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The European Union's Legal Personality in International Law – Character, Structure, and Scope

Abstract

In this paper, the author considers the issues of one's legal personality in international law in general, with emphasis on the international legal personality of the European Union. The focus of discussion is on the character and structure of the European Union's international legal personality and its peculiarities as a unique, juridical person. Special attention was given to the notion of the EU as a *sui generis* subject of international law, along with its scope of activities and supranational elements. As pointed out in this paper, these issues are numerous. Firstly, the issue of the European Union's status within the international legal order is analysed and, further on, the character and the elements of its legal personality and the scope of the EU's legal capacity as a juridical person in international law is also looked at. By conducting this discussion, conclusions were reached regarding the determination of the EU's international legal personality (primarily regarding its current character and structure), which undoubtedly exists within the framework of the international legal order, but as a specific and unique personality in many respects.

Keywords: International Law, European Union, Legal Personality, Legal Capacity, Juridical Person, Legal Capabilities

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Introduction: General Concept of Legal Personality

The general issue of an entity's legal personality is extremely complex from a theoretical point of view. Whether international or domestic, legal order is characterised primarily by its subjects; those possessing normatively recognised (legally defined) rights and duties. These subjects possess legal personality and, on that basis, they can be defined as subjects of the law. The law recognises them as legal persons that have abilities both in the formal and factual sense. Recognising them as such, the law determines their status, and considering that the law itself is applied within the legal order as positive law, its subjects are positioned within that legal order itself. M.N. Shaw highlights that “legal personality is crucial. Without it, institutions and groups cannot operate, for they need to be able to maintain and enforce claims” (Shaw, 2014, p. 142). Also, it is very important to emphasise that the law will determine the scope and nature of (legal) personality (Shaw, 2014, p. 142).

In legal terminology, it is commonly accepted that the “legal person” term refers to a subject of the law, an organism, entity or a being that has the capacity to obtain legal rights and duties (liabilities), regardless of its consciousness and will (Kazazić, Savić, 2018, p. 93). Therefore, subjects of the law are primarily people (human individuals), i.e., natural persons, who firstly acquire basic rights and duties independent of their will and consciousness, and then derivative rights and duties through the realisation of their will (Savić, Savić, 2017, p. 399). In addition to natural persons, there are certain social organisations that can also be defined as subjects of the law. These creations, i.e., organisations, are established through human association as a meaning of various interests realisation, and they are commonly called under one notion as juridical entities, juristic persons, non-human entities, etc. “For the law, these recognised groups and associations were regarded as distinct entities from the individuals composing them” (Portmann, 2010, p. 7). A special place among these juridical entities is taken by the state as a subject of the law. The specificity of the state as a subject of the law is reflected in the fact that the state acts from the aspect of sovereign power – *ius imperii* – i.e., it possesses the monopoly of physical coercion and that, at the same time, it appears in legal relations of domestic and international law. This means that the state is simultaneously a legal entity, both in the domestic and international legal order – and a subject of domestic and international law. This duality belongs exclusively to the state as a legal person, and it is of great importance in terms of determining the legal personality of the European Union in international law, primarily due to the fact that the

EU is constituted by its Member States which are independent subjects of international law, but is also due to the state-like elements that the EU possesses whose issues will be discussed later on in the paper.

