Along the Seam of Europe's Composite Constitution: Acts of the Representatives of the Member States

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The interaction between European law and national constitutional law is a constant theme in the scholarly trajectory of Leonard Besselink. Leonard often looks at this interaction from both sides of the divide: how do national constitutions accommodate the European integration process, and how does EU law treat national constitutions? He has also sought to transcend that divide and to offer an overall perspective of the legal landscape created by the development of the European Union. He proposed, for that purpose, the term 'composite European constitution' in the inaugural address he gave in 2007 at the University of Utrecht.[1] Based on the view that the European Union possesses its own constitution (a view which is not uncontroversial among national constitutional law scholars), he argued that 'the EU and the national constitutions should not be viewed as a conglomerate of autonomous, more or less

[1] Leonard F.M. Besselink, *A Composite European Constitution* (Europa Law Publishing 2007). That same publication also contains the Dutch language version of the same text: *Een samengestelde Europese constitutie*.

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detached systems' but rather as a 'composite whole' in which 'one part cannot function without the other, and the various components keep each other in balance'.[2] Those components remain distinct and identifiable. We are still able, most of the time, to tell which institutions and which rules belong to EU law, and which belong to international law and national constitutional law. But the idea that the components are parts of a greater whole allows us to account for legal phenomena that do not easily fit within one of the components. Such phenomena reflect the 'entwinement' of the European and national legal orders.[3]

Switching Hats within the Composite Constitution

The dividing line within the composite European constitution is somewhat fuzzy, in the sense that it is not always clear whether a particular legal rule or institution is within the EU part of the composite constitution or not. A recent illustration of this fuzziness is the controversy about the legal nature of the Eurogroup. This body, composed of the ministers of finance of the euro area states, rose to prominence during and after the euro crisis.[4] Among its other activities, it discussed and fixed the conditionality to be imposed on EU states receiving financial assistance from the European Stability Mechanism (ESM).[5] In recent court cases, the question arose whether an action

[2] All quotes from *A Composite European Constitution,* p. 6.

[3] The term 'entwinement' is used in Leonard F.M. Besselink, 'Parameters of Constitutional Development: The Fiscal Compact in between EU and Member State Constitutions', in: Lucia S. Rossi & Federico Casolari (eds), *The EU after Lisbon: Amending or Coping with the Existing Treaties?* (Springer 2014), p. 21-35, at p. 23.

[4] On the role of the Eurogroup within EMU law, see Alberto de Gregorio Merino, 'The Institutional Architecture of Economic Union', in: Federico Fabbrini & Marco Ventoruzzo (eds), *Research Handbook on EU Economic Law* (Edward Elgar 2019) p. 11-34, at p. 17-20; Paul Craig, 'The Eurogroup, Power and Accountability', 23(3-4) *European Law Journal* (2017), p. 234-249.

[5] Since the ESM's Board of Governors is composed of the very same persons as the Eurogroup, the Eurogroup could effectively dictate the decisions that were to be formally adopted by the Board of Governors.

for damages could be brought against the Eurogroup for the alleged infringement of fundamental rights caused by the Eurogroup decisions that formulated the conditionality accompanying the ESM assistance to Cyprus in 2013. Whereas the General Court held such an action admissible (but rejected it on the merits),[6] the Court of Justice, in the appeal case, found the action against the Eurogroup inadmissible. It pretended that 'the Euro group was created as an intergovernmental body – outside the institutional framework of the European Union – intended to enable the ministers of the MSCE to exchange and coordinate their view on issues relating to their common responsibilities concerning the single currency. It thus provides a bridge between the national level and the EU level for the purpose of coordinating the economic policies of the MSCE.'[7] The fact that the Eurogroup serves as a bridge is accurate (and confirms Besselink's views about the interactions between legal orders), but the Court of Justice seems to have located the main foundation of this bridge on the wrong side of the divide: the Eurogroup is very much part of the EU's institutional system, as it is mentioned (and given an institutional role) in Article 137 TFEU as well as in a dedicated Protocol No 14 annexed to the Treaties. There is no convincing reason why it should not be considered as an EU body for the purpose of an action for damages.[8] At any rate, this case shows that even the European Courts sometimes struggle to draw a clear dividing line between what belongs to the EU part of the composite constitution and what lies outside it.

In this contribution, I will propose some musings on another institutional phenomenon that is situated along the seam of the composite constitution, i.e. around the dividing line between EU law and

[6] Case T-680/13, *K. Chrysostomides & Co. and Others v Council and Others,* EU:T:2018:486.

