ACTA UNIVERSITATIS WRATISLAVIENSIS
No 3367
PRZEGLĄD PRAWA I ADMINISTRACJI LXXXVI
WROCŁAW 2011

DAGMARA KORNOBIS-ROMANOWSKA
University of Wrocław

THE CONTRIBUTION OF THE LISBON TREATY TO THE NEW IMAGE OF THE EUROPEAN UNION AS INTERNATIONAL ORGANIZATION — FOCUS ON THE INTERNATIONAL LEGAL PERSONALITY, CAPACITY AND POWERS OF THE EU

1. GENERAL REMARKS — INTERNATIONAL LEGAL PERSONALITY, CAPACITY AND THE QUESTION OF COMPETENCES

The European Union has been acting in the sphere of international law since the first Treaty on European Union signed in Maastricht.[1] But the legal form and structure of international organization it has gained upon the Treaty of Lisbon.[2] Now it formally is, as it always has practically been since the very beginning, one of the most externally active organizations, with lots of external activities, common foreign policy and international contacts.[3] It has been acting in international relations for decades, but without legally recognized legal personality. Now, under the Treaty of Lisbon, it changed and the legal personality has been expressly provided to it.[4] The EU's capacity and its international competence have been clearly confirmed and regulated.

Taking into account the revision in EU's law, this article is focused on the three above-mentioned attributes of the Union — the international legal personality, capacity and competence. Its purpose is to analyze the distinction between

[1] Treaty on European Union, signed on February 7, 1992, in force since November 1, 1993, OJ C 191 of 29.07.1992.

[2] Treaty amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, December 13, 2007 (Treaty of Lisbon), OJ EU C 115/16 of 09.05.2008.

[3] For more details about the treaty making power see: P.-A. Royer, *Les accords externes européens: les limites de l'engagement conventionnel de l'Union européenne*, "Revue du droit de l'Union Européenne" 4, 2007, p. 869–897.

[4] Article 47 of Treaty on European Union (TEU), consolidated version, OJ EU C 83/01 of 30.03.2010.

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these attributes in the international law, the new situation and position of the EU on the international plane, the new rights and obligations of the Union and its Member States. The point is to show, to what extend this position has been enforced, is it a symptom of the stronger autonomy of the Union in relation to the States, and how does it influence the quality of relations between the EU and other subjects in international law.

Let us start with some general remarks on the meaning and scope of the notions of international law which are basic for this paper. First is the legal personality that covers the legitimization in international law to the exercise of certain rights and the fulfillment of certain obligations by the persons of international law. The personality legitimates the entity to act on its own and reflects its autonomy in action. The action encompasses such international rights and obligations of the different persons as the treaty making power and the *ius legationis* — in active and passive form, which is to receive and to send its representatives to other countries. It also gives a right of privileges and immunities and the international liability. The active and passive procedural liability comprises the claims against or by non-Member States and other international organizations and the case of injury to the organization's officials. There is also the right of participation in international organizations as a member or as an observer, right of recognition of States or administration of the territory.

To carry it out, the legal personality needs recognition in international law. It demands the States' action, either by creating customary law, or by concluding the agreement or expression of acquiescence. While the recognition in the customary law is very broad, expressed in the primary idea that the only subject of the international law is the State,[5] the latter depends on the agreement or acquiescence and is opposable in international plane only to the parties of these acts.[6] Apart from the States, other international entities created under customary law and developed by the treaties. These are the organizations of the States — international organizations, and some individuals — moral and physical persons. Once recognized as having legal personality, these entities may act in the international sphere as subjects of international law. They can have subjective rights and obligations coming directly from international law. But together with the personality, they also need to be attributed with some instruments of personality for the rights and duties to be arisen.

In this context, the capacity as the second legal notion in this paper means the aptitude of certain subjects of law for possessing rights and duties and for maintaining their rights by bringing claims. The capacity entitles the person to operate on an international level and to undertake in this aim the necessary steps like:

[5] See P. de Visscher, *Observations sur la contribution de Hans Kelsen au droit International positif*, "4 Revue Internationale de philosophic" 1981, p. 530.

[6] I. Brownlie, *Principles of Public International Law*, 6th ed., Oxford 2003, p. 57.

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to negotiate and to conclude the international treaty, to establish diplomatic relations, to recognize other subjects of international law, to bring international claims or to execute the procedural liability.