The general capacity of any legal subject determines the nature and extent of its legal personality. This implies that a subject – as a special individual (be it person or entity) – actively participates in legal relations while appearing in these relations as the bearer of rights and duties. The general capacity consists of several specific capabilities that are, in the theory of the law, defined as the elements of a legal personality (Portmann, 2010, p. 14). This is a formal concept, also known as *the concept of four capabilities* (Kazazić-Savić, 2018, p. 100). Thus, all subjects of the law have *legal capability*, which is practically understood as legal personality within the general concept of the law. Conclusively, legal capability is to be seen as the possibility of a certain person being the bearer of rights and duties. In addition to legal capability, legal personality is determined by what is known as *contract (business) capability*. This capability can be defined as the ability of subjects to assume duties and obligations and realise rights with their own declarations of will, i.e., to establish, change, and terminate legal relations (Kazazić, Savić, 2018, p. 93). In terms of legal personality, legal and contract capability can be defined as general capacities of legal subjects. Additionally, legal theory recognises two more capabilities, namely, process or delictual (tort) capabilities. These two capabilities in domestic law can be understood as the integral substance of contract capability. This is due to an usual understanding that the contractual capability of domestic law subjects implies the possibility to undertake procedural actions and the ability to be responsible for a violation of rights and the non-fulfillment of obligations. On the other hand, considering that international legal relations are of a significantly different nature, in international law theory, these two capabilities must be fundamentally distinguished (Savić, 2018, p. 321).

In order to establish general capacity as subjects of the law (full legal personality), legal persons must obtain all the relative capabilities. However, there are significant exceptions to this uptake regarding the personality of juridical entities, which is conditioned by differences in their nature, status, organisation, activities, membership, etc. In this sense, the concept of the *activities capacity* capability is established, which is characteristic only for the scope and quality of juridical entities as legal persons. With this approach, i.e., emphasising the nature of their fundamental activities, the existence and extent of functional legal capacity is to be determined. Considering the characteristics of the international legal order and international legal relations, this approach is important in particular

for the subjects of international law. In that sense, it is also important for the sake of the precise determination of the EU's international legal personality and status within the international legal order.

Legal Personality in International Law

Akin to any other legal order, international legal order has its specific subjects. They are in many ways distinctive regarding the subjects and relations that exist in domestic law (Savić, 2016, p. 32). From the perspective of international law, all legal entities can be divided into the states, the entities within the states (natural and juridical persons), and the entities outside the states (other states, international organisations, etc.). From this viewpoint, legal persons can be the subjects of domestic (internal) law, subjects of international law, and subjects of both domestic and international law at the same time (Krivokapić, 2011, p. 68). However, personality in international law is specific in many ways, which is certainly conditioned by its nature. This is a consequence of the fact that international law regulates relations that take place on the international scene/in the international legal order, which significantly differ from what happens within the state legal order (Savić, 2017, p. 184). In the theory of international law, we can single out many basic, conceptual approaches in the determination of legal personality in international law¹ (Portmann,

¹ There are continuous academic discussions in respect of the theoretical conceptions of legal personality in international law. Within international legal doctrine, we can find different approaches and determinations of this problem, which methodically become more and more differentiated, regarding the contemporary comprehensions of the international legal order. Regarding these issues further, see Portmann, 2010; Shaw, 2014; Nijman, 2004; Koskenniemi, 2011; Buergenthal, Murphy, 2013. Regarding the determination of international legal personality, a significant turning point has been made with the International Court of Justice Advisory Opinion on Reparation for injuries Suffered in the Service of the United Nations (Reparation for injuries suffered in the service of the United Nations, Advisory Opinion of April 11, 1949, ICJ Reports of Judgments, Advisory Opinions and Orders 1949, pp. 174–189. No. 4/49). Furthermore, the restrictive approach of the International Court of Justice in the Advisory Opinion on Kosovo is particularly interesting. In the process of determining its jurisdiction, the court referred to the concept of international law subjects, referring to the Lotus case – The Case of the S.S. “Lotus” (France v Turkey) from 1926 (Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion of July 22, 2010, ICJ Reports 2010, pp. 403–453. No. 997/10). In this sense, the Declaration of Judge Simma is also important (ICJ Reports, No. 997/10, Declaration of Judge Simma, the reference of the International Court of Justice to the Lotus Case in the context of determining subjects of international law and acceptance of jurisdiction in the text of the Advisory Opinion of the International Court of Justice of 22.07.2010).

2010, p. 12). According to these different approaches, there are various definitions of the international law subjects.

