INSIGHT

EU STRATEGIC AUTONOMY AND TECHNOLOGICAL SOVEREIGNTY
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SETTING NORMS AND PROMOTING A RULES-BASED INTERNATIONAL LEGAL ORDER: ENHANCING STRATEGIC AUTONOMY THROUGH THE AUTONOMY OF THE EU ORDER

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ABSTRACT: This *Insight* analyses whether and to what extent the legal implication of the EU operating as an autonomous legal order can contribute to also ensuring its strategic autonomy. The way the European Court of Justice has interpreted the autonomy principle and preserves the autonomy of the EU legal order enhances the strategic autonomy of the EU by preserving its freedom to act. But while its being an autonomous legal order can help the EU to promote a rules-based international order, its ambition as a norm-setting power remains largely dependent on the attitude of its Member States.

KEYWORDS: Multilateralism – Strategic Autonomy – Autonomy of the EU Legal Order – Norm-setting Power – External Relations of the EU – Rules-based International Order.

I. INTRODUCTION

The European Union's strategic autonomy is a political concept that has taken on a new dimension in recent years. Historically confined to the field of Common Security and Defence Policy (CSDP), it initially met with only limited success, as not all Member States were in favour of the Union asserting strategic autonomy in defence matters.[1]

As the EU's international geopolitical environment has become more complex – interdependent and uncertain –, strategic autonomy has progressively become a more encompassing concept and a multi-dimensional policy objective. The COVID-19 pandemic acted as an electroshock in that it raised awareness of the need for the Union to be more conscious of its critical dependencies and to put in place appropriate policies to reduce

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[1] European Parliament Research Service (EPRS), *EU Strategic Autonomy 2013-2023: From Concept to Capacity* (8 July 2022) www.europarl.europa.eu 2.

them. This ambition to develop a more resilient European Union covers multiple dimensions: geopolitical, economic, social, technological, climatic, etc., but also legal, since it is also through the evolution of its law and international law that the Union will succeed in defending its interests and values.

From the perspective of its external relations, the European Union's open strategic autonomy depends on its ability to play an active role on the international scene by equipping itself with the tools it needs to manage interdependencies in accordance with its interests and values. It also requires "a greater capacity to defend a principled commitment to multilateralism, rather than the aspiration to act unilaterally".[2]

Strategic autonomy can thus be analysed as both an objective and a political process that should enable the Union to remain free to make its own political choices in the long term, but also to work towards multilateral responses to global issues. This ambition, clearly stated by the Commission[3] and its President,[4] echoes, in two ways, the autonomy of the Union's legal order, which is a legal concept.[5] According to this concept, the European Union exists as its own legal order, distinct from both the legal order of its Member States and the international legal order. Because it is an autonomous legal order, the European Union is entitled to remain free to act and to seek greater strategic autonomy. But it is also by ensuring that the autonomy of its legal order is preserved in the long term that it can avoid undermining the very foundations of its strategic autonomy.

It is thus possible to assess how the autonomy of the Union's legal order is likely to contribute to its strategic autonomy. Are the effects of the autonomy of the EU's legal order on the conduct of its external action likely to serve strategic autonomy, in particular the Union's capacity to promote a rules-based international legal order and to defend, within it, the adoption of rules compatible with its values and interests?

In some respects, the principle of autonomy of the legal order operates as a leverage for the strategic autonomy of the Union. It preserves and strengthens the position of the European Union as an international norm-setter (section II). More broadly, beyond the principle of autonomy, the very legal nature of the Union, *i.e*. the fact of being an autonomous legal order (as opposed to a sovereign state) impacts its capacity to achieve strategic autonomy (section III).

[2] European Parliament Research Service (EPRS), *On Path to "Strategic Autonomy": The EU in an Evolving Geopolitical Environment* (28 September 2020) www.europarl.europa.eu 29.

[3] Report COM(2021) 750 from the Commission to the European Parliament and the Council of 8 September 2021, '2021 Strategic Foresight Report. The EU's Capacity and freedom to act'.

