The Legal Relations of the European Union with the Principality of Monaco

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The European continent has only one micro-state that is not landlocked: the Principality of Monaco. This city-state along the French Riviera is an independent state under international law and is not an EU Member State. Therefore, the law and policy of the EU's external relations applies, which must cater for the Principality's peculiar existence because of practical necessity. The EU retains differentiated legal relations with its closest geographical neighbours, and the EU-Monégasque relationship sees several unilateral EU measures taken to account for Monaco, as well as a limited array of international agreements between the parties, including a monetary agreement. These cumulatively make up the legal aspects to their international relations with each other. At first sight, these legal relations appear limited. Yet, as this article establishes, EU-Monégasque legal relations have widened and deepened over time, and an association agreement is on the horizon to account for the necessitated intensity of cooperation on a legal footing. Such a development would bring the Principality legally closer to the EU than it ever has been before.

Keywords: EU, EU external relations, Monaco, Monégasque, Micro-state, International agreements

1 INTRODUCTION

The European Union (EU) has several likeminded micro-states that are located in-and-around it: Andorra, Liechtenstein, Monaco, San Marino, and the Vatican City State. Some of these micro-states have survived through the centuries through adaptation, to achieve preservation. Others exist to settle legacy issues following the fall of empires.[1] Micro-states can be understood as a form of western European non-EU states,[2] along with non-micro-states such as Iceland, Norway, Switzerland, and the United Kingdom (UK); who too share similar values, identities, and interests with the EU and its Member States; not to mention their common borders. At the time of the founding of the Communities (now, the

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1 For example, regarding the establishment of the Vatican City State to cater for the Holy *see* e.g., J. Crawford, *The Creation of States in International Law*, 227–229 (2d ed., Clarendon Press 2006).

2 Though, it must be noted, there is no concrete definition of micro-states. *See* e.g., K. Friese, *Die europäischen Mikrostaaten und ihre Integration in die Europäische Union: Andorra, Liechtenstein, Monaco, San Marino und Vatikanstadt auf dem Weg in die EU?*, 27–31 (Duncker & Humblot 2011).

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Union) in the 1950s, micro-states were not really considered as particularly relevant, or the consequences to them that might flow with six states forming the early stages of what is now known as wider European legal integration.

The picture is very much different today than it was when the Treaty of Rome was signed in 1957, and there are vast ramifications that have followed for the micro-states owing to the supranational power that the EU has become. In the contemporary world, the EU has come to be a global legal actor, be in possession of extensive competence, and certainly, beyond the strict confines of its own law: a normative influence on the laws of third states in the wider world.[3] This evolution of the EU, and the way it has come to be, demands enhanced legal relations of the EU with its closest neighbours who are non-EU Member States.

Located on the French Riviera (*Côte d'Azur*) on the Mediterranean coast, the Principality of Monaco is the world's second smallest state by area,[4] and is for all intends and purposes, a city-state with a unique history. As a former protectorate of France, on whom it has been largely dependent on for its independent existence, the fate of Monaco has long been a bilateral matter of French-Monégasque legal, political, and diplomatic relations. But France, as a founding EU Member State, has also ceded and pooled powers and competences of its own with the EU.

Accordingly, French-Monégasque arrangements on a bilateral basis have now to also account for *EU*-Monégasque arrangements, with the EU potentially having different policy priorities and interests compared to that of France. Given the historical Franco-Monégasque link, the way in which Union law has quietly made its way into Monégasque law, before international agreements were concluded,[5] has been as a result of bilateral arrangements between France and Monaco; and not because of formalized EU-Monaco arrangements. The relationship of Monaco to France is key to understanding the constitutional place of the Principality of Monaco in Europe, as well as comprehending France's and the EU's facilitation of Monaco's own existence in the modern age.[6]

Micro-states naturally have privileged relations with their neighbouring states, and they have each evolved along different paths, with no two micro-states having the exact same legal relations with either their neighbouring state(s) or the EU. It is apparent from EU primary law that the EU must have *some* type of legal relations with Europe's micro-states. Article 8 TEU provides that, '[t]he Union shall develop a special relationship with neighbouring countries, aiming to establish an

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3 *See* e.g., E. Fahey, *The Global Reach of EU Law* (Routledge 2017).

4 The smallest is the Vatican City State. *See* G. Butler, *The Legal Relations of the European Union with the Vatican City State and Holy See*, 27(2) Eur. For. Affairs Rev. 263 (2022), doi: 10.54648/EERR2022022.

5 *See* ss 3, 7, 8, and 9 of this article.

6 Further, *see* V. Margossian-Cotta, *Droit européen et droit monégasque: la force du vecteur français*, 2 Revue de droit monégasque 137 (2000).

area of prosperity and good neighbourliness', and from that, 'the Union may conclude specific agreements with the countries concerned'.[7] EU-Monaco legal arrangements, as will be uncovered in this article, are ad hoc, in the sense that they follow no clear pattern. Whilst the legal relations are regulated 'in the conventional way',[8] that is to say, by international agreements, there is no 'framework' agreement of any kind. Moreover, in addition to international agreements, the EU has also taken several unilateral measures within its own legal order to account for Monaco in various ways.

Legal arrangements of the Principality with the EU rarely receive attention,[9] and thus, this article hopes to contribute to closing this deficit, and analyse the legal relations as they presently are, which in turn allows for contemplation of how the legal relations will adapt into the future. This article is structured as follows. Section 2 outlines the place of Monaco in the international legal order, and considers its international relations with both France, and international organizations. Section 3 considers issues related to the movement of goods between the EU and Monaco, including fiscal and non-fiscal measures, as well as international trade. Sections 4 and 5 analyse the legal arrangements concerning the movement of workers, residence rights, establishment, and services considerations, as well as the issue of capital movements. Section 6 considers the issue of border control and the Schengen Area, whilst section 7 examines the issue of taxation. Section 8 scrutinizes the justice and home affairs (JHA) matters between the EU and Monaco, whilst section 9 analyses the monetary arrangements between them, accounting for Monaco's adoption of the single currency (the euro). Penultimately in section 10, in light of the analysis, the article ponders how the future legal relations between the EU and Monaco might develop. By way of

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[7] Article 8 TEU in full reads, '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 para. 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'.

[8] G. Grinda, *The Principality of Monaco: State, International Status, Institutions* 8 (2d ed., TMC Asser Press 2010). For the original language version, *see* G. Grinda, *La Principauté de Monaco: L'Etat, Son Statut International, Ses Institutions* (2d ed., Pedone 2009).

[9] There are limited studies. For example G. Vandersanden, *L'application du droit communautaire sur le territoire de la Principauté*, 2 Revue de droit monégasque 175 (2000); 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, T. M. C. Asser Press 2006); 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); D. Dózsa, *EU Relations with European Micro-States: Happily Ever After?*, 14 Eur. L.J. 93 (2008), doi: 10.1111/j.1468-0386.2007.00403.x; S. Millan, *Les Micro-États Tiers Européens et Le Droit de l'Union*, in *Les États tiers en droit de l'Union européenne* (I. Bosse-Platière & C. Rapoport eds, Bruylant 2014).

conclusion, section 11 puts forth the argument that an 'EU-Monaco Association Agreement', or equivalent, is long overdue, and would signify the true reality of the necessitated legal relations between them.

