THE LEGAL PERSONALITY OF EUROPEAN UNION

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Aim and focal points of the research

On 1 December 2009 a new chapter has begun in the history of the European integration with the entry into force of the Lisbon Treaty,[1] since it has granted legal personality to the European Union. Through this symbolic step, the Member States committed themselves to strengthen and deepen their cooperation with public law and political elements. This came together with the reform of the integration's legal system essentially resulting the removal of the so-called pillar system, which meant a rather sharp dichotomy between Union and Community law. The modified founding treaties have not only reshaped the EU's internal legal system but laid down the new fundaments for the Union's role within the international community.

The question justifiably arises, why should the redefinition of the EU's role centered at the grant of legal personality be considered that important and what were its consequences. To get an answer, it is core to analyse the *function* of this phenomenon, which can be described in the simplest way that it means a kind of *detachment*. In legal context, it implies that a legal person, which is a fictive subject of law, should be considered as being separated from other subjects and legal persons of the legal system in question, it possesses its own rights and obligations, and is able to make use of them against the abovementioned actors. Significance of legal personality stems from the fact that it is also true against subject which created the legal person in question. Considering the character of the European Union, this detachment regarding its *Member States* is a particularly sensitive and complex issue, since the latter were those entities which transferred some of the *competences* belonged to their sovereignty to the European Communities and the European Union.

Reflecting the issues mentioned above, first and foremost *aim* of the dissertation is to explore the changes regarding the European Union's relationship with its Member States and other actors stemmed from the grant of legal personality to the EU and the related modification of the competence structure with its Member States. Because of the legal personality's embeddedness within the different legal systems and to list the relevant

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[1] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007. *OJ* C 306, 17.12. 2007, 1–271.

external actors, it is important to consider which fields of law or legal systems form a framework to contextualize this status.

Since the European Union should be considered as international organization, though a *sui generis* one, above all, *international law* is of outstanding importance, where the change in this status can be interpreted. Therefore, primarily the powers of the persons of international law, namely states and international organizations arise the question whether the Unions is able to make use of its rights independently from its Member States. From an EU law point of view, rather the internal aspects of this issue are of interest, namely how has the grant of legal personality reshaped the competence structure between the EU and its Member States. But from an international law point of view, it is relevant to explore the effects of it on other actors within this legal system and on the life of the international community.

Although the legal personality of international organizations is basically and international law category, another legal system might also get a role during the analysis on the status' effects, namely the *law of the European Union* itself. As the European Court of Justice has concluded in its famous *Van Gend & Loos* judgement[2], these group of norms forms "a new legal order of international law." It is not only theoretically presupposing the existence of legal persons within this legal system, but Union law has indeed created many, e.g. in form of agencies or Union business entities. Reflecting the point of departure mentioned above, it is necessary to examine whether the European Union itself possesses legal personality under Union law, and which rights and competences form parts of it.

The last type of fields of law are the *national legal systems* of various states. Here, the legal systems of Member States and third countries are to be distinguished. In case of 'classical' international organizations, above all the laws of their member states are those in which the rights and obligations of the organizations have already been defined. To explore the content of the Union's legal personality, it is important to analyse the practice of the Member States and the different ways of application in third countries.

Although this work aims to provide with a deep and comprehensive analysis of the European Union's legal personality in different legal systems, it does not mean that the international law, Union law and national law parts would have the same weight in course of the research. The reason for that is that the legal personality of the Union is predominantly an international law category, and this is the field of law where both the EU and its Member States are to be considered as persons but not as *entities being framework for the legal system* in question, which is true for Union and Member State law. Because of their *quasi* similar position and legal status under international law, the competence clashes outlined before can be contextualized primarily concerning the rights and obligations here. That is the reason why this work put such an emphasis on analysis

[2] Judgement of 5 February 1963, Van Gend & Loos, 26/62, EU:C:1963:1.

of these issues. In addition, the European Court of Justice has also identified the legal personality of the Union as a status *of public law character*.[3] Because of the related rights and obligations, it adumbrates above all the international and Union law analysis of the personality, since the national law status of the Union can be contextualized primarily in legal relationships *of private law character*.