[4] Ursula Von der Leyen, 'A Union that strives for more. My Agenda for Europe. Political Guidelines for the next Commission 2019-2024' (2019) commission.europa.eu.

[5] See for further reading, R A Wessel, S Blockmans, *Between Autonomy and Dependence: The EU Legal Order under the Influence of International Organisations* (T.M.C. Asser Press/Springer Verlag 2013); J Odermat, 'When a Fence Becomes a Cage: The Principle of Autonomy in EU External Relations Law' (EUI Working Paper 07-2016); C Eckes, 'The Autonomy of the EU Legal Order' (2020) Europe and the World: A Law Review; Bruno de Witte, 'European Union Law: How Autonomous Is Its Legal Order?' (2010) Zeitschrift für öffentliches Recht 141.

II. The autonomy principle as a leverage to achieve open strategic autonomy

The European Court of Justice (ECJ), by requiring that external agreements of the EC/EU do not affect the autonomy of its legal order, created a legal context compatible with political concepts such as open strategic autonomy. In that sense, the autonomy principle can be seen as a legal leverage, given the fact that it favours the affirmation of the EU as a norm-provider in two ways. Firstly, it has secured the EU's norm-setting power by ensuring that existing EU law remains unaltered (section II.1). Secondly, the autonomy principle preserves the EU's capacity and freedom to regulate for the future by making sure that EU institutions remain able to pursue the EU's strategic objectives (section II.2).

II.1. Securing the EU's influence as a norm-setter through the autonomy principle

Through the principle of autonomy, the Court ensures that EU law as it applies within the internal legal order cannot be distorted in its substance nor called into question in its interpretation and application. The autonomy of the legal order would not be guaranteed if international courts were able to decide how EU law were to be applied and interpreted in its own legal order for this is the task of the Court of Justice of the Union.[6]

The Court thus handled, in the early 1990s, a first type of threat likely to result from agreements organising an extension of the *acquis communautaire* to third States. Since the purpose of these agreements was to create a common normative area based on EU law, it was necessary to ensure the homogeneity of interpretation of the common rules in this area. At the same time, it was also necessary that the creation of this space should not distort the Community project. The only possible option was that the interpretation of the rules governing the common space – which are identical in substance to the Community rules – should receive an interpretation identical to that which applies within the Community legal order.

By establishing this requirement, which has guided the institutions in the way they have negotiated agreements providing for the extension of the Union *acquis* to third countries, the Court has prevented the European political project from being diluted by the Community's participation in larger, but less integrated and politically less ambitious, areas of law. Opinions 1/91,[7] 1/92[8] and 1/00[9] of the Court of Justice allowed several agreements extending the EU *acquis* to third countries to be concluded on the condition

[6] Art. 14 TEU and art. 344 TFEU.

[7] Opinion 1/91 *Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area* ECLI:EU:C:1991:490.

[8] Opinion 1/92 *Draft agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area* ECLI:EU:C:1992:189.

[9] Opinion 1/00 *European Common Aviation Area* ECLI:EU:C:2002:231.

that sufficient safeguards were inserted in the agreements to ensure that the autonomy of the EU order would not be called into question.

Different mechanisms have been set up in the EU's agreements extending the *acquis*, depending on their characteristics.[10] The safeguards vary according to whether a given agreement extends the *acquis* immediately (with provisions identical in substance applying as soon as the agreement becomes applicable) or progressively (with a commitment to align with the *acquis*), or whether it enforces the uniformity of application of the provisions through a diplomatic dispute settlement mechanism or through an arbitral one. Such safeguards aim in particular at ensuring that no external Court can ever decide on the interpretation of EU law within the EU order. These types of agreements have thus extended the *acquis* beyond the EU in a dynamic manner which permanently secures the norm-setting power of the EU towards its partners.

This legal influence of the EU remains mainly regional. Nevertheless, the safeguards inserted in such agreements[11] to preserve the autonomy of the EU order secure the EU's position as a norm-setter.

