

Who has the right to sign international agreements on behalf of the European Union?

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Introduction

The role of transparency in global political dynamics is paramount, particularly in the area of international agreements that determine the legal frameworks between blocs and countries. A recent legal confrontation between the European Council and the Commission highlighted this, focusing on who holds the authority to sign international treaties for the EU. This culminated in a landmark [ruling](#) by the Court of Justice on April 9, 2024, in the case concerning the EU-Gabon Fisheries Protocol. The Court decreed that the prerogative to sign these agreements, or to nominate a signatory, rests solely with the European Commission. This decision reverses a long-standing custom where the Council had taken on this responsibility.

The contention in Case C-551/21 revolved around a protocol that aimed to make the EU-Gabon FPA operational by outlining the terms for EU fishing activities in Gabonese territorial waters. The European Commission, representing the EU, had brokered the protocol. As the process reached the stage of signing the agreement, the Commission suggested to the Council to appoint the signatory. Contrary to this, the Council amended the proposal, granting the rotating Council Presidency the power to choose the signatory, who subsequently appointed the Portuguese EU representative for the role.

The dispute between the European Commission and the European Council

The Commission contested the Council's resolution, instigating a cancellation lawsuit before the Court of Justice. The European Commission contended that the European Council's authorization for the Presidency to appoint the signatory infringed upon its exclusive right of external representation as delineated in Article 17(1) of the Treaty on European Union (TEU). This provision assigns the Commission the responsibility of representing the EU externally, with exceptions only for common foreign and security policy and other specific cases outlined in the Treaties. Given that Article 218(5) of the Treaty on the Functioning of the European Union (TFEU), which pertains to the signing of international treaties, does not provide an exemption for this circumstance, and considering that the act of signing an international treaty is deemed a 'representation' under established international law, the Commission pursued the annulment of the Council's enactment.

The Court's verdict was in favor of the Commission, affirming that the prerogative to sign international treaties is a fundamental aspect of the Commission's exclusive powers of external representation. This confirmation was reinforced by the acknowledgment of established international law, particularly the Vienna Convention on the Law of Treaties, which views the signing of an international treaty as an act of 'representation', thus endorsing the Commission's argument.

CoJ once again supported an institutional balance

The Court's recent ruling did not deviate from expectations, given its historical stance on demarcating the Commission's authority while preserving the European Council's prerogatives within the treaty-making architecture.

In [Case C-161/20 \(IMO II\)](#), the Court dismissed the Commission's overly broad assertion of possessing sole power to propose to all international bodies, even those where the EU lacks membership. Nonetheless, the Court's reference to the Commission's external representation powers as 'exclusive' hinted at its intent to uphold the Commission's recognized rights in this domain.

This intent was evident in [Case C-425/13](#), where the Court annulled the Council's negotiating directives that imposed mandatory guidelines on the European Commission. Such mandates exceeded the European Council's jurisdiction under Article 218(4) TFEU, which allows it to provide negotiating directives to the Commission.

Echoing this sentiment in [Case C-24/20 \(Geneva Act\)](#), the Court ruled that the Council had altered the original Commission proposal by permitting both the EU and its Member States to join an international pact safeguarding appellations of origin and geographical indications. This decision underscored the Court's commitment to safeguarding the Commission's role as the EU's negotiator, empowered to suggest the ratification of international agreements under Article 218(6) TFEU.

Similarly, in the current case, the Court reinforced the Commission's standing within the procedural confines established by Article 218 TFEU. However, this reinforcement should be viewed alongside the Court's prior verdict in [Case C-660/13 \(Swiss MoU\)](#), which determined that the Council should always make the decision to sign non-binding agreements. Such decisions are deemed policymaking acts, allocated to the Council by Article 16 TEU. The Swiss MoU and IMO II cases underscore the Court's balanced approach in safeguarding both the Commission's and the Council's treaty-making privileges.

Summary

The judicial landscape that is revealed is one where the Court is dedicated to fully actualizing the powers granted to the various EU institutions by Article 218 TFEU. In instances where this article does not speak, the Court turns to the broader institutional guidelines in Title III of the Treaty on European Union. Within this framework, the European Commission is seen as the 'singular voice' in interactions with external entities (as demonstrated in Case C-425/13 and the current case), while the European Council is recognized as the decision-making body throughout the progression of an international agreement (as observed in Swiss MoU), always acting within the framework proposed by the Commission (as established in Geneva Act). This delineates an 'institutional equilibrium' among the entities involved in the negotiation and finalization of international treaties.

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