of legal personality would indicate that the IO's Member States could be liable for the actions of the IO. Consequently, taking into account that article 47 TEU confers the EU legal personality and that it entails the capacity to establish contractual links with third countries,[9] the EU would logically also be held responsible for breaching those links.

Yet, while undoubtedly the EU's responsibility under international law stems from the fact that it has been vested with a legal personality,[10] its precise scope cannot be established on the basis of its international legal personality alone.[11] By way of example, the EU, like any other IO, requires that Member States carry out its mission due to the limited capabilities and resources put at its disposal.[12] In an nutshell, EU law is mainly implemented by EU Member States and not by the EU itself.[13] As a result, any lack of conformity between a piece of EU law and an international obligation will more likely be evident when EU Member States are implementing that piece of EU law. Consequently, should the EU Member States bear responsibility for acts committed when implementing EU law? The mere fact that the EU has an international legal personality does not answer that question. It is necessary to establish the scope of that personality by analysing the relationship between the EU and its Member States when implementing EU law.

Moreover, there are situations where the subjective nature of an IO (its consideration as an independent international actor from its members) may compete with the nature of its legal system.[14] Regardless of its legal personality, the EU continues to be a forum wherein its Member States co-operate intensively to pursue a set of common objectives.[15] For instance, the Council, one of the EU's legislative bodies, is constituted of representatives of the Member States.[16] Member States acting as the Council can adopt legislation that could violate their international

[9] *Case 22/70 Commission v Council (ERTA)* [1971] ECR 263 para. 14.
[10] Article 2 ARIO seems to support this idea. See Chapter 2.
[11] See Chapter 2. Cf. José Manuel Cortés Martín, *Las Organizaciones Internacionales: Codificación y Desarrollo Progresivo de su Responsabilidad Internacional* (Instituto Andaluz de Administración Pública 2008) 79; Antoni Pigrau Solé, 'La Responsabilidad Internacional de la Comunidad Europea' in Fernando M. Mariño Menéndez (ed), *Acción exterior de la Unión Europea y comunidad internacional* (Boletín Oficial del Estado 1998) 173.
[12] Cf. Klabbers, (n 2); Schermers and Blokker, (n 2). [13] See Chapter 2.
[14] Catherine Brölmann, 'A Flat Earth? International Organizations in the System of International Law' [2001] 70 *Nordic Journal of International Law* 319, 320.
[15] Klabbers, (n 2) 25. [16] Article 16.2 TEU.

obligations. In such situations, the question of the responsibility of the EU or its Member States could revolve around the issue of the *volonté distincte* of the EU and the extent to which the Member States' control of the EU's machinery, and not around whether the EU is an international legal person.[17] In fact, the discussion would concern the possibility of EU Member States hiding behind the EU's personality to avoid their responsibility under international law.[18] Whereas such a scenario, where the EU is no more than the concerted will of its Member States,[19] is difficult to argue in the current state of the EU's integration process, it shows nonetheless how the constitutional relationship between the EU and its Member States plays a fundamental role in understanding the precise scope of the EU's international responsibility and, by extension, its international personality.[20]

[17] Jan Klabbers, 'The Changing Image of International Organizations' in Jean-Marc Coicaud and Veijo Heiskanen (eds), *The Legitimacy of International Organizations* (United Nations University Press 2001) 226. Rosalyn Higgins, 'Report for Institute de Droit International: The Legal Consequences for Member States of the Non-fulfilment by International Organizations of Their Obligations toward Third Parties' in Rosalyn Higgins (ed), *Themes and Theories: Selected Essays, Speeches, and Writings in International Law*, vol 2 (Oxford University Press 2009) 841. Brölmann, (n 6) 253.

[18] See Chapter 3.

[19] Cf. Robert Schütze, 'On "Federal" Ground: The European Unions as an (inter)National Phenomenon' [2009] 46 *Common Market Law Review* 1069.

