

# Law and Practice of EU External Relations

Salient Features of a Changing Landscape

EDITED BY

Alan Dashwood  
and Marc Maresceau

CAMBRIDGE

# LAW AND PRACTICE OF EU EXTERNAL RELATIONS

SALIENT FEATURES OF A CHANGING  
LANDSCAPE

Edited by  
ALAN DASHWOOD AND  
MARC MARESCEAU



**CAMBRIDGE**  
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS  
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore,  
São Paulo, Delhi, Dubai, Tokyo, Mexico City

Cambridge University Press  
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by Cambridge University Press, New York

www.cambridge.org  
Information on this title: www.cambridge.org/9780521182553

© Cambridge University Press 2008

This publication is in copyright. Subject to statutory exception  
and to the provisions of relevant collective licensing agreements,  
no reproduction of any part may take place without the written  
permission of Cambridge University Press.

First published 2008  
Reprinted 2009  
First paperback edition 2010

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloguing in Publication data*

Dashwood, Alan.  
Law and practice of EU external relations: salient features of a changing landscape/Alan  
Dashwood, Marc Maresceau.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-521-89923-9 (hardback)

1. International and municipal law—European Union countries. 2. European  
Union—Foreign relations. I. Maresceau, Marc. II. Title.

KJE5057.D37 2008

341.242 '2—dc22

2008012850

ISBN 978-0-521-89923-9 Hardback

ISBN 978-0-521-18255-3 Paperback

Cambridge University Press has no responsibility for the persistence or  
accuracy of URLs for external or third-party internet websites referred to in  
this publication, and does not guarantee that any content on such websites is,  
or will remain, accurate or appropriate.

## LAW AND PRACTICE OF EU EXTERNAL RELATIONS

Expanding European Union activity on the international scene has led to development of the legal concepts, principles and rules that govern it. External relations law and practice have also been affected by events within the EU.

This volume takes stock of the recent developments in the external relations law and practice of the EC/EU and investigates the increasing interaction between these different fields of Union competence. The first part of this book addresses issues that are broadly constitutional or institutional in character. The second part deals with various aspects of substantive external relations considered in a geographical or geopolitical perspective. The third part selects two specific substantive law areas – intellectual property law and environment law – as examples that illustrate the specific relationship between domestic policy and external relations.

ALAN DASHWOOD is Professor of European Law at the University of Cambridge and a Fellow of Sidney Sussex College. He is also a Barrister in Henderson Chambers and a Bencher of the Inner Temple, specialising in the law of the European Union and appearing regularly in proceedings before the European Court of Justice.

MARC MARESCEAU teaches European Law and Institutions at Ghent University, where he is also Director of the European Institute and Coordinator of the Jean Monnet Centre of Excellence. He has been teaching as a Visiting Professor at various universities and he also taught a course at The Hague Academy of International Law.

## ABBREVIATIONS

ACP	African, Caribbean and Pacific Group of States
AELE	Association européenne de libre exchange
AG	Advocate General
AJIL	American Journal of International Law
AMM	Aceh Monitoring Mission
AMU	Arab Maghreb Union
AP	Action Plan
APM	Agreement on Public Procurement Markets
Art.	Article
ASEAN	Association of Southeast Asian Nations
CAP	Common Agricultural Policy
CEPOL	European Police College
CCP	Common Commercial Policy
CDE	Cahiers de droit européen
CEEC	Central and Eastern European Countries
CEES	Common European Economic Space
CES	Common Economic Space
CFI	Court of First Instance
CFSP	Common Foreign and Security Policy
CL	Compulsory Licensing
CLJ	Cambridge Law Journal
CMLRep.	Common Market Law Reports
CMLRev.	Common Market Law Review
COREPER	Permanent Representatives Committee
CR	Country Report
CSCE	Conference of Security and Cooperation in Europe
CSDP	Common Security and Defence Policy
CSES	Common Space on External Security
CSFSJ	Common Space on Freedom, Security and Justice