[7] Case C-597/18 P, *Council v K. Chrysostomides & Co. and Others,* EU:C:2020:1028, para. 84. The abbreviation 'MSCE' stands for 'Member States whose currency is the euro'.

[8] See, in this sense, the critical comment by Menelaos Markakis and Anastasia Karatzia, 'The Final Act on the Eurogroup and Effective Judicial Protection in the EU: *Chrysostomides*', *EU Law Live*, 22 December 2020.

national constitutional law. Its ambiguous nature confirms the soundness of Besselink's conception of the composite European constitution. That institutional phenomenon is the meetings that take place between representatives of the governments of the EU member states to discuss 'their own business' in the margin of an official EU meeting. Government representatives meet, of course, very regularly within two EU institutions (namely, the Council and the European Council) and their preparatory bodies; but they also, occasionally, leave that EU framework without leaving their physical meeting place. They then continue their deliberations as a 'conference of the representatives of the governments of the member states', which is not an EU body but an international law body whose members act in the exercise of the powers given by (and constrained by) their national constitutions. Within such a conference, they adopt legal acts that are variously named but often constitute, in effect, binding agreements under international law. These 'acts of the representatives', as I will call them for the sake of brevity, are a subgroup of the larger category of agreements concluded between EU member states in connection with the operation of the EU.[9] What distinguishes this subgroup is that the acts are not adopted in a full-fledged and separately organised diplomatic conference but in the margins of a meeting of an EU institution, which may be either the Council or the European Council. The logistic closeness between EU action and international cooperation between the EU member states may result in some of the participants to the meetings not being fully aware that, in legal terms, they are crossing the divide between the EU part and the non-EU part of the composite European constitution.

The fact that the twenty-seven members of the Council of the European Union or the European Council can decide to 'switch hats' and become representatives of their countries at a non-EU diplomatic gathering is evocative of the quick adaptability of the chameleon, switching its colours from black to green according to changes

[9] For a typology (with examples) of this broader category, see Bruno De Witte & Ben Smulders, 'Sources of European Union Law', in: P.J. Kuijper et al. (eds), *The Law of the European Union* (5th ed., Wolters Kluwer 2018), p. 193-234, at p. 222-234.

in its environment or in its emotions.[10] We will now present two illustrations of this institutional phenomenon at different moments in time, followed, in section 2, by a discussion of its role in the European integration process and, in particular, in the functioning of the composite constitution of Europe.

A first illustration is in a press release of the Finnish Presidency of the Council, of 16 July 1999, containing the programme of the General Affairs Council to be held three days later. The programme listed a number of items on the agenda, including both 'first pillar' and 'second pillar' matters, as was usual for a General Affairs Council in those pre-Lisbon times, and then added: 'In the margin: nomination of members of the Commission (around 11 a.m.)'. What happened on that 19 July 1999, around 11 a.m., in the meeting room of the Justus Lipsius building of the Council, is that fifteen ministers or secretaries of state for foreign affairs ceased to act as members of an EU institution called Council, and instead became their countries' delegates to a 'Conference of the Representatives of the Governments of the Member States'. In their latter capacity, they adopted a decision on the nomination of the members of the Prodi Commission. There was nothing suspect about this *dédoublement fonctionnel*[11] taking place on 19 July 1999, because the EC Treaty itself, in its Article 214 (2), required the members of the Commission to be nominated by 'common accord' of 'the governments of the member states'. An institutional practice had developed over the years whereby such mini-intergovernmental conferences, since they were clearly instrumental to the functioning of the Communities, took place in the buildings of the Council, and with the logistical and secretarial support of the Council.

[10] In chameleons, colour change is determined by environmental factors such as light and temperature as well as by emotions such as fright (*Encyclopaedia Britannica*, 15th ed, Vol. 3, Micropaedia, p. 69).

[11] This term was coined and promoted by the French international law scholar Georges Scelle in a number of his writings starting in the 1930s. See the analysis of this doctrine by Antonio Cassese, 'Remarks on Scelle's Theory of "Role Splitting" (*dédoublement fonctionnel*) in International Law', 1(1) *European Journal of International law* (1990) p. 210-231.