The State, as subject of international law with general personality and full capacity, uniform and complete for all the States, is undoubtedly the only subject with inherent powers. It means that any power in international law remains with the State, because it has so called *Kompetenz-Kompetenz* — the power to confer power on itself[7] and to determine the limits of its own powers. As a result, the State can empower any international entity with competences required to enable the functions conferred on it and to determine conclusively the limits of its powers.[8] Every subject of international law other than the State possesses only such competences as have been conferred upon it by the State and must act only within the limits of conferred powers. Any action beyond its powers will be invalid. This makes the issue of competence central to the relationship between the institution or body created by the State and the State alone.

2. LEGAL PERSONALITY OF THE INTERNATIONAL ORGANIZATIONS — CRITERIA AND CONSEQUENCES

Under the customary law, only the States have full legal personality and unconditioned international capacity since they are sovereign. All other subjects, like moral and physical persons, can enjoy a certain scope of the general legal international personality and have the special capacities under the conditions which must be specified in the international agreements concluded by States, conferring the competences upon the international institutions and bodies. The States agree to a creation of any subject of international law, to entrusting any functions to it, but always within a limited legal personality, restricted capacity to act and competences required to enable its functions. Consequently, "the subjects of law are not necessarily identical in their nature and in the extent of their rights, and their nature depends upon the needs of the community." The latter statement derives from the advisory opinion of the International Court of Justice (ICJ) in *Reparation* case[9] on the capacity of the United Nations as an organization to bring an inter-

[7] In line with the basic constitutional doctrine of international law, an international community consists primarily of states having uniform legal personality, sovereign and equal; see classic studies, e.g.: H. Lauterpacht, *The Development of International Law by the International Court*, London 1958, pp. 297–400; C.H.M. Waldock, *General course on public international law*, "106 Hague Recueil" 1962, pp. 1–252.

[8] T.C. Hartley, *The Foundations of European Union Law. An Introduction to the Constitutional and Administrative Law of the European Union*, Oxford 2010, p. 110.

[9] *Reparation for injuries suffered in the service of the United Nations*, *Advisory Opinion*, ICJ Reports, 1949, p. 174.

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national claim in respect of injury to the United Nations caused by the injury to its agents. Sixty years on, the case did not lose its relevance and is still the leading case on legal personality of international organizations.[10] In the view taken by the ICJ in the *Reparation* case, the organization is exercising and enjoying functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothed it with the competence required to enable those functions to be effectively discharged.

This opinion of the ICJ and the criteria of legal personality of international organization have been summarized in the doctrine. Ian Brownlie sees the criteria as follows: a permanent association of States, with lawful objects, equipped with organs; a distinction, in terms of legal powers and purposes, between the organization and its Member States (asserting the identity of the Union on the international scene is a purpose which is clearly distinct from that of the Member States); the existence of legal powers exercisable on the international plane and not solely within the national systems of one or more States.[11] In the definition given by Gerald Fitzmaurice, international organization is the collectivity of States established in the treaty, with a constitution and common organs, having personality distinct from that of its Member States, and being a subject of international law with a treaty-making capacity.[12] Legal personality is also an inherent part of the definition given by Władysław Czapliński and Anna Wyrozumska,[13] showing that the express granting of the international legal personality to the organization is not demanded.[14] This view finds the justification in the advisory opinion of the ICJ in cited above *Reparation* case, where the Court decided that under international law, the international organization must be deemed to have powers which, though not expressly provided in the treaty, are conferred upon it by necessary implication as being essential to the performance of its duties.

[10] G.G. Fitzmaurice, *The law and procedure of the International Court of Justice: International organizations and tribunals*, "29 British Year Book of International Law" 1, 1952, p. B3306; see also P. Gautier, *The reparation for injuries case revisited: The personality of the European Union*, (in:) J.A. Frowein, R. Wolfrum (eds.), „Max Planck Yearbook of United Nations Law", The Hague-London-New York 2000, pp. 331–361.

[11] I. Brownlie, op. cit., p. 649.

[12] G.G. Fitzmaurice, *Special rapporteur, Report on the law of treaties*, "Yearbook of International Law Commission" 2, 1956, p. 108.

[13] W. Czapliński, A. Wyrozumska, *Prawo międzynarodowe publiczne. Zagadnienia systemowe*, 2nd ed., Warszawa 2004, p. 335.