CSR	Common Strategy on Russia
CSRE	Common Space on Research and Education
CT	Constitutional Treaty
DAC	Development Assistance Committee
DSB	Dispute Settlement Body (WTO)
DSU	Dispute Settlement Understanding (WTO)
EA	Europe Agreement
EC	European Community
ECB	European Central Bank
ECJ	European Court of Justice
ECHR	European Convention on Human Rights
ECMI	Economic Centre for Minority Studies
ECOFIN	Economic and Financial Affairs Council
ECOWAS	Economic Community of West-African States
ECR	European Court Reports
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
ed.	editor
eds.	editors
EEA	European Economic Area
EEAg	European Environment Agency
EEC	European Economic Community
EFARev.	European Foreign Affairs Review
EFTA	European Free Trade Association
EIB	European Investment Bank
EIONET	European Environmental Information and Observation Network
ELRev.	European Law Review
EMP	Euro-Mediterranean Partnership
ENP	European Neighbourhood Policy
ENPI	European Neighbourhood and Partnership Instrument
EPE	Energy Policy for Europe
ETS	Emissions Trading System
EU	European Union
EUFOR	European Union Force
EUPOL	European Union Police Mission
EuroMeSCo	Euro-Mediterranean Study Commission
EUROPOL	European Police Office

FAO	Food and Agriculture Organisation
FJ	Federal Journal
FMP	Free Movement of Persons
FTA	Free Trade Area
FTC	Federal Trade Commission
FYROM	Former Yugoslav Republic of Macedonia
GAERC	General Affairs and External Relations Council
GAM	Free Aceh Movement
GAO	Government Accountability Office
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GLONASS	Global Navigation Satellite System
GMOs	Genetically Modified Organisms
HR	High Representative
ICAO	International Civil Aviation Organisation
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ILM	International Legal Materials
IP	Intellectual Property
IPA	Instrument for Pre-accession
IPR	Intellectual Property Rights
JA	Justice Affaires Intérieures
JHA	Justice and Home Affairs
JIEL	Journal of International Economic Law
MBI	Market Based Instrument
MDG	Millennium Development Goals
MEP	Member European Parliament
MFN	Most Favoured Nation
MONUC	United Nations Organisation Mission in the Democratic Republic of the Congo
MoU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
NAFTA	North American Free Trade Association
NATO	North Atlantic Treaty Organisation
ND	Northern Dimension
NGO	Non-Governmental Organisation

n.	note
NT	National Treatment
NTA	New Transatlantic Agenda
nyr	not yet reported
OC	Official Collection
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OJ	Official Journal of the European Union
para.	paragraph
paras.	paragraphs
PCA	Partnership and Cooperation Agreement
PDO	Protected Designation of Origin
PEA	Positive Economic Agenda
PESC	Politique étrangère et de sécurité
PGI	Protected Geographical Indication
PIC	Prior Informed Consent
PJC	Police and Judicial Cooperation
PJCCM	Police and Judicial Cooperation in Criminal Matters
PNR	Passenger Name Records
PPC	Permanent Partnership Council
PSC	Political and Security Committee
REACH	Registration, Evaluation, Authorisation and Restriction of Chemicals
RGDIP	Revue Générale de Droit International Public
RRM	Rapid Reaction Mechanism
RSDIE	Revue Suisse de droit international et européen
SALWs	Small Arms and Light Weapons
SC	Systematic Collection
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
SCM	Subsidies and Countervailing Measures
SDS	Sustainable Development Strategy
SEER	Strategic European Energy Review
SES	Single Economic Space
SME	Small and Medium-sized Enterprises
SOFA	Status of Forces Agreement
SOMA	Status of Mission Agreement



SPMME	Strategic Partnership with the Mediterranean and the Middle East
TABD	Transatlantic Business Dialogue
TAC	Treaty of Amity and Cooperation
TACIS	Technical Assistance Commonwealth of Independent States
TAD	Transatlantic Declaration
TBR	Technical Barrier Regulations
TBT	Technical Barriers to Trade
TEP	Transatlantic Economic Partnership
TEU	Treaty on European Union
TEU revised	Treaty on European Union, consolidated after the Treaty of Lisbon
TFEU	Treaty on the Functioning of the European Union
TL	Treaty of Lisbon
TLD	Transatlantic Legislators' Dialogue
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
TSCA	Toxic Substances Control Act
UDHR	Universal Declaration of Human Rights
UEM	Union économique et monétaire
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UN IPCC	United Nations Intergovernmental Panel on Climate Change
US	United States
US EPA	United States Environment Protection Agency
VAT	Value Added Tax
VCTL	Vienna Convention on the Law of Treaties
WHO	World Health Organisation
WTO	World Trade Organisation
YEL	Yearbook of European Law
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