[20] By virtue of how this relationship is articulated, the EU is often defined as sui generis both from the perspective of the EU as a legal system (Bruno Simma, 'Of Planets and the Universe: Self-Contained Regimes in International Law' [2006] 17 *European Journal of International Law* 483, 516; Alain Pellet, 'Les fondements juridiques internationaux du droit communautaire' [1994] V(2) *Collected Courses of the Academy of European Law* 201, 249; Bruno De Witte, 'The Emergence of European System of Public International Law: The EU and Its Member States as Strange Subjects' in Jan Wouters, André Nollkaemper and Erika De Wet (eds), *The Europeanisation of International Law* (T. M. C. Asser Press 2009) 40) and from the perspective of an international subject (Allan Rosas, 'The European Court of Justice and Public International Law' in Jan Wouters, André Nollkaemper and Erika De Wet (eds), *The Europeanisation of International Law* (T. M. C. Asser Press 2009) 71; Christian Timmermans, 'EU and International Public Law' [1999] 4 *European Foreign Affairs Review* 181, 182). Yet, the sui generis label does not help in understanding how international law should deal with the special features of the EU (Eileen Denza, *The Intergovernamental Pillars of the European Union* (Oxford University Press 2002) 1; Schütze, (n 5) 34). Regardless of whether the EU does or does not fit easily into traditional international law classifications (Rosas, 'The European Court of Justice and Public International Law' 71), or whether it is the only Regional Economic Integration Organization (REIO) (De Witte, 'Emergence of European System ' 40), there is no doubt that the EU is an international subject with its own legal personality that, by virtue of the powers conferred to it, can be bound by international law, breach it, and be held responsible for those breaches where the extent of the EU's responsibility would boil down to how its relationships with its Member States are characterized.

1.2.2 An Examination of the EU's Treaty-Making Power as a Way to Establish the Scope of the EU's Responsibility under International Law

The limited and functional nature of the EU's personality shows how the responsibility of the EU under international law is inextricably linked to the division of competences between the EU and its Member States.[21] In other words, the EU can be responsible inasmuch as it has competence. This is an expression both of the limited nature of the EU's legal personality and of the principle of conferral as enshrined in article 5 (2) TEU. As the CJEU put it in *Opinion 2/94*, 'the [Union] is to act within the limits of the powers conferred upon it'.[22] The principle of conferral obviously entails a limitation to the powers of the EU,[23] and to a certain extent, it could be seen as useful to delineate the external contours of the EU's personality.[24] Yet, could an examination of the EU Treaties shed any light on the extent of the EU's international responsibility?

Given that the ability of the EU to conclude international agreements is one of the basic expressions of its capacity of representation on the international plane,[25] and that it is also a pre-requisite for international responsibility to arise, it seems rather obvious to note that the EU's treaty-making power arises only when the competence to enter into international agreements exists.[26] Furthermore, since the Lisbon Treaty introduced a

[21] Jean-Victor Louis, 'La personnalité juridique internationale de la Communauté et de l'Union Européenne' in Jean-Victor Louis and Marianne Dony (eds), *Commentaire J Megret Le Droit de la CE et de l'Union Européenne Relations Exterieures*, vol 12 (Université de Bruxelles 2005) 41.

[22] Case *Opinion 2/94 Re: Accession to the ECHR* [1996] ECR I-1759 para. 23.

[23] Article 5.2 TEU: '. . . the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein'.

[24] Giorgio Gaja, 'How Does the European Community's International Responsibility Relate to Its Exclusive Competence?' in *Studi di Diritto Internazionale in Onore di Gaetano Arangio-Ruiz*, vol II (Editoriale Scientifica 2004) 747; Allan Rosas, 'International Dispute Settlement: EU Practices and Procedures' [2003] 46 *German Yearbook of International Law* 284. See Chapter 4.

[25] *Case 6/64 Costa v ENEL* [1964] ECR 583 para. 3. Eric Stein, 'External Relations of the European Community: Structure and Process' [1991] 1 *Collected Courses of the Academy of European Law* 115, 131. In this same vein, the ICJ, when analysing the legal personality of the United Nations, stated that 'whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the [United Nations] Organization must depend upon its purposes and functions as specified or implied in its constituted documents and relevant practice.' From this perspective, the EU, as any other IO, can enter into international agreements only to the extent that it has competence to do so, *Reparation for Injuries Suffered in the Service of United Nations (Advisory Opinion)* [1949] ICJ Rep 174.

[26] Alan Dashwood, 'Implied External Competence of the EC' in Martti Koskenniemi (ed), *International Law Aspects of the European Union* (Kluwer Law International 1998) 120.

catalogue of EU competences, the answer to the EU's international responsibility could be found in that catalogue.[27] Yet, the scenarios in which this competence arises are not as straightforward as *Opinion 2/94* or article 5 (2) TEU might convey.[28] Instead, as it will be shown, the articulation of the EU's treaty-making power is far from clear in practice.

In this regard, article 216 TFEU would be the perfect expression of the inherent complexity of the EU's treaty-making powers. The provision identifies four situations by which the EU can enter into an international agreement: (1) where the Treaties so provide (constitutional express powers); (2) where the conclusion of an agreement is necessary to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties (external flexibility clause); (3) where it is provided for in a legally binding Union act (WTO Doctrine); or (4) where it is likely to affect common rules or alter their scope (ERTA-type implied powers). Out these four scenarios, two of them could be considered to be two very different manifestations of the principle of conferral (1 and 3) while the other two (2 and 4) would be expressions of the doctrine of implied powers.