In order to define legal personality in international law along with diverse entities and their rights and duties, legal capacity in general and the requirements that arise in international legal relations must be analysed as a precondition. “In municipal law, individuals, limited companies, and public corporations are recognised as each possessing a distinct legal personality, the terms of which are circumscribed by the relevant legislation” (Dias, 1985, p 12). On the other hand, we must bear in mind – as highlighted by N.M. Shaw – that “it is the law which will determine the scope and nature of personality. Personality involves the examination of certain concepts within the law such as status, capacity, competence, as well as the nature and extent of particular rights and duties” (Shaw, 2014, p. 142), and international law in specific ways defines the scope and the nature of international legal personality, so “accordingly, legal personality in international law, in addition to the general legal capacity, should be amended, firstly with a wide range of special capabilities, and secondly with the factual or social (or, more precisely, political) dimension, which indirectly influences the formation and recognition of legal entities, whether they exist simultaneously in domestic and international, or only in international law. This is the only way we can fully capture and determine the nature, form, and scope of legal personality in international law” (Savić, 2016, p. 33). The aforementioned can be perceived in international law as a factual (substantial) element of legal personality. This substantial element has much less importance within a particular state, simply because of the nature of state legal order that is hierarchically organised on the basis of constitutional and legislative framework. For this reason, in legal theory, this factual element is not fully taken into account in the process of defining the subjects of domestic law. Indeed, it is to the contrary; in international law it is sometimes of crucial importance.

The full range of a subject's rights and duties implies the existence of general capacity in international law. Usually, this general legal capacity is determined by four specific capabilities. This is the formal approach – the *concept of four capabilities*, and the four capabilities can be defined in international law accordingly – *Legal capability*: the enjoyment of rights, the necessary capability to fulfil the duties arising from the principles and provisions of international law; *Contract (business) capability*: the capability to voluntarily acquire, dispose of, and fulfil the rights and obligations arising from international legal relations; *Process capability*: the capability to initiate and participate in proceedings before the International Court of Justice and other international juridical bodies; and *Violation (delict,*

tort) *capability*: the capability of calling to account a particular legal person for violations of international law provisions (Savić, 2016, p. 11). These are considered to be general capabilities, as they constitute general legal capacity in international law and are (formally) almost identical to the capabilities that define the legal personality of subjects in domestic law. However, their manifestation in international law is significantly different. In the context of legal personality in international law, states are the only legal entities that have general legal capacity. Beside states, other subjects of international law also have the capabilities to create and obtain particular rights and duties. But their legal capacity is limited and specific, as opposed to the state's legal personality and is not of a general character (Savić, 2015, pp. 69–73).

In addition to legal capacity in international law, there are a large number of so-called “secondary”, i.e., supplementary capabilities that, in the theory of international law, are not uniquely determined. They can be defined just as a factual or political component, and can be dismissed as such in terms of general legal capacity. On the other hand, these special capabilities can be determined as additional elements of the legal or contractual capabilities of international law subjects. However, because of their importance, these secondary capabilities must be highlighted whether or not they are an additional element of general legal capacity substance.

Regarding these issues, professor Magarašević points out that there are “...additional capabilities, or rather, characteristics that determine legal personality in international law and that are unique only to the subjects of international law. This is, for example, the legal-creative capability, which includes the ability to participate in the creation, modification, or abrogation of international law provisions, as well as the ability or the right to send and receive diplomatic missions with diplomatic protection abroad” (Magarašević, 1965, p. 97). Further examples include the immunity of subjects of international law from national jurisdiction, as well as the fact that judicial immunity in a broad sense can represent additional capability. This implies that a subject of international law in proceedings before any court can appear only on a voluntary basis, which is its special capability (Brownlie, 1990, p. 60). Also, R. Portmann emphasises the uniqueness of subjects of international law regarding the ability to create international legal provisions, along with the ability to limit the application of certain provisions (Portmann, 2010, pp. 8, 69, 231–312). These additional elements of legal personality in international law, in the broadest sense, can be determined as supplementary capabilities of international law subjects which include: 1) the active and passive right

