NEW INSTITUTIONAL ACTORS IN EU EXTERNAL RELATIONS: TRAPPED IN A LEGAL MINEFIELD BETWEEN EUROPEAN AND INTERNATIONAL LAW

1. Introduction
The EU policy field of external relations is one of the main areas where the hybrid legal structure of the European Union and European Community comes to the fore. While the European Community is installed with legal personality without dispute and has used its legal status to participate in international negotiations, held memberships in international organisations and concluded international treaties with an array of countries and organisations, is the legal personality of the European Union a long disputed subject since the Maastricht Treaty created the European Union. However, not only the different actors in form of European Union, Communities and Member States make the external representation of this creation rather diffuse but also the need for the parallel participation of Member States in the conclusion of mixed agreements has led to wide-reaching legal questions. Additionally, the internal division of competences between the EC and EU institutions in external relations is far from clear when the mandates of Council and Commission are compared and the wording of Articles 300 and 302 EC Treaty is taken into consideration. Beyond the classical institutional setup of EU, EC and Member States, new actors in EU external relations have emerged over the years. The European Central Bank, Europol and EU agencies such as the European Borders Control Agency (FRONTEX) or the newly established European Fundamental Rights Agency (FRA) are active in participating in relations with third countries and international organisations and practice the management of external relations activities next to the classical institutions of Council and Commission. This raises important and novel questions of the legal status of their actions, whether they are assigned with international legal personality and how their activities have to be qualified in relations to the institutional balance, accountability and the division of competences inscribed in the Treaties and interpreted by the ECJ.

2. The role of EU agencies in external relations
EU and EC agencies have proliferated over the years. Originally founded as independent administrative units to aid the Commission’s work, they nowadays cover as decentralised bodies not only EC policies but also second pillar (European Defence Agency, the European Union Institute for Security Studies) and third pillar issues (Eurojust). They take over more and more tasks in the area of external relations as the example of the European Fundamental Rights Agency (FRA) or European Borders Agency (FRONTEX) show. All of the newer agencies such as the European Food Safety Agency (EFSA), the European Aviation Safety Agency (EASA) and FRONTEX have established contacts to international organisations such as the Council of Europe, the FAO, the WHO and the WTO and third countries’ competent authorities.

Despite their proliferation and popularity in managing administrative functions in the European Union, agencies find no explicit legal basis in EC or EU Treaty and have been

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1 OJ 2007 L 53/1.
established through secondary law and based at the beginning on Article 308 EC and later on the respective policy provisions of the Treaties. This first legal basis is not unproblematic as its wording limits actions ‘in the course of the operation of the common market’ and the ECJ limited from the beginning the conditions of setting up such independent administrative unit by the European Commission. Accordingly, the Commission cannot delegate broader powers than it enjoys itself; only strictly executive powers may be delegated, discretionary powers may not be delegated, the exercise of delegated powers cannot be exempted from the conditions to which they would have been subject, had they been directly exercised by the Commission, in particular the obligation to state reasons for decisions taken, the powers delegated remain subject to conditions determined by the Commission and subject to its continuing supervision, and the institutional balance between the EC institutions must not be distorted and the legal control by the ECJ is ensured. Even though the Meroni judgment is still a starting point in assessing the legal standing of agencies in EU law, their environment and structure have changed and they are established across pillars and policies, by supranational and intergovernmental instruments. While the Commission only distinguishes between regulatory and executive agencies, the literature separates the categories of information, management and regulatory agencies. Especially regulatory agencies have come under close scrutiny in regard to their coherence, effectiveness and accountability and while a Draft Interinstitutional Agreement on the operating framework is still under discussion, the legal framework would also not be changed with the Treaty of Lisbon which only introduces agencies as institutional bodies in the legal protection provisions and covers only the EDA in detail under the Common Foreign and Defence Policy. This Draft Interinstitutional Agreement on the operating framework for the European regulatory agencies addresses common legal matters arising with every new agency and is currently covered by its individual founding regulations of the newer generation of agencies, namely their legal status, the participation of third countries and the agency’s international activities. Consequently, agencies are assigned with legal personality and third countries may participate on the basis of international agreements with the EC and the agency may cooperate with international organisations. However, these provisions do not clarify the agencies’ role in external relations and even whether they are assigned with international legal personality. In such, the EU agencies’ role and status in external relations can only be determined on the basis of internal rules and external practice in relations to the other EU institutions which have delegated powers to them.

8 Executive agencies are entrusted with certain tasks relating to the management of Community programmes. They are covered by the Council Regulation No.58/2003, OJ 2003 L 11/1.
9 Example for an information agency is the European Environment agency, for a management agency are the European Agency for Reconstruction and for regulatory agency the European Food Safety Agency and the European Aviation Safety Agency.
10 See on this: European Parliament resolution on the communication from the Commission, A5-0471/2003.
2.1 EU actors and their international legal personality

*International* legal personality represents the ability to be a subject of international law which includes the acquisition of rights and duties on an international plane. Holders of such kind of rights and duties in international law, in principle, are states and international organisations. And while states hold an objective and qualified personality, international organisations acquire a subjective international personality which relates to their charter and objectives. International organisations with international legal personality can be separated as an organisation from its members, they can bring claims under international law and be held liable for the non-fulfilment of obligations. They are given international legal personality when its members have the will to confer this right on the organisation, this organisation is entrusted with certain functions and powers, has at least one organ with a will of its own but also the ability to enter into relations with states and other organisations. This international legal personality of an organisation needs to be separated from the domestic legal personality. *Domestic* legal personality denotes the capacity to perform legal acts in domestic law, it may be even implied when necessary to allow an international organisation to function effectively. Though Article 282 EC Treaty regulates the domestic legal personality of the European Community in its Member States, its international legal personality is only insinuated in Article 281 EC and assumed by the treaty-making provision of Article 300 EC, further defined by jurisdiction, literature and confirmed by state practice. Domestic legal personality status is also given to all EU institutions and agencies, while their respective international legal personality can only be determined on a case-by-case basis, analysing and comparing respective legal provisions and state practice.