2 THE PRINCIPALITY OF MONACO AND ITS LEGAL ORDER

Micro-states – a narrow category of states within a broader category of small states – have always had an unusual place in international law.[10] As a western European non-EU state, Monaco is a small state, but also a micro-state. It forms a single municipality,[11] even though the ward of Monte Carlo is by far the most well-known internationally. Monaco's total population is just over 38,000 residents on a landmass of just over two square kilometres.[12] In such a small space, this makes the population density very high compared to the rest of Europe. The Principality is situated approximately halfway between Marseille (France) and Genoa (Italy), with the next-nearest metropolitan area being Nice (France). Whilst Monaco is a coastal state, it has no significant natural resources.[13] It is surrounded by the hills of France on three sides, and to the Mediterranean Sea on the remaining side with its own coastal waters.

Today, Monaco is home to numerous financial services operations,[14] places where games of chance can be played (gambling),[15] a preferential taxation regime for non-citizen residents, its annual Formula One Grand Prix,[16] and to a lesser extent, tourism. It is not an industrial state, and not a major production society. On the contrary, it is a consumption state, totally reliant on the outside world for much of its needs. As a matter of practical necessity, Monaco weighs most heavily upon the surrounding state of France. It thus has been treated atypically compared to most other third states in which the EU has legal arrangements.

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10 *See* e.g., J. C. Duursma, *Fragmentation and the International Relations of Micro-States: Self-Determination and Statehood* (Cambridge University Press 1996).

11 Article 78, Constitution of the Principality of Monaco of 1962.

12 The size of the state has been slowly expanding owing to land reclamation.

13 Industry in Monaco has always been marginal. *See Riviera Boasts Factories Now, Along With Bikinis and Roulette* (New York Times 4 Mar. 1961).

14 It was even considered by the Third Reich to be an international outpost for finance. G. G. Kundahl, *The Rivera at War: World War II on The Cote D'Azur* 298–300 (IB Tauris 2017).

15 It can be stated that the state has been built and sustained on its gambling history vis-à-vis the rest of Europe for much of the past. *See* e.g., M. Braunde, *Making Monte Carlo: A History of Speculation and Spectacle* (Simon & Schuster 2016).

16 It is one of the most prestigious motorsport races in the world. *See* P. O'Kane, *A History of the 'Triple Crown' of Motor Racing: The Indianapolis 500, the Le Mans 24 Hours and the Monaco Grand Prix*, 28 Int'l J. Hist. Sport 281 (2011), doi: 10.1080/09523367.2011.537920. *See also* A. Cygan, *Are All Sports Special? Legal Issues in the Regulation of Formula One Motor Racing*, 18 Eur. Bus. L. Rev. 1327 (2007), doi: 10.54648/EULR2007048; A. Cygan, *Competition and Free Movement Issues in the Regulation of Formula One Motor Racing*, in *The Regulation of Sport in the European Union* (B. Bogusz, A. Cygan & E. Szyszczak eds, Edward Elgar Publishing 2007).

Monaco's legal history and domestic constitutional arrangements are essential to understanding its identity. It is one of the last remaining principalities of Europe and has never been absorbed by its large neighbour, despite the possibilities of other entities doing so over the ages. Contemporary Franco-Monégasque relations rest on a non-absorption doctrine and are governed by approximately 126 arrangements.[17] This web of bilateral arrangements, through international agreements (treaties), conventions, declarations, protocols, letter exchanges, and additional administrative arrangements have shaped the very basis of the external relations of Monaco.[18]

Amongst these Franco-Monégasque arrangements, a small number stand out as to their significance. First is the 1918 Treaty,[19] which, inter alia, demanded conditions of Monaco's international relations, in that it would act in conformity with French interests. In essence, it set the stage for the twentieth century understanding of Monaco vis-à-vis France. Second were the 1963 Treaties. These agreements framed the 'Neighbourhood Agreement',[20] as well as separate international agreements covering matters like taxation and related customs issues.[21] This was significant in that these agreements were *after* the European Economic Communities (EEC) (now, the Union) was formed. Third are a series of letters that were exchanged in 1998 between Monaco and France as a result of the introduction of the single currency,[22] which had dramatic repercussions for Monaco, given that the French currency – the French franc – would soon no longer be legal tender and cease circulation.

Monaco's internal governance is relevant too. The Principality is ruled by the Grimaldi family, and presently headed, since 2005, by Prince Albert II. The role of the royal family is not a symbolic role; but an assertive political one. As a constitutional monarchy, the Prince of Monaco is by no means merely a figurehead acting as a ceremonial head of state. Rather, the Prince has significant control

[17] Latest numbers provided by the *Direction des affaires juridique* of the Principality, as of Mar. 2023.

[18] Note that the Communities took an early interest in Monaco's capabilities as regards the state's external relations. 'Service juridique des Exécutifs européens. Branche C.E.E. Objet: Statut juridique de la Principauté de Monaco, de la République de Saint-Marin et des Vallées d'Andorre à l'égard de la Communauté Economique Européenne (Legal Status of Monaco, San Marino & Andorra vis à vis the EC). Référence: Votre lettre du 15 décembre 1961 (06989). Bruxelles, le 16 mars 1962, JUR/CEE/638/62 – PB/mm'.

[19] Treaty to determine the Principality's relations with France. Paris, 17 Jul. 1918, entering into force 23 Jun. 1919. SO of 9 Aug. 1919.

[20] Neighbourhood Agreement. Paris, 18 May 1963, entering into force 1 Sep. 1963. SO no. 3.039 of 19 Aug. 1963.

[21] For example Tax Treaty. Paris, 18 May 1963, entering into force 1 Sep. 1963. SO no. 3.037 of 19 Aug. 1963; and, Customs Treaty. Paris, 18 May 1963, entering into force 1 Sep. 1963. SO no. 3.038 of 19 Aug. 1963.

[22] Series of letters exchanged concerning the introduction of the Euro in Monaco (31 Dec. 1998). SO no. 13.916 of 1 Mar. 1999.

in the form of political power, as evidenced by the text of the Constitution of Monaco.[23] Article 13 states that, '[t]he Prince represents the Principality in its relations with foreign powers'. In other words, the concentration of Monaco's external relations lays with the monarchy, and is out-of-character compared to other European states.[24] Monaco is not a presidential or parliamentary system of government, but rather, the House of Grimaldi reigns supreme in a weak constitutional system of checks and balances.

These internal governance arrangements of Monaco, vis-à-vis the rest of Europe, has not gone unnoticed. In fact, alarmingly, as a report by the Venice Commission once noted, the 'functioning of this system is mostly left to the wisdom and good will of the Prince'.[25] Whilst European monarchies are today largely adapted to democratic principles,[26] and are typically one step removed from direct political power on a day-to-day basis; this is not so with regard to Monaco.

For Monaco to have legal relations with the EU, it must have sufficient international legal capacity. By this, it means legal autonomy from France. A way that Monaco has done this is to have expressed (and continues to express) itself in international organizations. With respect to Monaco's external relations,[27] it has a variety of relationships with various international organizations that is incomplete compared to most EU Member States. Principally, it is a member of the Council of Europe (CoE),[28] a signatory state to the European Convention of Human Rights (ECHR), and thus, within the jurisdiction of the European Court of Human Rights (ECtHR).

More broadly, Monaco is a participating state in the Organization for Security and Co-operation in Europe (OSCE), a member country of the World Health Organization (WHO), the International Criminal Police Organization (Interpol), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the United Nations (UN) itself.[29] By contrast, Monaco is not a member of many other prominent international organizations, including the EU, the

[23] *See* Arts 43–51 (Ch. V. The Government) of the Constitution of the Principality of Monaco.

