The Legal Relations of the European Union with the Vatican City State and Holy See

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The EU has differentiated legal relationships with its nearest geographical neighbours. Arguably, none is more unique than that of the EU with the Vatican City State (VCS) (and by extension, the Holy See). Between the parties is a mere 'monetary agreement' that facilitates the official use of the single currency in the territory. It is the only bilateral legal commitment that the parties have undertaken. Yet, this apparent simplicity masks a deeper reality. In fact, the monetary agreement currently in place, which replaced a prior monetary agreement, has now de facto *put in an institutional framework on the legal relations of the EU with the Vatican City State and Holy See, with a Joint Committee to govern monetary arrangements, and an obligation to implement, in its own way, many aspects of EU financial regulation. The monetary agreement also provides for jurisdiction of the Court of Justice of the European Union to settle disputes arising therefrom. This article contextualizes and analyses the legal relations of the EU with the Vatican City State and Holy See, and argues that more embedded legal relations in the future will be inevitable, leading beyond a mere monetary agreement, but one leading to the adopting of a more sophisticated international agreement.*

Keywords: EU, Vatican City, Holy See, Monetary agreement, EU acquis

1 INTRODUCTION

The European Union (EU), the Vatican City State (VCS), and the Holy See all share the distinction for their peculiarities in the international and global order. The EU is the world's most advanced international organization, involving the most extensive form supranationalism that has ever been seen. The latter two are, respectively, unique legal entities. The VCS, upon its creation in 1929, quite literally, involved the 'revision … in every … text-book on international law'.[1] The VCS is one of Europe's few non-EU Member States, and is a geographic enclave within the city of Rome, Italy. The state surrounding the VCS – Italy – was, of course, a founding EU Member State. To the EU, the VCS is a mere non-EU Western European state that is, legally speaking, a third state. For the EU, the

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1 C. G Fenwick, *The New City of the Vatican*, 23 Am. J. Intl. L. 371 (1929).

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VCS is the only third state who's legal relationship with the EU, bilaterally, is governed exclusively by a monetary agreement, and not any other trade-related or other international agreement. Because of this limited legal relationship, there is an absence of the formal institutional infrastructure between the EU and the VCS that can be seen as regards the EU's external relations with most other third states.

In 2020, the EU and the VCS/Holy See[2] celebrated fifty years of formalized diplomatic relations between them.[3] Whilst there has been diplomatic engagement beginning in 1970, there has also been a firmer legal construct to the relations that has taken shape over time. And whilst the fiftieth anniversary was reason enough to mark a significant event in terms of international relations and diplomacy, it is the *legal* relations between the EU and the VCS/Holy See, specifically as regards the monetary relations between them, which has significantly intensified the legal relationship. In particular, a monetary agreement has been put in place between the parties – now a second-generation monetary agreement – which regulates the manner in which the VCS/Holy See can officially use the euro (single currency). This monetary agreement – a form of international agreement (treaty) – is the sole bilateral treaty that the EU and the VCS/Holy See have with one another. It thus wholly governs the legal relations between them, given there is no other form of legal instrument regulating the relationship between the EU and the VCS/Holy See.

The EU-VCS/Holy See legal relationship, consequently, might therefore be seen as severely limited. In as much as this may at first sight be true, such limited legal arrangements has arguably been warranted, and that no wider or deeper forms of legal relations would be necessary, given that the VCS is merely to exist as the territorial state for the Holy See – the seat of the Roman Catholic Church – which in international legal terms, serves its own special purpose. Nevertheless, this article unearths that legal ties are deeper today than ever before. It elucidates the legal relations of the EU with the VCS/ Holy See, owing to the unusual arrangements, and as apparent, the closely knit arrangements as regards monetary arrangements, and consequently, many aspects of EU financial regulation. This is analysed therein, given that the usual study of Europe's non-EU Member States, and the legal relationship that the EU has with such, typically only cover the European Economic Area (EEA) Agreement (Iceland, Liechtenstein, and Norway), the EU-Swiss arrangements (Switzerland), the 'AMS micro-states' (Andorra, Monaco, and San Marino), and potential future accession states. Little if any attention is generally paid to the EU-VCS/Holy See *legal* relationship.

Therein, this article uncovers that whilst, in principle, the legal relations between the EU and VCS/Holy See are indeed light by comparable standards to

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[2] On the formal legal distinction that may need to be drawn between the VCS and the Holy See *see* s. 3 of this article.

[3] H. E. Cardinale, *The Holy See and the International Order*, 260 (Colin Smythe 1976).

Europe's other non-EU Member States, that nonetheless, in specific fields, there is much cooperation that is bound up in law. The article is also more than merely just an insight to the EU-VCS/Holy See legal relations however. It also offers insight into how the EU institutionally deals with its nearest neighbours on monetary agreements, and the relatively new institutional design of them through the form of a Joint Committee, as well as the novel form of dispute resolution.

The article is structured as follows. Section 2 analyses the place of the EU's nearest geographical neighbours, and what the demands are of the EU, as a matter of EU primary law – the EU Treaties – that it has with them. Section 3 then begins to distinguish, for the sake of EU external relations, the differences between the VCS and Holy See, given they are not synonymous entities. Section 4 places the lack of an overall *acquis* between the EU and VCS/Holy See in context, before section 5 analyses the content and scope of the former 2000 monetary agreement, and the current 2009 monetary agreement. Penultimately, section 6 offers insight into the current institutional framework that applies to the current 2009 monetary agreement, before section 7 concluding with the proposition that the legal relationship between the EU and the VCS/Holy is likely to intensify further over time.

2 THE EU'S NEAREST GEOGRAPHICAL NEIGHBOURS AND EU PRIMARY LAW

The EU has quite differentiated legal relations with its nearest geographical neighbours. Whilst it has a particular relationship with three of the four states of the European Free Trade Association (EFTA) through application of the Agreement on the EEA Agreement,[4] there are also other third states in Europe that are not part of any framework agreement[5] with the EU. These are the European micro-states of Andorra, Monaco, and San Marino – the AMS states.[6] Europe's other micro-state, Liechtenstein, is a party to the EEA Agreement. And finally there is the VCS/Holy See.

The economies of micro-states vary, but are all heavily dependent on their large neighbours – Andorra with Spain and France, Liechtenstein with Switzerland and Austria, Monaco with France, and San Marino and the VCS/Holy See with Italy. Each of the four micro-states (except Liechtenstein) have had some connection to the EU given their geographic proximity with founding EU Member

[4] The 'extended internal market' – which incorporates Iceland, Liechtenstein, and Norway. The fourth EFTA state, Switzerland, has bilateral international agreements with the EU.