Since the establishment of the European Union with the Maastricht Treaty, the international legal personality of the Union is disputed. In difference to the first pillar, does the EU Treaty know no similar provision to Article 281 EC and therefore and on the basis of the Member States original intention not to install the Union with legal personality, the mainstream opinion at the beginning denied legal personality and international organisation status to the European Union. In difference to this opinion, the view asserting legal personality has gained supporters, also in light of the reforms after the Nice Treaty through Draft Constitutional Treaty and Reform Treaty. This assertion is based on amendments introduced to Article 24 EU through Amsterdam and Nice, the current practice of treaty-making under second and third pillar, the international acknowledgement of the EU and the practice that these agreements are not ratified by the Member States. The Nice Treaty changed decisively

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14 See M. Shaw, *International Law*, (5th edn. Cambridge University Press 2003), p.241. Klabbers devides it into two theories, namely the will theory, the members of the organisation want to give the organisation legal personality and the objective theory where the organisation possesses a distinct will of its own, see J. Klabbers, *An Introduction to International Institutional Law*, (Cambridge University Press, 2002), pp.54.


18 Both reform proposals include the international legal personality of the European Union.

19 D. Curtin and I. Dekker, ‘The EU as a ‘layered’ international organisation: Institutional unity in disguise’, in P. Craig and G de Búrca, (eds.) *The Evolution of EU Law* (Oxford University Press, 1999). See also Bono, op.cit,
the wording of Article 24 EU in such a way that these agreements shall be binding on the institutions of the Union but also the Union has been more and more involved in treaty-making. The number of agreements concluded in area of the third pillar under Articles 24 and 38 EU Treaty and under the second pillar according to Article 24 EU Treaty has augmented, for instance, in the Agreement on extradition between the EU and the USA the European Union is mentioned as a contracting party, in the case of the extension of the Schengen *aquis* on Switzerland, an Agreement between the European Union, the Community and Switzerland was concluded.  

Beyond the EC and the EU, also other EU institutions are accepted as actors under international law. So is the European Central Bank (ECB, see formulation of Article 107 (2) EC and Article 6 Protocol on the Statute of the European System of Central Banks and the ECB)\(^\text{21}\) and the European Investment Bank (EIB, Article 266 EC and Art.16 Protocol on the Statute of the EIB) installed with external relations tasks in respect to their functions.\(^\text{22}\) In addition, the special independent role in external relations of Europol deserves mentioning. The European Police Office has been established by the Europol Convention, an international agreement between the Member States and is an international organisation equipped with own tasks.\(^\text{23}\) Article 26 of the Europol Convention stipulates that “Europol shall be empowered to conclude a headquarters agreement with the Kingdom of the Netherlands and to conclude with third States and third bodies within the meaning of Article 10(4) the necessary confidentiality agreements pursuant to Article 18(6) as well as other arrangements in the framework of the rules laid down unanimously by the Council on the basis of this Convention and of Title VI of the Treaty on European Union.”\(^\text{24}\) The subjective international personalities of these institutions and bodies are however restrictive in this regard that they are limited to their functions and tasks they have to fulfil according to their statutes.

### 2.2 The management of external relations by Council and Commission

While the European Community’s international legal personality and its ability to act externally is recognised, the management of external relations divides into an external and internal dimension. On the external side, the EC needs to coordinate the conclusion of international agreements with its Member States and with the majority of competences shared,\(^\text{25}\) both sides assure a common legal responsibility by concluding mixed agreements

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\(^{25}\) See on the status quo in regard to the areas of exclusive competences held by the EC the Treaty of Lisbon in Art.2 BTreaty on the Functioning of the European Union.
which can be found not only in the first pillar but also in cross pillar matters. The internal division of competences addresses the question who is acting on behalf of the EC/EU and actions divide into the representation of the Community towards third countries, the representation in international organisations, the daily management of relations with third countries and international organisations. This management is covered by Article 300 EC Treaty which addresses treaty-making while Articles 302 and 303 EC Treaty treat the relations with international organisation. These provisions stipulate that binding international agreements are concluded on the behalf of the EC by the Council while the Commission negotiates such agreements and ensures the maintenance of all appropriate relations with international organisations. It is far from clear, however, whether the ERTA doctrine can be applied by analogy on the internal division of competences by drawing conclusion from the internal functions of the Commission to be able to participate in international treaties or other arrangements. It is even more disputed whether the Commission can act independently and commit the Community as a whole when concluding such agreements with third parties.

Article 300 EC Treaty mentions the division between external but also internal competences in a rather minimalist way. It addresses the internal division of competencies among the Community institutions and the procedural dimension of treaty making in paragraphs 1 and 2. Negotiations are conducted by the Commission according to the guidelines set by the Council; the conclusion and implementation of agreements fall under the responsibility of the Council. Nevertheless, the Commission, on the basis of Article 302 TEC, is responsible for the relations with international organisations. Article 302 EC, which is the legal basis for this management functions, states rather briefly that the Commission shall ensure the maintenance of all appropriate relations with all international organisations without specifying limits or nature of this maintenance. One of tasks of the Commission, though it finds no reflection in the Treaties, is the setting up of diplomatic delegations in third countries. Detailed coordination between Commission and Council and involving also the EC Member States needs to be agreed on a case to case basis for voting and general representation of the EC in international organisations which can take the form of full membership or observer status. The ECJ has further specified in several decisions that a genuine obligation of cooperation and unity in international representation between the institutions and the Member States exists.

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26 The example of the association of Switzerland to the Schengen acquis shows this quite clearly as due to the crosspillar nature of these matters, two Council decisions on the conclusion of such an international agreement are necessary: Proposal for a Council Decision on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen acquis, COM/2006/0752 final, Proposal for a Council Decision on the signature, on behalf of the European Community, and on the provisional application of certain provisions of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen acquis, COM/2006/0752 final.

