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Meeting abstract

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THE EUROPEAN PROSECUTOR: A BIG STEP FOR THE EU, A SMALL STEP FOR JUSTICE

1. THE POLITICAL CONTEXT OF INTRODUCING THE INSTITUTION OF EUROPEAN PUBLIC PROSECUTOR

In professional literature on political science as well as in political practice, it is often heard that the European Union (hereinafter: EU) is the most successful peace project in the history of mankind. However, this fact is often overlooked, while the economic effects of the EU take centre stage. Analyses of the success of the EU start exclusively with the economic indicators of the benefits that the Member States gain by acceding to this supranational association. The main motive of the founding fathers of the EU is simply overlooked. After World War Two, the most extensive and horrendous war in all history, albeit just one of so many wars waged in Europe, the aim of the integration of European states, those that had previously stood on opposite sides of the battlefield determined to destroy each other, was to create an environment of tolerance and peace. Initially, the intention was to produce this peace-keeping effect primarily by means of economic cooperation. However, the gradual integration of European states, which started with a small number with a similar political and economic system, gained momentum, not only through further EU enlargement, especially after 2004 when ten new members acceded to the EU, but also through expansion to states that had abandoned socialism/communism as their fundamental political and economic doctrine and by the strengthening of European institutions and the expansion of their competence. The legal framework for strengthening integration was the Lisbon Treaty, which opened the door for a process popularly referred to as "more Europe". This means the strengthening of European institutions, the expansion of their

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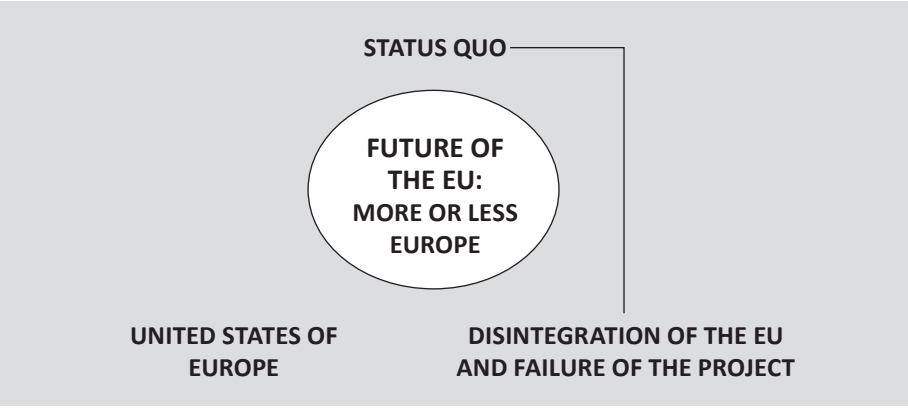
competences and, consequently, the reduction of aspects of Member State sovereignty in favour of the EU. Substantial economic crises at the end of the first and the beginning of the second decade of the 21st century and the sharpening of economic but also political confrontation/competition between the USA, Russia, China, but also the strong economic upswing of some countries and their various associations (Brazil, South Korea, Japan, the Republic of South Africa, Indonesia, India…) raise the question of whether European states are able to compete successfully in this global economic arena, either individually or as a community, and also to successfully protect their other concerns, including security, environmental, and political interests.

The only rational answer as to how Europe can be competitive and prosperous lies in the response related to "more Europe": further boosting the efficiency of the EU and its institutions and reducing the competences of the Member States in favour of the supranational institutions of the EU.

However, at the same time, there is a completely opposite tendency: the strengthening of Euroscepticism, the desire to reduce EU competences in relation to those of the Member States, accusations that the EU and its bureaucracy are primarily to blame for the economic and other problems of some of its Member States, etc. The culmination of this trend (so far) is the decision of Great Britain to leave the EU (otherwise known as BREXIT).

I believe that, subject to certain adjustments, the EU and its strengthening are the only rational choice for European states for economic as well as security and largely political reasons. Further, I hold that discontinuing the process of further integration of the EU will most likely lead to the stalling of the EU project, with the negative political, economic, security-related, and generally civilisational consequences which all that will entail. In fact, maintaining the status quo where many Member States advocate not "more Europe" but "less Europe" would indeed have the same effect in the long run as a policy geared towards imposing the concept of "less Europe".



In this context, the Lisbon Treaty, which expands the common EU area, including to the area belonging to the classical sovereign state, such as the judiciary, the work of the European Court of Justice, but also the introduction of the institution of European Prosecutor, can be seen as a victory of creeping Europeanism in relation to the self-seeking and, today, even eruptive souverainism and Euroscepticism that threaten the survival of the EU project.

2. THE LEGAL FRAMEWORK FOR THE WORK OF THE EUROPEAN PUBLIC PROSECUTOR: A PROMISING PROJECT OR A NON-FUNCTIONING HALF-FINISHED LEGAL PRODUCT?