[5] On frameworks, *see* A. Ott, *The Building Blocks and Stumbling Stones of Constructing the European Legal Space*, in *The Evolving Nature of EU External Relations Law* (W. T. Douma et al. eds, TMC Asser Press 2021).

[6] Today, the AMS micro-states all have their own respective international agreements with the EU, subject to their own nuances. Whilst intriguing in their own right, such analysis is beyond the scope of this Article. *See* D. Dózsa, *EU Relations with European Micro-States. Happily Ever After?*, 14 Eur. L. J. 93 (2008).

States. With these, the EU has legal relations with each, albeit of various different specificities owing to each of their uniqueness.

Today, such relationships of the EU with Europe's micro-states – the EU's nearest neighbours – could be construed as being legally required in some way, be it either in diplomatic or legal form. With the Treaty of Lisbon, there was a new provision inserted into EU primary law. Article 8 of the Treaty on European Union (TEU) provides:

> '1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterized by close and peaceful relations based on cooperation.
> 2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation'.

It is supplemented by a Declaration annexed to the final act of the inter-governmental conference which adopted the Treaty of Lisbon, signed on 13 December 2007, which states:

> The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

Thus, the EU is obligated to seek, but not necessarily have, international relationships with its neighbours. This is also in line with the general observance of international law that guides the EU's external activities,[7] and consistent with external objectives of the EU as enshrined in EU primary law.[8] Since the Treaty of Lisbon, this Article 8 TEU may be construed as an obligation, albeit a faint one, placed upon the EU to have such relationships with its nearest geographical neighbours that has resulted in the mainstreaming of legal ties.

In a way, this was a considerable boost in constitutional status for such arrangements.[9] It could even be argued that Article 8 TEU has elevated legal relations of the EU with its nearest geographical neighbours to being a constitutional norm, and a fundamental part of EU external relations. Yet, whilst Article 8 TEU does extend to Europe's micro-states specifically, and recognising that micro-states are far from the main focus of Article 8 TEU,[10] it does indeed cover them as guiding

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7 Article 3(5) TFEU.

8 Article 21 TEU.

9 Given that some neighbouring states are provided for in either: the enlargement parts, or external relations parts of the EU Treaties. *See* C. Hillion, *Anatomy of EU Norm Export towards the Neighbourhood: The Impact of Article 8 TEU*, in *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union: Towards a Common Regulatory Space?* (P. Van Elsuwege & R. Petrov eds, Routledge 2014).

10 R. Petrov & P. Van Elsuwege, *Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union?*, 36 Eur. L. Rev. 688, 702 (2011).

principles of legal relations. To date, however, Article 8 TEU has not been utilized as a legal basis for an international agreement of the EU, but is without doubt a legal norm to guide the EU's external relations.

3 THE VATICAN CITY STATE AND THE HOLY SEE

In colloquial terminology, 'the Vatican', 'the Holy See', and even 'Rome' are often used to define the Pope, the unique territory in the Italian capital, St. Peter's Cathedral, or nearly anything to do with the entire governmental order of the Roman Catholic Church. Problematically, it has been argued that making the formal distinction between the VCS and the Holy See is next to impossible as a matter of international law.[11] Even the preeminent authority on the creation of states in international law has stated that the relationship of VCS and Holy See causes 'some uncertainty'.[12]

That said, the VCS and Holy See are not synonymous concepts.[13] At the very least, the EU has a right to know who it is negotiating with, whom any opposite negotiator is acting on behalf of, and to whom the other binding party or parties to a treaty is or are. Thus, there is a need to differentiate the VCS and the Holy See, in legal terms, for the sake of EU external relations. As a matter of course, the VCS and Holy See are separates constructs, and has to be distinguished where necessary.

The VCS is a (micro-)state, whereas the Holy See is non-state entity of *sui generis* character. The VCS is new state, in the sense it was only formed in 1929. By contrast, the Holy See has a far older history. Even prior to the VCS coming into being in 1929, the place of the Holy See was, according to international law pre-VCS, indeed 'quite abnormal'.[14] The VCS is functionally dependent on the Holy See, and owes to the existence of the Holy See as regards its agency as an international actor to pursue its mission. Without the Holy See, there would be no VCS. Thus, the VCS and the Holy See work in tandem with one another, with the VCS being of a territorial nature, whereas the Holy See is non-territorial, but with legal personality.

Moreover, the Holy See and the Roman Catholic Church must not be confused. The Holy See is the governmental order of the Roman Catholic Church. In other words, the former is the supreme leader of the latter, under the authority of the Holy Father (the Pope). The purpose of the Holy See, and by extension the VCS, is to be as the administrative home of the Roman Catholic Church, as well as being the ecclesiastical centre of its mission.

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[11] G. Arangio-Ruiz, *On the Nature of the International Personality of the Holy See,* Revue belge de droit international 355, 366–369 (1996).

[12] J. Crawford, *The Creation of States in International Law*, 158 (Clarendon Press 1979).

[13] For extensive analysis, *see* Cardinale, *supra* n. 3, at 99–128, which is Ch. 5, 'The Juristic Position of the State of the Vatican City'.

[14] J. Westlake, *International Law: Part I: Peace*, 39 (2d ed., Cambridge University Press 1910).

But the VCS is unusual in that it's governing structure, if it were not religious in nature, would be a total anathema to the democratic features of modern Europe. Within the VCS, the Pope is the supreme power in executive and legislative function. The executive branch of the VCS is the Pope, chosen by College of Cardinals, and assisted by the Curia. The Pope is 'Prophet, Priest[,] and King'.[15] Because the Pope is simultaneously the Head of State of the VCS and supreme leader of the Holy See, it has been said this resembles 'a striking likeness to a royal Union'.[16] The legislative branch of VCS is the Pontifical Commission of the VCS. Owing to the specificity of the VCS and the Holy See, neither is a member of the Council of Europe (CoE), nor a signatory of the European Convention on Human Rights (ECHR), and thus, not subject to the jurisdiction of the European Court of Human Rights (ECtHR). That said however, the Holy See has observer status with the CoE.

The Holy See itself, apart from the VCS, does have the capacity to enter into treaties.[17] This is not surprising since the VCS, in the context of the history of the Holy See, is a new concept. And whilst the Holy See enters into treaties itself with third parties; at other times, it merely negotiates them, when in fact, the signatory of a treaty with a third party might be the VCS. In other words, separately, the VCS and the Holy See can conclude treaties with third parties. In legal relations with the EU, as will be seen as regards the EU-VCS/Holy See Monetary Agreement of 2009, the contracting party with the EU is the VCS, despite the fact it is the Holy See that negotiated the treaty with the EU. This, at face value, appears unusual, given when it comes to treaties more generally, it is the Holy See that is the signatory, such as, for example, Vienna Convention on the Law of Treaties (VCLT).