Novelty of the dissertation is that it intends to explore the content of the European Union's legal personality in all three possible legal systems. Due to its character, the issue of legal personality appears in studies connected to the Union's external relations and its legal aspects, where international law segments of these status are emphasized to place the related competences into a deeper context. Works especially dealing with the legal personality of the European Union are typically shorter chapters or papers both in the foreign and Hungarian literature.

Particularly in the context of the term's usage by the Hungarian literature, it needs to be clarified why the dissertation applies the term 'legal personality' instead of 'legal subjectivity'. Within the Hungarian language literature, to describe the international law status of states and international organizations the term 'legal subject' has become more widespread, likely for the reason that this category in itself refers to a certain level of independence or detachment against other subject of that legal system. In addition, several decades ago there was no reason to sharply distinct subjects and persons of international law, but this was challenged above all by the various human rights protection mechanisms. Besides the transformation of the term usage within the international law environment, Article 47 of Treaty on the European Union[4] itself also underpins it by stating that "The European Union shall have legal personality."

In accordance with the dissertation's aim defined above, it intends to explore the content of the European Union's legal personality focusing on the related rights and competences under the various legal systems, and to examine through these, how this status fulfils its function, namely to make the Union appear as a separate, independent entity. Due to the nature of this work, this analysis is not exhaustive but embraces the most typical fields of international, Union and national law, and focuses on the related types of rights and competences, and questions of responsibility. The dissertation, besides the introduction and the conclusion, is divided into four substantial parts. Within the parts (I.), there are chapters (1.), subchapters (1.1.), and points (1.1.1.) and in some cases sub-points (α, β, γ, δ). To analyse cases separately, the work applies small Roman numbers (i., ii., iii., iv.).

After the introduction, Part II deals with the legal personality of international organizations. To insert this is justifiable for the reason that the mentioned legal systems – above all international law and national laws – considered the European Union as

[3] Judgement of 15 July 1960, Von Lachmüller and others, 43, 45 and 48/59, EU:C:1960:15.

[4] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. *OJ* C 202, 7.6.2016, 1–388.

international organizations, even though all of them are recognizing its special character. This part serves as a theoretical fundament for the rest of the work, where the *international law* status of the organizations will be focused. After examining the definition and development of legal personality, the analysis will highlight how the practice on the status of the United Nations has contributed to the general recognition of the other organizations' personality, which issues have been raised connected to it, and how the International Law Commission tried to redress the lack of regulation in this field. Particularly the last element underpins the analysis of legal personality trough the related competences, since it always appeared in this context of the work of the ILC. Furthermore, that part is demonstrating the fact that the Union is not only possessing internal rules but it its own legal system, and also the typical elements of the organizations' national legal personality will be presented.

Part III is the most significant one of the dissertation analysing the legal personality of the European Union *under international law*. Attributes of the Communities' and the Union's personality lead to the present regulation in force. The scrutiny of these criteria is necessary to map whether the explicit grant of legal personality has indeed resulted a status recognized by international law. From the various international law capacities, the conclusion of international agreements gets particular attention, since the related powers can basically be considered as preconditions for the rest of rights. Keeping in mind the analysis of the functions of legal personality, that chapter is focusing on the express and implied powers, and on the mixed agreements. Besides, the EU's participation in diplomatic relations, especially the features of its privileges and immunities will be subject of examination. A separate chapter will deal with its membership and participation in other international organization as well as the complex issue of responsibility.

Since the European Union has its own legal system, subject of Part IV is whether the legal personality laid down by Article 47 TFEU is to interpreted *under Union law*, and if yes, with which content. This analysis is also justifiable for the reason that this legal system has established its own category of legal personality. Since there are no well-defined list of rights and obligations of entities possessing this status, this part is based on analogies coming from international and national law, and examining that within the existing legal framework how the legal personality of the Union itself can be contextualized. Such basic categories get attention here, like conclusion of contracts or responsibility.

The last substantial part deals with legal personality of the Union *under the national legal systems*. Distinction should be made between laws of the Member States and of third countries. In case of the former, there are relatively detailed Union law rules binding the Member States, but the latter is defined by the bilateral international agreements concluded by the Union and the states in question, which create a narrower space for the Union.