## NOTES ON CONTRIBUTORS

JACQUES BOURGEOIS is Senior Counsel of the law firm Wilmer Cutler Pickering Hale & Dorr and a professor at the College of Europe (Bruges) and Ghent University, Faculty of Laws. He studied at Ghent University (J.D., *cum laude* 1959) and the University of Michigan (MCL Program 1960) and had his traineeship at the Bar from 1960 to 1962. He was a civil servant of the Commission of the European Atomic Energy Community (1962–5), a member of the Legal Service and subsequently a legal adviser of the Commission of the European Communities (1965–1983), head of the Trade Policy Instruments Division of the Commission of the European Communities (1983–7) and principal legal adviser of the Commission of the European Communities (1987–91). He returned to the Bar in 1991 and is principally engaged in European law (competition, trade, regulatory) and in international trade law.

GÜNTER BURGHARDT served as Ambassador for the European Union in Washington from early 2000 to late 2004 after a 30-year-long career at the European Commission's headquarters in Brussels. He was the Commission's Director General for External Relations from 1993 to 2000. From 1985 to 1993 he held the posts of Deputy Chef de Cabinet, Diplomatic Adviser and Political Director under Commission President Jacques Delors. He joined the Commission as a member of the Legal Service in 1970. He retired from the Commission in 2005 and joined the international law firm of Mayer Brown International as a Senior Counsel. He teaches at Ghent University, Faculty of Laws and the College of Europe in Bruges. He studied law and economics in Germany, France and the UK and obtained a *summa cum laude* PhD from the University of Hamburg with a thesis on European Community law in 1969.

MARISE CREMONA is Professor of European Law at the European University Institute, Florence. Until December 2005 she was Professor of

European Commercial Law at the Centre for Commercial Law Studies, Queen Mary, University of London. Her research interest is in the external relations law of the European Union, including its foreign policy, trade and development policies. From this perspective she is interested in the interaction between regulatory and policy regimes within and between national, regional and international systems. Her current research projects include the legal and institutional dimensions of the EU's European Neighbourhood Policy, the export of norms in EU external policy, the constitutional basis for EU foreign relations law, the relationship between the EU and the WTO, and the role of the EU in relation to the Fair Trade movement.

ALAN DASHWOOD is Professor of European Law at Cambridge University and a Fellow of Sidney Sussex College. He is also a Barrister in Henderson Chambers and a Bencher of the Inner Temple. Before election to his Chair at Cambridge, he was a director in the Legal Service of the Council of the EU. He was the founding editor of the *European Law Review* and is presently one of the joint editors of the *Common Market Law Review*. He is co-author of *Wyatt and Dashwood's European Union Law*, the fifth edition of which has recently been published. He was appointed CBE in 2004.

PIET EECKHOUT has been Professor of European Law at King's College London since 1998, and directs the Centre of European Law. He is an associate academic member of Matrix Chambers, London. Before joining King's he held academic positions at the Universities of Ghent and Brussels (Belgium) and worked in the Chambers of Advocate General Jacobs, European Court of Justice (1994–8). His academic interests and activities cover many different areas of EU law, including external relations, the internal market, state aid, judicial protection, the constitutionalisation process, and fundamental rights protection. He is also very active in the field of international economic law, in particular WTO law. He is editor of the *Yearbook of European Law* and is the author of *External Relations of the European Union: Legal and Constitutional Foundations* (2004) and of *The European Internal Market and International Trade: A Legal Analysis* (1994).

INGE GOVAERE (Law degree, Ghent University, 1987; PhD, European University Institute, Florence, 1994) is Professor of European Law at Ghent University and Director of the European Legal Studies Department at

the College of Europe, Bruges. She was the Fulbright Scholar-in-Residence at Cornell University (US, 1998) and a visiting professor at Pittsburgh University and the College of Europe (Bruges and Warsaw). Recent publications include entries in the second volume of *The Oxford Encyclopaedia of EC Law* (2005) and *European Legal Dynamics/Dynamiques juridiques européennes* (2007).

CHRISTOPHE HILLION is Professor of European Law and co-director of the Europa Institute, Faculty of Law, University of Leiden, the Netherlands. He was educated at the University of Rennes (DEA), the College of Europe (MA) and the University of Leiden (PhD). Prior to moving to Leiden, he held academic posts in the law departments of Cambridge University, University College London (UCL) and at the College of Europe (Bruges/Natolin). His research focuses on the external relations, enlargement and institutional law of the European Union. His publications include *The European Union and Its East-European Neighbours: A Laboratory for the Organisation of EU External Relations* (2008) and *EU Enlargement: A Legal Approach* (2004). He is a member of the editorial boards of the *European Foreign Affairs Review* and of the *Common Market Law Review*.