27 ECJ, Case 22/70, Commission v. Council (ERTA), [1971] ECR 263.


30 Lenaerts and van Nuffel, op.cit. n.16, para.19-008.

31 Three different forms of delegations have crystallised in practice: 1. consisting of representatives of the Commission, the Council Secretariat, the Presidency in office, 2- representative of Commission and member States, 3. Community delegation composed of representatives of the Commission.
which derives from the principle of sincere cooperation of Article 10 EC Treaty.\textsuperscript{32} The European Community is only a member in a few international organisations.\textsuperscript{33} This is the case in the Food and Agriculture Organisation (FAO), the World Trade Organisation (WTO),\textsuperscript{34} the European Bank for Reconstruction and Development and the Northwest Atlantic Fisheries Organisation (NAFO)\textsuperscript{35} and certain commodity agreements and their organisations.\textsuperscript{36} Depending on the mandate of the organisation and the competences of the EC in relations to its Member States, the EC is the only member in the organisation and representing EU members (such as in NAFO and the International Sugar Organisation) or double membership of EC and Member States is necessary such as in the case of the WTO, FAO\textsuperscript{37} or the International Coffee Organisation. In other international organisations the EC can only acquire an observer status because the founding charters do not foresee the participation of non-state entities. This situation arises with the UN, ILO, OECD, the International Maritime Organisation and the CoE.\textsuperscript{38} In the cases of UNESCO and the WHO the EC has acquired an active role as observer so that the EC became even a signatory party the the WHO Framework Convention on Tobacco Control.\textsuperscript{39} Another example of the role of the EC is given by the International Conference on Harmonisation of Technical Requirements for Registration for Pharmaceuticals (ICH) which is a joint initiative between the EC, the USA and Japan and the industry and is governed by an ICH Steering Committee which agrees on non-mandatory guidelines. The UN Convention against Transnational Organised Crime clarifies in one of its provisions that regional economic organisation may ratify and in the annex to the Convention a clarification towards third parties is included on competence fields covered by the EC.\textsuperscript{40} A similar annex is found in the Declaration by the EC to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. But even more, Article 27 para.3 of this Convention addresses the topic of double membership and especially in regard to the responsibility for the performance of obligations which is addressed by the annex of the EC.\textsuperscript{41}

The daily management of the EC’s participation and its Member States leads to legal questions in regard to European but also international law. In some cases, this can be addressed within the international agreement establishing the organisation or the membership of the EC\textsuperscript{42}, or an informal manner between the Commission or Council or between EC and the organisations through working arrangements.\textsuperscript{43} Working arrangements are in practice used to clarify relations between EC and international organisations. It is common EC practice to


\textsuperscript{34} See Art. XI para. 1 of the Agreement establishing the WTO.


\textsuperscript{36} R. Barents, ‘The European Communities and the Commodity Organisations’, LIEI 1984, pp.7-91.


\textsuperscript{38} MacLeod and Hendry and Hyett, op. cit. n.34, at p. 193; ECJ, Opinion 2/92 OECD [1995] ECR I-521.


\textsuperscript{40} OJ 2004 L 261/115.

\textsuperscript{41} OJ 2006 L 201/29.

\textsuperscript{42} See for instance Annex B Declaration concerning the competence of the EC in regard to matters governed by the Agreement on the implementation of the provisions of the UN Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks, OJ 1998 L 189/17.41.

\textsuperscript{43} Macleod/Hendry/Hyett, op.cit. n.34 pp.172, 178, 185,186. EC coordination for commodity agreements under PROBA 20 was agreed between the Commission and the Member States in 1981.
use working arrangements which can take the form of an informal exchange of letters or formal international agreements which neither have to be ratified nor published in the Official Journal. Examples in practice are the exchange of letters between the World Health Organisation and the Commission or between the Commission and the UN Environment Programme. Such arrangements with international organisations have been common practice in the EC and sometimes also concluded by the Council on behalf of the Community or the Commission or even by the EC but signed by the Commission President. Despite this common practice, it is disputed in EU law what legal nature they have. From a strict international law point of view, a clear classification is needed whether they can be considered binding international agreements and whether the European Commission can conclude international arrangements on behalf of the EC despite the clear division according to Article 300 EC Treaty and consequently bind the Community as a whole.

In two cases, the Commission used the argument of its executive powers in competition law, the wording of Article 300 para.2 (EC Treaty) (‘subject to the powers vested in the Commission in this field…’) that its powers extend to the conclusion of binding executive agreements. The Court clarified that the expression ‘agreement’ in Article 300 EC Treaty (then Article 228 EC Treaty) was to be understood in a broad sense but that Article 300(2) is to be interpreted narrowly and the Commission’s powers are clearly limited to administrative or working agreements, which implement the working relations with international organisations in accordance with Article 302. Consequently, the role of the Commission is strictly limited to the management of external relations under the auspices of the Council, and negotiations take place on the basis of a mandate given by the Council. Recent case law reveals that this mandate may also include the negotiation of guidelines that create no legally binding effect and have a clearly defined scope.

Therefore working arrangements or inter-agencies arrangements with international organisations have been concluded in different legal forms by Commission and Council with third parties but have no consequences for the Community as a whole when concluded by the Commission.

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44 OJ 2001 C 1/7-11.
47 Exchange of letters between the WHO and the Commission of the EC concerning the consolidation and intensification of cooperation, OJ 2001 C 1/7-11.
48 As in the case of the exchange of letters between the Council of Europe and the EC concerning the consolidation and intensification of cooperation, OJ 1987 L 273/35-39.
49 See also C. Tiedje who clearly argues against this “toleration” practice, see Tietje, before Articles. 302-304 EGV para. 7; op.cit.n.29.
50 C. Tiedje, before Artt.302-304 EGV, para.9, op.cit n.35.
internal division of competences between Council and Commission and consequently the level of independence by the Commission to take measures depends on the legal nature of such measures. This strict EU constitutional perspective has to be separated from the evaluation of such actions under international law and based on an interpretation in line with the Vienna Convention on the Law of the Treaties, especially Article 38 ICJ Statute. In majority, the literature has considered on the basis of a case-by-case interpretation, legally binding obligations in line with Article 302 EC are not only binding for the Commission but also for the Community as a whole. When the limits of the Commission’s external relations tasks are overstepped, the legal effect of such a concluded arrangement needs to be judged in light of Article 46 Vienna Convention on the Law of the Treaties. Whether they are considered legally binding or not, are a question of interpretation of the wording and will of the contracting parties. Such an arrangement, though internally between EC and Member States, was considered by the ECJ. This arrangement dealt with the rules on statements and voting in FAO meetings and defined the necessary measures when competences are exclusive or shared. The Court clarified that such informal arrangements have legal effects.