Consequently, depending on the situation, convention, or subject matter, the legal actor in legal relations can be the VCS, or the Holy See,[18] given both the VCS and Holy See possess the necessary capacity to enter into treaties. In practice, it is the Holy See that exercises the international relations of the VCS. Despite the VCS/Holy See distinctions that have to be made, it is Holy See that de facto represents both it and VCS,[19] and executes international relations of them, whether it be with the EU or anyone else.

In terms of diplomatic relations, the EU formally has them with the Holy See,[20] and not the VCS. The Secretariat of State of the Holy State is

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[15] M. Louisa Hekker, *Constitutional Issues Raised by Diplomatic Relations Between the United States and the Holy See,* 15 Hastings Constitutional L. Q. 101,103 (1987).

[16] H. F. Cumbo, *The Holy See and International Law*, 2 Intl. L. Q. 603, 614 (1948).

[17] R. J. Araujo, *The International Personality and Sovereignty of the Holy See,* 50 Catholic U. L. Rev. 291, 337–344 (2001).

[18] For examples, J. Crawford, *The Creation of States in International Law*, 227–229 (2d ed., Clarendon Press 2006).

[19] C. Ryngaert, *The Legal Status of the Holy See,* 3 Goettingen J. Intl. L. 829, 836 (2011).

[20] *See* further, Cardinale, *supra* n. 3, at 260–265.

consistent of 'General Affairs' body, and a 'Section for Relations with States'.[21] Despite its name, and its dealings with 'states', it is the Section for Relations with States that is responsible for engaging with the EU. The Apostolic Nunciature to the EU is the Holy See's diplomatic relations to the EU. The EU even made the diplomatic representative of the Holy See – the Apostolic Pro-Nuncio, or Nuncio – the Dean of the Diplomatic Corps.[22] Reciprocally, the EU has a Delegation in Rome, which is accredited to the Holy See, Order of Malta, UN Organisations in Rome, and to the Republic of San Marino, and is headed by an Ambassador of the EU. Since 2016, there has been an EU-Holy Ministerial See Structured Dialogue on foreign policy and global issues, with the High Representative of the Union (HR) representing the EU, with the Secretary for Relations with States of the Holy See on the other side. This structured dialogue meets and sits like an informal association council, though without a legal basis governing it. By contrast to such *diplomatic* relations, and political relations; the *legal* relations with the EU as regards the monetary agreement is with the VCS, and not the Holy See, despite the fact that the 2009 monetary agreement, as analysed below, was ratified by the Holy See.[23]

4 THE INITIAL DISTANCE OF THE VCS/HOLY SEE FROM THE EU ACQUIS

There is no framework agreement between the EU and the VCS/Holy See that regulates their general legal relationship: no association agreement, no partnership and cooperation agreement, nor EU membership application. Therefore, prima facie, there is a legal distance to be drawn between the EU legal order, its *acquis*, and its application to the VCS/Holy See. The VCS/Holy See is largely unintegrated into the EU, despite being completely surrounded by it in terms of geography. It does not apply EU customs rules given it is not part of the customs union; there is no free movement law, or other forms of internal market measures; there are no excise duties on goods; and it is not in the Value Added Tax (VAT) area. It is not even a formal part of the Schengen Area. The VCS, as a geographical area however, benefits from the Schengen Area, by means of border – and visa-free

[21] The Pontifical Commission of the VCS has no place in any relevant external relations.

[22] J. Wouters & S. Duquet, *Unus Inter Plures? The EEAS, the Vienna Convention and International Diplomatic Practice*, in *The European External Action Service: European Diplomacy Post-Westphalia* 169–170 (D. Spence & J. Bátora eds, Palgrave Macmillan 2015). On diplomacy in Italy, *see* R. A. Graham, *The Rise of the Double Diplomatic Corp in Rome: A Study in International Practice (1970–1875)* (Martinus Nijhoff 1951).

[23] *See* further, K. Martens, *The Position of the Holy See and Vatican City State in International Relations Symposium: Law and Religion*, 83 U. Detroit Mercy L. Rev. 729, 758 (2005).

travel by way of its relationship with Italy. Since all entrants into the geographical construct of the VCS enter via Italy, and since there is an open border between the VCS and Italy, the VCS de facto accepts Schengen visas from third country nationals (TCNs) as a basis for temporary entry.

Article 351 of the Treaty on the Functioning of the EU (TFEU) allows pre-existing bilateral treaties of Member States with third states to remain in place, provided they do not infringe EU law.[24] The Lateran Treaty of 1929 between Italy and the Holy See, pre-dating the EU, therefore remains vitally important, given that it regulates the relationship between the EU and the VCS/Holy See outside of matters that fall within the scope of EU competence. But matters of the Lateran Treaty do today, in part, fall within the competence of the EU, including matters of exclusive EU competence. For example, customs matters as regards goods, regulated by Article 20 of the Lateran Treaty, is governed by EU law, and an exclusive EU competence. Thus, if Article 20 of the Lateran Treaty were to be amended today, it could not be done so without EU involvement.

Yet, owing to the fact that the Lateran Treaty was signed by Italy before the creation of the EU, as a pre-existing international agreement, it has remained applicable.[25] For example, another enclave state within Italy, the Republic of San Marino, through an international agreement concluded with Italy in 1939, was considered to be part of the *Italian* customs territory. However, that did not mean that San Marino was part of *EU* customs territory. Under such arrangement from 1939, arising customs duties were collected by Italy, and arranged for transfer to San Marino after collection. But, such duties were not within the calculation of dues owed to the EU for its 'own resources', as would ordinarily be the case for customs duties levied on goods coming into EU Member States from third states.

The EU's Uniform Customs Code (UCC) defines the customs territory of the Union. It does not include the geographical area of VCS,[26] despite the fact that another micro-state, Monaco, is included within the EU customs territory.[27]

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24 *See* M. Kellerbauer & M. Klamert, *Article 351 TFEU*, in *The EU Treaties and the Charter of Fundamental Rights: A Commentary* 2065–2071 (M. Kellerbauer, M. Klamert & J. Tomkin eds, Oxford University Press 2019).

25 For example, by way of analogy, the Italy-San Marino Agreement of 1939 remained applicable after the accession of Italy to the EEC as a founding Member State, by virtue of Art. 351 TFEU. *See* Opinion of Advocate General Jacobs, Case C-10/00, *Commission v. Italy*, ECLI:EU:C:2001:626 (*Third state imports destined for San Marino*), para. 11.