[24] The other exception to the rule here is Europe's other Principality: Liechtenstein. It shares similar characteristics with Monaco, in that neither is a true democracy in the contemporary European sense. However, Liechtenstein is a survivor of the Holy Roman Empire, whereas Monaco is not. In this sense, their origins highly differ and not necessarily easily comparable. After all, Liechtenstein if an EFTA state applying the EEA Agreement.

[25] *European Commission for Democracy Through Law (Venice Commission). Opinion on the Balance of Powers in the Constitution and the Legislation of the Principality of Monaco (Opinion No. 695/2012)*, CDL-AD(2013) 018, 9 (Strasbourg 18 Jun. 2013).

[26] *See* e.g., Belgium, Denmark, Luxembourg, the Netherlands, Norway, Spain, Sweden, and the UK.

[27] *See also* J.-P. Gallois, *Le régime international de la principauté de Monaco* (Pedone 1964).

[28] Though only since 2004 and remains the most recent state to accede to the CoE. *See* G. Grinda, *Le processus d'adhésion de Monaco au Conseil de l'Europe: incidences sur l'ordre juridique de la Principauté*, 7 Revue de droit monégasque 25 (2005). Curiously, Monaco is not a member country of the Council of Europe Development Bank.

[29] Monaco only became a member of the United Nations in 1993.

European Free Trade Association (EFTA),[30] the North Atlantic Treaty Organization (NATO), the Organization for Economic Co-operation and Development (OECD), the International Monetary Fund (IMF), the World Trade Organization (WTO), the World Bank (WB), or the International Labour Organization (ILO).

As a non-EU Member State, the freedoms of the EU's internal market do not apply to Monaco. Whilst 'free movement' between the EU and Monaco is not realized, there are legal arrangements that govern some limited forms of movement. This complements the declaration annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, signed on 13 December 2007, which stated that: '[t]he Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it'. This explicit reference is inclusive of the concept of Europe's micro-states such as Monaco; and supplements the aforementioned Article 8 TEU. The specificity of Monaco demands that there must be legal relations of some form. That said, the EU is free to regulate this relationship in a way that it sees appropriate, and thus, there are some key areas of EU law and policy that are worthy of further probity.

3 GOODS: CUSTOMS, INTERNATIONAL TRADE AND NON-FISCAL MEASURES

There is only limited alignment of EU-Monaco legal arrangements on the movement of goods.[31] There is no international agreement concerning customs issues; but whilst Monaco is not part of the EU's territory,[32] Monaco *is* part of the EU *customs territory*. This is owed to the historical precedent that France and Monaco had a customs union between them stemming from the nineteenth century, but which following the advent of the EU customs union, was downgraded to Monaco merely becoming part of EU customs territory. This occurred in 1968 when Monaco was included in the applicable EU secondary law concerning

[30] That is despite the micro-state of Liechtenstein being an associate since 1978 and a full member in 1991. M. Maresceau, *Very Small States and the European Union: The Case of Liechtenstein*, in *A Constitutional Order of States? Essays in EU Law in Honour of Alan Dashwood* 503 (A. Arnull & others eds, Hart Publishing 2011).

[31] In Case 15/81, *Gaston Schul Douane Expediteur BV v. Inspecteur der Invoerrechten en Accijnzen, Roosendaal*, ECLI:EU:C:1982:135, Monaco briefly arose because the seller of a pleasure boat was residing in Monaco. However, because the good was located in France, and the good was moving to the Netherlands – the good moving between two EU Member States – the status of Monaco as regards the movement of goods did not specifically arise.

[32] *See* Art. 355(3) TFEU, which provides that, 'The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible'.

customs issues,[33] which referred back to a bilateral Franco-Monégasque agreement.[34] The decision to make Monaco part of the EU customs territory was (and is) a unilateral EU one, incorporating it into the Uniform Customs Code (UCC), and thus, Monaco is considered part of French customs territory.

A customs territory is not the same as a customs union. Consequently, Monaco is not part of the EU's Common Commercial Policy (CCP). EU international agreements on trade with third states concerns EU Member States; and not the EU customs territory. Thus, this places Monaco in an odd position: Monégasque goods are not goods of EU origin, but yet Monaco is considered as EU customs territory, that entails obligations upon it. For example, it must apply the EU customs *acquis*, which includes all the secondary legislation, inclusive of duties and tariffs owed on direct imports from outside the EU. That is coupled with the obligation of the neighbouring state, France, to ensure such obligations are fulfilled, and the European Commission overseeing all those obligations.

Consequently, owing to Monaco's inclusion in the EU's customs territory, this curtails Monaco from utilizing an external commercial policy of its own with non-EU third states when it comes to trade in goods; and Monaco does not benefit from EU international agreements with the wider world. That said, there is nothing that precludes the EU in its external relations to make clear to third parties that equal treatment could be given to goods originating in the EU customs territory, including Monaco. The fact that Monaco is not in the EU customs union makes it different to the two other AMS micro-states of Andorra and San Marino, albeit under differing arrangements.[35] Indeed, even post-Brexit, analogies can be drawn to special arrangements that have been made regarding Northern Ireland, which is not in the EU customs union, but is part of EU customs territory,[36] albeit that Northern Ireland is part of the UK.

The effects of being part of the EU customs territory are considerable. For example, no customs duties (or charges having equivalent effect) can be applied on trade in goods between Monaco and Member States. Consequently, within the EU, goods from Monaco are treated as originating in the Union, and thus,

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[33] *Regulation (EEC) No 1496/68 of the Council of 27 September 1968 on the Definition of the Customs Territory of the Community*, OJEC L 238/1 (28 Sep. 1968), and as subsequent amended and replaced.

[34] Annex, Art. 2: 'The territory of the Principality of Monaco as defined in the Customs Convention signed in Paris' 18 May 1963, OJ. 8679 (27 Sep. 1963).

[35] The EU-Andorra agreement only covers certain industrial goods/products, whereas the EU-San Marino agreement covers all goods/products.

[36] *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). Moreover, G. Butler, *State Aid: Extension of the Acquis and the 'Effect on Trade'*, in *The Law & Politics of Brexit: Volume IV: Protocol on Ireland/Northern Ireland* (F. Fabbrini ed., Oxford University Press 2022).

covering by the principles of the free movement of goods *as regards customs issues.* [37] There are no customs declarations needed for the movement of goods between Monaco and the EU owing to this situation.

But in as far as customs issues are concerned, there are also non-fiscal matters that deserve consideration. The *Estée Lauder* case at the Court of Justice of the European Union (CJEU or the Court) is of note here.[38] At issue was goods that originated in Monaco, and were distributed throughout the EU. In his Opinion, Advocate General Fennelly noted that, 'the very fact that Monaco is part of the customs territory of the Community justifies treatment of goods originating in Monaco as benefiting from the rules on free movement'.[39] The Court decided the case on other grounds without dwelling on the origin of the goods from Monaco further.[40]

The Opinion of Advocate General Fennelly is peculiar on this point. In reaching his conclusions, he noted that:

> 'It is clear from Article [29 TFEU] and *Donckerwolcke* that third-country goods must physically be imported into and legally satisfy the relevant CCT formalities, including payment of the appropriate tariff, in a Member State before they may be regarded as being in free circulation. Monaco's legal status, as part of the [Union]'s customs territory, renders these requirements superfluous'.[41]

This is correct, but a clarification is needed, as it does not cover all aspects of the free movement of goods, but only insofar as *customs matters* are concerned. Whilst customs matters (border issues) are not a hinderance to movement of goods between Monaco and the EU, the matter of non-fiscal measures (beyond the border issues) is a different matter entirely, to which Advocate General Fennelly's remarks do not apply. Such regulatory or technical matters – often called non-fiscal measures – include national or harmonized (EU) standards for placing goods on the internal market, which have to be met for goods to be marketed and sold in the EU, does not apply. In other words, goods of Monégasque origin do not benefit from the doctrine of mutual recognition that emanated from the *Cassis de Dijon* case-law.