of representation, i.e., the ability to send and receive diplomatic missions; 2) the ability to participate in international conferences; 3) the ability to be a member of international organisations; 4) the ability to lead a defensive war and take coercive measures; 5) the ability of the peaceful settlement of disputes, and participation in these processes; and 6) the ability to enjoy immunity from foreign jurisdiction (Krivokapić, 2011, p. 69). These “secondary” capabilities are of exceptional importance for determining the international legal personality of the EU. In the continuation of this paper, specific details in this regard will be analysed.

The International Legal Personality of the European Union

Subjects of international law, as indicated earlier, can be all those legal persons (primarily juridical, but exceptionally natural) that can be holders of rights and duties in international legal relations, and that can obtain special capabilities within international legal order. Primarily, those are the states, and, secondly, international organisations. However, apart from these two categories, there are other entities with specific legal personality in international law (Savić, 2016, p. 36).

Regarding the determination of the international legal personality of the EU, it is necessary to briefly refer to the stages of the development of the EU itself. In this sense, we can highlight four historical periods through which the EU has passed, the first being the period of 1951–1957, the founding period in which the first treaties establishing the three European Communities were concluded; the second being 1958–1987, a developmental period in which the institutions of the European Communities were integrated; the third being 1988–2001, a period of major reform and which saw the creation of the EU by the Maastricht Treaty in 1992 and the further development of the European legal and political system; and the fourth period commencing from 2002, which has been characterised by the doubling of the number of Member States, the strengthening of institutions along with the establishment of the supranational character of the EU institutions, and its obtaining of its formal, international legal personality on the basis of the Treaty of Lisbon (Krivokapić, 2017, p. 471). In the context of historical development, despite the rise of Euroscepticism and an interval of slight stagnation, it can be said that this current period is in a phase of consolidation and is observing a search for new goals that could probably culminate in further institutional development, the additional integration of Member States, along with the Union’s future enlargement thanks to the admission of

the Western Balkans states in the time to come. Although the EU is continuously affected by a series of major international crises – much like the entire international legal order – it can be said that the EU is actually only one step ahead of creating an even closer connection of European states in the form of a united states of Europe (Beck, Grande, 2012, p. 126).

The European Union was the first and is currently the only supranational organisation in the international legal order. However, there are some indications that the Union could be considered as an international organisation of the intergovernmental type that expresses supranational ambitions (Klabbers, 2016, p. 9). Nevertheless, considering the current institutional architecture and the primacy of EU law in relation to the law of the Member States, its supranational dimension clearly exists. On the other hand, the EU's legal nature is specific and thereby unique, because the process of European integration did not take place in a linear fashion. This process was based on previous common achievements and international treaties and agreements during the 20th century, i.e., the forming of European communities which were then transformed and reformed with the establishment and development of the EU. Also, the current situation in terms of legal personality is quite complex because even after the Treaty of Lisbon, there are still independent European bodies, and one of the European Communities (the European Atomic Energy Community)² has remained a legally distinct international organisation. In addition to this, the Treaty of Lisbon itself, which was adopted in 2007 and which entered into force in December 2009, consists of three general parts/agreements: 1) the Treaty on the European Union (TEU), 2) the Treaty on the functioning of the European Union (TFEU), and 3) protocols and declarations amended to treaties; namely, Protocol No. 1 on the role of national parliaments in the European Union (Document 12016E/PRO/01), Protocol No. 2 on the application