26 The VCS is omitted from Art. 4 (Customs territory). *See L 269/1. Regulation (EU) No 952 of the European Parliament and of the Council of 9 Oct. 2013 Laying down the Union Customs Code (Recast).*

27 Article 4(2) of the UCC: 'The following territories, including their territorial waters, internal waters and airspace, situated outside the territory of the Member States shall, taking into account the conventions and treaties applicable to them, be considered to be part of the customs territory of the Union: (a) France: The territory of Monaco as defined in the Customs Convention signed in Paris on 18 May 1963 (Journal officiel de la République française (Official Journal of the French Republic) of 27 Sep. 1963, at 8679)'.

Generally speaking, customs arrangements are normally put in place to reduce barriers where goods, with designation of origin, might move between two customs areas. Yet the VCS has no goods-producing or manufacturing industry worth mentioning. More broadly, there is no real market economy in the VCS, given that all sectors of the minuscule domestic economy are controlled exclusively by the VCS/Holy See. In other words, there is no real private sector in the geographical area of VCS. Thus, the interest in having EU-VCS customs arrangements through law is negligible. The EU, accordingly, is not afraid of goods imported into the EU from the geographical area of the VCS, because there are none of any description, and the VCS is totally dependent on goods being imported into it by way of Italy, which is already part of the EU customs union.

Beyond customs matters however, but still concerning goods, Article 20 of the Lateran Treaty states:

> Goods arriving from abroad for destinations within the Vatican City, or without it boundaries for institutions or offices of the Holy See, shall invariably be allowed transit over Italian territory (from any part of the Italian boundary as also from any seaport of the Kingdom) free of payment of any customs or *octroi* dues.

This provision places a special duty on Italy to facilitate the movement of goods into Italy, of EU origin, or third state goods, with full exemption status. However, the obvious problem here is the potential for goods, which have once transited into the VCS under preferential import arrangements, for them to be easily then imported into the EU via Italy, after merely doing a U-turn in the VCS. Whilst such a scenario is highly unlikely, the principles of the *Commission v. Italy (Third state imports destined for San Marino)*[28] case remain relevant.

Concerning EU financial regulation – EU secondary law – the VCS is considered as a third state, and thus, has no automatic right of equivalency status, and nor an automatic alignment with the EU regime on such matters. Of most interest, from the EU's perspective, is the VCS's Financial Intelligence Authority (Autorità di Informazione Finanziaria (AIF)), which oversees anti-money laundering activities, and has a role in implementing EU legislation that is incorporated into the 2009 monetary agreement.

Moreover, the relationship of the VCS/Holy See with EU agencies can have an impact of the functioning of the internal market. Yet the VCS/Holy See does not participate in any EU agency, despite the fact that it is conceivably possible.[29] There stands the potential for cooperation of the VCS/Holy See with European

[28] *See* Case C-10/00, *Commission v. Italy*, ECLI:EU:C:2002:146 (*Third state imports destined for San Marino*).

[29] On third states and EU agencies, *see* T. Bekkedal, *Third State Participation in EU Agencies: Exploring the EEA Precedent*, 56 Com. Mkt. L. Rev. 381 (2019).

Union Agency for Criminal Justice Cooperation (Eurojust), the European Union Agency for Law Enforcement Cooperation (Europol), the European Union Agency for Law Enforcement Training (Cepol), the European Banking Authority (EBA), and the European Securities and Markets Authority (ESMA) being obvious possibilities, where the secondary law of the EU agency so permits.

5 THE CLOSER PROXIMITY THROUGH THE EU-VCS/HOLY SEE MONETARY AGREEMENT

The Treaty of Maastricht of the early 1990s set in train the arrangements that lead to the eventual introduction of the single currency in the VCS. However, given what the single currency would actually entail, declarations were made as regards, first: third states outside of the Union; and second: the micro-states of Europe. Annexed to the Treaty of Maastricht, Declaration (No 5) on monetary cooperation with non-community countries stated:

> The Conference affirms that the Community shall aim to contribute to stable international monetary relations. To this end the Community shall be prepared to cooperate with other European countries and with those non-European countries with which the Community has close economic ties.[30]

Immediately following this, Declaration (No 6) on monetary relations with the Republic of San Marino, the Vatican City and the Principality of Monaco stated:

> The Conference agrees that the existing monetary relations between Italy and San Marino and the Vatican City and between France and Monaco remain unaffected by the Treaty establishing the European Community until the introduction of the ecu as the single currency of the Community.

The Community undertakes to facilitate such renegotiations of existing arrangements as might become necessary as a result of the introduction of the ecu as a single currency.[31]

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30 'C 191/1. Treaty on European Union'.

31 *Ibid.* Notably, Andorra was not specifically mentioned, owing to the fact that at the time, the legal status of Andorra had not been settled. On Andorra, *see* F. Maiani, *Unique, yet Archetypal : Relations Between the European Union and Andorra, Monaco and San Marino*, in *The Proliferation of Privileged Partnerships Between the European Union and Its Neighbours* (S. Gstöhl & D. Phinnemore eds, Routledge 2019); M. Maresceau, *The Relations Between the EU and Andorra, San Marino and Monaco*, in *Law and Practice of EU External Relations: Salient Features of a Changing Landscape* (A. Dashwood & M. Maresceau eds, Cambridge University Press 2008); F. Murray, *Micro-States (Andorra, Monaco, San Marino and the Vatican City),* in *The European Union and Its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration* (S. Blockmans & A. Łazowski eds, TMC Asser Press 2006); R. Torrent, *Individual Third Countries, Member States, the European Community and the World at Large – How Do They Fit Together? a Very General Reflection of a Very Particular Case: Andorra*, in *The European Union and the International Legal Order: Discord or Harmony?* (V. Kronenberger ed., TMC Asser Press 2001).

With the formal introduction of the single currency in 1999,[32] competence regarding monetary policy was no longer that of Italy, but rather, became that of the EU. However, owing to the fact that the Italian currency – the Lira – was forgone by Italy with the introduction of the single currency, this necessitated a change in the currency regime of the VCS as regards the currency that it would use.

Treaties of the VCS with third parties regarding currency use predate the single currency. Since the Lateran Treaty of 1929, the VCS/Holy See initially, de facto, used the currency of its surrounding state of Italy. Separate to the Lateran Treaty of 1929, a monetary convention with Italy was put in place over a year later from 2 August 1930.[33] Such bilateral monetary commitments of the VCS/Holy See and Italy were done on the basis of bilateral conventions, which only had ten-year time spans, and had to be subsequently renewed. The last occurred, pre-single currency, in December 1991.[34]

A monetary agreement of the EU allows the single currency to become the official currency of a third state. They have the potential to cover use of material currency, formal status of the single currency in the third state, access to the Single European Payments Area (SEPA), amongst other things. Procedurally within EU law, monetary agreements are subject to a special treaty-making procedure, separate and distinct from ordinary treaty-making,[35] marking them as not only distinct, but unusual, given they come under a separate procedural regime of Article 219 TFEU (ex-Article 111 EC). The typical regime of Article 218 TFEU does not apply as regards the negotiation, signature, and conclusion of agreements under Article 219 TFEU.[36]

'Monetary agreements' as a name, however, is not the actual term used in the EU Treaties. Rather, Article 219 TFEU specifies that the rules must related to 'monetary or foreign exchange regime matters'. In contrast to ordinary international agreements under Article 218 TFEU, which are concluded by the Council, monetary agreements under Article 219 TFEU are concluded by the Commission. Furthermore, the negotiation of monetary agreements has the possibility to be done by individual Member States, as per a joint reading of both Article 219(3) TFEU and Article 219 (4) TFEU; compared to the Commission, who ordinarily exercised that function for normal international agreements under Article 218 TFEU.

