

Style Guide

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- C** Please follow this hierarchy: I. / A. / 1. / a. / aa.
- D** English abstract of your article.
- E** Alphabetical list of relevant keywords and legal provisions you refer to (in alphabetical order).

A *From Small Arms and Light Weapons to Pirate Transfer Agreement with Tanzania* The Impact of Articles 21(2) and 40 TEU on the Choice of the Appropriate Legal Basis

B Sandra Hummelbrunner*

- C**
- I. Introduction
 - II. The Legal Setting after the Treaty of Lisbon
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D **Abstract** This article revisits the impact that Articles 21(2) and 40 TEU have on the choice of the appropriate legal basis in view of EU measures that touch upon both CFSP and non-CFSP issues alike. Even though the Court of Justice's case law that has been assessed for this purpose does not allow any definite conclusions, it is clear that these provisions have made determining the appropriate legal basis in respect of such measures more cumbersome than pre-Lisbon. In particular, it is still unclear how the set of overarching EU external action objectives established by Article 21(2) TEU as well as the mutual non-affect clause stipulated in Article 40 TEU can be applied in practice, seeing that the Court of Justice has failed to deliver viable approaches for their application.

E **Keywords** Art 21(3) TEU; Art 21(2) TEU; Art 40 TEU; Case C-91/05 (Commission/Council "Small Arms and Light Weapons"); Case C-130/10 (Parliament/Council "Smart Sanctions"); Case C-263/14 (Parliament/Council "Pirate Transfer Agreement with Tanzania"); choice of the appropriate legal basis; Court of Justice; dual legal basis; EU external action.

Legal Provisions Art 21, 40 TEU; ex-Art 11 TEU (Nice); ex-Art 47 TEU (Nice); Regulation (EC) 44/2001; Regulation (EC) 883/2004; Regulation (EC) 1370/2007; Regulation (EC) 207/2009; Regulation (EC) 987/2009; Regulation (EU) 1244/2010; Regulation (EU) 1024/2012; Regulation (EU) 1215/2012; Regulation (EU) 575/2013; Regulation (EU) 468/2014; Rules of Procedure of the ECJ; Statute of the Court of Justice of the European Union; Strafprozessordnung (Code of Criminal Procedure); Art 4, 19 TEU; Umweltverträglichkeitsprüfungsgesetz (Federal Law on environmental impact assessments); Umsatzsteuergesetz (Law on Turnover Tax).

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A few examples of the different materials that may be referred to.

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I. Introduction

Almost ten years after the entry into force of the Lisbon Treaty, the time is ripe for revisiting the impact that the Treaty of Lisbon has had on the choice of the appropriate legal basis in view of EU measures that touch upon both common foreign and security (CFSP) and non-CFSP issues alike. This applies all the more seeing that, in the meanwhile, the Court of Justice of the European Union (Court of Justice/Court) had the chance to deal with a few relevant cases in that regard. In particular, it is considered a good opportunity to take stock of the Court's handling of the legal conundrum created by Article 40 TEU, which stipulates that:

This formulation stands in stark contrast to ex-Article 47 TEU (Nice), which only established that nothing in the TEU shall affect the Treaties establishing the European Communities (TEC), and which, in the (in)famous *Small Arms and Light Weapons* case, led the Court of Justice to give precedence to the legal basis of the TEC.¹ Some scholars have proposed to circumvent it by treating the CFSP as a *lex generalis* to the other external EU competences,² and, hence, prioritising the specialised TFEU legal bases whenever EU acts can be fully founded on them.

References

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¹ Stefan Griller, International Law, Human Rights and the European Community's Autonomous Legal Order: Notes on the European Court of Justice Decision in *Kadi*, European Constitutional Law Review 4 (2008) 528 (xyz).

² Griller (Fn 1) xyz.