² The European Atomic Energy Community, also known as EAEC/EURATOM, was formed as an international organisation on the basis of the Euroatom Treaty of 1957. It is legally distinct from the European Union, although it has the same membership and common management with the EU. In terms of membership, things changed in 2014 when The Council of the European Union adopted a Decision approving the conclusion by the European Commission, on behalf of the European Atomic Energy Community, of the Agreement for scientific and technological cooperation between the European Union and the European Atomic Energy Community and the Swiss Confederation associating the Swiss Confederation with Horizon 2020. On the basis of this decision, Switzerland participates in EURATOM programs as an associated state (Council Decision, 2014). Also, the situation has changed regarding the cancellation of Great Britain's membership due to Brexit.

of the principles of subsidiarity and proportionality (Document 12008E/PRO/02), Protocol No. 14 on the Eurogroup (Document 12008M/PRO/14), and Protocol No. 10 on permanent, structured cooperation established by article 42 of the TEU in the field of defense (Document 12016M/PRO/10). The Treaty of Lisbon also offers some flexibility tools primarily created to facilitate policy implementation (Wessel et al., 2020, p. 378).

According to the Treaty of Lisbon, the EU is based on two separate treaties – not on a single document, as expected. The previous three pillars were abolished and the method and procedure of decision-making was changed. The new structure of the treaty led to a partial renumbering of earlier articles from the EEC Treaty and the Maastricht Treaty, as well as a partial overlap in the content of certain articles in the TEU and the TFEU (Dougan, 2008, p. 623). In the constitutional legal sense, the Lisbon Treaty's changes can be defined as fundamental and revisionary both in terms of their content and scope, as well as in the terms of what preceded them at the time of adoption (Vukadinović, 2012, p. 35). This legal architecture *per se* makes the determination of the EU's legal nature and its international legal personality an issue of a fairly complex nature. If we add to this complexity the status of the Member States and the position of EU institutions together with common policies, it is clear that the legal personality of the EU in international law is dynamic, multifaceted, and extraordinary.

In any case, “the European Union is an intergovernmental and supranational union of 27 European countries, known as EU Member States” (Leal-Arcas, 2006, p. 169). In a substantial sense, it simultaneously possesses elements of both that of a state and an international organisation, so it is very difficult to lay out a complete definition of the EU in simple terms. “The EU competences and activities cover all areas of public policy, from health and economic policy to foreign policy and defense. However, the extent of its powers differs greatly between areas” (Leal-Arcas, 2006, p. 169). After the entry into force of the Treaty of Lisbon, the powers of the EU were expanded, and the development of new, state-like institutions intensified, whereupon the EU was defined as a single legal entity.

At this point, it is needed to briefly address the issues of the definition and legal nature of the EU. Both these issues are significant, because they *per se* (pre)determine the EU's legal personality in international law. Firstly, the EU in some ways resembles a federal state, while in others it is to be defined as an international organisation. It is, in fact (still) an international organisation, although having various supranational characteristics, which makes it a unique entity in the international legal order. Because of this, it can be stated (until similar forms of integration are created in other areas

such as Africa, South America, etc.) that the EU is a *sui generis* subject of international law (Krivokapić, 2010, p. 260). Furthermore, the EU differs from all other international organisations, due to the fact that it possesses institutions with supranational competences. These institutions, which are similar to those within the states, are continuously developing. Also, the fact that members of the European Parliament are elected directly makes a huge difference when the EU is compared to other international organisations.

When taking into account the fact that EU legislation has primacy over the legislation of Member States, and that more and more EU provisions are directly applied in Member States systems, and that the Union has its own “citizenship”, and that the customs and monetary community is functioning, and that common cultural, legal, social, etc. space and identity is intensively developing, and that, as regards international dealings, the Union has established and is developing the concept of common foreign and security policy, and, finally, that there is intensive cooperation in the domain of internal affairs and justice, it is clear that the supranational elements of this entity are increasingly noticeable (Krivokapić, 2010, p. 261). In substantial terms, the EU is undoubtedly more than a confederation, but it is still less than a (sovereign) state or a federation. On the other hand, it is also more than an ordinary international organisation, with its clearly established supranational qualities, which, as said before, can be seen within the EU’s internal organisation and the broad powers of common institutions, especially in relation to Member States and decision-making procedures. The EU’s supranational character is also expressed in its growing and, in many aspects, unique role in international (political) relations and especially in international legal relations (Krivokapić, 2017, p. 471).