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[37] *See* e.g., Case 41/76, *Suzanne Criel, née Donckerwolcke and Henri Schou v. Procureur de la République au tribunal de grande instance de Lille and Director General of Customs*, ECLI:EU:C:1976:182. Further, P. Eeckhout, *Linking Internal and External Trade in a Perfect Customs Union: Donckerwolcke*, in *EU External Relations Law: The Cases in Context* (G. Butler & R. A. Wessel eds, Hart Publishing 2022).

[38] Case C-220/98, *Estée Lauder Cosmetics GmbH & Co. OHG v. Lancaster Group GmbH*, ECLI:EU:C:2000:8.

[39] Opinion of Advocate Generally Fennelly, Case C-220/98, *Estée Lauder Cosmetics GmbH & Co. OHG v. Lancaster Group GmbH*, ECLI:EU:C:1999:425, para. 14.

[40] Though it should be added that the analysis of Advocate General Fennelly was agreed with in the Opinion of Advocate General Sharpston, Case C-291/09, *Francesco Guarnieri & Cie v. Vandevelde Eddy VOF*, ECLI:EU:C:2010:520, para. 23.

[41] Opinion of Advocate Generally Fennelly, Case C-220/98, *supra* n. 39.

The matter of non-fiscal measures taken by Member States and goods is not as generous as the customs matters are. For example, in *Francesco Guarnieri & Cie*, the Court was asked to rule on the issue of security for costs (*cautio judicatum solvi*), and the treatment of nationals of Monaco doing business in the EU.[42] The Court ruled that Article 34 TFEU dealing with quantitative restrictions and measures having equivalent effect on the import of goods allowed Member States to impose different 'security for costs' laws on third-country nationals like Monégasque nationals, as compared to EU citizens. This affirmed that when it comes to trade in goods between the EU and Monaco, a level playing field has not been achieved.

Given the limited production economy in Monaco, the non-application of the non-fiscal measures provisions concerning the movement of goods has not been an overriding concern. But for the small industry in Monaco, the state has successfully concluded a limited international agreement with the EU to overcome the potential non-fiscal barriers that Monégasque goods might face in the EU's internal market. The international agreement called the 'Agreement … on the application of certain [Union] acts on the territory of the Principality of Monaco' (the certain acts agreement),[43] which is based on Article 207 TFEU, aims to facilitate enhanced EU-Monaco trade regarding medicines for human and veterinary use (pharmaceutical goods), cosmetic products, and medical devices. Principally it demands that Monaco must take all proper measures to ensure the application of the EU legal acts annexed to the international agreement within the Principality.[44]

One of the more curious cases of the free movement of goods that has arisen is in regard to animals. As a matter of EU law, the free movement of animals comes within the non-fiscal measures aspects of the free movement of goods.[45] Given the free movement of animals is not guaranteed by legal arrangements between the EU and Monaco, it is curious that the International Circus Festival of Monte-Carlo (*Festival International du Cirque de Monte-Carlo*) sees animals being imported into Monaco, and then later exported back into the EU. Given that animals raise issues concerning public health – and that there is extensive harmonizing secondary law

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[42] Case C-291/09, *Francesco Guarnieri & Cie v Vandevelde Eddy VOF*, ECLI:EU:C:2011:217.

[43] *Agreement Between the European Community and the Principality of Monaco on the Application of Certain Community Acts on the Territory of the Principality of Monaco*, OJEU L 332/42 (19 Dec. 2003).

[44] When EU legal acts are updated (amended and/or repealed) internally within the EU legal order, a joint committee of the parties established under the certain act agreements may updated the annexes to that agreement that apply to Monaco. *See* e.g., *Decision No 1/2013 of the EU-Monaco Joint Committee Established under the Agreement between the European Community and the Principality of Monaco on the Application of Certain Community Acts on the Territory of the Principality of Monaco of 12 July 2013 Amending the Annex to the Agreement (2013/513/EU)*, OJEU L 279/73 (19 Oct. 2013).

[45] For example Case C-5/94, *The Queen v. Ministry of Agriculture, Fisheries and Food, ex parte: Hedley Lomas (Ireland) Ltd*, ECLI:EU:C:1996:205; and, Case C-67/97, *Criminal proceedings against Ditlev Bluhme*, ECLI:EU:C:1998:584.

on this at EU level – the fact that animals are moving into the Union from a third state is problematic in the absence of an international agreement covering such matters. Similarly, food exports of animal origin from Monaco to the EU is not permitted because Monaco does not subscribe to EU food safety standards as a matter of alignment with any international agreement.

4 PERSONS, RESIDENCE, AND WORKERS

Union citizens have no right of residence in Monaco that is derivable from any EU legal act. 'First-entry' rights are solely at the discretion of Monaco, as there is no international agreement that provides for 'first movement' rights of Union citizens to move to Monaco. There is also no international agreement concerning the rights of persons residing in or already working in Monaco, as compared to some other micro-states,[46] which provides for equal treatment of other nationals residing there beyond first-entry rights.[47]

That said, Monaco, though entitled, does not prevent nationals of EU Member States and EFTA-EEA (European Economic Area) states from taking up residence in Monaco, though such nationals wanting to reside in Monaco must apply for a residence permit, as a form of prior authorization. The barriers appear to be more cost-prohibitive than legally-barred.[48] Comparatively, nationals of Monaco have no formal free movement rights under EU law. In the eyes of EU law, without Union citizenship, and not a national of an EFTA-EEA state,[49] Monégasque nationals are mere third country nationals. Whilst the neighbouring France grants a right of residence for nationals of Monaco in France, that is a unilateral choice (and competence) of France. However, it does not entail secondary movement from France onwards into other EU Member States.

During the COVID-19 pandemic, residents of the micro-states were considered, for some purposes, to be 'EU resident'. At the same time however, the EU's vaccine export authorization to third states did not initially include Monaco.[50] That said, the post-pandemic developments at political level welcomed the idea

[46] Compared to, e.g., Art. 5 of the EU-Andorra Cooperation Agreement and Art. 20 of the EU-San Marino Cooperation and Customs Agreement.
[47] Maresceau, *supra* n. 9, at 285.
[48] The average cost of living in Monaco compared to all other EU Member States is considerably higher.
[49] Note that in Case C-897/19, *Ruska Federacija v. I.N.*, ECLI:EU:C:2020:262, para. 58, the Court stated, '[i]t is appropriate to add that not only the fact that the person concerned has the status as a national of an EFTA State, which is a party to the EEA Agreement, … [which … renders the situation of that person objectively comparable with that of an EU citizen to whom, in accordance with Art. 3 (2) TEU, the Union offers an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured'.
[50] A. Petti, *EU COVID-19 Purchase and Export Mechanism: A Framework for EU Operational Autonomy*, 59 Common Mkt. L. Rev. 1333, 1356 (2022), doi: 10.54648/COLA2022094.

that Monaco and other micro-states would participate in the EU's Health Security Committee, and be involved in joint procurement efforts for future serious health threats.