In consequence, working arrangements are not only internally legally binding but can be considered as an international treaty when the interpretation gives rise to an objective intention of the contracting parties to be bound and the Commission acts in line with its executive competences of Article 302 EC and does not infringe the division of internal competences between Commission and Council. When it does infringe this division because the Commission’s external relations powers are limited, the Community might still be bound with the exception of cases of manifest violations and internal rules of fundamental importance. In consequence, this leads to interpretation differences depending on the European or international law point of view.

3. International legal personality of EU agencies?

Drawing from the conclusions above, the question arises under which conditions EU agencies participate in EU external relations. As above outlined, the domestic legal personality has to be clearly separated from an international legal personality and domestic legal personality status is also given to all EC and EU agencies such as in the case of the EDA in Article 6 of the Regulation. However, from its domestic legal personality cannot be automatically concluded that such an agency is also endowed with international legal personality. Some literature opinions deny, as a matter of principle, an international legal status for agencies. Others highlight that certain features as treaty-making ability, the privileges and immunities

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56 According to Article 38 ICJ Statute recognised legal sources of international law are international agreements, customary international law and general principles of law.
58 Article 46 Provisions of internal law regarding competence to conclude treaties
1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith. See also Kokott, Art.302 para. 11, in Streinz, op.cit.
59 Tiedje who clearly argues against this “toleration” practice, see Tietje, before Articles. 302-304 EGV para. 7’.
62 Tiedje, before Artt. 302-304 EGV para.7 in Grabitz and Hilf, op.cit.n.29, K. Schmalenbach, Article 302, para.1, op.cit.n.24; Kokott, Article 302 para.9 to 11, in Streinz, op.cit.n.22 with reference to Tiedje.
64 Oppermann, op.cit. n.23, p.130.
assigned to them, international responsibility are indications for an international legal personality and deduce a status under international law in respect to its functions and tasks.\(^{65}\) It has also been argued in the literature that an international legal personality of some agencies exists because some EU Member States have concluded headquarters agreements with agencies residing in their countries, such as in the case of the EEA with Denmark and the European Training Foundation with Italy, in addition a reference is made to the identical wording of Articles 281 and 282 EC Treaty and the respective provisions in the Regulation establishing an agency.\(^{66}\) As such, this view states, that these states have implicitly recognised the international legal personality of independent community bodies by treating them as international organisations, recognised the treaty-making powers of an agency in regard to its status and seat.\(^{67}\) However, these conclusions are unfounded. A simple reference to Article 281 and 282 EC Treaty cannot be decisive as the wording is not consistently and, in contrast, decisively are the cumulative indications listed above in form of the wording on international relations provisions in the founding regulations, state practice and the forms and wording of arrangements concluded by the agency with third countries or international organisations.

Common consensus exists that the EIB has international legal personality in regard to the tasks assigned to them. However, when the wording of the relevant provision is analysed this evaluation is far from certain and an identical wording of provisions applicable to these entities as Article 281 EC Treaty, are not per se sufficient.\(^{68}\) Article 266 of the EIB Regulation is phrased as Article 281 EC Treaty but further clarification in the Statute is missing, except for Article 16 according to which the Bank shall cooperate with all international organisations. In contrast, decisively is the common state practice to accept the EIB in its international status. So are both, the EIB and the EC members of the European Bank for Reconstruction and Development.\(^{69}\) The same difficulties in interpretation arise with the ECB and Europol. Again, Article 107 (2) EC Treaty and Article 9.1 of the ECB Statute confirm legal personality of the ECB but further circumstances determine the legal personality on the international plane. In such also Article 6.2 of the ECB Statute determines that the ECB may participate in international monetary institutions Article 23 of the ECB Statute, specifies the scope of “external operations”.\(^{70}\) In the same vein the special role in external relations of Europol can be mentioned. The European Police Office has been established by the Europol Convention between the Member States and is currently not categorised as an agency or an EU institutions.\(^{71}\) Article 26 of the Europol Convention stipulates that “Europol shall be empowered to conclude a headquarters agreement with the Kingdom of the Netherlands and to conclude with third States and third bodies within the meaning of Article 10(4) the necessary confidentiality agreements pursuant to Article 18(6) as well as other arrangements in the framework of the rules laid down unanimously by the Council on the basis of this Convention and of Title VI of the Treaty on European Union.”\(^{72}\) Relations with third states and bodies are not only governed by Article 42 of the Europol Convention but also the


\(^{66}\) For instance Denmark with the EEA, the European Training Foundation in Italy, the European Monitoring Centre for Drugs and Drug Addiction with Portugal, the European Monitoring Centre on Racism and Xenophobia with Austria and the European Agency for Reconstruction with Greece.


\(^{68}\) In such, however, B. Kempen, Article 107 para.9, in Streinz, op.cit n.22.; Rijken, op.cit n.25., at pp.582

\(^{69}\) Ohler, Art.266 EC, para.10 in Streinz, op.cit.n.22.; Müller-Borle/Balke, Art.266 para.7.  M. Rossi, Article 266 para.4, in Streinz, op.cit.n.22. See also the ECJ on the EIB’s legal personality: ECJ, Case 85/86 Commission v. Board of Governors of the European Investment Bank [1998] ECR 1281.

\(^{70}\) See further Horng, op.cit. n. 22. at p.325 and Kempen, Article 107 para.9, in Streinz, op.cit.n.22, Herrmann, op.cit.n.22, pp.1.

\(^{71}\) Rijken, op.cit. n.25, at p.582.

Council Act of November 1998 laying down rules governing Europol’s external relations with third states and non-European Union related bodies it is stated that Europol may conclude agreements with third states and non-EU related bodies but that the Council has to determine the third States or non-EU related bodies with which agreement are to be negotiated, in addition, it needs the unanimous approval of the Council for its conclusion. This clearer formulation, the practice of agreements concluded and its status as an international organisation determine significantly its international legal status.

As above highlighted all EU agencies regulations have a provision on legal personality which might differ in its wording but which only specifies their domestic legal personality. Whether an international legal personality can be considered, depends on the wording of the provisions addressing external actions of these agencies and its subsequent practice. When analysing the cooperation on an international level, two aspects have to be differentiated. On the one hand the cooperation with third countries and their participation in agencies and on the other hand the cooperation of EU/EC agencies with international organisations and other countries’ related institutions. All of the EU regulations establishing EC and EU agencies regulate such external relations, however, the wording and whether these are detailed regulations, differ and depend on whether it concerns information or management/regulatory agencies, whether it is a younger generation agency and covers second and third pillar issues.