Specifically as regards the VCS/Holy See, monetary agreements of the EU have been necessary for the continuity of currency arrangements, given that the formal

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32 Though the currency did not circulate until 2002.

33 G. Ireland, *The State of the City of the Vatican*, 27 Am. J. Intl. L. 271, 277 (1933).

34 Monetary Agreement between the Italian Republic and the Vatican City State, concluded on 3 Dec. 1991.

35 The ordinary procedural legal basis concerning international agreements of the EU is laid down in Art. 218 TFEU.

36 F. Erlbacher, *Part Five: Title V International Agreements: Article 219 TFEU*, in *The EU Treaties and the Charter of Fundamental Rights: A Commentary* 1674 (M. Kellerbauer, M. Klamert & J. Tomkin eds, Oxford University Press 2019).

currency link between the VCS/Holy See and Italy ended. In fact, Italy was no longer in possession of monetary powers itself following the creation of the single currency. Given the dominance of the single currency in Europe, in terms of its adoption amongst the majority of EU Member States, it made as much sense for Europe's micro-states within the EU's sphere of influence, especially those had that such close ties with larger neighbours, to use the single currency. The same applied for overseas countries and territories (OCTs) of EU Member States to have currency-arrangements.[37]

In many ways, a monetary agreement is a powerful legal instrument given that when agreed between parties, it can result is the total movement of an independent monetary regime, to a monetary regime of another entity – in this case, the VCS/Holy See – coming within the monetary regime of a third party. For the VCS/Holy See however, this was nothing entirely new when the EU-VCS/Holy See Monetary Agreement of 2000 (2000 monetary agreement),[38] which was signed in 1999, came into being. The only difference, however, was that rather than being a bilateral matter with a state – Italy – to being a bilateral matter with an international organization – the EU – within the full sphere of EU law. Unlike the prior monetary convention that the VCS/Holy See had with Italy, which had to be renewed every ten-years, the initial 2000 monetary agreement was to be perpetual, until it would be either replaced and/or repealed. Notable was whom the signatories to the 2000 monetary agreement were: Italy, 'on behalf of' the then Community (now EU); and the VCS, 'on its behalf, the Holy See'. It was not the EU itself.

The 2000 monetary agreement was an example of the single currency being placed into use in a third state. This initial agreement was built on trust, and did not allow for temporary suspension measures. The 2000 monetary agreement had no institutional enforcement for ensuring that the applicable provisions, as applied to the VCS/Holy See, were brought into line with what is demanded of that agreement. The only remedy provided for in the monetary agreement, it appeared, was unilateral withdrawal of the parties from the monetary agreement. This was deficient,[39] and would in time need rectification in the form of an updated or new monetary agreement.

In 2009, the Council invited the Commission to revise the monetary agreements that the EU had with a number of third states, nearly ten years after they had first been signed, including the 2000 monetary agreement with the VCS/Holy See. When it came to renegotiating the monetary agreement, the Council Decision in

[37] F. Amtenbrink, *EMU and the Overseas*, in *EU Law of the Overseas: Outermost Regions, Associated Overseas Countries and Territories, Territories Sui Generis* 288–289 (D. Kochenov ed., Kluwer Law International 2011).

[38] *C 299/1. Monetary Agreement Between the Italian Republic, on Behalf of the European Community, and the Vatican City State and, on Its Behalf, the Holy See. See also L 30/35. Council Decision of 31 Dec. 1998 on the Position to Be Taken by the Community Regarding an Agreement Concerning the Monetary Relations with Vatican City* (1999/98/EC).

[39] *See Communication from the Commission to the Council. Report on the Functioning of the Monetary Agreements with Monaco, San Marino and Vatican*, COM(2009) 359 Final, 6 (2009).

2009[40] on the negotiating position stated that the negotiation would be done jointly by Italy, with the European Commission to be 'fully association with the negotiations', and the European Central Bank (ECB) 'fully associated with the negotiations in its field of competence'. In other words, neither the Commission nor ECB were negotiating directly, but rather, had to be channelled through Italy.

The EU-VCS/Holy See monetary agreement of 2009 (2009 monetary agreement)[41] that followed, which confusingly entered into force on 1 January 2010, therefrom replaced the prior 2000 monetary agreement in full. Articles 1–7 on the 2009 monetary agreement cover the prime issue that is the reason for the legal relations – the use of the single currency. The 2009 monetary agreement did not specify the legal basis of the new agreement, and nor is it clear from the applicable EU legal acts. Just days before the Treaty of Lisbon was to come into effect, which was on 1 December 2009, the Council on 26 November 2009 adopted a Decision, which stated that 'the Commission shall be entitled to conclude the agreement on behalf of the Community',[42] in line with the then Article 111(3) EC.

In contrast to the 2000 monetary agreement, which was, 'between the Italian Republic, on behalf of the European Community, and the Vatican City State and, on its behalf, the Holy See', this time, the 2009 monetary agreement was, 'between the European Union and the Vatican City State'. The EU in 2009 was represented by Commission and Italy, but only the Commission signed it for the Union. The VCS represented by the Holy See within the meaning of Article 3 of the Lateran Treaty, and was signed, 'for the [VCS] and, on its behalf, the Holy See'.

The 2009 monetary agreement, beyond including the use of the single currency, however, is heavily tilted towards a certain level of integration on EU monetary policy, and select parts of EU financial regulation, including a swath of EU secondary law. Given the further features it involved compared to the prior 2000 monetary agreement, it can thus be labelled a 'second-generation' monetary agreement. In particular, Article 8 provides for a novel regulatory technique. Whilst legislation included in the annex to the 2009 monetary agreement does not require ordinary transposition of EU secondary law as would be required of EU Member States regarding implementation of directives, it instead requires the VCS/Holy See to 'adopt all appropriate measures, through direct transpositions or possibly equivalent actions, with a view to implementing…EU legal acts and rules', as set out in the annex of the monetary agreement. It prescribes a time of just one year for the VCS/Holy See to, 'adopt all appropriate measures, through direct transpositions or possibly equivalent actions'.[43]

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[40] *L 321/36. Council Decision of 26 Nov. 2009 on the Position to Be Taken by the European Community Regarding the Renegotiation of the Monetary Agreement with the Vatican City State*, 2009/895/EC (2009).

