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**HOW TO GROW AN INTERNATIONAL SOCIETY?
AN ANALYTICAL FRAMEWORK OF THE EXPANSION OF
POWERS OF THE EUROPEAN UNION**

PHD DISSERTATION

THESES

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I. A brief summary of the research task

A crucial part of the questions about the law of the European Union continues to revolve around what and how much competence the Union has and how much expansion of powers of the Union threatens the competences of the Member States. Even though there are many aspects of EU law, this question is, unsurprisingly, primarily political. So, in Hungary, too, the political dimension is mainly at issue.

From a 'pro-integrationist' perspective, the expansion of powers of the Union is difficult to understand, as, in their view, the Union exercises its competences conferred on it by the Member States under the founding treaties. The activities of the European Union are expanding, and so is the exercise of the competences of the Union (extension of competences, in Hungarian: *hatáskör "kiterjesztése"*). The use of terminology logically implies that the process is foreseeable and predictable. Instead, from the 'sovereignist' perspective, with the so-called competence creep (or "integration by stealth", "competence shift", in Hungarian: "*lopakodó hatáskör*" or "*lopakodó hatáskörelvonás*"), the EU legislature and the EU institutions fail to respect the limits of the competences of the EU. The terminology points to the fact that this process is not foreseeable and unpredictable, and even more, it presents the phenomenon as a political tool.

The politically exclusive nature of the debate is understandable and surprising at the same time. It is understandable because it concerns issues of competence which are of considerable political sensitivity for the Member States. Examples include family policy, migration and even some issues relating to the external action of Member States.

It is surprising, however, that the Hungarian legal academic community reflects on the questions of competences only sporadically and only occasionally. The most general theoretical approaches emphasize that the European Union is based on the concept of the "ever closer Union", which from time to time presupposes further steps along the road to integration. Some theoretical approaches

also emphasize that the Union is a kind of constitutional project to which current legislation is committed. This logically presupposes an evolution, or at least a change, in the competences of the European Union. In most cases, however, Hungarian academic works highlight a single issue related to the EU's competences or reflect on the ongoing processes, but they rarely take a position on the phenomenon as a whole, looking at the process itself. The literature does not examine this from an analytical and systematic approach from the perspective of EU law. It is odd as Hungary is no longer a 'new Member State.' However, the international literature is no exception on this matter: the ambitious works concerning the development of the competences of the Union do not provide an exhaustive analysis of the expansion of powers, lacking the 'experimental' character of a systemic approach.

This situation needs to be addressed for several reasons. First, given that it is an EU law phenomenon as well, if the process of the expansion of powers is not subject to conceptual examination, it implies that the nature of EU law is only vaguely understood by the person dealing with EU law issues. Unfortunately, the understanding is not facilitated by the existing grand theories about European integration, which do not address the phenomenon of the expansion of powers or, if they do, they do so exclusively from a political or economic perspective and do not pay (sufficient) attention to the implications of EU law. Secondly, this lack of knowledge is problematic not only from a theoretical but also from a practical point of view. From time to time, a Member State and its apparatus are confronted with the fact that EU policies evolve. In addition, in the last few years, the reform of the EU Treaties has re-emerged on the political agenda of the Union. A conceptual understanding and a thorough knowledge of this phenomenon is necessary for a Member State to prepare a strategy in this respect. In other words, it is time for an academic debate on the issue of the expansion of powers of the Union that goes beyond political statements and opinion columns in newspapers or on internet news sites, and that can be useful for both academics and practitioners.

Hence, the research aims to provide a conceptual explanation on the process of the development of the competences of the European Union, or as the research names this phenomenon, the expansion of powers of the Union, from the viewpoint of EU law. More specifically, the

dissertation describes how the expansion of powers take place in the European Union, and which actors can influence or take part in the expansion of powers. It is important to identify these actors in order to observe certain general tendencies in the process. The research aims to elaborate on these matters from a more theoretical and analytical angle that is applied specifically to the functioning of intergovernmental organizations in order to better understand the common characteristics of the process how such a process occurs for the Union and how it affects EU law.