### 3.1 EU Agencies Rules on third country’s participation

Third country participation in certain EU programmes and institutions is not only encouraged but necessary for the European Economic Area countries and Switzerland when the aims of these agreements should be achieved. Countries preparing for EU accession are encouraged to familiarise themselves with institutions and programmes. In addition, agencies which are concerned with cross-border matters such as environment, aviation and maritime safety, have an interest in the participation of wider European countries with no concrete accession perspective but in proximity. The EEA countries Norway, Iceland and Liechtenstein therefore participate not only in EC programmes but also agencies such as EEA, EASA and EMEA. However, to organise the participation of non-EU members, the special legal order with different institutional, decision-making structures and legal effect needs to be respected. Participation in the institutional EU structures has to exclude full participation with equal rights. Such participation will be in principle agreed through an international agreement between the EC and the participating European state. In the case of the EEA and due to

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74 In newer Regulations setting up agencies also rules on cooperation on Member State level and among EU institutions have been included. See Art. 13 of the European Borders Agency on cooperation with Europol and Art.7 and 8 of the Regulation setting up the European Fundamental Rights Agency on cooperation between Community bodies, offices, agencies and organisation on Member State and European level.

75 This is based on the EEA Agreement and the Bilateral Agreements with Switzerland. See further A.Lazowski, ‘EEA countries’, pp.95 and ‘Switzerland’, pp.147 in A.Lazowski and S.Blockmans (eds), op.cit. n.16.


78 See example: Agreement between the EC and the Czech Republic concerning the participation of the Czech Republic in the EEA, OJ 2001 L 213/3; Agreement between the EC and the Kingdom of Norway concerning the participation of Norway in the work of the European Monitoring Centre for Drugs and Drug Addiction,
special institutional structure established, this is done by a Decision of the EEA Joint Committee.\textsuperscript{79} Consequently, the founding regulations on the EEA, ERA, EASA or EFSA know a provision such as the one for the EMEA which regulates that third countries may participate which have “adopted and are applying Community law in the field of maritime safety and prevention of pollution by ships”.\textsuperscript{80} The EEA agency exemplifies the wide web of third country participants. Next to the 27 EU members, Iceland, Liechtenstein, Norway, Switzerland and Turkey are collaborating, while Albania, Serbia and Montenegro, Bosnia/Herzegovina, Croatia and Macedonia have applied for membership. Within this agency three categories of members exist, consisting of EU Member States, EFTA Member States, and candidate countries. The participation of the non-EU countries (EEA countries and candidate countries) in the agency’s work is complete, including participation in the Management Board, but without the right to vote.\textsuperscript{81} In contrast to the European Economic Area countries and their special structure, participation in the EEA agency before the accession of the new Member States was enabled by international agreements. These cooperation structures are based on a legally binding Association Agreement, in consequence a potential participation in the EEA is mentioned in all Europe Agreements with the former candidates and Stabilisation and Association Agreements with the Western Balkans. These agreements are concluded on behalf of the Community with the third countries.\textsuperscript{82} Such third country participation is, however, not consistently regulated. While the Article 18 of the EASA Regulation speaks about the agency assisting Community and its Member States in their relations with third countries, the EDA regulates in Article 23 in detail that third parties may contribute to particular ad hoc projects or programmes and FRONTEX stipulates in Article 14 that in matters covered by its activities and to the extent required for the fulfilment of its tasks, the Agency shall facilitate the operational cooperation between the Member States and third countries in the framework of the European Union external relations policy. In such the Agency may cooperate with the authorities of third countries competent in matters covered by this Regulation in the framework of working arrangements concluded with these authorities, in accordance with the relevant provisions of the Treaty. FRA stipulates in a special provision on the participation of candidate countries and countries which have concluded a Stabilisation and Association Agreement. Such cooperations do not confirm an international legal status of these agencies, in contrast, they affirm that EC has a decisive role to play as these cooperations are legally established by international agreements based on Article 300 EC Treaty and concluded between the countries and the EC.

3.2 Cooperation between Agencies and international organisations
A different but not consistent picture arises when the collaboration between agencies and international organisations and entities of third countries is considered. All founding agency regulations which cover external relations tasks include provisions on participation and

\textsuperscript{79} See an overview on the website of the EEA, http://secretariat.efta.int/Web/EuropeanEconomicArea/ParticipationInEUProgrammes, last visited on 19.12.2007.
\textsuperscript{80} Art.17 of Regulation establishing a European Maritime Safety Agency, OJ 2002 L 208/1.
\textsuperscript{81} See also Article 24, Draft Interinstitutional Agreement, supra n 12.
cooperation or networking with other international organisations, but these are from their wording rather diverse and in certain founding regulations stipulated independently from third countries’ participation. Depending whether these agencies are established recently and in second and third pillar, these provisions can be rather detailed. EFSA regulates in Article 36 networking with such organisations, according to this provision the Commission shall lay down implementing rules for the networking. The Regulation establishing the European Foundation for the Improvement of Living and Working Conditions describes in Article 3 (2) only generally that the Foundation shall cooperate closely as possibly with specialised institutes, foundations and bodies in the Member States or at international level. However, it does not explain the circumstances and conditions of such cooperations in difference to the founding regulation on the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) which mentions in Article 20 working arrangements concluded by the agency with organisations and bodies. In a similar manner describes Article 25 of EMEA that the agency shall collaborate with the WHO on international pharmacovigilance and shall take the necessary steps to submit promptly to the WHO appropriate and adequate information regarding the measures taken in the Community which may have a bearing on public health protection in third countries and shall send a copy thereof to the Commission and the Member States. Also the EEA only stipulates the following (Art. 15): “The Agency shall also cooperate actively with other bodies such as the European Space Agency, the Organization for Economic Cooperation and Development, the Council of Europe and the International Energy Agency as well as the United Nations and its specialized agencies, particularly the United Nations Environment Programme (UNEP), the World Meteorological Organization and the International Atomic Energy Authority.”

