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A SYNOPSIS OF THE DOCTORAL DISSERTATION
on "Concepts of the positioning of the European Public Prosecutor's Office
in the institutional system of the European Union",
written under the direction of Prof. Dr. hab. Jerzy Jaskiernia

The dissertation is devoted to the European Public Prosecutor's Office (EPPO) which is an emanation of the policy of the fight against fraud to the detriment of the financial interests of the EU.

The origins of the concept of its creation date back to late 1960s when – along with the establishment of the so-called own resources – European Communities gained full budgetary autonomy and the fight against fraud affecting the economic interests of the Communities has become one of the main priorities on the agendas of the Commission and the European Parliament.

The doctoral thesis assumes, that the European Public Prosecutor's Office can be considered as a model example of the *spill-over* phenomenon belonging to the theory of neofunctionalism, which has been primarily prompted by the economic cooperation within the framework of the ECSC and the EEC – resulting the need of finding an effective system of protecting the Communities' economic interests.

The background of these changes was an important parallel process of constitutionalization of the EU legal order, whose dynamics – being determined in doctrine an integration by law – was strongly stimulated by the progressive jurisprudence of the Court of Justice.

Set of fundamental constitutional principles concluded by the Court from the spirit (*sic!*) of the EEC Treaty in its landmark judgments in cases: *van Gend & Loos*¹ (direct effect of primary law) and *Costa v E.N.E.L*² (supremacy of EC law over the national law) – presented an inevitable need to ensure the effectiveness of Community law.

¹ ECLI:EU:C:1963:1.

² ECLI:EU:C:1964:66.

This need has led - on the one hand - to *de facto* instrumental recognition of fundamental rights as an unwritten Community law (case *Stauder v Ulm*³); on the other hand – it has imposed an imperative for creation of supranational law enforcement system, with the use of administrative and criminal sanctions.

This particularly pivotal issue has become the *ratio legis* of the Draft Treaty 1976 amending the founding treaties, which embedded two essential - from the point of view of the concept of a future EPPO - tendencies concerning the establishment of transnational standards for cross-border investigations of infringements of Community law and criminal penalties – based on the principle of assimilation of provisions of national criminal law – for fraud against the EC financial interests. The Draft Treaty unfortunately proved to be too innovative to be accepted by the Member States which considered the competence in criminal law as a matter of their sovereignty.

Despite this setback, the concept gave it a clear impulse for upcoming integration processes leading to the crystallisation of the responsibility of Member States for the protection of the Communities' financial interests (case *Commission v Greece*⁴), reciprocating by the Maastricht Treaty the assimilation principle on the ground of primary law (Article 209a TEC), the granting of new powers of the European Union pursuant to the provisions of the Treaty of Amsterdam (Article 280 TEC), and moreover the gradual exit from the dogmatic perception of the standard-setting criminal law, as an inherent attribute of State sovereignty.

Ultimately, the mutual penetration of tendencies within the process of European integration has led to the postulancy for establishing the European Public Prosecutor's Office, which arrived *explicitly* in the *Corpus Iuris* project developed upon request by the European Commission in the mid-1990s.

Materialisation of this idea has only become the possible as the Treaty of Lisbon entered into force and the Council adopted, based on article 86 TFEU – a regulation on establishing the European Public Prosecutor's Office in the formula of enhanced cooperation⁵.

Doctoral dissertation consists of five chapters. The first two serve the introductory purposes and constitute a sketch of historical and legal-institutional determinants and their impact on the emergence of the concept of a European Public Prosecutor's Office. The consequent three cover in a comprehensive way the current legal and organisational solutions relating to the

³ ECLI:EU:C:1969:57.

⁴ ECLI:EU:C:1989:339.

⁵ O.J. EU L 283, 31 October 2017.

establishment of the Public Prosecutor's Office along with the overall rollout of the legislative process and pinpoint essential constitutional dilemmas on the compatibility of certain elements of the regulation with the treaties and the question of the functioning of the European Public Prosecutor's Office arising from concerns in the formula of enhanced cooperation.

The first chapter touches upon the general processes (prerequisites), which led to the crystallisation of the idea of vocation of the European Public Prosecutor's Office. This chapter discusses the process of the development of the budgetary autonomy of the European communities and its institutional and legal protection. In this part of the thesis key historical conditions have been featured, which had a significant impact on the decisions of the Community institutions in the field of budgetary control. The aspect of switching the dynamics of integration processes related to the evolution of the Community system of law enforcement in the field of the protection of the financial interests of the EU also constitutes as an important part of this chapter.

