Introduction

The contributions included in this issue have one topic in common – the rule of law in various areas of international dispute settlement. In this respect, this issue also represents the final building block in a series of projects and events that have taken place over the past few years (2021-2024) as part of the *Jean Monnet Chair for the EU Constitutional Framework for International Dispute Settlement and Rule of Law.*

The EU itself is constituted as a *community based on law*; it finds its basis in law itself. Accordingly, the rule of law plays a prominent role in its internal dimension and external relations, as is generally established by Art. 2 TEU and emphasized again by Art. 21 TEU for the entire area of external action.

Today, the EU participates in a large number of international dispute settlement bodies, as it has become a party to international organizations and treaties in its own right as a subject of international law. However, in order for the EU to be allowed to conclude such international treaties, it must be ensured that they respect the fundamental requirements of the *EU Constitutional Framework*. By this, fundamental principles, such as the autonomy of EU law, represent a benchmark for determining the necessary compatibility of international dispute settlement with Union primary law and thus for the EU's participation. At the same time, these principles applicable to internal dispute settlement mechanisms within the EU can also serve as a starting point for the further development of international dispute settlement mechanisms in which the EU is involved.

In the last decades, the ECJ has underlined the necessary compliance of international dispute settlement regimes with the EU's constitutional framework in a number of cases and also did not shy away from limiting the EU's possibilities of accession (European Convention on Human Rights) to and even continued participation in international treaty regimes (Energy Charter Treaty). Apart from the autonomy of the EU legal order which has been repeatedly emphasized in this context, the rule of law is certainly another fundamental principle that deserves special attention, in particular when it comes to international dispute resolution. The participation of the EU and its Member States in international dispute settlement mechanisms inevitably presupposes that the requirements of a Union-wide rule of law are met. In *CETA Opinion 1/17* (para. 110), the ECJ emphasizes, that

> "(…) the Union possesses a constitutional framework that is unique to it. That framework encompasses the founding values set out in Article 2 TEU, which states that the Union 'is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, and respect for human rights', the general principles of EU law, the provisions of the Charter, and the provisions of the EU and FEU Treaties, which include, inter alia, rules on the conferral and division of powers, rules governing how the EU institutions and its judicial system are to operate, and fundamental rules in specific areas, structured in such a way as to contribute to the implementation of the process of integration described in the second paragraph of Article 1 TEU (see, to

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that effect, Opinion 2/13 (*Accession of the Union to the ECHR*) of 18 December 2014, EU:C:2014:2454, paragraph 158)."

Referring to the specific requirements of the EU rule of law principle for dispute settlement proceedings, the ECJ emphasizes in *CETA* (para. 203) that "[t]he second aspect, which is internal in nature, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the judicial system)*, C-216/18 PPU, EU:C:2018:586, paragraph 65 and the case-law cited)". The court further also mentions the access to justice in this Opinion.

Overall, elements the ECJ sees as part of the mandatory minimum standard of an EU participation in international dispute settlement (the "minimum standard EU IDS RoL requirements") are esp.

- independent, impartial court tribunal established by law
- public proceedings including general transparency obligations,
- general access, in particular accessibility for small and medium-sized enterprises as well as individuals, and
- consistency of decision making.

Further aspects mentioned in the ECJ's case law are the principles of evidence and proof, which can be derived in particular from the guarantees of fundamental rights.

Thus, if the EU is to be included in international dispute resolution – and because of its extensive competences and its geopolitical significance, there is actually no way around this – there must be in effect an EU-RoL (legal) export to the international dispute resolution process.

The following contributions examine individual fields of international dispute resolution – in particular investment, commercial and sports arbitration as well as WTO dispute settlement and rule of law questions of a future Council of Europe Special Tribunal for Ukraine and finally the EU's Common Foreign and Security Policy from the perspective of the rule of law.

In a next step, the question would arise as to whether these different dispute mechanisms meet the EU-related requirements. This will then have to be discussed in a further article and/or issue of ZEuS.

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