

# International Legal Personality Of The European Union

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**Key words:** European Union, European Communities, international legal personality, international relations, common foreign and security policy.

## ABSTRACT:

This article deals with features of formation of European Union's legal personality. Legal consequences of the Union's actual entry into international relations are analyzed. The relevant provisions of the Lisbon Treaty are considered.

**Açar sözlər:** Avropa İttifaqı, Avropa Birlikləri, beynəlxalq hüquq subyektivliyi, beynəlxalq münasibətlər, ümumi xarici və təhlükəsizlik siyasəti.

## Annotasiya:

Bu məqalədə Avropa İttifaqının hüquqi subyektivliyinin formalaşmasının xüsusiyyətləri araşdırılır. İttifaqın beynəlxalq əlaqələrə daxil olmasının hüquqi nəticələri təhlil edilir. Lissabon müqaviləsinin müvafiq müddəaları nəzərdən keçirilir.

**Ключевые слова:** Европейский союз, Европейские сообщества, международная правосубъектность, международные отношения, общая внешняя политика и политика безопасности.

## Аннотация:

В этой статье рассматриваются особенности формирования правосубъектности Европейского Союза. Анализируются

правовые последствия фактического вступления Союза в международные отношения. Рассмотрены соответствующие положения Лиссабонского договора.

The notion of “international legal personality” is in close relation with that of “subject of international law”, these notions being often defined one through the other. For the identification of a subject of international law it is required to ascertain whether such subject possesses legal personality in the international legal order, in other words, whether it has the legal capacity to act internationally (1).

Since the formation of the European Union over its international personality, there have been disputes. This was mainly due to the fact that when concluding the Maastricht Treaty, the states did not give the Union the opportunity to independently enter into international relations. However, in fact, such activities by the European Union were carried out through the European Communities. In order to understand the essence of the “actual” international personality of the EU in 1992-2009, it is necessary to turn to its grounds.

Having established the European Union in 1992, Member States three “pillars”, one of which is the common foreign and security policy (CFSP). It should be noted that the CFSP affects not only the Union and the Member States, but also the European Communities that have not ceased to exist since the creation of the European Union. Both states and integration associations had to coordinate among themselves foreign policy, the implementation of which took place both on behalf of the states and on behalf of the Union itself (5).

Foreign sources rightly point out that, in order to implement a common foreign policy, the Union clearly needed the ability, for example, to conclude international treaties with third parties. Such an opportunity the EU Maastricht Treaty does not provide. The opinions of the Europeanists were divided into two camps: some believed that granting the status of a legal entity to the Union would not harm national sovereignty and would allow states to fully and sufficiently independently implement their foreign policy. Others believed that the conferring of legal personality on the Union would affect the legal personality of the Community. However, the authors note the paradox of the Maastricht Treaty. In particular, the provisions of articles 24 and 38 of the EC Treaty allow the Council to conclude international agreements in the field of CFSP and LDPE. The Council, in turn, is an institution of the Union, and not an intergovernmental conference, therefore, giving these powers to the Council, states grant the Union the right to conclude international treaties, officially refusing to recognize the existence of an international legal personality. It is obvious that the Union entered into international relations through the institutional system of the Communities, while not having its own international personality (6).

It is worth agreeing with the German scientists who believe that the legal personality of the Union was not only derived from actual relations (4). In turn, the argument in favor of legal personality is the presence of permanent bodies and the ability to accept new members.

Theoretical discussions were also conducted among Russian international lawyers. Some authors, while analyzing the EU acts and examining its international activities, tend to have a legal personality. For example, B. N. Topornin denies the lack of legal personality in the European Union by virtue of Article 49 of the Treaty on European Union, which establishes the rules for admission to the EU, as well as article 15, according to which the Presiding Member State represents the European Union in matters related to the general policy and security policy, which points to the activities of this organization as a subject of international law (7). In addition, in foreign sources, the position on the legal personali-

ty of the European Union on the basis of the latter's own competence in terms of powers in the field of common foreign policy and general security, internal affairs and justice, European citizenship issues was upheld by G. Ress.

Europeans, defending the presence of international legal personality in the European Union, the main argument is the possibility of the EU (before Lisbon Treaty) to conclude international trade agreements. The authors speak about the possibility of entering into contractual relations with third countries, as well as the possibility of being responsible.

Real relations of the EU still spoke of his participation in international relations. Moreover, the EU entered into similar relations as a subject of international law, for example, taking part in international organizations. Thus, the central element of the foreign policy of the European Union is relations with the UN. Cooperation has been and is being implemented now in a wide range of areas: environmental protection, peace consolidation in conflict zones, humanitarian assistance in crisis situations, combating corruption and crime, global health problems, labor and culture issues.

The European Union enters into relations with the UN and through member states. This is especially true in such areas as agriculture, fisheries and trade. Currently, the EU is a party to more than 50 multilateral UN agreements. In addition, the Union makes a significant contribution to the UN system.

Cooperation is built not only on political dialogue - the EU provides significant financial support for UN programs and projects, implemented on the basis of financial and administrative framework agreements.