Given that the topic has political and legal characteristics, the research relies on an interdisciplinary approach to the theoretical foundations. It requires that, in addition to the specific EU rules in force, it also takes into account the relevant theoretical framework of international relations and the theoretical approaches from the law of intergovernmental organizations concerning the development of these organizations. Consequently, part of the dissertation is dedicated to examining this and the applicability of the resulting analytical framework to the EU and EU law.

Although the dissertation acknowledges that there is still no consensus on the exact nature of the Union (the question itself is contemporaneous with European integration, but the dissertation does not seek to answer this question), it assumes that even though the characteristics of the Union go beyond the classical framework of an international intergovernmental organization, it still has certain non-negligible characteristics of intergovernmental organizations.

II. Methodological approach of the dissertation

The analytical framework used in this dissertation is divided into two parts, one based on international political theory and the other on the law of intergovernmental organizations. The branch concerning the international political theory of the analytical framework is based on the so-called English school. The English School essentially combines, links, and synthesizes competing international theoretical approaches to present a unified view of aspects of international relations. It acknowledges the realist and liberal traditions and incorporates historical and constructivist approaches. The basic premise of the English school is to distinguish between three dimensions: the international system, international society, and world society. The international system describes the traditional politics of power between states. On the other hand, international society emphasizes that groups of states often form a society, conscious of certain common interests and shared values because they believe common rules bind them. In the latter case, the English school distinguishes between so-called institutions, which provide a framework for international society to achieve common goals and develop common practices, thus serving as its pillars. In addition, it places at the center of the analysis of international relations, individual non-state organizations, and other formations, all of which can affect international relations. These actors form the so-called world society.

However, the English school also examines individual intergovernmental organizations, which in some cases may be linked to their international societies with their own rules and institutions, as mentioned above. Intergovernmental organizations and their international societies interact in specific ways. The intergovernmental organizations essentially 'socialize' the individual states in international relations. In so doing, intergovernmental organizations could strengthen the institutions of international societies and even, within certain limits, shape their content. At the same time, the institutions of international society legitimize the existence of intergovernmental organizations, without which it would not be possible for them to function. The European Union has such an international society, which has its institutions (therefore not the institutions of the Union as underlined in its institutional framework pursuant Article 13 TEU), such as the pooling of sovereignty, the *Acquis Communautaire*, multi-managerialism, democracy, coalitions of

Member States, but also, according to some authors, the internal market, environmental protection, trade, and financial liberalization.

However, the English school does not deal with the functioning of international law in detail. This gap is filled by another branch of the analytical framework, which draws on Guy Fiti Sinclair's approach, developed in his *To Reform the World: International Organizations and the Making of Modern States*. Sinclair's approach is a pragmatic choice, given that his work examines the expansion of powers of certain intergovernmental organizations. Sinclair stresses that these organizations have become one of the most critical actors in global governance. The author introduces the concept of constitutional growth, following a socio-legal approach. In this context, the author refers to Georg Jellinek's theory of constitutional transformation, which he used to examine the changes in the meaning of the provisions of the constitutions of states. In this respect, Sinclair shows a similar trend regarding intergovernmental organizations. Sinclair starts by examining the founding treaties of individual intergovernmental organizations. His approach is that the founding treaties of each intergovernmental organization set out the objectives and powers of the organization, which define but also limit the scope of action. However, Sinclair argues that although the provisions of these treaties remain unchanged, the underlying meaning may change. Some intergovernmental organizations rely in this context on certain trends in the international community to expand their scope. A typical feature of this is that the leadership of the relevant intergovernmental organization supports the trend within the organization. The working documents, communications, non-binding soft law measures, and even, at a later stage, hard law instruments of each organization play a significant role in this. The process also results in a change in the internal (legal) order of the intergovernmental international organization, often defined as a reform. The member states of the organization accept these changes. From a legal point of view, however, international courts can legitimize these extensions of jurisdiction through their decisions.

The dissertation aims to demonstrate that the two-element analytical framework is suitable for examining the expansion of powers of the European Union. To this end, the dissertation explores some of the characteristics of the European Union from several perspectives.