[41] *C 28/13. Monetary Agreement Between the European Union and the Vatican City State 2010/C 28/05.*

[42] *L 321/36. Council Decision of 26 Nov. 2009, supra* n. 40.

[43] Article 8(1) of the 2009 monetary agreement.

The annex is then subject to unilateral amendment by the Commission, every year, as per Article 8(3) of the 2009 monetary agreement, to account for new EU legal acts, or amendments and supplements to such. The VCS/Holy See only has a say as regarding the 'appropriate and reasonable deadlines' for the implementation of the updated annex, through the Joint Committee. Thus, the 2009 monetary agreement has been claimed to be 'more than' a mere monetary agreement,[44] owing to the institutional features of the third state participating in select aspects of EU financial regulation. To date, the Commission has adopted ten such Decisions,[45] which in each instances, replaces the annex of the 2009 monetary agreement with a new annex.[46] The annex includes important aspects of EU secondary law, including EU legal acts on the prevention of money laundering,[47] the prevention of fraud and counterfeiting,[48] rules on euro banknotes and coins,[49]

[44] M. Cremona & P. Leino-Sandberg, *International Agreements of the EU in the Field of EMU*, in *EU Law of Economic & Monetary Union* 186 (F. Amtenbrink & C. Herrmann eds, Oxford University Press 2020).

[45] The Commission Decisions occurred in 2012, and every year from 2014 to 2022. It is unexplained by there were no Commission Decisions in 2011 and 2013, despite the legal obligation contained in Art. 8(3) of the 2009 monetary agreement that, 'The Annex *shall be amended* by the Commission *every year*' (emphasis added).

[46] The most recent such Commission Decision is: *L 92/5. Commission Decision (EU) 2022/453 of 15 Mar. 2022 Amending the Annex to the Monetary Agreement Between the European Union and the Vatican City State*, O.J.E.U. (21 Mar. 2022).

[47] Such EU legal acts include, inter alia, *L 182/1. Council Framework Decision of 26 Jun. 2001 on Money Laundering, the Identification, Tracing, Freezing, Seizing and Confiscation of Instrumentalities and the Proceeds of Crime (2001/500/JHA).* Official Journal of the European Communities(5 Jul. 2001); *L 127/39. Directive 2014/42/EU of the European Parliament and of the Council of 3 Apr. 2014 on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union*, OJEU (29 Apr. 2014); *L 141/1. Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on Information Accompanying Transfers of Funds and Repealing Regulation (EC) No 1781/2006 (Text with EEA Relevance)*, OJEU (5 Jun. 2015); *L 141/73. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, Amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and Repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA Relevance)*, OJEU (5 Jun. 2015); *L 284/6. Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 Oct. 2018 on Controls on Cash Entering or Leaving the Union and Repealing Regulation (EC) No 1889/2005*, OJEU (12 Nov. 2018); *L 284/22. Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 Oct. 2018 on Combating Money Laundering by Criminal Law*, OJEU (12 Nov. 2018), as amended and supplemented (where applicable).

[48] Such EU legal acts include, inter alia, *L 181/6. Council Regulation (EC) No 1338/2001 of 28 Jun. 2001 Laying Down Measures Necessary for the Protection of the Euro against Counterfeiting*, OJEU (4 Jul. 2001); *L 373/1. Council Regulation (EC) No 2182/2004 of 6 Dec. 2004 Concerning Medals and Tokens Similar to Euro Coins*, OJEU (21 Dec. 2004); *L 151/1. Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the Protection of the Euro and Other Currencies Against Counterfeiting by Criminal Law, and Replacing Council Framework Decision 2000/383/JHA*, OJEU (21 May 2014); *L 123/18. Directive (EU) 2019/713 of the European Parliament and of the Council of 17 Apr. 2019 on Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA*, OJEU (10 May 2019), as amended and supplemented (where applicable).

[49] Such Council conclusions and EU legal acts include, inter alia, Council Conclusions of 10 May 1999 on the quality management system for euro coins; *L 70/20. Guideline of the European Central Bank of 20 Mar. 2003 on the Enforcement of Measures to Counter Non-Compliant Reproductions of Euro Banknotes and on the Exchange and Withdrawal of Euro Banknotes* (ECB/2003/5) (2003/206/EC) OJEU (25 Mar. 2003); *L 267/1. Decision of the European Central Bank of 16 Sep. 2010 on the Authenticity and Fitness Checking and Recirculation of Euro Banknotes*

the inclusion of relevant rules applicable to entities carrying out financial activities on a professional basis,[50] and legislation on collection of statistical information.[51]

The VCS is thus a rare example of a third state which formally utilized the single currency, without being a state that is a part of the Eurosystem within the European System of Central Banks (ESCB). Whilst a third state does not have to have a monetary agreement in place to use the single currency as its de facto currency, it is clearly evident that in the modern era, being closely intertwined with the single currency now also demands having select aspects of EU financial regulation being part-and-parcel of any legal arrangements related to the single currency. Rightly, it is more appropriate and legally sound for a monetary agreement between a third state and the EU to be in place, rather than just de facto usage without legal arrangements.

6 CONTEMPORARY INSTITUTIONAL FRAMEWORK OF LEGAL RELATIONS

In the prior 2000 monetary agreement, there was no joint committee or any kind, and nor was there any clause in which dispute settlement was provided for. This

(ECB/2010/14) (2010/597/EU) OJEU (9 Oct. 2010); *L 339/1. Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 Dec. 2010 Concerning Authentication of Euro Coins and Handling of Euro Coins Unfit for Circulation*, OJEU (22 Dec. 2010); *L 201/135. Regulation (EU) No 651/2012 of the European Parliament and of the Council L of 4 Jul. 2012 on the Issuance of Euro Coins*, OJEU (27 Jul. 2012); *L 118/37. Decision of the European Central Bank of 19 Apr. 2013 on the Denominations, Specifications, Reproduction, Exchange and Withdrawal of Euro Banknotes (Recast) (ECB/2013/10) (2013/211/EU)*, OJEU (30 Apr. 2013); *L 194/1. Council Regulation (EU) No 729/2014 of 24 Jun. 2014 on Denominations and Technical Specifications of Euro Coins Intended for Circulation (Recast)*, OJEU (2 Jul. 2014), as amended (where applicable).

