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NOTE

From:	Presidency
To:	Delegations
Subject:	Case-law of the Court of Justice of the European Union: judgment of the Court (Grand Chamber) in Case C-551/21, Commission against Council, of 9 April 2024 (<i>signing of international agreements</i>) - Note by the Presidency

The Presidency would like to bring to the attention of delegations the [judgment](#) of the Court of Justice (Grand Chamber) in Case C-551/21, Commission against Council, of 9 April 2024.

The case concerned the question who should sign international agreements on behalf of the Union: a representative of the Commission, a representative of the Council, or both.

This question is of relevance for work in COPEN. For example, the recent Agreement between the EU and Armenia, for judicial cooperation of the Armenian authorities with Eurojust, was signed on 5 April on behalf of the Union by both a representative of the Commission (the European Commissioner for Justice) and a representative of the Council (the Belgium Minister for Justice).

In its judgment, the Court concludes that, in a situation where the Council has authorised the signing of an international agreement which is not within the scope of the CFSP or of ‘other cases provided for in the Treaties’, it is for the Commission to ensure the actual signing of that agreement.

The key paragraphs read as follows:

- 61 It must be borne in mind, at the outset, that the Treaties set up a system of allocation of powers among the EU institutions, assigning to each institution its own role in the institutional structure of the European Union and the accomplishment of the tasks entrusted to the European Union (judgments of 22 May 1990, *Parliament v Council*, C-70/88, EU:C:1990:217, paragraph 21, and of 25 October 2017, *Commission v Council (WRC-15)*, C-687/15, EU:C:2017:803, paragraph 40).
- 66 In accordance with that allocation of powers, and as is confirmed by Article 218(2) and (5) TFEU, it is for the Council, on a proposal by the negotiator, to authorise the signing of an international agreement on behalf of the European Union. (...)
- 67 The decision authorising the signing of an international agreement does not include, however, the later act of the signing itself of that agreement. That signing must, following the authorisation, be done after all the necessary steps have been taken to that end, including in respect of the third country concerned. Those steps include the issuing of the full powers designating the person or persons empowered to sign the agreement on behalf of the European Union.
- 68 In order to determine which institution, under EU law, has the power of designating the signatory of an international agreement, reliance must be placed upon the main characteristic of that designation, which is to empower one or more persons to act on behalf of the European Union with regard to the third country concerned.
- 72 The signing, by the person designated for that purpose, of an international agreement on behalf of the European Union properly expresses the declaration of the European Union's intention, as defined by the Council, with regard to the third party with which that agreement has been negotiated.

- 73 The wording of the sixth sentence of Article 17(1) TEU, according to which the Commission is to ‘ensure the Union’s external representation’, thus tends to establish that that provision confers on the Commission the power to take, outside of the CFSP and unless the Treaties provide for a different allocation of powers on that point, any action that, following a decision of the Council authorising the signing of an international agreement on behalf of the European Union, ensures that that signature is given.
- 77 Therefore, having regard to the sixth sentence of Article 17(1) TEU, it must be held that the steps necessary for the purpose of the signing of an international agreement after that signing has been authorised by the Council, including the step of designating the signatory, outside the CFSP, fall within the scope of the Commission’s power to ‘ensure the Union’s external representation’, unless the EU Treaty or the FEU Treaty allocate the power to organise that signing to another institution of the European Union. The latter reservation, reflected in the phrase ‘other cases provided for in the Treaties’, constitutes, as the Advocate General observes in point 72 of her Opinion and as follows from the wording of the sixth sentence of Article 17(1) TEU, an exception to the Commission’s powers provided for in that provision.
- 80 Although the procedure for the negotiation, signing and conclusion of international agreements laid down in Article 218 TFEU may, as a whole, be regarded, as the Council and the governments supporting it observe, as a ‘continuum’, the fact remains that, during each of the steps of that procedure identified in that article, each institution must, subject only to the exceptions expressly provided for, exercise its powers as allocated by the Treaties, and must do so in accordance with the principle of institutional balance recalled in paragraph 62 of the present judgment. As regards the designation of the signatory of an international agreement, Article 218(5) TFEU does not lay down, in favour of the Council, an exception to the competence that the Commission derives from the sixth sentence of Article 17(1) TEU.
- 81 It follows that, in a situation where the Council has authorised the signing of an international agreement which, as in the present case, is not within the scope of the CFSP or of ‘other cases provided for in the Treaties’ it is for the Commission, pursuant to the sixth sentence of Article 17(1) TEU, to ensure the actual signing of that agreement.

- 82 That finding is not undermined by the fact that the Council has continued, since the entry into force of the EU and FEU Treaties, to designate the signatories of international agreements and regularly to choose as signatory the permanent representative to the European Union of the Member State exercising the rotating Presidency of the Council. A practice, however consistent, cannot alter the rules of the Treaties that the institutions are obliged to respect (see, to that effect, judgment of 25 October 2017, *Commission v Council (WRC-15)*, C-687/15, EU:C:2017:803, paragraph 42 and the case-law cited).
- 83 Lastly, it should be observed that, in accordance with the first sentence of Article 17(1) TEU, the Commission must exercise its competence relating to the signing of international agreements in the general interest of the European Union. It is, in addition, required to comply with the duty of mutual sincere cooperation provided for in Article 13(2) TEU. Accordingly, it is incumbent upon that institution to ensure in particular that, once the Council decision authorising the signing of an agreement has been adopted, that signing takes place within the shortest possible time and in circumstances that reflect appropriately the importance of that agreement. Furthermore, in the event of a fundamental change of circumstances arising after the adoption of the decision authorising the signing, it is incumbent upon the Commission to consult the Council so that it may, if appropriate, within the framework of exercising its powers enshrined in Article 16(1) and (6) TEU and Article 218 TFEU, draw the consequences of that fundamental change of circumstances before the signature is given.

Although in this case the Court annulled the designation of the Permanent Representative of the Portuguese Republic to the European Union as the person empowered to sign the Agreement concerned, it declared that in order to preserve legal certainty, the effects of such designation were definitive.