KIRSTYN INGLIS has been a researcher with the European Institute at Ghent University since 1998 in the field of external relations. In September 2006, she defended her PhD at Ghent University under the title 'European Union enlargement: a legal analysis of pre-accession and transitional arrangements with case studies on EC agri-food and environment law'. Before her time in Ghent, having studied law at Dundee University, she qualified as a solicitor in 1990 and then practised as a trade lawyer in City law firms. Since 1994 she has pursued her interest in food and environment law with specialist consultancies and international institutions based in Brussels.

FRANCIS G. JACOBS KCMG, QC is Professor of Law at King's College London and Jean Monnet Professor. From October 1988 to January 2006 he was an Advocate General at the Court of Justice of the European Communities. Previously, he was Professor of European Law in the University of London (1974–88) and a barrister specialising in European law. From 2005 to 2006 he held the Marcel Storme Chair at the University of Ghent. His most recent book is *The Sovereignty of Law: The European Way* (Cambridge University Press, 2007), part of the Hamlyn Lectures series, intended for the non-specialist.

CHRISTINE KADDOUS studied at Neuchâtel University, Cambridge University and the Institut d'études européennes of the Université Libre de Bruxelles. She teaches European Union law at Geneva University. She is Director of the Centre d'études juridiques européennes of the same university. Many of her publications concentrate on the external relations of the EU, free movement of persons as well as on relations between the EU and Switzerland. One of her recent publications (with Monique Jametti-Greiner) is *Accords bilatéraux II Suisse-UE et autres Accords récents*, Dossier de droit européen no. 16 (2006).

ERWAN LANNON studied law at the University of Rennes as well as political science and international relations at the Université Libre de Bruxelles. He is Professor at the Faculty of Law of Ghent University and at the College of Europe. He has been a consultant to the United Nations Conference on Trade and Development and has worked at the Delegation of the European Commission to Israel. He is presently Liaison Officer for the Euro-Mediterranean Study Commission of the Euro-Mediterranean Partnership. He recently co-edited with Joël Lebullenger *Les défis de l'adhésion de la Turquie à l'UE* (2006).

ORLA LYNSEY has been a teaching assistant in the Legal Studies department at the College of Europe, Bruges, since August 2005. She read law at Trinity College, Dublin, where she graduated with first-class honours, and went on to obtain a Master's degree in European legal studies at the College of Europe. She will be called to the Bar of England and Wales in 2008.

MARC MARESCEAU studied at Ghent University, The Johns Hopkins University, Bologna and the Institut universitaire de hautes études internationales, Geneva. He teaches on European law and institutions at Ghent University. He is Director of the European Institute and Coordinator of the Jean Monnet Centre of Excellence at the same university. He has held visiting chairs at King's College, London; the University of Bologna; the University of Brussels; Scuola Sant'Anna, University of Pisa; the University of Georgia (US); the Hebrew University of Jerusalem; Libera Università Mediterranea; the College of Europe; Université Montesquieu, Bordeaux IV; Université de Rennes I; Université Paris II (Panthéon-Assas). Many of his publications concentrate on EU external relations. A recent publication is 'Bilateral agreements concluded by the European Community',

*Recueil des cours de l'Académie de droit international*, 2006, vol. 309, pp. 125–451.

PETER-CHRISTIAN MÜLLER-GRAFF is Professor for European Law, Economic and Private Law and Comparative Law at Heidelberg University and is Director of the Institute for German and European Economic Law since 1994. He chairs the European Graduate School of the Deutsche Forschungsgemeinschaft 'Systemtransformation und Wirtschaftsintegration im zusammenwachsenden Europa' and the Arbeitskreis Europäische Integration. He is a member of the Comité Directeur of FIDE (General Secretary 1994–1996). He is a visiting professor at the universities of Vienna, Zurich, Cracow and Georgetown, and at the College of Europe; he was formerly a visiting professor at Cornell University, Nihon University, and the universities of Nancy and Bordeaux. He is an honorary professor at ELTE Budapest. He was Dean of the Heidelberg Law Faculty (1999–2004), served as Judge at the Court of Appeals of Cologne (OLG-Richter auf Lebenszeit), counselled in questions of the Constitutional Treaty (Convention, German authorities) and represented the Federal Republic of Germany before the ECJ. He is author and editor of many books on European law, economic law and private law, among them *Die Rolle der erweiterten Europäischen Union in der Welt* (2006), *Die Europäische Gemeinschaft in der Welthandelsorganisation* (2000), *East Central Europe and the European Union: From Europe Agreements to a Member Status* (1997) and *Gemeinsames Privatrecht in der Europäischen Gemeinschaft* (1999, 2nd edn).