[50] Such EU legal acts include, inter alia, *L 372/1. Council Directive of 8 Dec. 1986 on the Annual Accounts and Consolidated Accounts of Banks and Other Financial Institutions (86/635/EEC)*, OJEU (31 Dec. 1986); *L 176/338. Directive 2013/36/EU of the European Parliament and of the Council of 26 Jun. 2013 on Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms, Amending Directive 2002/87/EC and Repealing Directives 2006/48/EC and 2006/49/EC (Text with EEA Relevance)*, OJEU (27 Jun. 2013); *L 176/1. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 Jun. 2013 on Prudential Requirements for Credit Institutions and Investment Firms and Amending Regulation (EU) No 648/2012 (Text with EEA Relevance)*, OJEU (27 Jun. 2013); *L 173/1. Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 Apr. 2014 on Market Abuse (Market Abuse Regulation) and Repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (Text with EEA Relevance)*, OJEU (12 Jun. 2014); *L 173/179. Directive 2014/57/EU of the European Parliament and of the Council of 16 Apr. 2014 on Criminal Sanctions for Market Abuse (Market Abuse Directive)*, OJEU (12 Jun. 2014), as amended (where applicable).

[51] Such EU legal acts include, inter alia, *L 2/34. Guideline of the European Central Bank of 25 Jul. 2013 on the Statistical Reporting Requirements of the European Central Bank in the Field of Quarterly Financial Accounts (Recast) (ECB/2013/24) (2014/3/EU)*, OJEU (7 Jan. 2014); *L 73/16. Regulation (EU) 2021/379 of the European Central Bank of 22 Jan. 2021 on the Balance Sheet Items of Credit Institutions and of the Monetary Financial Institutions Sector (Recast) (ECB/2021/2)*, OJEU (3 Mar. 2021); *L 297/51. Regulation (EU) No 1072/2013 of the European Central Bank of 24 Sep. 2013 Concerning Statistics on Interest Rates Applied by Monetary Financial Institutions (Recast) (ECB/2013/34)*, OJEU (7 Nov. 2013), as amended (where applicable).

contrasts with the arrangements under the 2009 monetary agreement. Rather, Article 12 of the 2000 monetary agreement merely provided that parties could request a review of the provisions therein, and amend them thereafter. Essentially, there was no institutional structure. The Commission acknowledged this was a flaw, given that other monetary agreements of the EU had with other third states conferred a surveillance role for the Commission. The 2009 monetary agreement changed such deficiencies. First, it provided for a Joint Committee. Article 11 laid out the formalities, including the representation of the parties. On the EU side, it requires there be representatives of the Commission, Italy, and the ECB. No consistent monitoring is explicitly foreseen, but the Joint Committee is the place in which concerns of the EU about the VCS/Holy See's compliance with the monetary agreement can be raised.

Second, the 2009 monetary agreement provided a new, affirmative means of dispute settlement between the EU and the VCS/Holy See. The preamble of the 2009 monetary agreement states, '[t]he Court of Justice of the European Union should be the judicial body in charge of settling disputes which may arise from the application of the Agreement'.[52] More specifically, Article 10(1) of the agreement specifies that the Court of Justice of the European Union (the Court):

> shall be the jurisdiction which shall have the exclusive competence for settling any persisting dispute between the parties which may arise from the application of this Agreement and which could not have been solved within the Joint Committee.

In other words, the parties to the monetary agreement cannot go straight to the Court, as the Joint Committee is the first place in which a dispute should be resolved. Furthermore, if a dispute is to go to the Court, the subject matter of the dispute has to be confined to the subject matter of the monetary agreement alone. The wording used in Article 10(1) of the 2009 monetary agreement is 'persisting dispute'. That is to say, a dispute must have a character that is not a once-off or short-term issue, but rather, of long duration.

Therefore, whilst the jurisdiction of the Court is confirmed with the 2009 monetary agreement, the admissibility of cases demands procedural steps. Article 10(2) demands on the EU side, for the EU to be 'acting on a recommendation of the EU delegation in the Joint Committee'.[53] The 2009 monetary agreement also

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[52] Preamble 8, *C 28/13. Monetary Agreement Between the European Union and the Vatican City State 2010/ C 28/*05, *supra* n. 41.

[53] The full text of Art. 10(2) of the 2009 monetary agreement: 'If the European Union (acting on a recommendation of the EU delegation in the Joint Committee) or the Vatican City State considers that the other Party has not fulfilled an obligation under this Agreement, it may bring the matter before the Court of Justice. The judgment of the Court shall be binding on the Parties, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court in its judgment'.

stipulates that any judgment rendered by the Court on foot of the agreement is binding, and that both parties – the EU and VCS – 'shall take the necessary measures to comply with the judgment within a period to be decided by the Court in its judgment'. Furthermore, in addition to the binding nature of the judgment, it appears such a judgment as envisaged under the 2009 monetary agreement is declaratory in nature, akin to an infringement procedure taken by the Commission against a Member State under Article 258 TFEU.[54] However, different from an infringement procedure, Article 10(2) of the 2009 monetary agreement explicitly asks the Court to put a date down for compliance, but also implicitly appears to imply that the Court set down what 'necessary measures' the parties must take. That appears to imply that the Court ought to set down a timeframe in its judgment, which is a practice that it, ordinarily, does not do as a matter of course. There is no basis for allowing any courts or tribunals of the VCS make a reference for a preliminary ruling to the Court.[55]

As a safeguard measure following a judgment of the Court, if a party fails to comply with a judgment, the other party may terminate the monetary agreement immediately. Article 10(3) of the 2009 monetary agreement allows termination immediately if the other party fails to comply with the date, but it can be understood that the parties may indeed terminate without necessarily bringing the dispute to the Court, on the basis of Article 12, with a one-year notice period. As also apparent, the 2009 monetary agreement allows the EU to bring a non-EU Member State – a third state – before the Court; and similarly, allows a third state to bring the EU (as opposed to a specific EU institutions, bodies, offices, or agencies) before the Court.

This is quite remarkable, and a rarity in the practice of the EU's external relations. Any inclinations towards other forms of dispute settlement – such as arbitration[56] – have been specifically spurned by the parties. Whilst remarkable, it is, however, not fully surprising that the VCS/Holy See accepted jurisdiction of

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[54] Or a Member State might take against another Member State under Art. 259 TFEU. *See* G. Butler, *The Court of Justice as an Inter-State Court*, 36 YB. Eur. L. 179 (2017).

[55] Though, it must be noted that the EU-UK Withdrawal Agreement (EU-UK WA), and in particular, the Protocol on Ireland/Northern Ireland, since Jan. 2021, foresees all courts and tribunals in the United Kingdom having the possibility, and even an obligation, where applicable, to make a reference for a preliminary ruling to the Court. To date, no such requests from any UK courts and tribunals have been made since the EU-UK WA came into effect. *See* G. Butler, *The EU Customs Union, Free Movement of Goods, and Enforcement Mechanisms in the Protocol on Northern Ireland: A Legal Appraisal*, in *Research Handbook on Legal Aspects of Brexit* (A. Łazowski & A. Cygan eds, Edward Elgar Publishing 2022).