In Monaco, a sharp distinction must be drawn between the ability to take up *residence*, and the ability to take up *employment*. Whilst the former is quite liberal for Union citizens and EFTA-EEA nationals through the aforementioned prior authorization procedure, it is a reasonably closed system for the latter.[51] A job priority scheme operates whereby non-Monégasque nationals need work permits and Monégasque nationals do not, which is an anathema to a non-discriminatory, market-based economy. Nationality discrimination, in the form of positive discrimination for Monégasque nationals, is heavily practiced and entrenched in Monaco. This is even embedded within the Constitution of Monaco, which, at face value, is fundamentally incompatible with EU law, and one of the overriding reasons why Monaco has never sought to accede to the EU.

For example, Article 25 of the Constitution provides that whilst there is a right to work, '[p]riority is granted to Monégasques for the obtainment of public and private positions in the circumstances prescribed by law'. The subsequent Article 26 of the Constitution dictates that Monégasque nationals 'are entitled to the assistance of the State in the event of destitution, unemployment, sickness, handicap, old age and maternity in the circumstances and manner laid down by law', but is silent as regards to other residents and workers of other non-Monégasque nationals. Similarly, Article 27 of the Constitution provides gratuitous education at primary and secondary level for Monégasques, but not for other nationals. And Article 29 of the Constitution provides that the right to peaceful assembly is a protected right for Monégasque nationals only. The only saving grace is that Article 32 of the Constitution stipulates that non-nationals 'enjoy all public and private rights in the Principality', but in the same breadth, makes clear that this only applies regarding rights 'that are not formally reserved to nationals'.

Monaco is a major employment hub in the region, and there are many cross-border workers commuting from their residences in France, and even some from Italy. Put another way, a lot of workers in Monaco do not formally reside in Monaco. By contrast, most residents of Monaco, particularly non-nationals, derive their income from elsewhere, outside of Monaco. This paradox results in a non-working resident population owing to the considerable wealth of its citizens and residents.

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[51] Non-nationals in Monaco need employment permits for each job, which makes mobility in the employment market for non-nationals difficult.

5 ESTABLISHMENT, SERVICES, AND CAPITAL

The freedom of establishment for Monégasque natural and legal persons in the EU does not exist. In fact, the most recent monetary agreement between the EU and Monaco specifically excludes it as regards certain types of legal persons.[52] It states, in the preamble, that the agreement 'shall not confer any right upon credit institutions or, where appropriate, any other financial institutions authorized to carry out their activities … in matters related to the freedom of establishment or the provision of services in the European Union'.[53]

That said, nearly all banking and financial institutions in Monaco are from outside Monaco, and are subsidiaries of other commercial groups domiciled in the EU, Switzerland, and the UK. France plays an important role in Monaco's banking industry. There has been the Franco-Monégasque Convention of 1945 and several letter exchanges ever since concerning the role of France and French regulations, on certain aspects of regulation, in the Monégasque banking and financial sector. This is a matter of bilateral conventions however, and not as a result of EU law.

Being a place of financial services, but also of European values, Monaco has an active interest in ensuring it does not become a hotbed of activity for sanctioned individuals and entities, by unilaterally applying EU restrictive measures (sanctions); even though it is not under a formal legal obligation to do so.[54] More active alignment of EU restrictive measures through automation, rather than case-by-case bases,[55] is also highly desirable to ensure there is no circumvention of EU sanctions.[56]

Monaco's attraction as a location originated in Principality's success as a haven for gambling, with the state serving as a service provider within its own territory. As a jurisdiction that was free to make its own choices, Monaco could offer services that were otherwise restricted or banned in France, as well as in nearby Italy and Spain. However, there is no free movement of services between the EU and Monaco, and thus, Monégasque companies, including those related to

[52] On monetary matters, *see* s. 9 of this article.

[53] Preamble 7. It also rules out such EU legal persons from establishing in Monaco. For more on the EU-Monaco monetary affairs, *see* s. 9 of this article.

[54] This is similar to other third states in Europe.

[55] *See* e.g., with regard to others non-EU Member States, C. Hillion, *The Case-by-Case Cooperation between the EU and Switzerland in Foreign Policy, Security and Defence*, in *Switzerland and the EU: A Challenging Relationship* (M. Maresceau & C. Tobler eds, Brill Nijhoff 2023); C. Hillion, *Deepening Cooperation Between the EU and Its Neighbours in Foreign Policy, Security and Defence – the Norway Way*, in *The European Union's Contribution to International Peace and Security: Liber Amicorum in honour of Gert-Jan van Hegelsom* (S. Marquardt & S. Blockmans eds, Brill Nijhoff 2023).

[56] On the issue of circumvention, *see* G. Butler, *Of Rulers, Relatives, and Businesspersons: The Imposition of EU Restrictive Measures through Sanctions on Family Members*, 50 Legal Issues Econ. Integration (2023); F. Finelli, *Countering Circumvention of Restrictive Measures: The EU Response*, 60 Com. Mkt. L. Rev. 733 (2023), doi: 10.54648/COLA2023050.

financial services, banking, and gambling, cannot offer their services in the EU's internal market on a free movement basis.

Whilst it is envisaged that the free movement of capital has an external dimension to it, in that capital was to be easily applied to third states, that assumption should be preceded with supreme caution. The third state or third country dimension of capital is not automatic.[57] This can be striking, given the individual wealth of residents in Monaco, and to which they have commercial activity and investments elsewhere. Furthermore, whilst Monaco is not exactly a prime destination of EU investment, payments between the EU and Monaco are streamlined. Monaco is part of the Single European Payments Area (SEPA), but such a payment settlement system, which provides the same terms as those of an EU-resident institution, is conditioned on Monaco's continued fulfilment of conditions as set down in EU secondary law.

6 BORDER CONTROL AND THE SCHENGEN AREA

Before the advent of the Schengen Area, Monaco relied upon France for control, if any, of the external land border between the two jurisdictions. Put another way, France exercised control over the entry and exit points of Monaco *as if* it were a French police checkpoint.[58] But with the creation of the Schengen Area, and the Franco-Monégasque border becoming an external Schengen border, this meant some radical change.[59] Theoretically, this would mean the imposition of controls, even though no border controls were formally in place.

To ensure the border for persons was unhindered as possible, a way was found to integrate Monaco into the Schengen Area, despite Monaco not being part of the Schengen Area itself. Whilst an association agreement with Monaco could have been adopted, allowing a third state outside of the EU to become a part of the Schengen Area,[60] that is not what occurred. Instead, the Executive Committee of Schengen decided that the Franco-Monégasque border would remain open.[61] After all, the creation of the Schengen Area was not designed to close it. Moreover, it is difficult to enter Monaco without already being in the Schengen Area in the first place. This pragmatic response to a practical problem means that

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57 *See* G. Butler, *Free Movement of Capital: General Rules and Exceptions*, in *Oxford Principles of European Union Law: Volume II: The Internal Market* (R. Schütze & T. Tridimas eds, Oxford University Press 2024).

58 In addition to the French border, Monaco has a seaport and a heliport, but no airport.

59 *See* e.g., L. Balmond, *Libre circulation des personnes et relations franco-monégasques: entre Schengen et la Convention de voisinage*, 2 Revue de droit monégasque 159 (2000).

