ELTE Institute of Political and International Studies

WHY DO MEMBER STATES REJECT THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE?

EXPRESSING DISSATISFACTION ON THE AVENUES OF DISINTEGRATION

MARCELL OTTÓ ORMÁNDY

STUDENT PAPER

ELTE POL-IR WORKING PAPER SERIES

2020/2

ELTE Institute of Political and International Studies

ELTE POL-IR WORKING PAPER SERIES

Series of the ELTE Institute of Political and International Studies

Published by the ELTE Institute of Political and International Studies

Address: 1117 Budapest, Pázmány Péter sétány 1/A.

URL: http://polir.elte.hu

E-mail: eutud@tatk.elte.hu

ISSN 2677-1357

WHY DO MEMBER STATES REJECT THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE?

Expressing Dissatisfaction on the Avenues of Disintegration

MARCELL OTTÓ ORMÁNDY[1]

Abstract

The European Public Prosecutor's Office is one of the proposed safeguards of the European Union's finances, although several Member States reject its creation. This thesis provides explanations to why this rejection can be a sign that Member States have begun to disintegrate from the Union. The first part of this thesis argues that the introduction of this new office improves the principal-agent relations of the Union, as well as its creation is a logical step in the integration of the Area of Freedom, Security and Justice. I found that the current Protection of the Union's Finances is inefficient due to narrative, legal and structural problems on both the principal and agent levels, while EPPO as a supervisor aims to correct these.

In the second part I constructed three avenues of disintegration that Member states take in order to lower their cost of exit from the Union. The rejection of EPPO is a result of growing dissatisfaction with the Union. This dissatisfaction comes from the changing nature of the principal-agent relations of the Union.

---

[1] Marcell Ottó Ormándy graduated in International Relations at the ELTE Institute of Political and International Studies in 2019. His thesis was supervised by Dezső Tamás Ziegler, and it was awarded with the prize for the Best Thesis in the International Relations Bachelor's Degree Program in 2019. Marcell Ottó Ormándy is currently enrolled in the Master of European Studies: Transnational and Global Perspectives program at the Katholieke Universiteit Leuven (KU Leuven). The manuscript was closed in April 2019.

As the Union gains more competences the Member States begin to deconsolidate due to their loss of sovereignty. In order to stop this deconsolidation Member States begin on these avenues to either further voice their dissatisfaction, to lower their cost of exit or to diminish their population's loyalty towards the Union. All of these steps can be seen as a sign of disintegration. Following my framework, reasons for the rejection of EPPO can be found in the first and second avenues: the Member States efforts to become a dead-lock state and the rising Eurosceptic nature of Member States.

Keywords: agency theory, Area of Freedom Security and Justice (AFSJ), enhanced cooperation, corruption, disintegration theory, European integration, European Public Prosecutor's Office (EPPO), European Union (EU), Euroscepticism, fraud, liberal intergovernmentalism, Justice and Home Affairs (JHA), neofunctionalism, new institutionalism, OLAF, social constructivism, sovereignty transfer.

Introduction

The European Union has been facing structural and integrational problems since its conception. It has created a sui generis international cooperation, which has a multi-level decision-making managed by a multi-level governing structure and a complex legal system. The jurisdiction of its agencies is not as clear-cut as in a federal state, but it is not a simple cooperation between states of the same mind. Its quasi-constitution (which is based on the two separate, but interlocked parts of the Lisbon Treaty and its annexes) addresses many problems, albeit its answers are sometimes underdeveloped.

One of such problems is the fight against corruption and the protection of the Union's financial interests as laid down in Article 325 TFEU (PIF). The financial security of the Union is continuously undermined; about 3 billion euros (or roughly 2% of the EU budget) are lost to fraud each year (Guarascio 2016; Mańko 2016). These offences have an increasingly transnational character,

involving activities carried out by several groups of people, acting in an organised manner and operating across national borders (Csúri 2016).

The need for the financial security of the Union was incorporated into Article 86 TFEU following decades of integration and negotiations. The article describes a European Public Prosecutor's Office (EPPO) at a Union level, and is now acted upon by 22 Member States (MSs) in the form of enhanced cooperation. However, many EU institutions, bodies, offices and agencies (IBOAs) – such as Eurojust, or OLAF – and multiple national offices, are already investigating and prosecuting fraudulent cases and cross-border crimes in the Union. Apart from the overlapping competences, many MSs resist further integration, especially in the Area of Freedom, Security and Justice.