The second chapter presents the evolution of the concept of a European Public Prosecutor's Office – starting from evaluating the assumptions of key project *Corpus Iuris*, moving on to the proposals in the report of the Commission of Independent Experts and legislative proposals The EC Commission tabled during the Intergovernmental Conferences (IGCs). In this part of the work, the emphasis has been put on a particularly interesting constitutional thread, related to different concepts of the location of the European Public Prosecutor's Office in the institutional architecture of the EU, as well as problems concerning the practical aspects of its functioning. Presentation, in detailed manner, of the process of the final determination of the content of the mandate of the European Public Prosecutor's Office on the basis of the Treaty and the conditions that determine the possibility of establishing - provides a starting point for further analysis and presentation of conditions, which have eventually prompted the European Commission to undertake the appropriate legislative initiative.

The third chapter is devoted to analysing the legislative proposal of the Commission with regard to the Council's proposal for a regulation foreseeing the establishment of a European Public Prosecutor's Office. It covers thoroughly the most important assumptions concerning the status and organizational structure of the Public Prosecutor's Office, as well as legal considerations related to the performance of its properties. Furthermore, the analysis of the proposed regulations and rules concerning the conduct of preparatory proceedings by the European Public Prosecutor's Office has been presented in this chapter, along with other essential elements of a criminal case concerning first of all guarantee procedural and judicial

actions. An indispensable commentary to these solutions have been provided, which serves as initial evaluation of the efficiency of the proposed solutions. In addition, it signals issues that are particularly controversial from a constitutional point of view, regarding certain elements of the regulation. A more detailed assessment of the above mentioned issues was contained in the last chapter of the dissertation. An important part of this chapter is stated by the elaboration on the future relationship of the European Public Prosecutor's Office with its partners, i.e. Eurojust, Europol and OLAF.

The fourth chapter presents in detail the legislative process regarding the Commission's proposal in the Council. The features of the special legislative procedure with a limited role of the European Parliament - determined the spread of this process over further periods of Presidency of the Council, so that - in this part of the dissertation – the author has recreated crucial steps in the negotiations on the different parts of the draft regulation, as well as the so-called *partial general approach* of the Council. Apart from In addition the Council's work on creating legislation, which prevails as essential axis of analysis in chapter four – explained are also objections raised in the well-founded opinions of the national parliaments to the proposal adopted in the subsidiarity control mode ('yellow card'). In addition, the author has examined the impact of provisional reports and European Parliament's resolutions on the legislative process, and – of particular importance for protection of the financial interests of the EU – judgment of the Court of Justice in case *Taricco*⁶. Undoubtedly, the resolutions of the European Parliament and the judgment of the Court of Justice - should be considered as essential elements of an informal "legislative dialogue" conducted with the Council, whose effects are visible in the final text of the regulation. The final part of the chapter covers also a practical dimension of establishing an enhanced cooperation in a specific mode for a European Public Prosecutor's Office, along with the systematic analysis of the treaty, which shall aid at providing a response to relevant research question, whether the Council being the main legislator – has indeed effectively fulfilled the constitutional prerequisites for the implementation of enhanced cooperation resulting from the specific (and unprecedented on the grounds of the treaty) mode with 86 paragraph 1 TFEU.

The endmost – fifth - chapter presents general characteristics of the legal norms governing the functioning of the European Public Prosecutor's Office in the light of the adopted Council regulation (EU) 2017/1939 implementing enhanced cooperation. It is of utmost importance in this part of the dissertation to emphasise the differences in comparison to the original objectives of the Commission's proposal, relating to the organizational structure, regulation

⁶ ECLI:EU:C:2015:555.

of the *ratione materiae* of the European Public Prosecutor's Office, the internal distribution of competences in the conduct of the proceedings, method of the completion of the investigation and handling problematic issues related to the operation of the European Public Prosecutor's Office in the format of enhanced cooperation. A substantial part of the chapter is also determined by the presentation of key constitutional controversies concerning matters indicated previously in the doctrine (e.g. the judicial activities of the European public prosecutor's Office), likewise completely new points, that have not yet been thoroughly discussed in the currently available literature sources (i.e. excessive degree of institutional independence Central European Public Prosecutor's Office and - associated with it-nontreaty competence of the Court of Justice in the field of judicial decision on shortening the term of the European Prosecutor's Office and European prosecutors).

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