The EU founding treaties. It is necessary to examine the founding treaties because they are the ones that, like the founding treaties of intergovernmental organizations, contain the tasks and objectives of the Union. The Lisbon Reforms also introduced a specific catalogue of competences. Consequently, understanding the nature of the EU Treaties is crucial for research.

The question of competences. Given that the European Union is based on the principle of conferral of competences, understanding the nature of competences, particularly the clear delineation of competences between the Union and the Member States, is essential. Hence, to better understand the phenomenon of the expansion of powers, it is necessary to examine the question of competences.

The institutional framework of the Union. Sinclair emphasizes the role of certain organs of intergovernmental organizations in expanding the powers of the relevant organizations. In this sense, some of its prominent actors, such as the European Commission, the European Parliament, and the Court of Justice of the European Union, need to be examined in more detail. The European Commission is a relevant actor because it is one of the embodiments of the supranational nature of the Union. The European Parliament is a pertinent actor because of its role of political control and its prominent role (as well as its role as EU legislator) in shaping EU law. Finally, the role of the Court of Justice of the European Union is also indisputable, given its monopoly on the interpretation of EU law. This latter institution is also significant because, in line with Sinclair's approach, it could also have a function of legitimizing the expansion of the Union with its decisions.

The role of the legal academic community. EU law has played a significant role in the development of the Union, partly because of the pro-integrationist legal academic community, which has traditionally maintained close links with the institutions of the Union since the beginning of European integration. The English school emphasizes the importance of world society in

understanding the international community, of which it constitutes a part. As legal scholars have always been interested in the concept of an ever closer Union, the perspective of this community can be important in understanding the expansion of powers of the Union.

However, it is not enough to consider the applicability of the analytical framework at an abstract level; its context must also be considered in its historical, policy, and legal contexts. To this end, this dissertation uses a qualitative methodology and case studies to illustrate the applicability of the analytical framework. This methodology is capable of highlighting the specificities of the system by presenting multiple perspectives while being able to target specific identical patterns, structures, and processes. In addition, case studies can be used to address different approaches and sources simultaneously. This makes case studies in this form suitable for proving claims in interdisciplinary research. Finally, the use of case studies is also justified by the fact that some approaches in English school often use case studies. In addition, Sinclair uses case studies to illustrate the expansion of powers of specific international intergovernmental organizations.

In order to provide comprehensive evidence for its theses, the dissertation examined three different case studies. The case studies cover different time periods, different development stages of European integration, and issues to highlight different aspects of expanding powers.

The first case study examines the direct effect and primacy of EU law as Community/EU law principles. The case study highlights how the development of these legal principles in the early stages of the development of integration, in the first years of the European Economic Community, ensured the effective functioning of the common market. The second case study focuses on the emergence of the environment as a policy, which became part of the political agenda from the late 1960s onwards. It traces its development within Community law until 1987, when, with the Single European Market, the environment received its legal basis in the founding Treaties. The third case study examines the development of an EU value, which thus addresses an entirely different legal issue. But beyond this, this case study is also necessary to show that the same patterns shown in the past are still present so that the respective analytical framework can be applied to current trends.

These case studies present the phenomenon of the expansion of powers with the same structure. First, the case studies present the context of the expansion, including relevant (international) trends and historical circumstances. It is followed by the different approaches of the Community/EU institutions and the precise role they have played in the process. In this respect, the Commission is the most prominent actor. At the same time, other institutions, such as the European Parliament and the Court of Justice of the European Union, are also discussed, depending on their importance in the process under examination. The case studies also look at the position of the legal academic community and, more specifically, how the members of the community identified and assessed the critical and relevant issues at hand and, where appropriate, the responses to them. Finally, the case studies will discuss the case law of the Court of Justice of the European Union, whereby the Court legitimizes the expansion of powers by interpreting Community/EU law.