Article 86 of the Treaty of Lisbon amending the Treaty on European Union (the so-called Lisbon Treaty) lays down the legal basis establishing the institute of European Public Prosecutor via primary EU law. The Lisbon Treaty prescribes rather sparingly the establishment, competence, and elements entailed in the work of the European Public Prosecutor. Crucially, the European Prosecutor would function in national courts to examine and prosecute criminal offences against the financial interests of the EU. The provision that the pre-trial phase of the European Prosecutor would be governed by EU law and the phase from the indictment to the completion of the proceedings would be regulated by national law raises innumerable legal dilemmas and various practical issues. The key problem is whether the interpolation of a very complex international mechanism into the structure of national criminal prosecution can be expected to yield greater efficacy and better achieve the declared goals of the European Public Prosecutor's Office (the effective protection of the financial interests of the EU). Further, it is also legitimate to ask whether the introduction of the European Public Prosecutor is an expression of distrust in the national institutions responsible for criminal prosecution. It is also not clear whether a system with two European Delegated Prosecutors ("a gourd without roots" is a picturesque comparison) would be more efficient than an established national authority such as USKOK in Croatia and whether the new channel of communication between national institutions and the institutions of several states would result in noise in communication and delays in proceedings.

European Delegated Prosecutors (European Prosecutors) are burdened with multiple status-related and functional problems in the current legal situation.

The first problem is related to the independence of European Prosecutors from the influence of national states, especially in terms of the "two hats" policy, which is a solution according to which the European Prosecutor is part of the structure of the national prosecutor's office. The primary question is that of his or her hierarchical position. Further, there are problems of a "technical"

nature, such as devolutive decision-making by the state attorney, appearance in courts having different ranks, the competence of the European Prosecutor towards the police, resolving conflicts of jurisdiction between the European Prosecutor and the national prosecutor, deciding on exemptions…

The simplest legal solution, which is most probably politically unacceptable for a number of Member States, is one that would provide the European Prosecutor with the same authority as the national state attorney. The fact that certain Member States have decided not to accept the institution of European Prosecutor also says a lot about the political sensitivity of the issue.

It is also certain that the Regulation on the establishment of the European Public Prosecutor's Office, in conflict with the national criminal procedural and organisational law, raises other important questions.

The first one is whether the provisions on investigative and other measures cohere with national legislation (special investigative measures, urgent investigative measures, etc.).

Further, there is the question of the compatibility of provisions on arrest, pre-trial detention, and precautionary measures. This question is all the more sensitive as it relates to fundamental human rights (the right to liberty, the right to a fair trial, etc.) and any incoherence in this regard in national and European law will lead to very serious consequences.

In addition, the provision on the limitations imposed on the Permanent Chamber with respect to indictments is also problematic. Namely, it may not dismiss a motion to indict, which raises major legal as well as moral and political problems.

One of the important procedural questions is one on the admission of evidence gathered in other states and the reach of the principle *locus regit actum*. The provision of the Regulation that evidence may not be denied admission by a national court "on the mere ground that the evidence was gathered in another Member State" does not settle the question sufficiently clearly.

The independence of the European Public Prosecutor should also be examined in its financial context. The first question relates to the salaries of the European Prosecutor and his or her staff compared with those in the local justice system. The foreseeable (big) disparity, at least in some countries, including Croatia, in favour of the European Prosecutor will surely provoke certain interpersonal and professional concerns, especially in the context of the "two hats" concept.

Further, the nature of proceedings for offences affecting the Union's financial interests is such that it is reasonable to expect that they will be lengthy and costly. The provision that the costs are borne by the state will most certainly generate dissatisfaction of the state in cases where the indictment is unsuccessful. According to the Regulation, the budget of the European Public Prosecutor's Office does not encompass operational costs, other than optionally in

the case of exceptionally complex and costly measures. However, the same article (91.7) of the Regulation states that practically all costs are borne by Member States. This contradictory legal regulation will most certainly require additional instructions.

3. CONCLUDING REMARKS

This presentation provides a framework of only the most important legal and political issues concerning the European Public Prosecutor. These issues, just like the general position of the European Public Prosecutor in European and national legal systems, are the result of compromise where the quality of coherence and the consistency of profiling the institution of the European Prosecutor have given way to the prospect of introducing the legally and politically very important institution of European Public Prosecutor.

Since Member States are hardly working very diligently on the implementation of the Regulation, and since there are many uncertainties, but also resistance, the fate of the institution of European Public Prosecutor is not completely clear. Today, the European Public Prosecutor is at the crossroads, where it can become an exceptionally important instrument in strengthening Europeanism, further EU integration, and a factor to bolster the rule of law at the European level. However, it also cannot be excluded that it might become a legally and politically insignificant appendage of national justice systems.