ELEANOR SPAVENTA is a reader in Law and Director of the Durham European Law Institute. She previously held positions at Birmingham University, where she was a lecturer, and at the University of Cambridge, where she was a Norton Rose European Law Lecturer and a fellow and Director of Studies at New Hall. Her research interests lie in European law and, in particular, in the fields of European constitutional law, free movement, fundamental rights and cooperation in criminal matters in the EU. She is the author of *Free Movement of Persons in the European Union: Barriers to Movement in their Constitutional Context* (forthcoming), the co-author of *Wyatt and Dashwood's European Union Law* (2006) and the co-editor of *Social Welfare and EU Law* (2005).

PETER VAN ELSUWEGE studied international relations and European law at Ghent University. He has worked as an academic assistant at the

European Institute of Ghent University since 2001. In July 2007, he defended his PhD thesis 'EU enlargement and the Baltic states: a legal and political analysis'. His research activities essentially focus on the legal and political consequences of EU enlargement. He also works on related topics such as the relations between the enlarged EU and its new neighbours. One of his recent publications is 'Promoting democracy in the EU's neighbourhood: lessons from the pre-accession strategy', in A. Kasekamp and H. Pääbo (eds.), *Promoting Democratic Values in the Enlarging Europe: The Changing Role of the Baltic States from Importers to Exporters* (2006), pp. 40–52.

RAMSES A. WESSEL is Professor of the Law of the European Union and other International Organisations and Co-Director of the Centre for European Studies at the University of Twente. He is also a member of the Governmental Advisory Committee on Issues of Public International Law; Editor-in-Chief and founder of the *International Organizations Law Review*; Editor-in-Chief of the Dutch journal and yearbook on peace and security, *Vrede en Veiligheid*; and a member of the editorial boards of the *Netherlands Yearbook of International Law* and *Internationale Spectator*. He is the author of *The European Union's Foreign and Security Policy: A Legal Institutional Perspective* (1999) and of a number of other publications in the field of international and European law. His general research interests lie in the field of international and European institutional law, with a focus on the law of international organisations, peace and security, European foreign, security and defence policy and EU external relations in general.

## ACKNOWLEDGEMENTS

The origins of this volume lie in the Ghent/Cambridge Workshop on 'Recent trends in the external relations of the European Union', which took place in Ghent in December 2005. The initiative brought together a number of leading specialists in this sphere of EU law and policy. The very stimulating discussion it generated was a starting point for further reflections, which resulted in a collection of papers finalised in early 2008. The organisers of the Workshop, also being the editors of the present volume, would like to express their deep appreciation to all the contributors for their cooperation, diligence and thorough analysis.

The project was part of a Jean Monnet Centre of Excellence activity of Ghent University. It also benefited greatly from support by the VZW Europees Instituut. The editors' sincere thanks are due to the authorities of the Jean Monnet Programme of the European Commission and to the Board of the VZW Europees Instituut. Mr Willy De Clercq, the Chairman of the VZW, deserves a particular tribute for the unfailing encouragement he gave to the project, without which the publication of this book would simply not have been possible. Finally, a special word of thanks goes to Dr Kirstyn Inglis for her invaluable assistance in the editing of some contributions and to Mr Rien Emmery and Ms Magali Carel for their much appreciated help in the preparation of the text.



## CONTENTS

*Abbreviations* page viii

*Notes on contributors* xiii

*Acknowledgements* xix

Introduction 1

ALAN DASHWOOD AND MARC MARESCEAU

### PART I **Constitutional and institutional questions** 11

- 1 Direct effect and interpretation of international agreements in the recent case law of the European Court of Justice 13  
FRANCIS G. JACOBS
- 2 Defining competence in EU external relations: lessons from the Treaty reform process 34  
MARISE CREMONA
- 3 Article 47 TEU and the relationship between first and second pillar competences 70  
ALAN DASHWOOD
- 4 EC law and UN Security Council Resolutions – in search of the right fit 104  
PIET EECKHOUT
- 5 Fundamental rights and the interface between second and third pillar 129  
ELEANOR SPAVENTA