As far as strategic autonomy is concerned, the EU's norm-setting power increases with the effective implementation of the agreements by EU partners, which is more likely when they include a legally binding dispute settlement mechanism. Considering the fact that these agreements extend, at least partially, the internal market to the territory of third States, EU law applies, in substance, within up to 35 or 36 States[12]. Beyond the economic area they establish, the agreements amplify the EU's market power and fuel phenomena such as the so-called "Brussels effect".[13] They have thus become a dynamic vector of dissemination of the substantive law of the Union and of the methods of interpretation of Union law.[14] More importantly as far as strategic autonomy is concerned, each time this dissemination occurs, it carries with it the policy objectives that underlie EU law and that the EU partners then make their own.

[10] For an analysis, see C Rapoport, 'Autonomy of the EU Legal Order and International Agreements Extending the *Acquis*: *Opinion 1/00 (European Common Aviation Area)*' in G Butler et R A Wessel (eds), *EU External Relations Law: The Cases in Context* (Hart Publishing 2022) 501.

[11] They are sometimes described as "integration agreements". See M Maresceau, 'Les accords d'intégration dans les relations de proximité de l'Union européenne' in C Blumann (ed.), *Les frontières de l'Union européenne* (Bruylant 2013) 151-192 at 153: "integration agreements with neighbours all organise, in one way or another, the incorporation of part of the Union *acquis* as such into their internal legal order, which, combined with a more or less structured alignment, tends to achieve partial integration in certain areas or policies of the Union" (my translation).

[12] Depending on the field, and apart from EU MS, EU law applies in European Free Trade Association (EFTA) states (Norway, Island, Liechtenstein, Switzerland), in the Western Balkans (Serbia, Bosnia and Herzegovina, Montenegro, Albania and Kosovo), and in Eastern associated Neighbours (Georgia, Moldova, and Ukraine).

[13] A Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020).

[14] E Delcher, *L'Espace économique européen: recherche sur l'homogénéité au regard du droit de l'Union européenne* (PhD manuscript, University of Tours 2021) 221-259.

More recently, a second type of external threat, resulting from some international agreements of Member States – the so-called *intra*-EU bilateral investment treaties (BITs) – has been identified in the field of international investment law. With its *Achmea* judgment,[15] the Court of Justice ruled that no international arbitral award issued by reference to an *intra*-EU bilateral investment treaty could prevent the application of EU law nor alter its interpretation within the EU order. Even more recently, the Court confirmed that the same reasoning applied to multilateral investment treaties, in particular the multilateral Energy Charter Treaty (ECT).[16]

Such rulings preserve the EU's existence as an autonomous order and thus secure the integrity of EU law as well as its uniform and effective application. By ensuring that its norm-setting power remains unaltered within the Union and even extends into the internal order of third countries, the Court creates the proper conditions for the EU to assert itself as a norm-provider worldwide as the former also effectively secures the latter's capacity and freedom to act.

II.2. Securing the EU's effective capacity and freedom to act through the autonomy principle

In addition to the law in force, the autonomy of the EU's legal order aims to perpetuate its capacity to make political choices through EU law. In this sense, the Court's jurisprudence has progressively framed the conduct of institutions when they consider entering into international commitments on behalf of the Union. Building upon this tendency, the Court in its Opinion 1/17 went a step further in delineating/conceptualizing the principle of autonomy by including more explicitly than before a will to preserve the Union's ability to legislate and freely determine the levels of protection of its legitimate public interests that echoes the concept of strategic autonomy.

It is important that the conventional obligations subscribed to by the EU do not constitute the source of such pressure or influence. This is how the Court of Justice's examination of the Investment Court System of the Comprehensive Economic and Trade Agreement (CETA) should be interpreted. On the one hand, the Court verifies, as it has done with regard to previous agreements, that the international court is unable to adopt an interpretation of Union law (other than the provisions of the international agreement itself) that is binding in the internal legal order of the Union (verification of the non-denaturing of Union law). On the other hand, it also verifies the absence of means of external pressure resulting from the general economy of the Investment Court System, the first of which being the financial risk incurred by the Union or its Member States on the occasion of a procedure. The threat of financial sanctions shall not go so far as to make them give up legislating or freely determining the level of protection of their

[15] Case C-284/16 *Achmea* ECLI:EU:C:2018:158.

