

Mario Mendez, *The Legal Effects of EU Agreements: Maximalist Treaty Enforcement and Judicial Avoidance Techniques*. Oxford: Oxford University Press, 2013. 374 pages. ISBN: 978-0-19-960661-0. GDP 60.

International agreements are the EU's legal tools, par excellence, to establish and define its relations with third States and other international organizations. Indeed, as noted by Mendez, "Today few parts of the world remain unconnected to the EU by some form of bilateral or regional trade-related agreement" (p. xvii). Yet, the Union's external relations have moved well beyond trade and aid issues and by now the international agreements cover most of the areas in which the EU enjoys internal competences. Over the years the number of express references in the Treaties to external competences has increased, and at the same time the famous *ERTA* doctrine found its way into a Treaty provision (Art. 216(1) TFEU), allowing for international agreements to be concluded in other areas linked to internal policies or provisions. All in all, this had led to some 1,000 treaties to which the Union is a party.

Indeed, irrespective of the absence of a definition of "international agreement" in the EU Treaties, there is no doubt that they are "treaties" in the sense of international treaty law. By concluding international agreements, the Union thus enters international law and it must follow the rules to be able to play along. At the same time, international agreements bring international obligations to the Union's domestic legal order. It is this latter dimension in particular that forms the topic of the book reviewed here and which also leads to "a constitutionalization of international norms through their transformation into EU law provisions that are then endowed with those special hallmarks of EU law, supremacy and direct effect." (p. xix). The question of how the EU Courts deal with international agreements and establish their effects is central in this book. This question is approached on the basis of a dataset of some 337 cases – thus highlighting the empirical dimension of this study (something not frequently seen in legal scholarship). The cases are classified along three strands: Association, Cooperation, Partnership and (non GATT/WTO) Trade Agreements, GATT and WTO Agreements, and a rest category called "non-trade agreements" (including e.g. the Aarhus Convention, the Montreal Convention, the MARPOL Convention and UNCLOS). This approach reveals the dominance of trade issues in the Court's case law. While these days the EU seems to be concluding agreements in many different areas (including CFSP, CSDP, the AFSJ), this is not at all reflected in case law – the reason obviously being the different role of the Court in some of these areas.

The author's factual approach is refreshing. The empirical work sheds a new light on a classic theme in EU external relations law. On the basis of the analysis of the different cases, the author aims to discover some general findings and he does so by categorizing the cases along three lines: 1. ex post challenges to the substance or to the procedure for concluding EU Agreements; 2. challenges to domestic action; 3. and challenges to EU action. The overall conclusion with regard to the first category (19 cases) is that the "autonomy of the EU legal order" seems to be preserved ("the triumph of constitutionalism"). The second category (159 cases; of which 90% relate to trade) reveals "a maximalist approach to treaty enforcement, that is, a model exhibiting a powerful commitment to ensuring the greatest possible effect for this additional category of EU law" (pp. 291–292). Finally, the third category (invoking EU Agreements to challenge EU action; 134 cases) is characterized by, what the author refers to as "avoidance techniques": while accepting the status of EU Agreements in the EU legal order, the Court is reluctant to engage in the review of EU legislation.

The analysis of the many cases once more makes clear that allowing international Agreements to form part of the EU's legal order does not lead automatically to their supremacy: "it is the EU legal order that will ultimately determine the types of internal legal effect which such Agreements can display and, indeed, can potentially deprive the, through ex post review, of internal legal effects where they clash with EU primary law" (p. 320). The book addresses this more conceptual insight in the first chapters. In the first Chapter, the author revisits the classic question of the legal effects of treaties in domestic legal orders, while noting the complexities arising from the fact that the EU itself is composed of States with various constitutional traditions. The second Chapter revisits the constitutional status of EU Agreements, and the development of "the EU's external relations constitution" (p. 104) throughout the 1970s and 1980s. It points to, not only, the acceptance of automatic treaty incorporation, but also to the ways in which international treaties were suddenly endowed with an "EU dimension", resulting in "a supra-constitutional status within the Member States' legal order". Irrespective of the fact that we know the cases (*Haegeman, Kupferberg, ...*), both introductory Chapters succeed in presenting the development in a new fashion; thus forming a solid and convincing basis for the empirical analysis in the remaining Chapters of the book.

With this book, Mendez has contributed substantially to the further understanding of the role and function of international agreements in the development of EU external relations law. He has written an impressive book on the basis of equally impressive empirical research – a must-read for anyone dealing with EU Agreements. While the book will probably be listed under "EU external relations law", the study underlines the intertwinement of external and internal developments and constitutional (and political) preferences. There is a fragile balance between preserving the EU's autonomy and adhering to international obligations. What Mendez has shown is that it is possible to relate the choice for either "maximalist treaty enforcement" or "judicial avoidance techniques" to certain categories of treaties. The overload of trade cases is not something we can blame the author for. Yet, it would be interesting to urge the author to keep his database up-to-date to take the new and future (non-trade) activities of the Union into account.

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