60 This has been the adopted way of, e.g., Norway and Switzerland into the Schengen Area, amongst others.

61 *The Schengen Acquis. Decision of the Executive Committee of 23 June 1998 on Monégasque Residence Permits (SCH/Com-Ex (98) 19)*, OJEU L 239/199 (22 Sep. 2000).

the territory of Monaco is within the external borders of the Schengen Area, which is a form of indirect and unintended integration.

As a result, nationals of Monaco are given certain exemptions. Monégasques benefit from the freedom of travel throughout the Schengen Area.[62] Moreover, third country nationals possessing residence permits to reside in Monaco are equated with Schengen visas, and allow for such residents of Monaco to transit in and throughout the Schengen Area. However feasible this solution has been in alleviating some of the difficulties, it has not eliminated all problems for all persons. For example, when Monégasque nationals are re-entering the Schengen Area from non-Schengen states, they are not permitted to use the 'EU' lanes at airports and must use the other designated lanes for third country nationals.

7 TAXATION AND SAVINGS

The lure of life in Monaco is not only the location and the weather, but the tax incentives.[63] Monaco has long been marketed as a place for its generous personal tax regime for non-Monégasque and non-French nationals. As put, it has been a place 'where living conditions are excellent and personal income taxes are zero, you can achieve a fairly ideal situation with complete legality'.[64] The attractive taxation regime, whereby no direct taxation is levied, means that the Principality has to fund itself and its public services through other means.

From the perspective of the EU, having a micro-state on its immediate periphery that facilitates large-scale tax avoidance, and potentially allows for base erosion and profit shifting (BEPS), has been undesirable. Thus, it is apparent that Monaco has made extensive efforts to ensure it has never been on the wrong side of the EU's list of non-cooperative jurisdictions for tax purposes.[65] Monaco takes part in the EU's VAT area, as well as the applicable excise duties. But the most significant form of cooperation has come in the field of savings tax, where a specific international agreement has been put into place.

The EU has numerous international agreements with neighbouring third states on savings tax. It attempts to ensure cooperation and exchanges of information on savings income in the form of interest payments. Essentially, it comes down to sufficient governance standards in the area of tax. The EU had adopted Directive 2003/48 (the savings tax directive) but had an interest in having its

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[62] Though not all EU Member States are part of the Schengen Area, and thus, entry requirements into non-Schengen states in the EU are subject to different criteria.

[63] The well-known euphemism goes the French Riviera 'isn't only a sunny place for shady people'. W. Somerset Maugham, *Strictly Personal* (Doubleday 1941).

[64] C. Torem & D. DuVivier, *Corporation and Tax Laws of Monaco*, 16 Bus. Law. (ABA) 1053,1064 (1960).

[65] On this EU conception, *see* A. Koutsouva, *The European Union's List of Non-Cooperative Jurisdictions for Tax Purposes*, 29 EC Tax Rev. (2020), doi: 10.54648/ECTA2020045.

application extended to third states. This is because there was the intent of ensuring no mass capital flight leaving the EU and to be headed towards convenient nearby third states.[66] Monaco entered into an international agreement with the EU – the EU-Monaco Savings Tax Agreement (the savings tax agreement) – to apply the savings tax directive in Monégasque law.[67]

Within the EU, a new Directive 2014/107, expanding the range of information that is exchanged, and is in compliance with OECD standards, has entered into force. In other words, it represented an enhanced effort by the EU to ensure that income or assets owned, for which taxes would be owed to the appropriate authority, would be levied. Given there was no automatic update to the EU-Monaco savings tax agreement, a new amending protocol had to be agreed,[68] which focused on allowing automated exchange of information, owing to technological advancement and efficiency considerations.

8 JUSTICE AND HOME AFFAIRS

Little-to-no parts of EU secondary law concerning JHA[69] are applied to the EU-Monaco relationship. This is despite Monaco having the potential to be a haven for otherwise prohibited or unwanted activity in the EU. Such examples include money laundering and tax evasion.

The initial EU-Monaco Monetary Agreement of 2002 (the 2002 monetary agreement)[70] had stated that Monaco 'shall cooperate closely with the [EU] to combat counterfeiting of euro bank-notes and coins[,] and to suppress and punish any counterfeiting of euro banknotes and coins which may occur in its territory'. This was merely a promise, albeit a legally bound one, to undertake activity, but from an EU perspective, might have been viewed as inadequate homogeneity to the EU *acquis*, given there was no real means of enforcing this, other than through diplomatic pressure.

A means of strengthening enforcement for achieving effective enforcement of ensuring no counterfeit currency circulates has been to tie Monaco into the EU's

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[66] On the free movement of capital in the EU, and the eagerness of investors for capital to be exported from intra-EU and extra-EU borders, *see* Butler, *supra* n. 57.

[67] *Agreement Between the European Community and the Principality of Monaco Providing for Measures Equivalent to Those Laid down in Council Directive 2003/48/EC*, OJEU L 19/55 (21 Jan. 2005). *See* F. Lura, *La coordination de la fiscalité de l'épargne dans la Communauté et dans certains pays*, 7 Revue de droit monégasque 71 (2005).

[68] *Amending Protocol to the Agreement Between the European Community and the Principality of Monaco Providing for Measures Equivalent to Those Laid Down in Council Directive 2003/48/EC*, OJEU L 225/3 (19 Aug. 2016).

[69] Also known as the Area of Freedom, Security, and Justice (AFSJ).

[70] For more on this, *see* s. 9 of this article.

agency dealing with crime: the European Police Office (Europol), for which an operational strategic co-operation agreement has been entered into.[71]

9 MONETARY MATTERS

The French franc was only the official currency of Monaco from 1995 to 2001. For many years prior to 1995, a Monégasque franc was used. The reason for Monaco abandoning its own currency was EU developments, with the Treaty of Maastricht paving the way for the eventual adoption of the single currency throughout the majority of EU Member States. This advent of the single currency was recognized as being of particular interest to Europe's micro-states. Thus, appended to the Treaty of Maastricht was a declaration on the monetary relations that the EU would have to have with certain micro-states, including Monaco. It provided that:

> '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'.[72]

The single currency meant a special type of international agreement was to be made possible: a monetary agreement, which are no ordinary international agreements. The EU Treaties make a distinction between them. On the one hand there is the procedural regime for ordinary international agreements as set out in Article 218 TFEU. By contrast, a different procedural regime is stated in Article 219 TFEU concerning monetary agreements between the EU and third states.[73]

The Council authorized Monaco's use of the single currency, unilaterally, before any EU-Monaco monetary agreement was put into place,[74] which was agreed shortly thereafter. The first EU-Monaco monetary agreement of 2002 (the 2002 monetary agreement)[75] contained obligations upon Monaco to implement extensive EU secondary law relating to the single currency.

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[71] *Agreement on Operational and Strategic Co-Operation between the Government of HSH The Sovereign Prince of Monaco and the European Police Office* (6 Oct. 2011).

[72] *Treaty on European Union*, OJEC C 191/1, 99 (29 Jul. 1992), emphasis added.

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

[74] *Council Decision of 31 December 1998 on the Position to Be Taken by the Community Regarding an Agreement Concerning the Monetary Relations with the Principality of Monaco (1999/96/EEC)*, OJEC L 30/31. (4 Feb. 1999). On this late adoption, *see* C. A Stumpf, *The Introduction of the Euro to States and Territories Outside the European Union*, 28 Eur. L. Rev. 283, 291 (2003).