The second illustrative example happened 17 years later. The Conclusions of the European Council meeting of 15 December 2016 have an Annex containing a 'Decision of the Heads of State or Government of the 28 Member States of the European Union, meeting within the European Council, on the Association Agreement between the European Union (...) and their Member States, of the one part, and Ukraine, of the other part.'[12] Unlike in the earlier example, the switching of hats was not announced on the official agenda of the European Council meeting.[13] At some moment during that European Council meeting (but we do not know when exactly), the Leaders (as they like to be called these days) ceased to function as members of the EU institution and became (maybe without personally realising the nature of this legal transformation) representatives of their states concluding an executive agreement under international law. The reason for this chameleonic event was the problem that had arisen in the Netherlands, where a consultative referendum had rejected the approval of the association agreement concluded by the EU, and its member states, with Ukraine. In order to allow the Netherlands to go ahead with the ratification of the agreement, and thus to save the entry into force of this mixed agreement, it was considered necessary to adopt a binding interpretative agreement that clarified that the association agreement did not do anything that the Dutch no-voters seemed to have feared.[14] The legal service of the Council had usefully given an opinion in which it argued that the Decision 'should ... be regarded – although it does not require the accomplishment of the formalities generally needed for self-standing agreements

[12] Conclusions of the European Council meeting of 15 December 2016, EUCO 34/16.

[13] Provisional agenda of the European Council meeting, 14 December 2016, EUCO 35/16.

[14] Ramses Wessel, 'The EU Solution to Deal with the Dutch Referendum Result on the EU-Ukraine Association Agreement', *European Papers – European Forum,* 22 December 2016, p. 1. For clarification of the broader external relations law context, see Peter Van Elsuwege, 'The Ratification Saga of the EU-Ukraine Association Agreement: Some Lessons for the Practice of Mixed Agreements', in: S. Lorenzmeier et al. (eds), *EU External Relations Law* (Springer 2021), p. 95-105.

– as an instrument of international law, by which the EU Member States agree on how they understand and will apply, within their competences, certain provisions of an act by which they are otherwise all bound.'[15] In other words, the Decision was a binding one, but it did not modify the content of the association agreement with Ukraine. This hat trick enabled the Dutch ratification of the Ukraine agreement.

In both examples mentioned above, the legal act adopted by the member state representatives is called 'Decision'. The term 'decision' normally points to the existence of a unilateral act of an international organization (as is the case with EU decisions), but the use of this term, by itself, does not exclude that the act may be considered as an international agreement, if it denotes the will of the states to be bound. That is emphatically the case in both these examples and, indeed, whenever the term 'Decision of the Representatives' is used. They can be qualified as *executive agreements* between the governments of the member states, whereby the states' consent to be bound is given by the mere signature or joint adoption of the act, without the need for ratification.

Apart from their common legal nature, the two examples illustrate the variable use of this legal phenomenon. The acts of the representatives can either be adopted whilst 'meeting within the Council' or 'whilst meeting within the European Council'[16]; they can either be required by the text of the EU Treaties or they can 'just happen', on the initiative of the member states themselves; they can relate to the EU's internal operation (as with the appointment of the Commission) or to the EU's external relations (as with the Ukraine agreement). Beyond those variations, there is one functional distinction that I will develop in the next section since it affects the role of these

[15] Opinion of the Legal Counsel of 12 December 2016, EUCO 37/16, p. 2. Note that the 'legal counsel' of the European Council is the head of the Council's legal service. The latter serves both the Council and the European Council.

[16] The latter is a bit more complicated. Since the president of the European Commission is a member of the European Council, the transformation of the latter into a Conference of the Heads of State or Government requires the president of the Commission to momentarily 'leave the room' (virtually at least).

legal instruments within Europe's composite constitution. Indeed, it can be argued that some of those instruments strengthen the coherence of the composite constitution, whereas in other cases the member states are 'jumping over the fence of the EU legal order' to escape from the strictures imposed by it, and by doing so they weaken the integrity of that legal order. As critically noted by Tridimas, 'the boundaries between EU law and collective action by the Member States are porous in a way that serves to disguise the true source of authority.'[17]

Strengthening or Weakening the Composite Constitution?

In many instances, the acts of the representatives support the operation of the EU legal system. This is most clearly the case where the European Treaties require the member state governments to take common action for the implementation of certain Treaty provisions, without requiring that this action should take the form of a 'solemn' international agreement accompanied by ratification.[18] There are several examples of this. According to Article 19 TEU, members of the Court of Justice 'shall be appointed by common accord of the governments of the Member States'; these appointments are made through a Decision of the Representatives which is published in the "L" part of the Official Journal.[19] They are agreements that enter into force directly upon their conclusion and do not require ratification by the contracting parties. One must presume that this lack of a

[17] Takis Tridimas, 'Constitutional Fluidity and the Problem of Authority in EU Law', in: Fabian Amtenbrink et al. (eds), *The Internal Market and the Future of Legal Integration. Essays in Honour of Laurence W. Gormley* (Cambridge University Press 2019), p. 65-80, at p. 71.