In contrast to these very general and unspecific regulations of earlier agencies, FRA, FRONTEX in Article 13, EDA as a second pillar agency and the EASA as a partly regulatory agency with decision-making power stand out with more detailed provisions in Articles 7 to 9 FRA, Article 18 EASA Regulation and Article 25 of the EDA respectively. According to Article 18 of the EASA Regulation, EASA “shall assist the Community and its Member States in their relations with third countries in accordance with the relevant Community law. The Agency may cooperate with the aeronautical authorities of third countries and the international organisations competent in matters covered by this Regulation in the framework of working arrangements concluded with those bodies in accordance with the relevant provisions of the treaty.”

Interesting comparisons can be also drawn with Europol which is currently no agency under EU law but an international organisation separately established by Member States. By June 2008 Europol will be introduced into the EU system through a Council decision which should create more coherence between other institutions such as Eurojust and Europol but also changes its legal structure substantially. The Commission also emphasised that the current practice of Europol concluding international agreement with third parties will change as such that these agreements are in the future be negotiated on behalf of the European Union.

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83 See the overview of agencies which do not engage in such relations: S.Peers, ‘Governance and the Third Pillar: The Accountability of Europol’, in Curtin and Wessel, (eds.) op.cit. n.3, p.262-263.
85 Regulation 1210/90, OJ 1990 L 120/1.
86 See Regulation 1365/75, OJ 1975 L 139/1.
The Europol Convention reads the following:

Article 42: Relations with Third States and Third Bodies

Insofar as is relevant for the performance of the tasks described in Article 3, Europol shall establish and maintain cooperative relations with third bodies within the meaning of Article 10(4), points 1 to 3. The Management Board shall unanimously draw up rules governing such relations.

Insofar as is required for the performance of the tasks described in Article 3, Europol may also establish and maintain relations with third States and third bodies within the meaning of Article 10(4), points 4, 5, 6 and 7. Having obtained the opinion of the Management Board, the Council, acting unanimously in accordance with the procedure laid down in Title VI of the Treaty on European Union, shall draw up rules governing the relations referred to in the first sentence. The third sentence of paragraph 1 shall apply mutatis mutandis.

While the original proposal by the Commission phrased relations with third state and organisations in a manner familiar to other founding agency regulations, this has resulted in revision proposals by Member States and it is far from clear whether this view will be followed as also the wording of paragraph 3 has changed from administrative arrangements to agreements again.

Article 23, Relations with third States and organisations

1. Insofar as is required for the performance of its tasks, Europol may also establish and maintain cooperative relations with
   (a) third States;
   (b) organisations such as:
      - international organisations and their subordinate bodies governed by public law;
      - other bodies governed by public law which are based on an agreement between two or more States; and
      - the International Criminal Police Organisation (Interpol).

2. Europol shall conclude agreements with the entities referred to in paragraph 1 which have been included in the list referred to in Article 25(1)(a). Such agreements may concern the exchange of operational, strategic or technical information, including personal data and classified information. Such agreements may only be concluded after the approval by the Council, after having consulted the Management Board and after having obtained, via the Management Board the opinion of the Joint Supervisory Body as far as it concerns the exchange of personal data.

3. Prior to the entry into force of agreements as referred to in paragraph 2, Europol may directly receive information, including personal data and classified information insofar as this is necessary for the legitimate performance of its tasks.

All newer agency regulations on external relations enable the agency to cooperate on an international plane on the basis of working arrangements. The most detailed regulation on the relations with third countries, organisations and entities can be found in Article 25 of the newly established EDA which was established by a second pillar Council Joint Action, the Council, 15429/07 Europol 120, Brussels 26.11.2007.

1. For the purpose of fulfilling its mission, the Agency may enter into administrative arrangements with third States, organisations and entities. Such arrangements shall notably cover: (a) the principle of a relationship between the Agency and the third party; (b) provisions for consultation on subjects related to Agency’s work; (c) security matters.

In so doing, it shall respect the single institutional framework and the decision-making autonomy of the EU. Each such arrangement shall be concluded by the Steering Board upon approval by the Council, acting by unanimity.

2. The Agency shall develop close working relations with the relevant elements of OCCAR, the LoI Framework Agreement, and WEAG/WEAO with a view to incorporate those elements or assimilate their principles and practices in due course, as appropriate and by mutual agreement.

3. Reciprocal transparency and coherent development in the field of capabilities shall be ensured by the application of CDM procedures. Other working relations between the Agency and relevant NATO bodies shall be defined through an administrative arrangement referred to in paragraph 1, in full respect of the established framework of cooperation and consultation between the EU and NATO.

4. With a view to facilitating their possible participation in projects and programmes and within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with organisations and entities other than those mentioned in paragraphs 2 and 3.
second pillar agency Eurojust and the first pillar FRA. In the case of FRA the regulation diversifies between relations with Community bodies via memoranda of understanding, international cooperations through administrative arrangements and the cooperation with the CoE which is done by an agreement based on Article 300 EC Treaty.

5. With a view to facilitating their possible participation in specific projects and programmes and within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with third countries.

6. The non-EU WEAG members shall be provided with the fullest possible transparency regarding the Agency’s specific projects and programmes with a view to their participation therein as appropriate. A consultative committee shall be set up for this purpose, to provide a forum for exchanging views and information on matters of common interest falling within the scope of the Agency's mission. It shall be chaired by the Chief Executive or his/her representative. It shall include a representative of each participating Member State and a representative of the Commission, and representatives of the non-EU WEAG members in accordance with modalities to be agreed with them.

7. Upon request, other non-EU European NATO members may also participate in the Consultative Committee referred to in paragraph 6, in accordance with modalities to be agreed with them.

8. The Consultative Committee referred to in paragraph 6 may also serve as a forum for dialogue with other third parties on specific matters of mutual interest within the Agency's remit, and may serve to ensure that they are kept fully informed of developments in matters of common interest and of opportunities for future cooperation.

90 Art.26 and 27 Founding Regulation OJ 2002 L 63/1.

91 Article 8 FRA: Cooperation with organisations at Member State and international level

1. In order to ensure close cooperation with Member States, each Member State shall nominate a government official as a National Liaison Officer, who shall be the main contact point for the Agency in the Member State. The National Liaison Officers may, inter alia, submit opinions on the draft Annual Work Programme to the Director prior to its submission to the Management Board. The Agency shall communicate to the National Liaison Officers all documents drawn up in accordance with Article 4(1)(a), (b), (c), (d), (e), (f), (g) and (h).