The case studies mostly rely on EU legal sources, as well as other related sources of intergovernmental organizations. In addition, the research examines the relevant scientific papers that helps to understand the (historical) circumstances of the case study and the issue at hand. It should be stressed that, considering the case studies, the research also uses then-contemporary legal academic literature in order to provide a detailed picture of the legal issues in the past. This enhances the understanding of the context and highlights the dynamics of the process. However, in order to get a better understanding of the process of the development, the research (regarding the case studies concerning the direct effect, the primacy of EU law, and the protection of the environment) also refers to archive documents related to the EU institutions, namely the Archives of European Integration, the Luxembourg Centre for Contemporary and Digital History and the Historical Archives of the European Union. Considering the latter, some of the documents are available in a digitalized format. On the other hand, some are still only accessible textually

III. Outcome of the research and its possible applications

1. General remarks: the applicability of the analytical framework for the European Union

The main conclusion of the dissertation is that the proposed analytical framework is applicable to the European Union. To this end, the dissertation has analyzed the EU and EU law according to the criteria indicated in Section II. It draws several sub-conclusions in this respect.

The texts of the provisions of the founding treaties of the Union have similarities with the respective intergovernmental organizations

Sinclair pointed out the so-called volatile nature of the texts of the founding treaties of intergovernmental organizations. It provides that the meaning of the respective provisions may change without amending the text. The EU Treaties are also international treaties, from the Treaty establishing the European Economic Community to the Treaty on European Union and the Treaty on the Functioning of the European Union. The founding treaties of the Union, like the founding treaties of intergovernmental organizations, contain provisions on the Union's aims and tasks, its institutional structure, and the fact that the European Union is a legal person. The dissertation also stressed that the text of the founding treaties is fuzzy because of its vague, obscure, and, in some cases, lengthy wording. This nature of the text of the founding treaties consequently requires a court that can formulate concepts about the nature of law to interpret the provisions of the EU treaties, which can fill the interpretative gaps. This logically encourages applying an interpretation that is even conducive to expanding the powers of the Union or could facilitate such a process.

A further feature of the text of the founding treaties is the constitutional character attributed to it. It is reflected, on the one hand, in the case law of the Court of Justice of the European Union, which insists on the arguments concerning the constitutional framework of the Union, even though the Member States themselves have stated, as a consequence of the referenda rejecting the Constitutional Treaty, that the EU founding treaties cannot contain the term 'constitution'. However, these developments have not altered the fact that, about the European Union, particularly

regarding EU law, there is an approach in the legal academic literature that emphasizes their constitutional nature. This discourse has been present since the beginning of EU integration. These characteristics go beyond intergovernmental organizations. On the other hand, if Sinclair's theory of expanding powers based on constitutional growth applies to intergovernmental organizations, then the approach can certainly be applied to the Union, which tends to have several "constitutional" characteristics.

The ambiguous nature of the distribution of competences in the Union is insufficient to tackle the expansion of powers of the Union.

The TEU and the TFEU contain provisions on competences, including the principle of conferral of powers, a catalogue of competences, and the structural principles governing these relations. Nevertheless, however much it may be defined in the EU founding treaties, the expansion of powers has been present in the development of European integration since its beginning. Although inconsistent, the literature on the expansion of powers points out that the legal environment provided by the provisions on powers laid down in the EU Treaties does not prevent such an expansion.

The institutional framework of the Union provides room for manoeuvre for the entities within the Union to promote the expansion of powers

The theoretical framework emphasizes the importance of the role of the organs of intergovernmental organizations in the process of expansion of powers. This is no different for the European Union. The founding treaties even support this argument. The first subparagraph of Article 13(1) TEU sets out the essence of the institutional framework. According to this provision, the Union shall have its institutional framework, the purpose of which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness, and continuity of its policies and actions. The wording of the provision itself is sufficiently vague (*fuzziness*). The points of alignment, which determine the institutional framework of the Union, are not sufficiently defined. Thus, this provision essentially provides the possibility for the EU institutions to interpret their tasks in a

reasonably flexible manner. The respective provision seems to limit the room for maneuver of the EU institutions at first glance, but the opposite is true. In essence, the provision allows for the expansion of powers.