[16] Opinion 1/20 *Draft modernised Energy Charter Treaty* (not yet published); case C-741/19 *République de Moldavie v Komstroy LLC* ECLI:EU:C:2021:655.

legitimate interests. This *in concreto* verification involves examining the way in which the agreement defines reprehensible conduct, a definition that must be sufficiently circumscribed and precise so that the international court cannot interpret it too freely or too broadly.[17] It is also necessary to ensure that the agreement expressly preserves the parties' right to regulate, which requires the systematic insertion of clauses to this effect in investment agreements negotiated by the Union or its Member States.[18]

Finally, it is important to verify how the agreement defines the office of the arbitral tribunal, in particular the way in which the agreement frames its power of interpretation and the sources of law to which it may refer in the context of its office.[19]

The solution of the Court regarding the autonomy principle can be seen as protecting the "EU's capacity and freedom to act",[20] which is one of the cornerstones of strategic autonomy, but also as allowing the EU's global norm-setting power to flourish, another feature of the EU's strategic autonomy. Indeed, the solution in Opinion 1/17 allows EU institutions to keep on negotiating external agreements whose compliance is subject to the control of an international jurisdiction. In that sense it allows the EU to play an active role and participate in multilateral or bilateral negotiations aiming at reinforcing the effectiveness of international law without weakening the autonomy of the EU order. Opinion 1/17 also guides the EU institutions in defining their position as far as the substance of international law is concerned. EU institutions have to make sure that they do not commit to international norms which could permanently affect EU's right to legislate. The margin of manoeuvre of the Commission (but also of the Council when elaborating the negotiating mandates) becomes narrower but more assertive at the same time. In that sense, the autonomy principle meets the objectives of strategic autonomy. A recent example can be found in the EU draft proposal for a modernised Energy Charter Treaty.[21] The EU suggested, "for greater certainty", that a circumscribed definition of "expropriation"[22] should be established. If the

[17] Opinion 1/17 cit. para. 158.

[18] When negotiating a BIT within the framework of Regulation 1219/2012 establishing transitional arrangements for bilateral investment agreements between Members States and third countries, the European Commission requires that they fall in line with the EU approach to the right to regulate and that they endorse the objective of establishing a multilateral investment court and use its services in the future. See Report COM(2020) 134 final from the Commission to the European Parliament and the Council of 6 April 2020 on the application of Regulation (EU) 1219/2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries, p. 7.

[19] Opinion 1/17 cit. paras 152-156.

[20] Report COM(2021) 750 final cit.

[21] See EU draft proposal for a modernised Charter of Energy Treaty, ccsi.columbia.edu 7.

[22] *Ibid*. "For greater certainty, except in the rare circumstance when the impact of a measure or series of measures is so severe in light of its purpose that it appears manifestly excessive, non-discriminatory measures by a Party that are designed and applied to protect legitimate policy objectives, such as the protection of the environment, including combatting climate change, the protection of public health, social services, public education, safety, public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity do not constitute indirect expropriations".

provision were to enter into force, the definition would bind the interpretation of the arbitral panel when enforcing the ECT.

Beyond the CETA, Opinion 1/17 has also possibly consolidated the EU's positions in several ongoing negotiations. The developments currently taking place in international investment law, at least as regards its normative aspect, clearly set out the objectives that the Union has decided to promote in the exercise of its competence in the field of investment. The conception of international investment law promoted by the European Union is, in fact, reflected both in the work carried out within the United Nations Commission on International Trade Law (UNCITRAL) on the establishment of a first instance and appeal investment court, and in the amendments sought[23] through the modernisation of the Energy Charter Treaty, the adoption of which is postponed for now.[24]

By preserving the EU's capacity to conclude external agreements through which it can achieve its objectives, and sometimes act as a norm-setter without altering its identity and its capacity and freedom to act, the autonomy principle contributes to the strategic autonomy of the EU. Beyond the autonomy principle as such, the constitutional autonomy of the EU may also have an impact on its achievement of strategic autonomy.