[14] The treaty establishing the ECCC signed in Paris in 1951 is one of the examples of the rare provisions expressly granting such a personality in the international agreement. W. Czapliński, A. Wyrozumska, op. cit., p. 329.

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Also the capacity to operate and the existence of international legal powers are part of the definition of every international organization. But following the opinions of the doctrine and the jurisprudence cited above, it must be noted that the existence of legal personality itself does not determine the rights and duties of the particular organization. These rights and duties consist in a treaty-making power; privileges and immunities of the assets, headquarters, personnel and representatives of the organizations; the *locus standi* before international tribunals; responsibility; the right to stand up with unilateral acts, such as recognition or protest; or the enjoyment of the rights provided in the law of the sea. They all depend on the provisions of the constituent treaty — expressly authorizing the organization and its bodies to act on the international area, or implicitly authorizing it by the interpretation of the founding treaty as a whole (implied powers of the international organization).

3. EUROPEAN UNION AS THE NEW INTERNATIONAL ORGANIZATION

The term and the model of the "Union" was introduced into the international law in the 19th century to designate in the beginning so called "administrative unions" — institutions and all other forms of associations of the States.[15] Amongst the different international organizations currently acting in the field of international law, the European Union is one of the biggest and the youngest. It is the youngest organization in the formal sense, since it was admittedly established in 1992 by the Maastricht Treaty, but its status of international organization has been officially recognized in 2009 in the Treaty of Lisbon.

Under the former constituting treaties, signed in Maastricht, with the amendments made in Amsterdam and at last in Nice, the vision of the Union was founded on the European Communities, supplemented by the policies and forms of cooperation established by the Treaty on European Union (TEU). Its concept was announced by Art. 1 TEU, according to which by the treaty the High Contracting Parties established among themselves a European Union. The establishing treaty in this article provided a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible, and as closely as possible to the citizen. The Union was founded on the European Communities, supplemented by the policies and forms of cooperation established by the treaty. Its task was to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.[16] This

[15] For example: *Union of the States*, *League of Nations*; see P. Gautier, op. cit., p. 341 and the literature cited therein.

[16] TEU signed in Nice, consolidated version OJ EU 2001 C 80/1.

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meant that the Union under the treaty of Nice was built on the three so called pillars with the European Community[17] and Euroatom (also the European Coal and Steel Community existing till 2002) as the first — Community pillar; and the two other pillars of the Union with special policies and forms of cooperation. These areas were Common Foreign and Security Policy (CFSP — second pillar) and Police and Judicial Cooperation in Criminal Matters (PJCC — the third one). It is very important that the international legal personality and the capacity to act in international law as the international organizations were confirmed only in reference to each of the three European Communities,[18] while the 2nd and 3rd pillars represented the functioning of intergovernmental cooperation between Member States and the Community rules were not applicable there, unless otherwise provided in the treaty. Therefore the later treaties did not provide the legal personality for the Union as such, is was implicitly conferred on it.

The structure of the pillars within the EU is now abolished. It is announced in the Preamble of the TEU signed in Lisbon, that the States-Parties are decided to mark a new stage in the process of European integration undertaken with the establishment of the European Communities. Pursuant to Art. 1 TEU, the treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. The Union is founded on the Treaty on EU and on the Treaty on the Functioning of the European Union (FEU). Those two treaties have the same legal value. This provision declares in final that the new Union replaces and succeeds the former European Community. It was regulated in Art. 24 TEU, provided for the Council the power to conclude an agreement with one or more States or international organizations with the Commission as to carry out the negotiations to that effect. The agreements concluded under the conditions set out by Art. 24 TEU were binding on the institutions of the Union and they might cover also the matters falling under the cooperation in the former third pillar concerning the police and judicial cooperation in criminal matters (Art. 38 TEU). It was the confirmation of the existence of legal powers exercisable on the international plane and not solely within the national systems of one or more States, a treaty-making capacity. The European Union fulfilled also other criteria provided for the international organizations in the doctrine, such as a permanent association of States established in the treaty, and a legal and functional distinction between the organization and its Member States. The basic question was if the Union had under the Treaty of Nice its own lawful objects and the organs, to what extend the purposes and institutions belong to the Community.

[17] Article 281 TEC as signed in Nice.

[18] Ibid.; 22/70 *ERTA* case, Rec. 263; further reading see P. Craig, *The Lisbon Treaty, Law, Politics, and Treaty Reform*, Oxford 2010, p. 25.