The functioning of some of the EU institutions examined in the dissertation confirms this. The European Commission is a central actor in the process because of its role in initiating legislation and setting the agenda. Almost from the outset, the European Commission has been committed to a supranational approach, and its leadership has worked from the EEC onwards to create an ever-closer union through legislative initiatives and initiatives in new policy areas. Its available tasks and responsibilities have given the Commission an essential position in expanding the powers of the Union. The European Parliament also plays a significant role alongside the Commission. The main reason is that, as European integration has developed, the European Parliament has gained a more substantial role. It acquired more and more rights regarding legislation, participation in policy-making, the budget, and control over other bodies, including the Commission, which is part of the EU institutional framework. Similar to the European Parliament and the European Commission, the Court of Justice of the European Union rapidly acquired new powers with the birth of the European Economic Community. This subsequently allowed the Court to influence the political agenda of European integration. At the same time, a mindset has developed within the Court that supports the development of the Union and the concept of an ever-closer union.

The CJEU has the position within the institutional framework to legitimize the expansion of powers

As Sinclair explains about some intergovernmental organizations, international courts can legitimize the expansion of powers of the respective organizations through their decisions. Relying on Sinclair's approach, the Court of Justice of the European Union has a similar role concerning the European Union. The Court of Justice of the European Union is at the apex of the EU judicial system, given that Article 19 TEU and Article 267 TFEU grant an interpretative monopoly concerning EU law. In addition, the EU founding treaties give the Court the power to decide on specific questions of EU law, including the proceedings concerning preliminary rulings, deciding action on annulments, and infringement proceedings against EU Member States. These tasks and

responsibilities put the Court of Justice of the European Union in a position to deal with the interpretation of EU law, which logically includes questions related to the competences of the Union. Moreover, although the Court of Justice of the European Union recognizes several methods of interpretation of the law, in the vast majority of its landmark decisions, it adopts a teleological interpretation of the law, i.e., it examines the object and purpose of the provisions of the EU Treaties themselves, going beyond a mere textual interpretation of its relevant provisions. These circumstances define the role of the Court of Justice of the European Union as an activist, which provides the role for the Court to legitimize a possible expansion of powers of the Union.

The academic legal community understands the dynamics of the expansion of powers and can contribute to the development of EU law

The legal academic community is of paramount importance for understanding the process of the expansion of powers. The English school also focuses on the so-called world society, which includes all non-state actors (which could consist of the academic community) that can influence international relations. In all the case studies about the expansion of powers, Sinclair details how particular intellectual trends have influenced the perceptions of some of the organs of the intergovernmental organizations under examination, which ultimately led to the expansion of powers.

With regard to the European Union, the literature agrees that the legal academic community is closely linked to the development of EU law. Since the creation of the European Coal and Steel Community and the European Economic Community, European integration has made considerable efforts to promote establishing an academic community about the Community/Union law. Associations on such legal issues, academic law journals, and centers for promoting legal education have been established to strengthen the presence of Community/Union law thinking in Europe. It should also be noted that there is a cross-over between the legal and academic community, the EU institutions, and other such bodies. Lawyers with such professional backgrounds work in the European Commission and the Court of Justice of the European Union or other areas of EU law. Members of the above-mentioned academic legal organizations give lectures and publish papers, which are also being followed up by practitioners. It puts this academic

community in a unique position to have a substantive say on crucial issues of EU law. These issues include the interpretation of the competences of the Union and, thus, potentially the question of the expansion of powers of the Union. Consequently, it is worthwhile to look more closely at this academic community to understand the process of such an expansion.