2. To help it carry out its tasks, the Agency shall cooperate with: (a) governmental organisations and public bodies competent in the field of fundamental rights in the Member States, including national human rights institutions; and (b) the Organisation for Security and Cooperation in Europe (OSCE), especially the Office for Democratic Institutions and Human Rights (ODIHR), the United Nations and other international organisations.

3. The administrative arrangements for cooperation pursuant to paragraph 2 shall comply with Community law and shall be adopted by the Management Board on the basis of the draft submitted by the Director after the Commission has delivered an opinion. Where the Commission expresses its disagreement with these arrangements the Management Board shall re-examine and adopt them, with amendments where necessary, by a two-thirds majority of all members.

92 Article 25 Relations with third countries, organisations and entities

1. For the purpose of fulfilling its mission, the Agency may enter into administrative arrangements with third States, organisations and entities. Such arrangements shall notably cover: (a) the principle of a relationship between the Agency and the third party; (b) provisions for consultation on subjects related to Agency’s work; (c) security matters.

In so doing, it shall respect the single institutional framework and the decision-making autonomy of the EU. Each such arrangement shall be concluded by the Steering Board upon approval by the Council, acting by unanimity.

2. The Agency shall develop close working relations with the relevant elements of OCCAR, the LoI Framework Agreement, and WEAG/WEAO with a view to incorporate those elements or assimilate their principles and practices in due course, as appropriate and by mutual agreement.

3. Reciprocal transparency and coherent development in the field of capabilities shall be ensured by the application of CDM procedures. Other working relations between the Agency and relevant NATO bodies shall be defined through an administrative arrangement referred to in paragraph 1, in full respect of the established framework of cooperation and consultation between the EU and NATO.

4. With a view to facilitating their possible participation in projects and programmes and within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with organisations and entities other than those mentioned in paragraphs 2 and 3.

5. With a view to facilitating their possible participation in specific projects and programmes and within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with third countries.

6. The non-EU WEAG members shall be provided with the fullest possible transparency regarding the Agency’s specific projects and programmes with a view to their participation therein as appropriate. A consultative committee shall be set up for this purpose, to provide a forum for exchanging views and information on matters of common interest falling within the scope of the Agency's mission. It shall be chaired by the Chief Executive or his/her representative. It shall include a representative of each participating Member State and a representative...
While some founding regulations mention that international relations are conducted on the basis of arrangements, they highlight differently the limits of such cooperations, some of them state that such arrangements have to be in line with Community law or stipulate that they have to be concluded by the Community itself under Article 300 EC. It is difficult to draw general conclusions from the forms and manners in which regulations regulate the international relations of agencies. The diverse regulations lead to interpretation difficulties and result from inherent differences of the agencies established over the years. Also a differentiation between the agencies’ tasks and whether it covers a Community policy or EU second and third pillar issues need to be made. As above highlighted the Council has broader functions in external relations including treaty-making function while the Commission is restricted to executive functions. Later agency regulations define working or administrative arrangements as the instrument to conduct international relations and they are concluded by the agencies. Agencies conclude working arrangements but their legal nature is already disputed when concluded by the Commission and whether this has the implication to legally bind the EC on an international plane.

Do these regulations enable the Council and Commission to delegate certain functions when they are in line with Community law but does this include the delegation of treaty-making or the conclusion of working arrangements? Does this imply that the agency is installed with international legal personality which then also leads to binding arrangements for the EC and EU?

This subsequently leads to the question how the practice deals with such arrangements, most of these arrangements have not been published but some agreements concluded with third parties and international bodies are published on the respective websites of Europol, Eurojust and EASA. In the case of EASA already working arrangements with other aeronautical authorities and the JAA are well documented on its website. A distinction can be made between arrangements concluded between EASA and other international organisations on the one hand and working arrangements concluded between EASA and other aeronautical authorities. In practice, EASA has already concluded a number of working arrangements with aeronautical authorities of Israel, Canada and Brazil, they are concerned with certification matters and regulated when set into force and can be terminated which indicates an intention to consider it legally binding. Such working arrangements are also practice between states, so has been a bilateral arrangement concluded between the Transport Canada Civil Aviation and the Civil Aviation Administration Israel. In other cases agreements between the governments of the respective countries have been concluded. The Commission is not referred to in these arrangements and the agency concluded them on its own right. For

7. Upon request, other non-EU European NATO members may also participate in the Consultative Committee referred to in paragraph 6, in accordance with modalities to be agreed with them.
8. The Consultative Committee referred to in paragraph 6 may also serve as a forum for dialogue with other third parties on specific matters of mutual interest within the Agency's remit, and may serve to ensure that they are kept fully informed of developments in matters of common interest and of opportunities for future cooperation.

93. Art.26 EASA “in accordance with the relevant provisions of the Treaty”. Art.13 FRONTEX. Art.25 EDA “respect the single institutional framework and the decision-making autonomy of the EU”. Art.8 (3) FRA.
94. The Predecessor of the FRA, the EUMC Regulation stated that the Centre “shall coordinate its activities with those of the Council of Europe. To this end the Community shall, in accordance with the procedure provided in Article 228 EC Treaty enter into an agreement, on behalf of the Centre, with the Council of Europe for the purpose of establishing close cooperation between the latter and the Centre.”
95. With the exception of Eurojust which classifies them in Article 27 (3) as cooperation agreements.
96. See the other working arrangements of the agency on the website of EASA, [http://www.easa.eu.int/home/intl_appror_en.html](http://www.easa.eu.int/home/intl_appror_en.html) 21 July 2007:
instance the working arrangement between EASA and the Interstate Aviation Committee specified that the EASA is the authorised representation of the EU Member States. This gives the impression that in this regard the EASA is representing the EU Member States. But in another document which is the Protocol to the Cyprus Arrangements on the Participation of the European Aviation Safety Agency which was signed between the JAA (the associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States) and EASA it is formulated in the preamble as follows: “Having regard to Regulation 1592/2002/EC (hereafter: EASA Regulation) on common rules in the field of civil aviation and establishing a European Aviation Safety Agency (hereinafter: Agency), which establishes Community competence in some of the fields covered by the Cyprus Arrangements and requires the Agency to execute some of tasks covered by these Arrangements.” Furthermore, Article 5 of this Protocol indicates that for matters for which the European Community has exclusive competence, the Agency represents all Authorities subject to the EASA Regulation. The whole structure and contracting parties of this protocol raises the question whether it has to be considered internationally legally binding and even more, the EASA appears as the legitimate representative of the Commission and the EC.