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The Lisbon Treaty answers these questions and it expressly provides in Art. 47 TEU that the Union shall have legal personality. This personality is no longer implicitly conferred on the EU, as it is used to be under the Treaty of Nice within the pillar structure. Now there is only one legally recognized organization with a single legal personality. This personality is now directly and clearly acquired by a new specific mention to that effect in the founding treaty.

The newly provided legal personality confirms that the Union is the subject of international law, that means it can operate and communicate with other international actors. The indication that the Union has international legal personality means that it is automatically tasked with some capacity to do it in the international relations. Consequently, the EU is dotted with the international capacity to act under the international law, as it used to have under the former treaties. Such capacity has been generally granted by the acts of international law, like Vienna Convention on the Law of the Treaties between International Organizations of 1986[19] on a basis of legal personality, while specific powers are granted by the founding treaties. Taking it into consideration, it is then well seen that by acquiring international legal personality, the EU acquires the capacity to act on international scene, but does not acquire any competence to do so, since the international personality and the capacity do not imply automatically a transfer of competences. The exact competence must be conferred upon by the treaty — its scope and compass stay subordinated to the treaty as a factor of the powers, connected with the functions and purposes of the concrete organization that indicates what the organization is empowered to do. Precisely speaking, the rights and the duties recognized by international law especially for the EU depend directly on the purposes and the functions of the EU according to the treaty, and not on its legal personality.

When analyzing the new treaty, the sphere of competences looks like quite well regulated. It expressly provided in Art. 5 TEU, that the limits of Union competences are governed by the principle of conferral and the use of the competences is governed by the principles of subsidiarity and proportionality. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the treaties to attain the objectives set out therein. Competences not conferred upon the Union in the treaties remain with the Member States, but when the Treaties confer on the Union exclusive competence in a specific area, it means that only the Union may legislate this field and adopt legally binding acts, and the Member States are able to do so them-

[19] Done on 21 March 1986, not yet in force; *Official Records of the United Nations Conference on the Law of Treaties between States and International Organizations or between International Organizations*, vol. II (United Nations publication, Sales No. E.94.V.5). This is a new concern in international law of the international organizations after the Treaty of Lisbon.

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selves only if so empowered by the Union or for the implementation of Union acts.[20]

Relating these arrangements to the question of capacity, it must be noted down that its extent in the international law is as wide as the legislative competence of the EU and the power to adopt legally binding acts. It corresponds to the capacity to act alone and to develop its exclusive competences.[21] Any action, any international right and duty, namely: the right to enter into agreements with non-Member States, to be represented and to establish diplomatic relations in other countries, to become member of international organization, to have the privileges and immunities, to take part in international judicial proceedings, etc. can be undertaken if it went beyond the Union's capacity.[22] In this regard, the competence falls within the shared competence of the Union and its Member States[23] and requires the common accord of the Member States. The Union can also have the delegated competence, the power just to carry out the actions of the Member States — to support, coordinate or supplement such actions.[24] This means that the EU has got the competences conferred upon it by the Treaties.[25] They can be exclusive when only the EU may legislate and adopt legally binding acts in the specific areas. The EU can also share the legislative competences with the Member States, and in this case they both can act in the given area, or to carry actions of support and coordination. In the latter case, the Union supplements the actions of the Member States, without superseding their competence.[26]

[20] Article 2 Treaty on Functioning of the European Union (TFEU). According to Art. 3 TFEU, the EU has the exclusive competence in the areas of customs union; the establishing of the competition rules necessary for the functioning of the internal market; monetary policy for the Member States whose currency is the euro; the conservation of marine biological resources under the common fisheries policy; and a common commercial policy.

[21] L. Grard, *L'Union européenne, sujet du droit international*, "RGDiP" CX, 2006, p. 342.

[22] In particular by leading to harmonization of the laws or regulations of the Member States in an area for which the Treaty rules out such harmonization.

[23] As the Art. 2 par. 2 TEU states, when the treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence. According to Art. 3 TFEU, shared competence between the Union and the Member States applies in the following principal areas: internal market; social policy, for the aspects defined in this Treaty; economic, social and territorial cohesion; agriculture and fisheries, excluding the conservation of marine biological resources; environment; consumer protection; transport; trans-European networks; energy; area of freedom, security and justice; common safety concerns in public health matters, for the aspects defined in the treaty.