2. Conclusions derived from the case studies

Emerging trends could generate a need for expansion of powers

Identifying trends and their context is essential. In all the case studies of the research. Certain (international) trends generated the need for the expansion of powers of the Union. In the first case study, dealing with the direct effect and primacy of Community/EU law, the drafters of the EEC Treaty, the Commission, and the legal academic community all stressed the similarity of certain provisions of the Treaty to an international treaty. Other provisions, however, appeared to establish rights and obligations for nationals of the Member States. The Commission recognized that this uncertainty posed a risk to the functioning of the common market. In essence, this invoked the need for some way of ensuring uniform implementation of Community law within the EEC. As regards the case study concerning the protection of the environment, an international policy trend became increasingly important in the 1960s. It led to a demand from the Member States and the Commission that European integration should also pay attention to environmental issues. Regarding the third case study, a trend towards focusing on the rule of law can also be observed in other international intergovernmental organizations. It should be noted, however, that the rule of law also received more attention because the Commission, the European Parliament, and the legal academic community all expressed concerns about the situation of the rule of law in certain Member States, which increased their demand for an expansion of powers in this area.

The text of the provisions of the EU founding treaties is fuzzy; for this reason, their meaning is not clear

As regards the case study dealing with direct effect and the primacy of EU law, the most relevant issue was the nature of the provisions concerning the common market. Neither the direct effect nor

the primacy can be deduced automatically from the text of the EEC Treaty. It required a teleological interpretation of the law by the Court. The Court declared the specific nature of the Community legal order, which was necessary to recognize the legal principles in that form. Similarly, the protection of the environment did not appear in the provisions of the founding treaties. Article 2 of the EEC Treaty dealt explicitly only with the harmonious development of the economy and the improvement of the quality of life and living conditions. Concerning the case study about the issue of the rule of law, Article 2 TEU emphasized it as a value of the Union, which did not give any guidance as to how such a statement should be interpreted. In addition, it is not clear from the text of the EU Treaties how the rule of law as a value can be linked to the independence of the judiciary, nor is it clear from the text how the rule of law connects to the protection of the financial interests of the Union. The interpretation of the Court was necessary to identify these connections.

The institutional framework promotes the expansion of powers

As with examining the aforementioned analytical framework, the case studies confirm that the EU institutional framework facilitates the expansion of powers. In terms of direct effect and primacy, the work of the Commission and its Legal Service should be highlighted. Michel Gaudet, who headed the Legal Service of the Commission, interpreted Community law as a constitutional legal order. Based on the available documents, he also recognized that the lack of direct effect and primacy would have jeopardized a uniform interpretation of Community law and, thus, a functioning common market. In addition, the Commission issued memorandums stressing the importance of direct effect and primacy of Community/EU law. The Commission later put forward the arguments in these memorandums before the Court in the Van Gend Loos and Costa v E.N.E.L. cases. It should also be noted that the composition of the judges and Advocates General within the Court of Justice had changed. The new members of the Court became increasingly interested in developing Community law. Like Gaudet, the new members, Trabucchi and Lecourt, favored a more constitutional interpretation of the EEC Treaty. This led to a more flexible interpretation of Community law, in this case, recognizing the principles of direct effect and primacy.

The second case study reveals that some of the most important officials at the Commission, Sicco Mansholt and Altiero Spinelli, were engaged in promoting environmental protection within the institution. They recognized the link between the environment and the common market and supported the creation of a division within the Commission dedicated to the environment. They both called for the Commission to play a more significant role in promoting environmental protection. This has subsequently been the case, with the Commission issuing action programmes and then proposing an increasing number of legal instruments dealing with specific aspects of the protection of the environment. Some MEPs in the European Parliament facilitated this process by stressing a more significant involvement of European integration in the field of the environment.

As regards the case study about the rule of law, Article 7 TEU has long been seen as the only instrument of the Union for addressing the rule of law-related deficiencies in the Member States. It is clear from the speeches of the presidents of the European Commission that these problems need to be addressed with increased care at the EU level, which requires further legislative development. This is reflected in both the EU framework for strengthening the rule of law adopted in 2014 and its 2019 Communication about further strengthening the rule of law within the Union. The latter also identified additional tools for the Commission, including the Rule of Law Reports, and linked the rule of law issue to some existing mechanisms. The Commission also proposed the adoption of a regulation on the rule of law conditionality. In addition, the European Parliament also played an active supporting role in this process. MEPs expressed the need for the EU to become more actively involved in matters relating to the rule of law. In addition, the European Parliament kept the issue of the rule of law in the Member States on the political agenda. In this context, reference should also be made to the importance of the Court of Justice of the European Union. Shortly after the entry into force of the Lisbon reforms, the President of the Court of Justice, Koen Lenaerts, stressed that the second subparagraph of Article 19(1) TEU is not a simple codification of existing case law. Despite the fact that this interpretation had previously appeared in the drafting debates about the EU Treaties on the provisions of the Court of Justice of the European Union, he underlined that its interpretation is still to be clarified. A few years later, the Court of Justice of the European Union, in the so-called ASJP case, linked this provision to the value of the rule of law.