III. The constitutional autonomy of the EU as a constraint on its strategic autonomy

This section no longer refers to the autonomy principle but more broadly to the very nature of the EU, *i.e*. its being an autonomous legal order also described as "the constitutional autonomy of the EU".[25]

Being a subject of international law, but not sovereign, the EU acts as an international player within the constitutional framework which its Member States have provided it with. This constitutional framework, in particular arts 2, 3(5) and 21 of the Treaty on European Union (TEU), sets out objectives to be achieved, values and interests to be defended, and principles to be respected. The Union's strategic autonomy must therefore

[23] Decision of the Energy Charter Conference, 'Public Communication Explaining the Main Changes Contained in the Agreement in Principle' (24 June 2022). The texts of the modernised ECT have not been made public yet.

[24] The Energy Charter Treaty Conference decided to postpone the adoption of the modernisation treaty pending the agreement of the EU (and its Member States) on their position within the Conference. An *ad hoc* Conference meeting had provisionally been scheduled in April 2023, but hasn't taken place yet.

[25] K Lenaerts, 'Les fondements constitutionnels de l'Union européenne dans leurs rapports avec le droit international' in A Tizzano, A Rosas, R Silva de Lapuerta and others (eds), *La Cour de justice de l'Union européenne sous la présidence de Vassilios Skouris (2003-2015). Liber amicorum Vassilios Skouris* (Bruylant 2015) 367-385, at 379, "The constitutional autonomy of the Union is based not only on structural principles, but also on substantive norms which, by reflecting the values on which the Union is founded, help to establish its constitutional identity" (my translation).

be deployed within this framework, taking into account Member States' natural presence on the international scene.

The EU's constitutional framework may then appear to be an unavoidable constraint that the EU has to take into account when deploying the legal instruments aiming at achieving its strategic autonomy. The EU's capacity and freedom of action remain necessarily constrained by the distribution of competences between the EU and its Member States and procedural rules established by the treaties. But beyond the provisions of the treaties, the EU's autonomous external action depends largely on the way in which the Member States, acting as such or acting as members of the Council will make use of the procedures. Within the constitutional framework, different institutional practices remain possible and may impact the achievement of strategic autonomy positively or negatively.

In that sense, achieving strategic autonomy cannot be the objective of the European Commission or the European External Action Service (EEAS)[26] alone. The goal can only be reached if it is jointly shared among the Institutions and the EU Member States. The EU's international agreements constitute a privileged ground for manifestation of this phenomenon. Recent examples concerning both multilateral and bilateral treaties illustrate how the practice of external relations law impacts both the EU's participation in multilateral agreements (section III.1), and its ability to forge strategic alliances (section III.2) and thus to contribute to a rules-based international order.

III.1. Ability to join or to depart from multilateral agreements

The freedom to act, which is an important feature of strategic autonomy, necessarily implies that the EU is effectively able to conclude multilateral agreements as they address global issues. It is also important that the EU is able to withdraw from them when necessary. On both aspects, the EU's constitutional framework does not address all the legal consequences generated by the joint participation of the EU and its Member States. Indeed, it leaves room for an institutional practice which may also affect EU's strategic autonomy.

The "common accord" technique, recently validated by the Court,[27] is an example of the difficulties rising from the EU's conclusion of a multilateral agreement requiring mixity.[28] According to this practice, the Council may decide to wait for the ratification of all the Member States before concluding a mixed agreement in the name of the EU in order to ensure the unity of the EU's external representation. However, at the same time, it weakens the action of the EU as an autonomous legal order. Indeed, it delays the EU's conclusion of the multilateral convention by implicitely making it conditional on the approval of all

[26] C Rapoport, 'La Commission et le Haut-représentant rêvent l'Union en leader du multilatéralisme de demain' (2021) Revue Trimestrielle de Droit Européen 684.