1.2.2.1 EU Express Powers

The inherent logic of the constitutional principle of conferral entails that the EU's power to conclude an international agreement stems from the Treaties. However, that does not necessarily require the existence of a one-stop shop for the EU's treaty-making competences. Any reading of article 216 TFU makes that clear: there is not a single legal basis for the EU to conduct its external relations. The EU Treaties adopt a sectoral approach to its treaty-making power, in which the Treaties expressly confer on the EU the competence to act externally as regards certain policy areas.[29] By virtue of these legal bases, the EU can enter into international agreements and, in the case of a breach, can be subject to international responsibility:

- CFSP: Article 37 (ex Article 24) TEU;
- European neighbourhood policy: Article 8 (2) TEU;
- Common customs tariffs: Article 32 (a) (ex Article 26) TFEU;
- Agriculture: Article 40 (2) (ex Article 34.2) TFEU;

[27] For a critical analysis of the catalogues, see Lucia Serena Rossi, 'Does the Lisbon Treaty Provide a Clearer Separation of Competences between EU and Member States?' in Andrea Biondi, Piet Eeckhout and Stefanie Ripley (eds), *EU Law after Lisbon* (Oxford University Press 2012) 102.

[28] Robert Schütze, 'Lisbon and the Federal Order of Competences: A Prospective Analysis' [2008] 33 *European Law Review* 709, 722.

[29] De Baere, (n 5) 11.

- Capital and payments: Article 63 (ex Article 57) TFEU;
- Asylum: Article 78 (2) (g) TFEU;
- Monetary policy: Article 138 (ex Article 111.4) TFEU;
- Education: Article 165 (3) (ex Article 149.3) TFEU;
- Vocational training: Article 166 (3) (ex Article 150.3) TFEU;
- Culture: Article 167 (3) (ex Article 151.3) TFEU;
- Public health: Article 168 (3) (ex Article 152.3) TFEU;
- Trans-European networks: Article 171 (3) (ex Article 155) TFEU;
- Research and technical development: Article 180 (ex Article 164) and Article 186 (ex Article 170);
- Environment: Article 191 (4) (ex article 174) TFEU;
- Common commercial policy: article 207 (ex article 133) TFEU;
- Development cooperation: article 209 (2) (ex article 177) TFEU;
- Economical and financial cooperation with third countries: article 212 (3) (ex article 181 A) TFEU;
- Humanitarian aid: article 214 (4) TFEU;
- Relations with other IOs: article 220 (ex articles 302–304 TEC) TFEU;
- Association agreements: article 217 (ex article 310 TEC) TFEU.

However, although at first sight, this list could be seen as a useful guideline to understanding where the EU can be held responsible under international law, a closer look at the inner workings shows otherwise. The common commercial policy (CCP) constitutes a good example of how the existence of an EU external competence does not settle per se the question on the competence to conclude an international agreement. Article 207 TFEU identifies the areas covered by the CCP competence like the 'the conclusion of tariff and trade agreements relating to . . . foreign direct investment'.[30] Yet the exact scope of these areas is not that clear.[31] For instance, the definition of foreign direct investment (FDI) would call for three different interpretations on its scope. A first possible way to approach the concept of FDI as enshrined in article 207 TFEU is to understand that the framers have coined a new, autonomous and very broad concept of foreign direct investment. This new definition of FDI would cover all aspects linked to investment protection covering FDI

[30] For an in-depth analysis of the interplay between investment arbitration and EU responsibility, see Chapter 7.
[31] Piet Eeckhout, *EU External Relations Law* (2nd edn, Oxford University Press 2011) 63.

sensu stricto as well as portfolio investment, dispute settlement and even expropriation.[32]

A second possible interpretation of the definition of FDI would follow the international definition of FDI that excludes portfolio investments from its scope. This definition of FDI can be found in multiple Organisation for Economic Co-operation and Development and International Monetary Fund instruments.[33] Moreover, it would also be in consonance with the definition of direct investment that the CJEU has developed in its internal market case law.[34] This reading of the FDI competence would entail that not all aspects of investment protection would be covered by the CCP. Therefore, those parts not covered by the CCP would be covered either by other EU implied powers or by EU Member States' competences.