To summarise this brief review; the EU *is* more than a community of Member States, but it still *is not* a fully-capacitated state, since the Member States are yet the bearers of (fundamental) sovereignty. However, considering the extent and depth of the integration of the Member States achieved so far, their sovereignty was generated by the transfer of competences to a common or, more precisely, supranational European level. The EU as a union of state members is actually a super-state in the making (Krivokapić, 2010, p. 262).

Today, the EU is a specific, independent legal entity in international law. The legal personality of the Union is explicitly defined in Article 47 of the Treaty of Lisbon which states that it is “the Union who has legal personality” (TEU, 47). Also, from a practical point of view, since the entry into force of this treaty provision in 2009, the international legal

personality of the EU has been further verified and developed through the realisation of legal capacity in international law and the fulfilment of the treaty-making power-*ius contrahendi* and the right of representation – *ius representationis*. The EU inherited/succeeded earlier concluded treaties, but also created significant number of new international treaties and agreements. Also, the EU has a highly developed diplomatic, worldwide network consisting of a large number of delegations, along with special and diplomatic missions.

In terms of *general legal capacity* in international law, it can be said that the EU has legal and contractual capabilities of a special character that are conditioned in two ways. In the first place, it is conditioned by the status of the EU within the international legal order and secondly, it is conditioned by the way international law recognises it. These capabilities are also determined by its fundamental peculiarities, institutional architecture, and internal organisation. Furthermore, the EU possesses – to a significant extent – other supplementary capabilities, such as process and delictual (tort) capabilities, as well as capabilities that map through these primary four, such as; the capability to establish and maintain diplomatic relations, the capability to participate in the work of international conferences and organisations, the capability to exercise various types of international jurisdiction, and the capability of self-protection, etc.

The legal capability of the EU in international law is conditioned by its legal nature, i.e., the way in which international law recognises it as a legal (juridical) person. Although it is a specific, supranational organism, considering its international importance and influence in international legal relations, the EU, as previously pointed out, has a special legal status. This legal status is not regulated by general international law, but by special acts and international provisions, as well as by customary practice that has been developed so far. This practice today has more elements of general, international custom law – the practice itself exists in continuity in a uniform way and it is accepted by other subjects of international law. Therefore, the custom as such actually exists, while there is also an awareness of its legal necessity – *opinio juris sive necessitatis*. On the other hand, the legal capability of the EU in the international legal order is limited by the international legal personality of the Member States as the primary subjects of international law (of *originaris* character), so it is, therefore, of a derivative character. In this sense, the legal capability of the EU corresponds to its *sui generis* character and can be defined as a *special legal capability* in international law.

The contractual capability of the EU in international law is limited primarily by its competences, i.e., the scope of activities and, once again,

by the position of the Member States. This capability can be analysed from various angles. Namely, the previously-mentioned legal capability in the form of the EU's contractual capability is dynamic, but also limited in several ways. In the first place, in terms of international treaties and agreements, it is a matter of *specialis* capability. However, considering the number, nature, and application of the treaties and agreements, as well as the legal relations entered into by the EU, its contractual capability is more akin to a complex state. The Union concludes international treaties with both candidate states and third party states. It also concludes treaties with international organisations, whereby the number of multilateral treaties and agreements in which the EU appears as a contracting party is increasing.³ "The EU is one of the most prolific authors of international agreements in the world" (Gastinger, Dür, 2021, p. 611). This is where the supranational dimension of the EU comes to the fore, especially regarding the application of international legal provisions in the legal system of the European Union, bearing in mind the range of the two crucial legal principles of the EU Regulations – the principle of *direct applicability*, and the principle of *direct effect*.⁴ However, it cannot be said that the EU's contractual capability is of a general character. Again, only states have full contractual capability in international law. This is defined by the Vienna Convention on the Law of Treaties. Nevertheless, in a substantive aspect, the quality of the EU's contractual capability is closer to that possessed by the states, than the one obtained by international organisations. Considering the fact that the EU is not a state, it has to be pointed out that its contractual capability is exclusively of a functional character. This functional character is a reflection of the scope of international legal activities and EU institutions' competences regulated by the founding treaties.