[24] The areas of such action provided in Art. 6 TFEU can be: protection and improvement of human health; industry; culture; tourism; education, vocational training, youth and sport; civil protection; administrative cooperation.

[25] Article 5 (1) TEU.

[26] Article 2 (5) TEU.

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4. A POWER OF THE EU TO SUBMIT TO THE INTERNATIONAL JURISDICTION

Amongst international rights and obligations special attention should be paid to the procedural liability, the capacity and competence of the EU in the field of international relations to submit to the decisions of a court. It has been clearly confirmed in the jurisdiction of the European Court of Justice that such a competence of the EU in the field of international relations and its capacity to conclude international agreements entail the power to submit itself to the decisions of a court which is created or designated by such agreements as regards the interpretation and application of their provisions.[27]

How this declaration functions in practice has been illustrated in a very recent case law of the Court of Justice of the European Union (ECJ) — in the opinion of the Court on the draft international agreement drew up by the Council of the European Union, as to whether an agreement envisaged is compatible with the Treaties.[28] The opinion 1/09 of the Full Court delivered on 8 March 2011[29] concerned the draft agreement that was to be concluded between the Member States, the European Union and third countries which are parties to the European Patent Convention.[30] The objective of the negotiated agreement was a creation of a unified patent litigation system. This draft provided the establishment of a European and Community Patent Court with jurisdiction to hear litigation related to the European patent. It was to be composed of a court of first instance, a court of appeal and a joint registry.

In its opinion, the ECJ found out that, under that agreement, the European and Community Patent Court (PC) is an institution which is outside the institutional and judicial framework of the European Union provided for in art. 19 (1) TEU, pursuant to which the Court of Justice of the European Union shall include the Court of Justice, the General Court and specialized courts. It shall ensure that in the interpretation and application of the Treaties the law is observed. In the opinion of the ECJ, the drafted agreement provides the establishment of the international Court, which is in fact a distinct international organization, with its own legal personality under international law. It is to be vested with exclusive jurisdiction in respect of a significant number of actions brought by individuals in the field of patents. The ECJ observes that to this extent, the national courts of the contracting States, including the courts of the Member States, are divested of that

[27] Opinion of the ECJ in case 1/91, relating to the creation of the European Economic Area, ECR [1991] I-06079, p. 40, 70.

[28] Article 218 par. 11 TFEU.

[29] Opinion of the ECJ in case 1/09, not yet published.

[30] The European Patent Convention, signed at Munich on 5 October 1973, is a treaty to which 38 States, including all Member States of the European Union (but not the Union itself) are currently parties.

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jurisdiction and accordingly retain only those powers which are not subject to the exclusive jurisdiction of the PC.[31] As far as EU law is concerned, the ECJ considered that the PC is to be called upon to interpret and apply not only the provisions of that agreement but also the future regulation on the Community patent and other instruments of European Union law, in particular regulations and directives in conjunction with which that regulation would, when necessary, have to be read, namely provisions relating to other bodies of rules on intellectual property, and rules of the FEU Treaty concerning the internal market and competition law. Likewise, the PC may be called upon to determine a dispute pending before it in the light of the fundamental rights and general principles of European Union law, or even to examine the validity of an act of the European Union. In this context, the ECJ observed that the PC takes the place of national courts and tribunals in the field of its exclusive jurisdiction, and therefore deprives those courts and tribunals of the power to request preliminary rulings from the Court in that field. In the field of its exclusive jurisdiction it becomes the sole court able to communicate with the Court by means of a reference for a preliminary ruling concerning the interpretation and application of European Union law and it has the duty, within that jurisdiction, to interpret and apply European Union law.[32] Consequently, it would alter the essential character of the powers which the Treaties confer on the institutions of the European Union and on the Member States, and which are indispensable to the preservation of the very nature of European Union law.

It is true that the ECJ has accepted in the past[33] that the international agreement may create a court with the duty to interpret provisions of European Union law and that such an agreement may affect its own powers provided that the indispensable conditions for safeguarding the essential character of those powers are satisfied and that the autonomy of the European Union legal order is not adversely affected. However, the competence of the PC would affect the very nature of EU law, as well as the powers of national courts to refer to the Court for a preliminary ruling that may in consequence disorder the correct application and uniform interpretation of European Union law and also in the protection of individual rights under the EU law. Moreover, the Court stated that if a decision of the European and Community Patent Court were to be in breach of European Union law it could not be the subject of infringement proceedings nor could it give rise to any financial liability on the part of one or more Member States.[34] Consequently, the Court ruled in the conclusion that the agreement creating a PC is incompatible with the provisions of European Union law.[35]

[31] Opinion 1/09, p. 72.