[18] Member state agreements subject to ratification are, of course, required for the revision of the Treaties according to the ordinary procedure of Art. 48 TEU. Revision treaties are, usually, politically agreed at a European Council meeting but the actual signature of the revision treaty happens on a separate occasion. There is thus no impromptu 'hat switching' involved when the Treaties are revised.

[19] See, for example, Decision 2021/920 of the Representatives of the Governments of the Member States of 2 June 2021 appointing three judges to the Court of Justice, *OJ* 2021, L 201/28.

ratification phase is acceptable under the constitutional rules on treaty making of each member state; they may be considered to have accepted this by anticipation when they ratified the EU Treaties. Similarly, Article 341 TFEU provides that the 'seat of the institutions of the Union shall be determined by common accord of the Governments of the Member States'. Once again, the legal instrument in which this common accord is couched is a Decision of the Representatives;[20] national ratification procedures are, again, dispensed with. In contrast, the members of the European Commission are no longer (unlike what happened in the example from 1999, mentioned in the previous section) appointed by a Decision of the Representatives but directly by another EU institution, namely the European Council.

In the cases mentioned in Article 19 TEU and Article 341 TFEU, the acts of the representatives, despite being formally instruments of international law, have a very strong connection with EU law: the member states are under an EU law obligation to adopt them in order to ensure the institutional functioning of the EU. Another indication of their strong link with EU law is the fact that they form part of the *acquis communautaire.* New member states accede to them automatically by virtue of their Act of accession to the EU.[21]

In many other cases, the acts of the representatives are *not* required by the text of the Treaties, but are, nevertheless, designed to complement Union action. Some of them are clearly functional to the operation of the Union. A typical example, from the old days, was in the Community's external relations in the coal and steel sector. As the

[20] See in particular the seat decision taken at the Edinburgh summit of December 1992: 'Decision taken by common agreement between the representatives of the Governments of the Member States on the location of the seats of the institutions and of certain bodies and departments of the European Communities', *OJ* 1992, C 341/1.

[21] The Acts of accession to the EU of the new member states contain a standard language to that effect. See for example Article 3(1) of the Act of accession of Bulgaria and Romania ('Bulgaria and Romania accede to the decisions and agreements adopted by the Representatives of the Governments of the Member States meeting within the Council'), *OJ* 2005, L 157/29.

ECSC Treaty did not vest external competences in the Community, unilateral and conventional trade measures affecting coal and steel were often taken in the form of 'Decisions of Representatives'.[22] Thereby, the Community could develop some kind of external policy also in the coal and steel sector. The Ukraine example, described in the previous section, also appears useful to the proper functioning of the EU: the member states acted collectively to reassure the Dutch government (and, through it, the Dutch voters who had rejected the Ukraine agreement) that the agreement would not cause mass immigration from Ukraine or EU membership of that country. Nothing was lost in making those superfluous statements and something important was gained, namely the entry into force of the association agreement.

In other cases, the capacity of the member state representatives to quickly switch hats so as to 'leave' and 're-enter' the EU legal order can be detrimental to the integrity of the EU legal order and to the coherence of Europe's composite constitution. If the members of the Council or the European Council can at any time transform themselves into an impromptu diplomatic conference, the institutional balance established by the EU Treaties, and the categorical distinction between EU law and non-EU law, made by the ECJ,[23] could become very fragile. The question therefore arises whether such chameleonic behaviour is compatible with the states' obligations under EU law. Also from the point of view of national constitutional law, the acts adopted by the representatives in the margin of a Council or European Council meeting may seem problematic. Those acts could easily be perceived as normal 'EU business' that does not require the special attention that national parliamentary bodies would normally devote to their government's foreign affairs activity.

[22] One example among many is the "Decision of the Representatives of the Governments of the Member States of the European Coal and Steel Community meeting in Council of 17 November 1975 opening tariff preferences for certain steel products originating in developing countries", *OJ* 1975, L 310/169.

[23] The European Court of Justice has consistently declared itself incompetent to interpret or enforce international treaties concluded by the member states (except, of course, for the founding Treaties).