When it comes to diplomatic representation, the situation is somehow similar – the EU does not have a general right of representation (*ius representationis generalis*) that the states have in international law. Despite this fact, the EU does have an active and passive right of representation. The Union receives foreign ambassadors, sends its own delegations and

³ The EU concluded: The UN Convention for the prevention of marine pollution from land-based sources, the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, the United Nations Convention on the Law of the Sea, the Kyoto Protocol, the Vienna Convention for the Protection of the Ozone Layer, etc.

⁴ Regarding the supremacy of EU law, the Decisions of the European Court of Justice in two cases are very important. These are: the Van Gend an Loos v Netherland case, and the Costa v ENEL case.

special representatives, and establishes special missions in third states and international organisations. At the same time, third states accredit their ambassadors in Brussels (Krivokapić, 2010, p. 262). There are certain similarities here with the form of representation that is present in international organisations. However, in a practical sense, the EU has an established service that is responsible for coordinating diplomatic representation in international relations. This is the European External Action Service (EEAS). In brief, this institution is the diplomatic service of the EU. The creation of the EEAS is one of the most significant changes in the institutional organisation of the EU introduced by the Treaty of Lisbon. The EEAS has “six large departments that cover various areas of the world – Africa, the Americas, Asia and the Pacific, Europe, Eastern Europe & Central Asia, and the Middle East & North America. Another department is dedicated to Global Agenda and Multilateral relations” (EEAS, 2021). Nevertheless, conceptual clarity of the EU’s Public Diplomacy is much needed in terms of diplomatic representation in general (Fanoulis, Revelas, 2023, p. 51).

Furthermore, the EU has established permanent delegations in more than 140 countries and to more than five international organisations. “In institutional terms, the key actors in EU public diplomacy are the EU delegations, which work closely with the headquarters of the European External Action Service (EEAS) in Brussels and with the departments of the European Commission with an external remit, such as the Directorates-General of External Trade, Enlargement and International Development” (Song, Fanoulis, 2023, p. 2). Besides this, “under the Common Security and Defence Policy (CSDP), the EU takes a leading role in peacekeeping operations, conflict prevention and the strengthening of international security. It is an integral part of the EU’s comprehensive approach towards crisis management, drawing on civilian and military assets. As of today, there are 21 ongoing CSDP missions and operations, 12 of which are civilian and 9 military” (EEAS, 2021). In this sense, although this matter is not regulated by the Vienna Convention on Diplomatic Relations, it can be said that the EU, together with host states, has already established the customary law (right) of representation in accordance with international law. This law is still of a *specialis* character, for the simple reason that the EU is a unique entity with this legal nature in the international legal order and, that besides that, there is no such practice anywhere else.

Based on the above, it is clear that the EU possesses legal and contractual capabilities, which implies that it has legal capacity in international law. However, the international legal capacity of the EU is of a specific nature and should be viewed primarily in a functional sense.