[75] Technically, France concluded the agreement on behalf of the Union, *see Monetary Agreement between the Government of the French Republic, on Behalf of the European Community, and the Government of His Serene Highness the Prince of Monaco*, OJEC L 142/59 (31 May 2002). *See also* B. Gastaud, *Convention*

This had remarkable constitutional significance for Monaco, for it was becoming even more of a self-standing state in its own right, with greater legal distance from France. After all, given monetary policy is an exclusive competence of the EU, it meant that bilateral Franco-Monégasque relations on currency issues could no longer suffice, with France no longer being a monetary sovereign. That said, the 2002 monetary agreement was negotiated by France, authorized by and acting on behalf of the EU. Given the area is exclusive competence of the EU, monetary agreements can never be mixed agreements.[76]

Various provisions of the 2002 monetary agreement were of note. For example, the right to mint Monégasque coins was given solely to the *Hôtel de la Monnaie* in Paris, the French mint,[77] and no other EU Member State could mint such Monégasque coins at its request. Furthermore, Article 9 of the 2002 monetary agreement demanded that Monaco 'shall closely cooperate' with the EU on eliminating counterfeit currency, and an obligation to take unilateral measures in line with the EU. Article 12 of the 2002 monetary agreement placed an obligation on both France and Monaco to amend one of their bilateral international agreements to account for Monaco's adoption of the single currency.

Furthermore, no dispute settlement provisions vis-à-vis the parties was contained therein. Whilst dispute settlement by the CJEU was not specifically provided for, it was foreseen to have an indirect influential role.[78] What was stated was that, '[f]or matters falling under this Agreement, the applicable rules shall be interpreted for the purposes of their implementation in accordance with the relevant case-law of the [CJEU]'.[79] Merely actions of EU institutions and bodies acting under the auspices of the monetary agreement would be subject to the exclusive jurisdiction of the CJEU, but not any Monégasque actions.

Whilst the 2002 monetary agreement was largely restricted to making the single currency the official currency of Monaco under terms and conditions, it nonetheless came with the demands of an updated *acquis*, divided between two different annexes, with one list of secondary law that could be unilaterally amended by the Commission, principally aimed at areas where France was responsible,[80] and

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monétaire conclue entre la Communauté européenne et Monaco, 6 Revue de droit monégasque 7 (2004); M. Géraldine Gazo & J.-M. Canac, *Vers l'autonomie du droit bancaire et financier monégasque?*, 6 Revue de droit monégasque 47 (2004); D. Vidal, *Le droit monétaire monégasque et la zone euro*, 6 Revue de droit monégasque 71 (2004).

[76] Mixed agreements are those which ratified by the EU and its Member States.

[77] Article 7(2) of the 2002 monetary agreement.

[78] Article 13(2) of the 2002 monetary agreement: 'For matters falling under this Agreement, the applicable rules shall be interpreted for the purposes of their implementation in accordance with the relevant case-law of the Court of Justice of the European Communities.'

[79] Article 13(2) of the 2002 monetary agreement.

[80] Annex A, appended to the 2002 monetary agreement.

another list that was to be taken by the Joint Committee for areas where Monaco was responsible.[81]

Given the haphazard and sudden need to get a monetary agreement in place after the single currency became the true European currency in 2002, it obviously experienced some teething problems. Illustratively is the view of the Commission who expressed concern, inter alia, about the lack of safeguards contained in the monetary agreements with the micro-states,[82] including Monaco. Thus, negotiations commenced not long thereafter to update the legal relations on monetary matters, in what resulted in the EU-Monaco monetary agreement of 2011 (the 2011 monetary agreement). The 2011 monetary agreement repealed the 2002 monetary agreement.[83]

In contrast to the 2002 monetary agreement, the subsequent 2011 monetary agreement was not merely contained to single currency issues,[84] but rather, had a particular mechanism whereby a greater part of the EU *acquis* was included through more extensive dynamic homogeneity. Article 11(3) of the 2011 monetary agreement allowed for the Commission to amend Annex A related to the single currency. As a matter of simplicity and clarity, when it is being amended, the Commission will replace the Annex A in full.[85] Similar to the former 2002 monetary agreement, it makes provision for where France is competent in respect of certain Monégasque functions. By contrast, with regard to amendments of Annex B, Articles 11(4), 11(5), and 11(6) stipulates that it requires a decision of the Joint Committee to be amended, thus meaning Monaco's consent on other aspects of legislation to which Monaco will onboard and apply. The full Annex B is also replaced in full, with deadlines set for Monaco to implement such law.[86] For Annex B, with Article 9(b) stating that Monaco must '[a]dopt measures to comply' with the stated legal acts, and further with Article 11(6) stating that such measures 'shall adopt measures equivalent in effect to the Directives of the European Union', it proposes that Monaco must act *as if* it was an EU Member State, trying to ensure continuous alignment of Monaco with EU law in select areas.

A surveillance power of the Commission, and dispute settlement procedures involving the CJEU, were included in the 2011 monetary agreement. On the

[81] Annex B, appended to the 2002 monetary agreement.
[82] *Communication from the Commission to the Council. Report on the Functioning of the Monetary Agreements with Monaco, San Marino and Vatican*, 6, COM(2009) 359 Final (2009).
[83] Article 17 of the 2011 monetary agreement.
[84] For example, Article 9(c) of the 2011 monetary agreement.
[85] For example, *Commission Decision (EU) 2022/506 of 29 March 2022 Updating Annex A to the Monetary Agreement between the European Union and the Principality of Monaco*, OJEU L 102/24 (30 Mar. 2022).
[86] Most recently, e.g., *Communication from the Commission Pursuant to Article 11(5) of the Monetary Agreement between the European Union and the Principality of Monaco (2023/C 64/03)*, OJEU C 64/3 (21 Feb. 2023).

former, the surveillance power of the Commission is not the same as it is for the Commission vis-à-vis EU Member States. Rather than 'infringements' being initiated, it is merely a mechanism, through the Joint Committee, to ensure that extensive monitoring takes place.[87] To facilitate the parties continuously engaging in dialogue over any arising issues, the Joint Committee must meet on at least one occasion per year.[88] On the latter, regarding dispute settlement, the Joint Committee between the contracting parties would be first and foremost involved in any arising disputes,[89] and thereafter if no resolution would be found, either party to the 2011 monetary agreement may initiate a case before the Court.[90] This clear right of initiation for a third state before the Court is rare, as is the right of a third state to be taken to the Court as a respondent. The 2011 monetary agreement clearly provides that, 'the judgment of the Court shall be binding on the [p]arties, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court in its judgment'.[91]

10 FRAMEWORK FOR FUTURE RELATIONS

The lack of an overall strategy on the EU's part with micro-states like Monaco is nothing new,[92] but the fact that the micro-states of Europe do not collaborate on a joint approach to their EU legal relations is particularly strange given that Andorra, Monaco, San Marino, and the Vatican City State all have monetary agreements in place. But owing to the increasing legal developments of different kinds as a form of widening,[93] the deepening of Monaco's relations with the EU is inevitable. The mixture of unilateral EU measures that extends the EU's *acquis*, and a number of international agreements, including a monetary agreement, gives rise to the reality that the EU's relationships with the micro-states lacks overall coherence.

Discussions on updating EU-Monaco legal relations have been ongoing for some time, but have failed to materialize any new political agreement that would lead to any legal changes thus far. Questions still linger over the very kind of legal relationship that might be pursued going forward into the future. On the EU side,

87 Article 12 of the 2011 monetary agreement.

88 Article 13(4) of the 2011 monetary agreement. Unusually, on the EU side of the Joint Committee, France is the chair; and not the Commission. Art. 13(2) of the 2011 monetary agreement.