Methods and approaches of the research

The present work is a dissertation in field of *law and political sciences*, and therefore it primarily applies the methods of this discipline to reach the aim of research. Coming from the character of the topic, international and Union law elements are dominant, therefore methods of analysis in case of the various parts follow those typical for these fields of law. Therefore, besides the general criteria for works of jurisprudences, like the analysis of evolution and content of norms and their context, their *character* gets importance, whether being binding or not, primary or secondary source etc. In accordance with the mentioned features, the analysis of the related practice involves above all the interpretative work done by international judicial forums, especially the International Court of Justice and the European Court of Justice.

Besides the main track of law and political sciences, the dissertation applies methods of other social sciences, especially those of the *history and theory of international relations*. This is particularly true for chapters on the evolution of the term legal personality and on the status of international organizations, since this category firstly appeared as attribute of the sovereign states, and became feature of other entities as well in line with needs of the international community. The European integration organizations got their present form as result of an organic development as well, and became legal persons of international law in the end. The European Union in its original form was not granted legal personality, and the hesitating approach of the Member States covers fears related to competences connecting to that status. Therefore, to explore the real content of legal personality makes it necessary to review the relevant parts of integration history.

Besides legal background, judicial practice and other documents as *primary sources*, the dissertation intends to research the relevant literature as *secondary sources*. Concerning parts about the European Union, the most important goal was to become familiar with monographies and studies dealing with the present legal framework of its external relations created basically by the Treaty of Lisbon. The dissertation is primarily based on foreign language, above all English, literature, where the monographies *EU External Relations Law*[5] by Piet Eechout and *EU External Relations Law: Texts, Cases and Materials*[6] by Bart Van Vooren and Ramses A. Wessel are to be emphasized. Furthermore, Dominic McGoldrick's paper *The International Legal Personality of the European Community and the European Union*[7] is of importance, since it analyses the status in context with the main related rights. Hungarian authors deal primarily with this

[5] EECKHOUT, Piet: *EU External Relations Law*. Second Ed. Oxford University Press, Oxford, 2011.

[6] VAN VOOREN, Bart – WESSEL, Ramses A.: *EU External Relations Law: Text, Cases, Materials*. Cambridge University Press, Cambridge, 2014.

[7] MCGOLDRICK, Dominic: The International Legal Personality of the European Community and the European Union. In: DOUGAN, Michael – CURRIE, Samantha (eds.): *50 Years of the Euroepan Treaties: Looking Back and Thinking Forward*. Hart, Oxford and Portland, Oregon, 2009. 181.

issue in studies on international law aspects of Union law, but the legal personality directly appears in the works of Ildikó Bartha, indirectly, inter alia, in studies of Marcel Szabó.

Besides the methodological considerations of law and political sciences and others typical for social sciences, the dissertation applies *evolutive approach* on the one hand. This is manifested in the analysis of development of law and legal phenomenons, through the examination of the related case law, the drawing up of directions of evolution and *de lege ferenda* suggestions. This approach is particularly true for parts dealing with the practice of International Court of Justice and European Court of Justice, where emphasis is placed on the enrichment of argumentation tools carried out by these judicial bodies.

On the other hand, *comparative approach* is definitive in case of key parts dealing with the European Union, where legal personality and related competences before and after the entry into force of the Lisbon Treaty will be compared. It is important for the special reason that the European Union in its present form has possessed legal personality only since 2009, but this has been realized with the succession to the European Community and its legal personality receiving its powers, which have become wider as well. Since this work intends to explore the present content of legal personality reflecting the antecedents, it seems to be reasonable to deliver a comparative analysis with the previous situation where it is necessary.

Thirdly, the elaboration of the topic is following a *complex approach*, meaning that it intends to explore the international, Union and national law content of the European Union's legal personality. It is carried out with reflection to the characteristic features of these legal systems. But as these fields of law do not work separately from each other, there is a significant interaction between them concerning the law and practice on legal personality. This is particularly true for the European Union, based on international law fundaments, having its own legal system and effecting not only its Member States' but also third countries' law. Therefore, the complex approach of the dissertation is manifested also in the reflection on interactions between the various fields of law.