There can be no objection against acts of the representatives being concluded in matters falling wholly outside the scope of EU competence, but then, those acts would typically *not* be adopted in the margin of a Council meeting. The main question therefore is to what extent the member states are legally entitled to conclude international agreements among themselves in matters coming *within* the competence of the European Union

A first important, although by now obvious, rule is that acts of the representatives are not admissible when they have the purpose or effect of modifying the text of the founding Treaties. This rule was affirmed by the European Court of Justice in the *Defrenne* judgment of 1976. On 30 December 1961, the member states' representatives had adopted a Resolution with an 'action plan' which in effect purported to delay the full implementation of the equal pay principle laid down in what was then Article 119 EEC (now article 157 TFEU). In the case of Ms. Defrenne, the Court of Justice held that Article 119 had direct effect since the end of 1961, and that the Resolution 'was ineffective to make any valid modification of the time-limit fixed by the Treaty'. The Court then added: 'In fact, apart from any specific provisions, the Treaty can only be modified by means of the amendment procedure carried out in accordance with Article 236 [now replaced by Article 48 TEU]".[24] The Court did not give reasons for this view, but the crucial consideration might well have been that if one were to accept the possibility of an informal Treaty amendment by means of an informal agreement, the governments of the member states could unilaterally modify the EU legal system without some of the checks and balances provided by Article 48 TEU. The ECJ's point of view has met with the general approval of legal writers, and seems to be tacitly accepted by the member state governments, as these have never since *Defrenne* sought to circumvent the 'official' Treaty amendment procedure.[25]

[24] Case 43/75, *Defrenne v SABENA*, EU:C:1976:56, para. 57.

[25] In this respect, EU law departs from the general rules of international law, according to which there is a *freedom of form* as to the procedure by which states can amend a treaty they have concluded among themselves.

Agreements between the Representatives are, furthermore, inadmissible within the scope of *exclusive* EU competence. Exclusivity can arise because of the nature of the policy field, but also because a certain segment of a policy area has been pre-empted by EU legislation, so that there is no more room for autonomous action by the member states acting either singly or acting all together.

A more problematic question is that of the compatibility with EU law of acts of the representatives in matters falling within the EU's *shared competence*. In its *Bangladesh* judgment of 1993, which dealt with a 'decision of the Member States meeting in the Council' in the field of humanitarian aid, the Court pointed out 'that the Community does not have exclusive competence in the field of humanitarian aid, and that consequently the Member States are not precluded from exercising their competence in that regard collectively in the Council *or outside it*.'[26] This is a rather sweeping statement which should be treated with some caution, because of the deficit in terms of democratic decision-making and judicial control that these acts involve. By abandoning the EU framework in favour of a traditional intergovernmental regime, the member states evade the constitutional principles and guarantees which have been built up in the course of the European Union's existence.

In terms of judicial control, these acts are situated in no man's land.[27] Because agreements between the member states are not 'acts of the EU institutions', they cannot form the object of a preliminary reference for their interpretation,[28] nor can they be the object of an action for annulment under Article 263 TFEU. The ECJ confirmed

[26] Joined Cases C-181/91 and C-248/91, *European Parliament v Council and Commission*, EU:C:1993:271, para. 6 (emphasis added).

[27] See, for a detailed analysis and criticism on this point, Eleanor Spaventa, 'Constitutional Creativity or Constitutional Deception? Acts of the Member States Acting Collectively and Jurisdiction of the Court of Justice (forthcoming, 2021).

[28] Case 130/73, *Vandeweghe and Others. v. Berufsgenossenschaft für die chemische Industrie*, EU:C:1973:131, para. 2: 'The Court has no jurisdiction under Article 177 of the EEC Treaty [now Article 267 TFEU] to give a ruling on the interpretation of provisions of international law which bind Member States outside the framework of Community law.'

in the *Bangladesh* judgment, mentioned earlier, that 'acts adopted by representatives of the Member States acting, not in their capacity as members of the Council, but as representatives of their governments, and thus collectively exercising the powers of the Member States, are not subject to judicial review by the Court.'[29] However, the Court also held, in the same case, that an act that is formally presented as an intergovernmental agreement could 'in reality' be a decision of the Council, although it did not spell out when this is the case.[30]

Although the ECJ does not have direct jurisdiction to interpret, apply or review parallel agreements, it has *indirect* jurisdiction to control whether the member states, when concluding or implementing a parallel agreement, act in violation of their obligations under Union law. The legal remedy available to sanction such breaches of EU law is the (rather theoretical) possibility for the Commission to bring an infringement action under Article 258 TFEU against all member states for infringement of EU law. It is also possible for national courts to seek a ruling of the ECJ on whether national measures implementing such an agreement are compatible with Union law.[31]