89 Article 12(1) of the 2011 monetary agreement.

90 On the EU side, a recommendation to initiate proceedings against Monaco must be first made by the Commission in consultation with France and/or the ECB (for matters falling with their field of competence). *See* Art. 12(2) of the 2011 monetary agreement.

91 Article 12(2), final sentence of the 2011 monetary agreement.

92 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*, 86 (S. Gstöhl & D. Phinnemore eds, Routledge 2019).

93 For example with regard to the Vatican City State, *see* Butler, *supra* n. 4.

strong arguments favour streamlining the approach of the EU with Europe's micro-states, owing, notwithstanding nuances, to their broad similarities. After all, the basis of developed homogeneity rests on a proper surveillance body. An imperfect solution that has prevailed is a joint committee setup, and thus, the level of EU-Monégasque integration cannot really be considered to be an intense partnership, for a joint committee is not neutral or independent. On the Monégasque side however, the need to preserve bilateral relations with the EU instead of multilateral relations (with other micro-states) is far more preferable.

The EU would like to see a stronger legal obligation for Monégasque reporting on implementation of various pieces of EU secondary law that are a part of the applicable international agreements. Such a comprehensive agreement for the micro-states is the evident preference of the Commission. The most prominent example of this is the surveillance arrangements seen with respect to the EEA, with a separate (independent) surveillance body.[94] Monaco joining the EEA would first require membership of the EFTA. Monaco has affirmatively ruled out the 'EFTA-EEA' model,[95] just as it has also ruled out a multilateral agreement with other European micro-states on a dynamic, homogenous area. The ruling-out by Monaco of the EFTA-EEA model is curious, given that micro-states and the internal market *acquis* are perfectly compatible, as Liechtenstein ably demonstrates. Furthermore, one overarching agreement of a micro-state on internal market matters with the EU does not exclude other international agreements being concluded with the EU covering other matters.

There is an undoubted need for dynamism. Whilst there is some element of agility in the 2011 monetary agreement that is currently in-force, it mostly (though not solely) is limited to matters related to the single currency. This is slowly expanding owing to the reality that financial regulation and supervision by public authorities is forever undergoing increasing internationalization, which is reflective of the global capital markets which have been becoming ever-more intertwined. Without dynamism across a broad range of areas, EU-Monégasque legal relations could end up in an EU-Switzerland-like situation, which is highly dissatisfactory from a legal homogeneity perspective.

In 2022, the Council had reported that negotiations on a form of association agreement with Monaco was advancing,[96] but was unclear as to whether it would

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94 The EFTA Surveillance Authority (ESA).

95 *Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Relations with the Principality of Andorra, the Principality of Monaco and the Republic of San Marino: Options for Their Participation in the Internal Market*, COM(2013) 793 Final (2013).

96 European Council, *Council Conclusions on a Homogeneous Extended Internal Market and EU Relations with Non-EU Western European Countries and with the Faroe Islands*, 10514/22, 13 (Luxembourg 21 Jun. 2022).

be an EU-Monaco association agreement, or a broader EU-Micro-State association agreement including both Andorra and San Marino also. It is likely that the 2011 monetary agreement between the EU and Monaco would remain separate to any association agreement, owing to the different basis in the EU Treaties for their conclusion in Article 219 TFEU.[97]

It should not be ruled out that Monaco could indeed become an EU Member State, with Article 49 TEU allowing Monaco to apply for EU membership if it so wished. This would, on the Monégasque side, necessitate additional political, diplomatic, administrative, and judicial capacity to fulfil the obligations of being an EU Member State; but as a highly developed jurisdiction, any such obstacles are not insurmountable. Membership applications have to be considered by all existing EU Member States, and approved unanimously for a new state to become an EU Member State. Yet for now, the status quo appears to largely suit Monaco, with the Principality having little incentive to change, and not be pushed into a deeper and more comprehensive form of legal integration with the EU.

11 CONCLUSION

The EU-micro-state arrangements are becoming increasingly sophisticated: either by way of unilateral EU actions, or via international and monetary agreements. Through unilateral measures, it has been out of necessity to account for the history of Monaco's legal relations with France, like Monaco having to become part of the EU customs territory and the Schengen Area. Through international agreements, it has been a form of direct and intended integration like the switch of France from its own franc to the single currency. The greater the intensity of EU legal relations with Monaco means, in turn, that France and Monaco have had to partake in partially amending their own bilateral relations to account for EU-Monaco legal relations. Therefore, despite Monaco being outside of the EU, Monaco is part of the story of European integration, with no European state being able to be uninterested in EU affairs anymore.

Whilst the savings tax agreement was one that was put into place following the EU's request to enter into negotiations that led to the conclusion of that international agreement[98]; by contrast, it was Monaco who had requested the EU to enter into negotiations to conclude the certain acts agreements covering, inter alia, pharmaceutical goods.[99] As rightly noted therefore, '[a]lthough Monaco is not a Member State of the European Union and has not concluded agreements of

[97] That said, a single institutional framework for such third states and the single currency would be preferable. For consideration here, *see* Cremona & Leino-Sandberg, *supra* n. 73, at 176.

[98] *See* s. 7 of this article.

[99] *See* s. 3 of this article.

association with the [Union], European … [Union] … law is gradually but effectively entering[,] indirectly[,] the law and jurisprudence of the Principality'.[100]

The EU and its *acquis* are challenging the legal statuses of Europe's micro-states. Questions can rightly be asked about the piecemeal approach of EU-Monaco legal relations. If the EU and Monaco are going to have a deeper and more comprehensive legal arrangement, the least they should have, outside of the specific monetary agreement, is an aligned institutional framework. More integration through a major international agreement would be most wise, and is long overdue. An association agreement of the EU with Monaco remains preferable. Either a bilateral one, or a multilateral one with the other two micro-states of Andorra and San Marino. The fragmented legal relations between the EU-Monaco is needless, and instead, two agreements would suffice: an association agreement, and a monetary agreement. If the EU can have association agreements with far flung third states like Chile, New Zealand, and Singapore, it can have one with its closest neighbours.

Micro-states have a keen interest in diversifying their small economies. Having greater access to the EU's internal market would certainly fulfil that purpose. That can only be achieved through more advanced legal relations. For Monaco, cultural change will have to be undertaken for deeper EU legal relations to take hold. But for a comprehensive association agreement, the EU should be cautious in not allowing Monaco to continue its practice of direct discrimination on grounds of nationality which is rife throughout the Principality. Monaco cannot have its cake and eat it too when it wishes to retain a national priority scheme throughout the economy, letting EU citizens be given lesser treatment. If any special provision is provided for Monégasque nationals in a proposed international agreement for ratification, the European Parliament should withhold consent to the international agreement until rectified, exercising its full powers under Article 218 TFEU.

The level of institutionalization in EU-Monaco legal relations has steadily increased over time. EU-Monaco legal relations are very much a one-way street in terms of hard obligations, with Monaco having to accept them. Thus, Monaco, in the longer term, would benefit from a sophisticated framework with the EU through a form of association agreement at the very minimum. This dynamic homogeneity would ensure that EU-law-making and the wider effects of the EU governance regime would be constantly kept abreast of in the Principality. Coherence in the EU's external relations is an ideal, but one that can be furthered. In turn, the legal relations of the EU should, as far as practicable, be mimicked across its legal relations with other European micro-states.

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[100] Grinda, *supra* n. 8, at 60.