Summary of the scientific results

As result of the evolution of law after the second world war, on the existence of legal personality of international organizations the present work follows the so-called *objective approach*. The advisory opinion issued by the International Court of Justice in case *Reparation for injuries suffered in the service of the United Nations*[8] has laid down the criteria for the existence of this status applicable to all international organizations. Accordingly, the permanent association or organization of states established by international agreement possesses this status, and is created to fulfil purposes in line with

[8] Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949, 174.

international law, has at least one organ capable to adopt decision attributable to the organization, and authorized with at least one competence to act under international law. Based on the practice of the last decades the objective character of legal personality is to be interpreted both in case of its own member states and third countries. It means that the legal personality fulfilling the criteria mentioned above is to be considered by both groups of states as *reality*. This is particularly true for the reason that legal personality of some organizations has been rather rejected, explicitly or implicitly, because of the lack of political will.

2 | The legal personality of international organizations is a *constitutive* category meaning that the entity in question possesses similar rights and competences to other legal persons of that particular legal system. Without this status, the given organization can be considered subject of law at the most implying an entity independent from its member states and other persons of international law. It is to be noted that legal subjects constitute a broader category, since natural persons own this quality too, and legal personality also fulfils this function to separate the entity from other legal persons. The existence of legal personality does not mean that an international organization might have all rights of other legal persons recognized by that legal system, and there is no closed competence list concerning these entities. But the practice of the organizations reveals cases where legal personality is of relevance. Concerning international law, these cases are above all the conclusion of international agreements, the, establishment of diplomatic relations privileges and immunities connected to it, the international claims and responsibility. The existence of *one* from this list or other capacity means the existence of the status, resulting legal personality of narrow extent. In case of national legal systems these are typically the conclude contracts, to acquire and dispose of immovable and movable property, and to institute legal proceedings.

3 | Concerning the rights connected to the legal personality, which practically form the content of it, this work follows the so-called *subjective* approach. It means that rights similar to those of the states are based on *competences* which were transferred from the member states to the organization. The present work rejects the position which accepts the existence of almost all international law competences when the criteria for international personality are present. This is the co-called *inherent powers* doctrine, whose followers though accept the limitation of competences by the member states. The subjective approach follows a counter-logic, and argues that international organizations possess rights (and obligations) allowed by their member states' intention. The primary manifestation of this intention is the agreement constituting the organization involving its purposes, functions, tasks and competences. From these, main sources of international law competences are the so-called *express powers*, which typically cover both substantive and procedural law norms. Due to the practice of the last decades the so-called *implied (external) powers* doctrine has also gained significance making possible to derive concrete competences from the purposes and functions of the organization.

4 | The express grant of legal personality and the lack of it in case of the European integration organizations was not only a symbolic act but involved concrete legal consequences. The establishment of the European Coal and Steel Community, the European Economic Community and the European Atomic Community happened just some years after the ICJ adopted its advisory opinion in case *Reparation for injuries suffered in the service of the United Nations*, which fundamentally reshaped the view on persons of international law. To grant *explicit* legal personality for those three international organizations should be considered not only a symbolic act of the commitment to the European integration but is to be contextualized with the permanent transfer of competences belonged earlier to the Member States' sovereignty to the European Communities. These and the internal and external application of the related rights are important elements of the supranational legal-institutional model. The Maastricht Treaty has also highlighted the lack of this structure by rejecting the grant of legal personality for the European Union, which could not make use of capacities under international law in cases of Common Foreign and Security Policy and Justice and Home Affairs.

5 | The Lisbon Treaty granting legal personality to the Union has transformed the status and powers of the integration organizations simpler and more transparent making its actions related to other actors of the international community more coherent. But all of this has *not* resulted *single* legal personality for them, since the European Atomic Energy Community continues to be a *sui generis* international organization possessing legal personality with the same institutions and Member States as the Union. Although single legal personality has been formally granted to the European Union, functioning and mechanisms of the rights being the content of it show differences, which is particularly true for the conclusion of international agreements in cases of Common Foreign and Security Policy and other fields of cooperation. But it is rather an Union law than an international law issue.