This is legally problematic when the original intentions of the EASA Regulation and the wording of Article 302 EC are considered, especially in regard to the two preconditions mentioned above: Delegated powers have to be open to judicial control and the powers delegated remain subject to conditions determined by the Commission and subject to its continuing supervision. Such arrangements should be concluded directly by the Commission and not by the agency or at least a clear link to the final responsibility resting on the Commission needs to be created. The Commission seems to be aware of the misleading wording of Article 18 EASA Regulation and suggested an amendment of the current Article 18 EASA Regulation with the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1592/2002 of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency. According to this Commission proposal Article 18 EASA will be amended with a second paragraph:

“Working arrangements shall comply with Community law and shall duly take into account Community foreign policy vis-à-vis third countries. They shall have received the Commission’s prior approval.”

These developments in practice are also taken into consideration in newer agencies provisions such as the EDA and the FRA where a link of administrative arrangements and an approval by the Council (Art.25 para.1 EDA) and the Commission respectively (Art.8 para.3 FRA) is established. Actions of the agency, including working arrangements, need to be subject to the continuing supervision of the Commission, the Commission can only delegate executive function in this area to an agency when such ad-hoc arrangements are not legally binding, and they do not bind the Commission and the other institutions of the EC. On the other hand, such a practice could also indicate an international legal personality acquired by EASA and other agencies. Another example is the practice of Eurojust, according to Article 26 of its Regulation it should keep close cooperation with Europol and ‘establish contacts of non-operational nature with other bodies, in particular international organisations’. On the basis of this, Article 27 of the founding regulation mandates Eurojust to conclude cooperation agreements approved by the Council with third States and international organisations. Agreements have been concluded with Europol but also with Iceland, Romania, Norway and

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100 Macleod, I.D. Hendry, S.Hyett, op.cit.n.34, p.167.
101 Eurojust, OJ 2002 L 63/1.
the USA.\textsuperscript{102} From their wording it is clear that they are legally binding for Eurojust and are concluded as an international agreement. However, when such agreements give the impression and show the intention to be international legally binding, then this could seriously violate the institutional balance in external relations. Even more, analysing the wording of the regulations and the practice of working arrangements in light of these findings, some of these agencies could have acquired international legal personality or on their way to achieve one. In such, the EDA, FRA, Eurojust and FRONTEX and EASA can be named. This status could create on the one hand a greater legal certainty about the legal nature of such arrangements concluded but stays questionable in light of institutional balance, transparency and democratic control of the existing Union’s institutional structures and the division of external relations tasks under the Treaties. It might be advisable to decentralise external relations tasks but with already having legal uncertainties about the management of external relations between Council and Commission, the rise and proliferation of agencies adds a new layer of uncertainty about the management of external relations and establishment of contacts to international bodies.

4. Conclusion

New institutional actors in EU external relations have emerged and are actively involved in the management of external relations by establishing formal contacts with international organisations and third countries’s bodies. They conclude legally binding international arrangements beneath the surface of the pillars and institutional structures accepted in EU and EC Treaty by Article 24 EU Treaty, Articles 281, 300 and 302 EC Treaty. Such actors are not only well-known institutions of the EIB, Europol and the ECB whose international legal personality is accepted in regard to their functions assigned to them. Additionally, such international legal status could be considered for agencies such as the EDA, Eurojust, FRONTEX, FRA and EASA which fulfil external relations tasks and third pillar functions. Especially for agencies set up by the Council in the second and third pillar a delegation of certain functions which go beyond simple management of external relations would be in line with the powers of the Council in external relations. For agencies set up to aid the Commission in its administrative tasks, international legal personality cannot be established due to the functions of the Commission in external relations from an EU point of view but nevertheless can be considered from an international law point of view where the subsequent state practice in concluding binding arrangements and intention of the involved parties is decisive.

As indicated above, certain incremental changes and an ongoing practice are decisive factors in establishing an international legal personality and international relations of agencies have to be assessed not only from the EU law perspective but also from international law and on a case-by-case basis. With this situation, a certain dilemma exists for agencies which act under the supervision of the Commission such as FRA or EASA. While an internationally binding working arrangements which is concluded only by EASA is not prima facie a violation of Community law in regard to the competence division between Council and Commission but it stays an infringement of the general division of competences in external relations. To consider this as a proof for the international legal personality of such an agency, is even more problematic because this would be in clear violation of the EC internal division of powers and the Commission’s powers of delegation but still could be decided also on factors determined by international law.

In conclusion, the problematic and disputed nature of working arrangements on Commission level is transported on a sub-institutional level of agencies. The current arrangements with different actors involved in external relations activities and the conclusion of international

\textsuperscript{102} See website of Eurojust:, last visited on 10.12.2007.
arrangements by these actors result in a grey area which is legally not acceptable and creates problems of legal uncertainty in regard to their implications and consequences for the internal and external division of competences in external relations. When such arrangements are concluded on agency level, they can be either concluded by the agency itself which triggers questions of the legal effect of such arrangements under international law but are also problematic under EU law aspects. Resolving this conflict by assigning agencies with international status is especially in the case of agencies under control of the Commission from EU law even more controversial. Even when a clear link to the Commission is created, these arrangements are of disputable nature and cause interpretative difficulties whether these arrangements bind the Community as a whole or only the Commission. In such a clear link to Article 300 EC with the Council as treaty-making institutions needs to be given. Finally, the interpretation of the current practice under the backdrop of the existing regulations and Treaty provisions leads to discrepancies between EU law and international law status of such external relations activities. Therefore, not only a clarification of the general nature of working arrangements is advisable but also a further streamlining of regulations setting up agencies is required in field of international relations to clarify their abilities to act in external relations and manoeuvre the different actors safely through this legal minefield between European and international law.