The third possible understanding of the scope of the FDI as enshrined in the CCP is the most restrictive one of the three. Based on a literal reading of article 206 TFEU, it would argue that the EU's exclusive competence does not cover all aspects related to FDI but instead only covers the issue of admission of FDI. Article 206 TFEU provides that among the CCP objectives, the progressive abolition of restrictions on international trade and on foreign direct investment is the aspect of FDI that has been entrusted to the EU.[35] Consequently, post-admission measures would fall outside the scope of the CCP. This narrow reading of FDI under the CCP would very much restrict the EU's powers in the field of FDI. This discussion shows how, even in areas in which the Treaties provide express treaty-making powers to the EU, there might still be plenty of uncertainties as regards those powers. Therefore, it seems rather improbable to understand the extent of the EU's international responsibility just by knowing which external powers have been conferred to the EU in the Treaties. In fact, even if the CJEU delimits the scope of certain competence, the uncertainties will still remain.[36]

[32] The Commission seems in favour of this position given its recent request for an Opinion to the CJEU on the scope of the competence to conclude a free trade agreement with Singapore. See www.statewatch.org/news/2015/feb/eu-com-fta-cjeu-com-8218-14.pdf.

[33] Eeckhout, (n 31) 64.

[34] For an in-depth analysis, see Angelos Dimopoulos, *EU Foreign Investment Law* (Oxford University Press 2011).

[35] Jan Asmus Bischoff, 'Just a Little Bit of "Mixity"? The EU's Role in the Field of International Investment Protection Law' [2011] 48(5) *Common Market Law Review* 1527.

[36] See, for instance, the different ways in which the Court delimited the intersection between trade and environment as regards the conclusion of international agreements in these three cases: *Opinion 2/00 Re: Cartagenal Protocol* [2001] ECR I-09713, *Case C-94/03*

Moreover, article 216 (1) TFEU accepts that legislative acts can also provide the EU with power to conclude international agreements. From a constitutional point of view, there is a fundamental conceptual difference between Treaty powers and those provided in a legislative act. Express Treaty powers correspond to the traditional conception of conferral by which the EU can only expand its competences by virtue of a Treaty change. By contrast, those powers envisaged in a Union legislative act would not correspond to that traditional understanding of the principle of conferral.[37]

Moreover, this provision seems to codify the 'WTO doctrine'[38] by which, whenever the EU has, in its internal legislative acts, expressly conferred on its institutions powers to negotiate with non-member countries, it acquires exclusive external competence in the spheres covered by those acts.[39] Though undoubtedly this provision does not give carte blanche to the EU institutions as regards the possibility to conclude international agreements,[40] it nevertheless shows the broad express treaty-making powers that the EU enjoys.[41] Moreover, it adds another layer of complexity in the exercise of a priori identifying when the EU can bear responsibility under international law based on the powers it has.

1.2.2.2 The Dynamic Nature of the EU's Treaty-Making Powers

Furthermore, article 216 (1) TFEU recognizes the shortcomings that the conferred nature of the EU can have when pursuing the objectives for

Commission v Council (Rotterdam Convention) [2006] ECR I-1, *Case C-178/03 Commission v Parliament and Council (Dangerous Chemicals Regulation)* [2006] ECR I-107. Cf. Panos Koutrakos, 'Case C-94/03, Commission v. Council, Judgment of the Second Chamber of 10 January 2006 [2006] ECR I-1; Case C-178/03, Commission v. Parliament and Council, judgment of the Second Chamber of 10 January 2006, [2006] ECR I-107' [2007] *Common Market Law Review* 171.

37 See Schütze, (n 5) 311. 38 Ibid.

39 *Opinion 1/94 Re: Competence of the Community to conclude international agreements concerning services and the protection of intellectual property* [1994] ECR I-05267 para. 95.

40 Marise Cremona, 'Who Can Make Treaties? The European Union' in Duncan B. Hollis (ed), *Oxford Guide to Treaties* (Oxford University Press 2012) 101.

41 A. G. Kokott has argued in favour of a broad approach to this treaty-making power in *UK v Council*. The case concerned the Council's decision to introduce, in its Association Agreement with Turkey, certain provisions on the coordination of social security systems which draw upon the rules applying within the EU and the legal basis required for the adoption of that act. Kokott argued that inasmuch as the Association Agreement with Turkey and its Additional Protocol are two agreements concluded by the EU, they are to be regarded as 'legally binding Union acts' within the meaning of in Article 216(1) TFEU. Therefore, recourse to provision where the conclusion of an international agreement is provided in another international agreement is conceivable. This broad reading of Article 216 (1) TFEU was not addressed by the CJEU, which remained silent in the whole discussion. *Case C-81/13 UK v Council* [nyr] ECR, Opinion of the AG, para. 108.