6 | Based on the legal personality of the European Union – earlier European Economic Community, than European Community – the European Court of Justice has widely applied the so-called *implied external powers* doctrine. Contrary to the International Court of Justice, the Luxembourg body has not established new capacities but extended the competence to conclude international agreements to fields without express founding treaty measure on it. Majority of cases are based on the doctrine laid down in the *ERTA* judgement[9], which stated that if the EU with its legal personality and own objectives were not entitled to conclude international agreements based on Treaty measure of secondary law, than the agreement might be concluded by the member states might effect those common rules or alter their scope. The other main track of the case law is based on Opinion 1/76[10], which is applicable in cases where the Treaties allow to adopt internal

[9] Judgement of 31 March 1971, Commission v Council, 22/70, EU:C:1971:32.
[10] Opinion of 26 April 1977, 1/76, EU:C:1977:63.

rules, but to reach the goal of the rules in this way is not possible. Here, the involvement of a third country is *indispensable*, which can be realized only by conclusion of an international agreement.

7 | One of the Lisbon Treaty's main novelties directly linked to the category of legal personality was the '*codification*' of the implied external powers doctrine. But the insertion of the main conclusions of the *ERTA* judgement and Opinion 1/76 cannot be considered successful for the reason that Article 3 (2) TFEU and Article 216 (1) TFEU are mixing up the cases of exclusivity and existence of external Union competences, and, due to their nature, they limitedly regive the main conclusions of these cases. Accordingly, the European Court of Justice continues to refer to its main case law when it applies these rules, but there is a tendency that subjects of its reference are more and more the post-Lisbon cases.

8 | Concerning the topic of this work, the category of the so-called *mixed agreements* are defining, since it reveals where the EU's competence system makes necessary for the Union to conclude agreements together with its Member States or other integration organizations, today the European Atomic Energy Community. Mixed agreements are a heterogeneous category. 'Classical' cases of them are the so-called 'vertical' agreements involving the Member States which are applied when neither the Union alone nor together with the Euratom they do not possess the proper power to conclude a treaty, therefore, the Member States with 'unlimited' legal personality also become contracting parties. Since this typically constitutes a confine of Union and Member State competences, in most of the previous cases connected to the implied external power doctrine, the European Court of Justice investigated whether the Union alone or together with its Member States is entitled to conclude the agreement in question. The category of vertical mixed agreements has been extended from time to time with new types like the most recent free trade agreements, which were concluded by the EU alone, but at the same time investment protection agreement were also singed as mixed agreements. The term of the so-called *horizontal* mixed agreements beard different content within the various periods of the integration. The 'inter-pillar' mixed agreements from the pre-Lisbon era have been replaced by the category of 'inter-sectoral' mixed agreements referring to international treaties with Common Foreign and Security Policy and other elements, where the highest level of institutional participation is standard. Agreements where both the EU and the Euratom are parties belong to the horizontal category as well.

9 | Contrary to all of its weaknesses, the European Union's current participation in *diplomatic relations* makes its actions more similar to those of the states, and it is not impaired by the fact that the Lisbon Treaty has defined different models and actors concerning the Common Foreign and Security Policy and other fields. It is true for the extended network of Union delegations and also for their *privileges* and *immunities*. The related capacities are not only meeting the relevant international standards but agreements concluded with third states expressly refer to the 1961 Vienna Convention on diplomatic relations, which is open only to States. This practically means the

Convention's customary law application by the EU. But the Union is not equal to states, and it is reflected by the fact that reciprocity clauses related to privileges and immunities within these agreements do not refer to mutual obligations provided by the Union, but it lays down that the Member States have to ensure the same rights. It is in a way reasonable, since the latter are contracting parties to the Vienna Convention, not the EU. Another difference is, when EU's privileges and immunities are challenged, the *functionality* of them is getting more importance both in Member States and third countries, than in case of a state.

10 | The EU's complex relationship with other international organizations also underpins that the European Union should indeed be considered as a *sui generis* international organization. But the nature and content of this relationship is defined by the fact that the overwhelming majority of the organizations having similar portfolio allow membership only for states, therefore the EU possesses this status just in a few cases. On the one hand, it raises the need of application of the principle of *loyal cooperation* laid down by Article 4 (3) TEU, which involves actions from the informal representation of the Union's interests till the conclusion of international agreements by the Member States falling under Union competence in the frame of another organization. On the other hand, the increasing role of the European integration organizations has been reflected by the international community. Considering the role of the European Economic Community, the Food and Agriculture Organization of the United Nations has inserted into its own Statute the term Regional Economic Integration Organization, which appeared in more and more multilateral agreements since the 1980s, and thereby the FAO made these organizations' accession possible. The application of this term seems to be reasonable by organizations with similar portfolio to the EU, especially in cases where high-level Union law harmonization has been reached, e.g. the International Labour Organization and the International Maritime Organization.