The potentially negative effects for the integrity of the EU legal order are particularly visible when the acts of the representatives have far-reaching policy implications. One example stands out in this respect, namely the EU-Turkey statement of 2016.[32] The document

[29] Joined Cases C-181/91 and C-248/91 (*supra* n. 26), para. 12. Recently confirmed, in identical terms, in the 'Sharpston orders': Case C-684/20 P, *Sharpston v Council and Conference of the Representatives of the Governments of the Member States*, EU:C:2021:486, para. 39, and Case C-685/20 P, *Sharpston v Council and the Representatives of the Governments of the Member States*, EU:C:2021:485, para. 46.

[30] *Id.*, para. 14. The Court may have intended to affirm that, where the 'Member States acting within the Council' adopt a measure falling within the exclusive competence of the EC, this measure is 'automatically' transformed into a Council act, at least for the purpose of its judicial review.

[31] See Case 44/84, *Hurd v Jones*, EU:C:1986:2, para.39.

[32] Another controversial example, that occurred just one month before the EU-Turkey statement, was the 'New Settlement for the UK'. This took the form of a 'Decision of the Heads of State or Government, meeting within the European Council' and sought to offer to the UK government and the British voters some

with this name was published on the Council's website[33] but, according to the General Court, it was not an act of the EU at all, but an informal agreement reached by the collective member states with Turkey.[34] The General Court based itself, for that conclusion, on the preparatory documents of the meeting (especially the agenda) which appeared to show that a meeting of the European Council on 17 March 2016 had been followed, the next day, by a meeting of the Heads of State or Government of the Member States together with their Turkish counterpart. In other words, the 28 heads of government had 'switched hats' overnight, even though the press release made it wrongly appear that the action had been taken by the European Council. Acknowledging this switch, the General Court declined jurisdiction when a complaint was made that the EU-Turkey deal breached the fundamental rights of asylum seekers crossing from Turkey to Greece. Both the chameleonic behaviour itself, and the General Court's acceptance of it, were widely criticized in the academic commentary. The EU-Turkey statement is clearly situated at the seam of the composite European constitution. The member states, supported by the Commission, decided that the switch was instrumental in securing a sorely needed deal with Turkey that would help to stem the mass immigration from that country and to facilitate the EU's migration management policy. But many observers found this cross-over between the component parts of Europe's composite constitution to be detrimental, not only to the rights of asylum seekers, but also to the constitutional integrity of the EU legal order.[35]

extra reasons to vote No at the Brexit referendum, by promising to tweak certain rules of EU law in a way agreeable to the UK government. The Decision (published in *OJ* 2016, C-69 I/1) lapsed after the Brexit referendum, but it had been criticized for potentially affecting the integrity of the EU legal order; see the comment by Jean-Victor Louis, 'L'arrangement avec le Royaume-Uni de février 2016: analyse d'un pari perdu', 52(2) *Cahiers de droit européen* (2016), p. 449-468.

[33] EU-Turkey statement, 18 March 2016, Council Press release 144/16.

[34] Case T-257/16, *NM v European Council*, EU:T:2017:130.

[35] See, among others: Mauro Gatti & Andrea Ott, 'The EU-Turkey Statement: Legal Nature and Compatibility with EU Institutional Law', in: Sergio Carrera, Juan Santos Vara & Tineke Strik (eds), *Constitutionalisng the External Dimensions of EU*

Conclusion

Conflicts between EU law and national constitutional law seem to occur more frequently than in the past. Leonard Besselink's concept of Europe's composite constitution, whilst not denying the possibility of occasional conflict, emphasizes how the EU constitution and the constitutions of its member states overlap and actually need each other to function properly. That approach is sound and the concept coined by Leonard allows us to make sense of legal phenomena that straddle the borderline between the European and the national part of the composite constitution. This contribution in honour of Leonard Besselink's rich scholarship looked more closely at one such borderline phenomenon.

Migration Policies in Times of Crisis (Edward Elgar 2019), p. 175-200; Sergio Carrera, Leonhard den Hertog & Marco Stefan, 'It wasn't me! The Luxembourg Court Orders on the EU-Turkey Refugee Deal', *CEPS Policy Insights* No 2017-15, April 2017; Spaventa, *supra* n.27; Tridimas, *supra* n.17, at p. 72-73 and 80.