The legal academic community urges and contributes to the expansion of powers

Taking into account the case studies examined in this dissertation, there are three ways in which the legal academic community contributed to the process of expansion of powers of the Union. First, individual authors drew attention to the relevant problems and urged action in the specific field. Second, they provided *de lege ferenda* proposals to address the challenge at hand. Third, some authors provided justifications for Community decisions about expanding the powers of the Union.

The case study on the direct effect and primacy of EU law shows that there has been a growing interest in the self-executing nature of international treaties within the International Federation of European Law (FIDE). This contributed greatly to the focus on the related concept of direct effect and then, following the Van Gend en Loos decision, on the issue of primacy. In this respect, the conferences at which the legal scholar Hans-Peter Ipsen, in the presence of representatives of the Court of Justice, explained that the question of priority should not be left to the courts of the Member States are of great importance. As regards the second case study on the environment, the legal experts were more concerned with the legal bases of the various legal instruments dealing with specific environmental issues. In this context, the legal academic community sought to provide a legally convincing explanation for the use of Articles 100 and 235 of the EEC Treaty, but several authors also argued that these legal bases are not sufficient to establish a new policy. As regards the rule of law, in addition to drawing attention to the dangers of the shortcomings of the rule of law in the Member States, authors within the legal academic community called for intervention by the Union, and in particular by the Commission. In addition, a number of authors provided *de lege ferenda* proposals to address problems of this nature relating to the rule of law.

The Court legitimizes the expansion of powers

The case study on the direct effect and primacy of Community/EU law shows that the Court accepted the arguments of the European Commission in the van Gend en Loos and Costa v. E.N.E.L. cases. Although the Court subsequently refined both principles in its case law, these Court decisions legitimized the approach of the Commission to the meaning of the two principles. As

regards the second case study, the Court of Justice emphasized in its rulings that environmental protection is one of the Community objectives to be taken into account in responding to the concerns expressed by Member States (in Case C-91/79), who questioned the importance of the protection of the environment. Later, however, the Court of Justice clarified the place of environmental protection in the Community legal order by refusing to recognize that it could be invoked by the Member States in relation to measures restricting the free movement of goods without adequate justification. In the context of the rule of law, the Court in the ASJP case linked the rule of law to the independence of the judiciary. This was later further refined (and thus legitimized) by the Court in the judgments in infringement proceedings initiated by the Commission relating to the independence of the Polish judicial system. Finally, the Court of Justice legitimized the legal basis for the rule of law conditionality regulation in its ruling on this issue when it stressed the link between the rule of law and the protection of the financial interests of the Union. Moreover, by defining the rule of law as a value of the Union as part of the identity of the Union, the Court further strengthened the expansion of powers at hand.

The Member States tend to accept the expansion of powers

The case studies also show that Member States tend to accept an expansion of powers of the Union. With regard to the first case study, the Member States concerned argued against an expansive interpretation of the EEC rules in relation to the principles of direct effect and primacy of Community law. Although the discussions on these principles remained on the agenda, the Member States finally accepted the introduction of these principles. This remained unchanged even if the enumeration of these principles at the level of the founding Treaties was rejected, as they were not incorporated into the provisions of the founding Treaties by the Lisbon reforms. As regards the second case study, the Member States themselves encouraged the environment to remain on the political agenda of the Community. From time to time, some Member States questioned the importance of environmental protection for their own political interests, but it was incorporated in the Single European Act, i.e., at the level of the founding Treaties. This claim is more interesting in relation to the rule of law. Some Member States themselves proposed instruments for the Union aimed at guaranteeing the protection of the rule of law. Germany, the Netherlands, Finland, and Denmark proposed such a framework, which at the time also aimed to amend the founding treaties.