The European Union has taken a stable place in relations with the UN. This is manifested in the fact that it is represented in six main committees and other subsidiary bodies of the UN General Assembly, the Economic and Social Council and its commissions, as well as in other bodies, including bodies of specialized agencies of the UN system. More than 1,000 internal coordination meetings of the EU are held in New York, Geneva and Vienna in order to develop a common position. Of no small importance is the permanent membership of France and Great Britain in the UN Security Council. Thus, Article 19 of the Treaty on the EU provides that Member States

that are also members of the UN Security Council will coordinate their actions and fully inform the other member states (3). Member States that are permanent members of the Security Council will take care in the exercise of their functions to protect the position and interests of the Union, without prejudice to the responsibility vested in them in accordance with the provisions of the UN Charter.

It should be noted that European Union entered into international relations through the European Communities. For example, the European Community, and not the Union, is a member of the World Trade Organization. WTO members are also EU states. In this regard, there is a problem with the definition of “international competence” of each of the subjects. An attempt to differentiate the powers in this sphere was made by the Court of European Communities.

Even at the conclusion of the Treaty establishing the WTO, a dispute arose between the Commission and the Member States of the Community, which of them has the right to sign the WTO Agreements. In accordance with the Court’s conclusion, according to Art. 113 (now Article 133 of the Treaty on the European Community) the Community has the exclusive competence to conclude international treaties in matters related to trade in goods. The Community and its member States have the joint competence to conclude the GATS and TRIPS. As noted by M.P. Fedorov, this conclusion was perceived ambiguously in the scientific world. Thus, according to M. Hilf, the Court could perhaps have recognized for the Community the authority to conclude all WTO agreements. It seems, however, that this conclusion of the Court is quite logical from the international point of view. The exclusive competence of the EU is provided only in the sphere of trade in goods, and in the sphere of services and intellectual property, the Community does not have such powers (Article 133 of the Treaty on the EU). Obviously, thus, Member States, while limiting the international legal personality of communities (including the Union), reserve the right to independently make decisions in certain areas. This approach has been preserved in the Lisbon Treaty.

Indeed, Article 32 of the Treaty on the European Union fixes the international legal personality of the European Union. This means

that the existing legal personality has finally acquired legal support, and now the EU becomes a full-fledged subject of international law. Commenting on this article, Ralph Gran points out that by giving the EU legal personality, states fix the provisions only on the basis of which the Union can independently enter into international relations, that is, act as a subject of international law. The author speaks of the strict limitation of the legal personality due to its secondary nature (production). Indeed, the states, granting the EU status, hastened to clearly stipulate its scope, to consolidate the scope of “international competence” (8).

It can be said that the states endow the Union with legal personality, but with “reservations”. For example, the EU can conclude international treaties in all areas of its competence, if:

- this is provided for by the basic EU treaties;
- requires the achievement of the objectives indicated in the contracts;
- a legally binding EU document requires this;
- this contract may affect or change the general rules of the EU.

In general, the international legal personality of the European Union under the Lisbon Treaty is reduced to the fact that the EU gives the right to enter into international treaties independently (without the Communities) and to be a member of international organizations. However, among European scholars there are those who believe that this is not enough, moreover, when analyzing the provisions of the Lisbon Treaty on the legal personality, they doubt that the EU has had the opportunity to conclude international treaties (not coordinated with the member states), the subject of which is trade or external policy (9).

The norms of the Lisbon Treaty on legal personality allow us to say that the Union and the member states sought to subordinate each other to the sphere of international relations. On the one hand, States restrict the international legal personality of the Union, on the other hand, the Union establishes control over the participation of “its” states in international relations. In particular, the norms of the Lisbon Treaty give States the obligation to coordinate their foreign policy with the EU. Thus, a provision is established according to which Member States within the European Council

and the Council of Ministers should conduct joint consultations on any matter relating to their common interests. This follows from the principles of cooperation (Clause 3, Article 4 of the Lisbon Treaty) and solidarity (it was fixed in clause 2 of Article 11 of the Treaty of Nice and Article 8, paragraph 2 of the Lisbon Treaty).

Analyzing the provisions of Art. 32 of the Lisbon Treaty, it can be concluded, that states undertake to coordinate among themselves, and hence with the EU, their position in the field of foreign policy and any action in the international arena (2). Also, this article establishes that Member States have the right to conclude any international treaty, provided that it does not conflict with agreements signed by the EU or does not fall within the competence of the Union. In our opinion, this can be interpreted as the fact that the Union assumes the authority to monitor the conclusion of international treaties by the member states for their compliance with their acts.

Of particular interest is article 34 of the Lisbon Treaty, which proclaims the duty of States to coordinate their actions within the framework of international organizations and at international conferences. This article imposes an obligation on States to maintain the position of the Union, especially in organizations that do not involve all Member States.

It seems that the legal personality of the European Union, like any other international organization, undoubtedly depends on the extent of the powers it is conferred on Member States.

Obviously, states do not simply define the directions of international cooperation to which the European Union can join, they can expand or limit its powers in each specific sphere. The European Union, after the entry into force of the Lisbon Treaty, acquired the international legal personality of the communities. Entering into international relations, the European Union represents not only its international personality, but also acts on behalf of the member states. This situation is justified by the existence of common policies peculiar to the Union.

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