[32] Ibid., p. 79.

[33] Opinion 1/91 of 14 December 1991 and opinion 1/00 of 18 April 2002.

[34] Opinion 1/09, p. 88.

[35] Also the Advocates General in the opinion requested by the Council of the European Union and delivered on 2 July 2010, consider the envisaged agreement as incompatible with the treaties.

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The opinion of the ECJ is the illustration of controlling and preserving by the EU, as the international organization, the competences that have been conferred on it by the treaty. As a result, a judicial institution of the EU — the Court of Justice of the EU that consists of the Court of Justice, the General Court and specialized courts is called to ensure that in the interpretation and application of the treaties the law is observed. The same function of interpretation and application of EU law was provided in the envisaged agreement for the Patent Court, new international organization with a distinct legal personality, but within the concurring competence in the field of exclusive powers. Although as it was presented above, the international organization as a derived subject in relation to State, is not capable to determine the limits of its own powers, it may, however, supervise and preserve the exercising of the exclusive competence. The organization acts in this sphere by intermediation of its institutions, within the conferred limits and in conformity with the procedures, conditions and objectives, as a legitimated subject of international law. To that extend, the European Union may oppose to any other international person, other organization but also the State interfering into its exclusive powers. It is undoubtedly the very new aspect of the legal personality of the EU as the international organization. It is a clear symptom of the stronger autonomy of the Union in international relations. But the Union is certainly not a State, so its legal personality as well as rights and duties are not the same as those of the State. It is a subject of international law, capable of possessing international rights and duties and capable to exclusively maintain its competences, conferred on it in the treaty.

5. CONCLUSIONS

The legal personality in international law is the one that is conferring the capacity to have subjective rights and obligations coming from international law that can be maintained by international jurisdiction. The other indispensable factor of the action of the subjects of international law is the competence. It is necessary

The reasons for this incompatibility in the opinion of the Advocates General were:

— the insufficient guarantees for ensuring full application and respect of the primacy of the EU law by the PC (pp. 78–93 of the opinion);

— the insufficient remedies available in case of breach of the European Union law by the PC and in case of failure to comply with its obligation of reference for a preliminary ruling (pp. 104–115 of the opinion);

— the risk that the language regime before the central division of the European and Community Patents Court might violate the rights of the defence (pp. 121–122 of the opinion);

— the draft agreement, read in the light of all the measures contemplated in matters of patents, does not meet the need to ensure an effective court control and a correct and uniform application of the European Union law in the administrative litigation relating to the grant of Community patents (pp. 68–75 of the opinion).

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for any subject of international law to operate and to act effectively in international plane.

The capacity and the competences flow from the legal personality, but in relation to the entities other than the States, they need to be fastened in the acts of the States, namely in international agreements by the acquiescence. In this background, the international capacity is the instrument to exercise the legal personality and the principal formal context in which the Union, as an international organization, is potentially entitled to use its personality and in which the question of its personality has arisen. The personality is the principal material context and the quality of a subject of the recognition in international law. The recognition of States is indispensable, although it can be expressed in any manner, also in customary law.

Under the Treaty of Lisbon, the EU is the expressly recognized international organization with all the characteristics of the subject in international law. It is important to remember that the legal personality of any international organization is always limited, since only States possess the general legal personality, the full capacity, and the totality of rights and duties in international law. Keeping that in mind, the EU is an international organization acting as a derived international person within the competences attributed to it by the States in the founding treaties. Acting within the competences means the control of the exercise and the supervision of the exercise of the exclusive competence. In this plane, the EU may not endure any supplementary power.

The final question is whether the international legal personality granted in the Lisbon Treaty is essential for the international capacity of the EU. The answer is positive, because it expressly confirms that the EU is the subject of international law and that it has the rights and duties coming directly from international law. Under the new treaty, the European Union is capable to act on the plane of international law as a legally recognized subject with a single legal international personality. Its capacity and the competence to act are no longer unclear and uncertain, however the competences do not depend on the capacity. They result from the constituent treaties and their limits are governed by the principle of conferral. In this regard the exercise of the capacities and the competences is a consequence, and not an evidence of legal personality of the EU.

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