Later, Germany and Italy proposed the introduction of a rule of law conditionality regulation in the future. Although the latter was opposed by Poland and Hungary (which later voted in favor), and both Member States brought actions for annulment of the rule of law conditionality regulation adopted before the Court of Justice of the European Union, the Court of Justice rejected these actions. The rulings of the Court were accepted by both Member States. Notable in this respect was the decision of the Polish Constitutional Court, which challenged an interpretation of Articles 2 and 19(1) TEU, which concluded that the Polish judicial system was contrary to EU law. This already indicates a strong willingness to protest. However, the decision did not receive further prominence after the former Polish government, PiS, lost the elections in Poland.

The phenomenon of the expansion of powers generates the functioning of the correlation between primary and secondary institutions

All the case studies highlight the importance of the interaction between intergovernmental organizations and the institutions (in the meaning used within the concepts introduced by the English School) of international society associated with them. Regarding the first case study, presenting the principles of direct effect and primacy was necessary for the effective functioning of the EEC common market. It introduced two essential principles to Community law. In doing so, the Union certainly shaped the content of the institutions on which international society is based, including the common market (internal market) and the *Acquis Communautaire*. The second case study focuses instead on the birth of one of the institutions of the international society of the Union. Given the growing importance of environmental protection within the EU, this ultimately also means creating an institution for the international society. It should be noted, however, that since environmental protection has long been understood in the context of the common market, and the Court referred to its relationship with the common market in its case law, the extension of its powers necessarily affected the content of that institution. Lastly, the expansion of powers concerning the rule of law affects the content of the *Acquis Communautaire* and, because of its horizontal nature, affects the content of all the institutions.

3. Possible applications of the outcome of the research

First, the dissertation attempts to interpret the process of the expansion of powers of the Union not in the form of a thought experiment but rather in a systematic and conceptual way. It aims to contribute to the existing literature on the matter at hand. Academic discourse is needed because the matter goes far beyond the level of political statements and opinion columns. Without an academic discussion on the matter, neither the functioning of the Union nor the development of EU law can be truly understood, as it highlights new, often neglected aspects of the functioning of EU law.

Second, it can also be helpful in conducting further research. Conceptually, the dissertation builds on the premise that the expansion of powers of the Union cannot be understood if the researcher focuses exclusively on the development of the case law of the Court of Justice of the European Union. As the dissertation argues, this is only the final stage, the result, in considering the development of EU public law. An in-depth knowledge of the work of the European Commission and other actors in the EU institutional system is equally crucial for understanding the development of EU law. This also requires knowledge about the content of the working documents of these actors. In addition, the dissertation points out that in many cases, the work of the legal academic community may also require analysis, as it can provide a more complete picture of research on specific aspects of EU law. These lessons foreshadow the need for further study, not only concerning the processes that have already taken place but also about the expansion of powers that are currently underway. Given that the Union remains a dynamically evolving entity, the lessons learned will continue to be reflected in the expansion of powers of the Union.

Finally, the topic of the dissertation has practical relevance. Systematic thinking can help practitioners to understand the expansion of powers of the Union. This can be relevant not only when working with specific policy areas. In recent years, there has been a growing demand for the text of the EU Treaties to be amended again. The development of negotiating positions also requires an understanding of the processes, all aspects of which are inevitably not apparent in the daily operations at work. A more systematic approach to the expansion of powers of the Union might also facilitate reflection on future issues related to the amendment of the EU Treaties.

IV. List of relevant publications

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Budai P., 'The complexity of the development of environmental policy within EU law: a case study, (2024) *Annales – Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae Sectio Iuridica*, vol. 62, no. 1, pp. 189-204, DOI: 10.56749/annales.elteajk.2023.lxii.11.189.