11 | Practice connected to the international responsibility of the European Union is restricted by the fact that only states can act as parties before many important international judicial forums. But this does not constitute such a burden like in case of membership in international organizations, since more such international courts with similar portfolio to the EU were not directly established in years after the second world war but in the course of the last decades, when the founders were more open to involve organizations as well. New and important tool in this field are the Draft Articles on the Responsibility of the International Organizations by the International Law Commission. It is built on the category 'internationally wrongful act' which might be realized by both action and omission. It is particularly important for the European Union, since the conventions establishing the courts in question and the ILC's work both reflect on the division of competences between the EU and its Member States laying down the *obligation to submit declaration* on that issue. The European Union's participation in disputes before the international judicial bodies can be considered successful, and its appearance led more times to peaceful compromises, moreover the Member States asked

for its assistance even in cases without exclusive Union competence. These positive result is primarily due to its participation in the dispute settlement mechanism of the World Trade Organization, and its present (International Tribunal for the Law of the Sea) and future (European Court of Human Rights) procedural capacity seems to be sufficient. At the current state of international law, there seems to be no need to open other judicial forums to the EU.

12 | Due to the complexity of norms adopted by the European integration organizations, these should be considered as a separate legal system with its own subjects of law and legal persons. According to Article 47 TEU, the European Union itself belongs to the latter category possessing special rights due to the nature of its status. This legal personality is shareable, which means that organs of certain functional autonomy fulfilling the Union's objectives are legal persons themselves, but the content of this status are primarily defined by the national legal systems. The powers stemming from the EU' legal personality are applied by its main institutions, which themselves were not granted this status, since they representing the EU as a whole. The rights connected to the legal personality of the Union do not constitute such a closed list like in cases of international and national law. The reason for that is that this status is above all of *public law* nature, resulting that legal persons of comparable status are missing from this legal system, therefore there are not many legal relationships involving actors with quasi similar position. Additionally, in this context, both law and jurisprudence are not focusing on the status of the EU but on the institutions and their procedural positions. In spite of this, such basic categories like conclusion of contracts and responsibility is applicable here as well. Due to the special character of legal personality and the lack of regulation, the European Court of Justice tries to substitute these issues with the adoption of basic principles from the national legal systems.

13 | Concerning the European Union's status under the national legal systems, there is a paradox situation at first sight, that in many third countries the EU is possessing legal personality due to the agreements on the Union delegations' privileges and immunities, while in the Member States it only enjoys "the most extensive legal capacity accorded to legal persons under their laws."[11] In fact, the directly applicable Article 47 TEU makes unnecessary to repeat it, although the quoted phrase also gives the Member States some space concerning the EU's formal status. According to its legal personality, the EU is entitled to have rights basically of *private law* character both in its Member States and third countries. In case of *public law* related disputes, the Union's position as defendant are usually excluded by its privileged and immunities. There is a difference concerning its position as applicant regarding the Member States and third counties. These involves mostly cases of Union institutions acted as authority, and the legal systems of the Member States allow them to act so before the national courts, while third countries reject it as a main rule.

[11] Article 335 TFEU.

14 | The legal personality of the European Union introduced by the Treaty of Lisbon effected mostly its status under international law causing significant changes in this field. The grant of this status and the re-regulation of the connected competences resulted indeed "a new stage in the process of creating an ever closer union among the peoples of Europe"[12] which has made the EU's role more efficient in its relationships with other actors of international law. Reflecting the political realities, this does not constitute a first step to a federal state, since the 'overregulation' of the Union's external relations show, that Member States pay attention to maintain their powers under international law. The background for that is that they intend to keep their legal personality with all of its content, through which they continue to remain active actors of the international community.

[12] Article 1 TEU.