[56] *See* e.g., Art. 18 of the 'L 374/14. Agreement in the Form of an Exchange of Letters between the European Economic Community and the Principality of Andorra – Agreement between the European Economic Community and the Principality of Andorra – Joint Declarations', which provided for arbitration. However, given the subject matter of the 2009 monetary agreement are matters mostly pertain to exclusive competence of the EU, the 2009 monetary agreement rightly rejects all other forms of dispute resolution.

the Court over the 2009 monetary agreement. After all, the Pope addressed the International Court of Justice (ICJ) in The Hague in 1985, speaking positively of dispute resolution mechanisms.[57] No other viable form of dispute resolution could be seriously entertained by the EU, given moving it outside of the purview of the Court would likely raised serious questions about the compatibility of the monetary agreement with the autonomy of the EU legal order.

Provisions contained in international agreements that give exclusive jurisdiction to the Court are indeed an exception, rather than the rule. Outside the scope of international agreements, it is now possible in some circumstances for third states to initiate proceedings at the Court.[58] Yet, in light of *Switzerland v. Commission*,[59] where a case was lodged by a third state at the Court under an international agreement, it would be interesting to see if the VCS ever lodged a case at the Court of Justice under the 2009 monetary agreement, and whether the Court of Justice would find the case admissible, or rather, send it to the General Court on procedural grounds.[60] No case, thus far, has ever been brought to the Court on foot of the 2009 monetary agreement.

7 CONCLUSION

Fifty years of diplomatic, and subsequent legal relations between the EU and the VCS/Holy See deserve to be marked, not for ecumenical matters, but for the purpose of further understanding the legal relations of the EU with a very specific micro-state entirely encapsulated by Italy, and thus, the EU. There is broad acceptance within the EU institutional framework that the VCS/Holy See has to continue to be treated according to its *sui generis* nature, but at the same time, the maintenance of an orderly (and legal) relationship between the parties, as regards monetary matters and EU financial regulation, has been very important to the EU.

This article has elucidated a number of characteristics of the legal relations between the parties, with predominant attention given to the sole treaty between

[57] *See* Pope John Paul II, *Apostolic Journey to Netherlands. Address of John Paul II to the International Court of Justice During the Meeting at the Peace Place, The Hague, Monday 13 May 1985* (Peace Palace, The Hague 13 May 1985).

[58] Case C-872/19 P, *Venezuela v. Council*, ECLI:EU:C:2021:507. *See* A. Arnull, *Non-Member States and Access to the Union Courts*, 47 Eur. L. Rev. 264 (2022); F. Finelli, *The Right of Third States to Challenge EU Restrictive Measures Before the Court: Venezuela v. Council*, in *EU External Relations Law: The Cases in Context* (G. Butler & R. A Wessel eds, Hart Publishing 2022).

[59] Case T-319/05, *Swiss Confederation v. European Commission*, ECLI:EU:T:2010:367 at the General Court, and on appeal to the Court, Case C-547/10 P, *Swiss Confederation v. European Commission*, ECLI:EU:C:2013:139. The initial case lodged at the Court was Case C-70/04, *Swiss Confederation v. European Commission*, ECLI:EU:C:2005:468.

[60] For criticism of the prior situation where the case lodged by Switzerland was lodged at the Court of Justice, but was sent to the General Court, *see* M. Maresceau, *EU-Switzerland: Quo Vadis?*, 39 Georgia J. Intl. & Comp. L. 727, 746–750 (2014).

the EU and the VCS/Holy See – the 2009 monetary agreement – a second-generation monetary agreement, which replaced a first generation one from 2000. The VCS/Holy See demonstrated a reluctance to any form of legal arrangements with the EU. In the modern economy, the VCS/Holy See is undoubtedly finding it difficult to wall itself off from external involvement and demanding international commitments. Whilst the VCS/Holy See has not truly been absorbed into the EU's legislative orbit, the global effect of EU law is undeniable,[61] and the demands of the current 2009 monetary agreement are a demonstration of this.

In fact, in light of the single currency, it is arguable that the VCS/Holy See had no choice but to enter into formal legal relations with the EU. Creating a currency for the VCS/Holy See alone has always been an unfathomable idea. Prior to the 2000 monetary agreement, there was only diplomatic relations between the EU and the VCS/Holy See, rather than legal relations. Even today with the 2009 monetary agreement, the legalization of relations has been kept to a reasonable minimum, with only select aspects of EU financial regulation having to be mimicked in the VCS. Other than forced matters of legal cooperation, like monetary matters and financial regulation, the EU and the VCS/Holy See have left their engagement outside of the bond of an intensified legal relationship.

The VCS/Holy See is largely immune from wider trends of differentiated integration in the EU. Even if any of Europe's other micro-states were to agree to become parties to the EEA Agreement,[62] or an alternative form of special relationship with the Union, it would be unlikely the VCS/Holy See would ever join such an arrangement. Instead, the prevailing character of its legal relationship with the EU through a standalone monetary agreement would prevail. Yet, despite there only being a monetary agreement between the parties, slowly but surely, over time, EU-VCS/Holy See relations are having an institutional dimension, for example, now with a Joint Committee meeting annually, and an updated annex every year also. This is despite there being no overarching 'association' framework in place at all.[63] Over time, a wider and deeper relationship will be inevitable.

In time, a 'third-generation' of treaty between the EU and the VCS/Holy See will be needed. When it goes to be negotiated in time, it ought to be more sophisticated than before, thus necessitating an ordinary international agreement

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[61] On this, *see* E. Fahey, *The Global Reach of EU Law* (Routledge 2017). It has later been popularized as the 'Brussels Effect'. *See* A. Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press 2020).

[62] Noting that Liechtenstein is already a party to the EEA Agreement.

[63] On what legally constitutes an 'association', *see* Case 12/86, *Meryem Demirel v. Stadt Schwäbisch Gmünd*, ECLI:EU:C:1987:400. *See* G. Van der Loo, *Direct Effect of Association Agreements and the Meaning of 'Association': Demirel*, in Butler & Wessel (eds), *supra* n. 58.

within the bounds of an association. Such a third-generation agreement, if more comprehensive than the current arrangements, would likely be an ordinary international agreement (subject to Article 218 TFEU), rather than the monetary agreement (subject to Article 219 TFEU) at present. For now however, the mere adoption of the single currency entails compliance with certain aspects of EU secondary law, and select aspects of EU financial regulation. This is the price of being a small micro-state, even of a *sui generis* nature.