Conclusions

In conclusion to all the aforementioned, it can be said that the notion of subjects of international law is multifaceted, and certainly dynamic, which is especially important under the circumstances of the contemporary challenges that are placed within the international legal order (Savić, 2016, p. 35). With its peculiarities and specificities, the EU's international legal personality is of a *sui generis* character. Although it can be pointed out that the Union existed on a global level even before the TEU, and not only in a political sense, but also in a legal sense, its international legal personality was questionable before the TEU entered into force in 2009. This dilemma appears in academic discussions for a reason, primarily because of the status of European communities, the specifics of the European integration process and, especially because of the large number of international treaties to which the Union became a signatory party. It is clear that the succession between the European Communities and the European Union exists, however, in terms of international legal personality; there is no simple linear continuity. "With the advent of the Treaty of Lisbon, the legal personality of the former European Community has been transferred to the EU. This is a logical transition, given that the awkward three-pillars-divide across the Community and Union, introduced by the Treaty of Maastricht, has now been eliminated. With the Lisbon Treaty, the relations between the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) have been finally put on a par" (Smith, 2011, p. 199).

On the basis of the Treaty of Lisbon, the world was faced with an international legal entity that possesses new competences (Wessel, 2014, p. 398). The complex relationship between the EU and its Member States has resulted in continuous debates about the legal nature of the Union, whereby the question of the EU's legal personality, as well as the joint action in a general sense, has been additionally complicated and actualised by the Brexit process since 2020 (Borić, Jodanović, 2020, pp. 250, 252). The background of the final determination of the EU's legal personality in the provisions of Article 47 is burdened with a struggle between the factual and the normative (formal). This is, on one side, a matter of the *de facto* personality that the Union has had almost since its foundation and its formal establishment, with the related fear of the Member States for the fate of their own sovereignty, on the other (Misita, 2014, p. 47). This struggle between the factual and the normative did not end with the entry into force of the Lisbon Treaty. Moreover, it has been intensified, especially

due to global processes and international crises that affect the functioning of the EU institutions and its Member States. In this regard, European debt crises, the 2015 migrant crises, the 2020 Corona virus (COVID-19) pandemic, global energy crises, and the war in Ukraine have affected the EU in many ways. On the other hand, Member States are also affected by these processes individually, and they are forced to act in parallel in these conditions as independent subjects of international law in order to protect and maintain their existence. This certainly created a particular split in terms of the international legal activities of the EU, but it does not call into question the EU's legal personality in international law.

Furthermore, when it comes to the organisation of the EU and its institutional architecture, the Union simultaneously encompasses the elements of an international organisation and the characteristics of a state or a special form of union of states. In the same entity, the EU unifies the Member States, supranational institutions with independent legislature, and functional legal personality in international law. In a structural sense, this corresponds to the internal organisation of some kind of a complex state in the international legal order. However, these statehood elements within the EU, primarily due to the sovereignty and international legal personality of the Member States, are only partially constituted. In that sense, the EU still has some characteristics of a supranational organisation. This is evident because those organisations whose binding acts of their bodies enjoy immediate applicability in the legal systems of their Member States can be considered supranational (Lapaš, 2008, p. 16). The law of the EU has primacy over the domestic law of the Member States – the principles of direct effect and direct application refers to EU Regulations as a source of law in the Member States. What is also important to emphasise is the fact that the “European Union is itself a source of law” (Evropski parlament, 2023).

Nevertheless, the Union's institutional framework that has been established so far together with statehood elements and with a high degree of structural integration, which altogether make the EU a hybrid (state-like) form of entity (organism, organisation, actor, etc.) in the international legal order. The EU, viewed in this way, has a supranational character, and it is the only such hybrid entity in the world. This characteristic of the EU reflects its international legal personality. In this sense, this hybrid form makes for the EU's legal nature and position of a *sui generis* character within the international order. Its status is unique. Its international legal actions and relations are incomparable with other existent legal actions and relations, while its international importance and regional leading role is undeniable (Blockmans, Wessel, 2012, pp. 1–143).

Ultimately, it can be noted that the EU possesses legal and contractual capabilities in international legal relations. In this sense, as a juridical entity, the EU in its international legal personality unifies the elements of general legal capacity. However, the character, scope, and manner of manifestation of the EU's capabilities are conditioned in several ways. The scope of these capabilities is limited, and, for this reason, the EU does not have a general capacity in international law, while its international legal personality appears to be of a special character of a primarily functional nature.

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