[27] Opinion 1/19 *Istanbul Convention* (not yet published).

[28] J P Jacqué, 'A propos de la conclusion d'un accord mixte par l'Union européenne: le cas de la convention d'Istanbul (Avis 1/19)' (2021) Annuaire Français de Droit International 448.

Member States within the Council. Even though a qualified majority would be sufficient, the Council remains free to determine the appropriate time for the adoption of its decision concluding the agreement since "both the decision whether or not to act on the proposal to conclude an international agreement, [...] fall within the Council's political discretion".[29] The delay in the conclusion of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is a recent illustration of this phenomenon.[30] The principle of loyal cooperation is of no help in this case, since, as the Court ruled in Opinion 1/19, it does not go so far as to oblige Member States to ratify the convention to facilitate its conclusion by the Union nor to oblige the Council to adopt the decision to sign or to conclude as soon as a qualified majority has been reached.[31]

More recently, the negotiations on the modernisation of the Energy Charter Treaty have highlighted the difficulty of maintaining a unified position over time both within the EU and between the EU and its MS. In charge of the negotiation of the modernisation treaty, the Commission did not obtain satisfaction on all the expected points of improvement, in particular, the elements aiming at securing the transition to green energy.[32] However, Prior to the Charter Conference meeting of 22 November 2022 when the text of the modernisation treaty was expected to be adopted and signed,[33] several Member States[34] expressed their intention to withdraw from the Charter, a withdrawal that they were free to trigger as they are also contracting parties to the ECT. This created a division within the Council as withdrawing Member States, being consistent with their individual statements, managed to prevent the reaching of a qualified majority. The Council was thus unable to adopt the Commission's proposal for an EU position at the Energy Charter Conference meeting.[35] Instead, the Commission had to request a postponement *sine die* of the vote until the EU reaches a position on its intentions *vis-à-vis* the ECT and its modernisation.

Beyond the capacity to reach a common position on the modernisation treaty, the withdrawal of the EU and its Member States from the ECT is now being studied. Whether

[29] Opinion 1/19 cit. para. 252.

[30] *Ibid*.

[31] *Ibid*. paras 251-255. The Istanbul Convention was signed by the EU in 2017. The Council finally decided to conclude the agreement without waiting for the ratification of all the Member States. See the Council Decision (EU) 2023/1075 of 1 June 2023 on the conclusion, on behalf of the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence with regard to institutions and public administration of the Union. Six Member States still refuse to ratify the Istanbul Convention.

[32] Doc. 10745/19 from the Council to Permanent Representatives Committee/Council of 2 July 2019, 'Negotiating Directives for the Modernisation of the Energy Charter Treaty'.

[33] The Commission proposes that the EU approves the four decisions related to the modernisation of the ECT that the Energy Charter Conference is to take. See the Proposal for a Council decision COM(2022) 521 final from the Commission of 5 October 2022 on the position to be taken on behalf of the European Union in the 33rd meeting of the Energy Charter Conference.

[34] France, Germany, Luxembourg, the Netherlands, Poland, Slovenia and Spain.

[35] Council Decision COM(2022) 521 final cit.

the EU's withdrawal will be suspended to a "common accord" remains to be seen. As far as Member States are concerned, those wishing to withdraw from the ECT are free to do so whenever they like. Indeed, the principle of loyal cooperation probably does not go so far as to deprive them of this right, as Advocate General Hogan pointed out in his conclusions on Opinion 1/19,[36] a right that Italy made use of in 2016.

As for the EU's decision to withdraw from the ECT or the decision to go on with its modernisation process, both may be impossible to proceed with especially if the Council seeks a common accord.

III.2. Ability to forge strategic alliances

Strategic autonomy implies that the EU has the capacity to forge strategic alliances. Association agreements have often been seen as the appropriate tool to establish a close, comprehensive and long-lasting conventional relationship with a partner. The Treaty on the Functioning of the European Union (TFEU) itself gives association agreements a specific status by requiring a unanimity vote of the Council for their signature and conclusion.[37] As a symbol of their specific status, association agreements are almost always[38] concluded as mixed agreements even though mixity is no longer required since the Lisbon Treaty.[39] As a result of this choice for mixity, the closest political partnerships that the EU can formalise through an agreement depend, in the end, on the ratification of the association agreement by all Member States. The conclusion of the EU-Ukraine Association Agreement has already proven how sensitive such a ratification can be within a Member State.[40]

But when it comes to association agreements, mixity is not the only way in which Member States can harm the EU's capacity to forge strategic alliances. The delay in

[36] Opinion of Advocate General Hogan, Opinion procedure 1/19, 11 March 2022, ECLI:EU:C:2021:198 para 225: "In those circumstances, although the duty of sincere cooperation would doubtless impose an obligation to inform the Union in advance on the part of the Member State concerned, it cannot go so far as to prevent a Member State from withdrawing from an international agreement. Indeed, the logical and inescapable consequence of the principle of attribution of competences is that a Member State may withdraw from a mixed agreement as long as part of the agreement still falls within the competence of the States, either because the Union has not yet pre-empted all the shared competences, or because certain parts of the agreement fall within the exclusive competence of the Member States. That possibility would not, however, oblige the Union to leave the agreement as well".

[37] Art. 218(6)(a) TFEU.

[38] With the notable exception of the EU-UK Trade and Cooperation Agreement and the EU-Kosovo Stabilisation and Association Agreement.

[39] P Van Elsuwege and M Chamon, 'The Meaning of "Association" under EU Law: A Study on Law and Practice of EU Association Agreements' (February 2019) Study for the European Parliament's Committee on Constitutional Affairs (AFCO) www.europarl.europa.eu.

[40] G Van der Loo, 'The Dutch Referendum on the EU-Ukraine Association Agreement: Legal Options for Navigating a Tricky and Awkward Situation' (8 April 2016) CEPS Centre for European Policy Studies www.ceps.eu.

signing the EU-ACP Partnership Agreement (hereafter "Post-Cotonou" Agreement)[41] shows the great dependence of the Union on its Member States in the deployment of association agreements which are likely to promote its strategic autonomy. This recent example is particularly relevant as the building of strategic alliances[42] is one of the new features of the envisaged future EU-Asian, Caribbean, and Pacific (ACP) agreement. With its Part III entitled "Global alliances and international cooperation", the Post-Cotonou Agreement could become the framework for a political dialogue dedicated to the promotion of EU-ACP common positions in multilateral fora.[43]

The signature of the envisaged EU-ACP partnership is, for now, blocked by a Hungarian veto within the Council. Hungary probably intends to put pressure on the EU institutions which are discussing the adoption of financial sanctions against it in response to its breaches of the rule of law. More broadly, this last example shows how hard it can be to achieve strategic autonomy, in particular its external dimension aiming at defending interests and promoting values when the effectiveness of those values is challenged from the inside. This last question should not be neglected. Part of the EU's credibility as an international actor lies in the fact that it is a rules-based and value-driven entity.

IV. Conclusion

Being an autonomous legal order and not a sovereign state, the EU acting at the international level has no choice but to comply with its constitutional framework. Such compliance is ensured by the legal supervision of the Court which has also boosted – through its interpretation of the autonomy principle – the EU's position as a norm-setter and its freedom to act. However, support from the Member States, remains essential for the EU to achieve strategic autonomy as they are natural international players.

[41] The text of the EU-ACP Partnership Agreement is annexed to the Proposal for a Council Decision COM(2021) 312 final from the Commission of 11 June 2021 on the signing on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union, on one side, and the members of the Organisation of African, Caribbean and Pacific States (OACPS), on the other part.

[42] See Part III "Global alliances and international cooperation" of the EU-ACP "Post-Cotonou" agreement, COM(2021)312 final cit.

[43] See art. 79(1) of COM(2021) 312 final cit.