This resistance is a result of the ever-growing integration of the Union's IBOAs, since their impact on the MSs' legal orders and democratic structures creates many narrative and structural problems in the Union (Goodhart 2007, 568–70). Thus, cooperation in this area has been subjected to a long process of deliberation by the MSs, and evaluation and self-correction on the Union's part.

Originally, eight MSs have not opted-in to the Regulation, and they have done so on different grounds. The United Kingdom and Ireland historically cooperate less in the Area of Freedom, Security and Justice (AFSJ), while Denmark has an opt-out from the entire policy cooperation. Sweden and initially the Netherlands have claimed that their criminal justice systems are reliable enough, mitigating the immediate need for the implementation of this new office in their countries; although neither countries have refrained from joining the cooperation in the near future. Malta initially did not join, although it played a crucial role in securing the cooperation, as the rotating president state of the EU. The remaining two MSs, Hungary and Poland, have not opted-in due to their increasingly Eurosceptic positions (Marini 2017). These latter two are the only MSs, against whom the European Parliament made a decision based on Article 7(1) TEU, for their breach of the EU's fundamental values laid down in Article 2 TEU.

The focus of this thesis is to explore why certain MSs would reject the creation of EPPO. In the first part of this thesis, I am going to explain what kind of integrational and structural problems presented themselves in the AFSJ (and its predecessor the Justice and Home Affairs). By using two theory groups, one about the principal-agent problem and one about European integration, I am going construct how the area has been transformed from an intergovernmental cooperation model to a supranational decision-making model. By investigating this process, I will assert the conduction of the Article 325 TFEU via an office on the supranational level, as opposed to the national level, is fundamental to the future of the Union. I will provide examples of narrative, legal and structural problems both on the level of the MSs and the Commission, and explicate how the introduction of a new supervisor (EPPO) will improve these.

In the second part of this thesis, I am going reverse the course of my explanations. By using European disintegration theories, I am going to explain the rejection of this new office, while also expanding the principal-agent problem. In this step, I am going to construct three avenues of disintegration that can explain MS non-compliance and their rejection of EPPO.

1. The main narratives of integration around EPPO

The structure of the first part is as follows: first, I am going to interpret the principal-agent pairs of the Union. Then I will analyse the various integration theories in relation to the transition from JHA to the AFSJ, thus arriving at the recent developments concerning EPPO. By closely applying the agency theory, I will explain the narrative, legal and structural problems around the PIF and how the newly proposed EPPO can contribute in solving these issues.

1.1. A specific case of agency theory: European integration

In this first part of the thesis, I am going to utilise two theory groups. Agency theory is originally a tool of economic to describe interactions between a principal and an agent, in which relation the latter carries out the aims of the

former actor (Mitnick 2013). European integration can be understood as an application of the principal-agent problem in two ways. Primarily, I can define a coalition of principals as the MSs who create agents (the IBOAs of the Union) to make cooperation easier. Second, this relation can be seen in reverse, when the IBOAs, especially the Commission, compel and give direction to MSs. The former can be understood as the intergovernmental model, while the latter as the supranational model. It is important to note, that the Union uses both models in various policy areas. (Pollack 1994, 1997; Kassim and Menon 2003; Shelton 2013; Brandsma and Adriaensen 2017; Delreux and Adriaensen 2017)

1.1.1. Agency theory

Agency theory, otherwise called the principal-agent problem is a basic tool of explaining the interaction of contracting parties. In its basic application the principal delegates the responsibility of carrying out a function to the agent (Kassim and Menon 2003, 112). The problem arising from this relation concerns the asymmetric distribution of information, which could enable the agent to diverge from the appointed task in a way that damages the principal's aims.

In the context of the EU, there is a number of ways that principal-agent pairs can be identified. "The chains that involve the European Parliament begin with the European electorate at large, while those that involve the member states begin with the citizenries of each respective member state" (Brandsma and Adriaensen 2017, pt. 3.3). Furthermore, the decision-making and the policy discourses of the Union are a fusion of intergovernmental and supranational models (Schmidt 2016). The former states that MSs, as the principals, created the institutions of the Union, the agents, in order to lower transaction costs and overcome the problems of intergovernmental cooperation (Pollack 1997, 103). Interactions in this case are not as fluid as in supranational models, since they centre the MSs as the main actors of integration.

In supranational models the institutions of the Union, while still influenced by the MSs, influence the MSs in a greater degree, thus creating a revolving process. In such cases the institutions become the principals of the Union, while MSs

carry out decisions made by such institutions (Brandsma and Adriaensen 2017, 48). In the case of the exclusive competences of the Union, the MSs may present their interests, but they are nonetheless integrated into a supranational interest of the Union.

The fusion of these two models can be understood in the division of competences between the Union and its MSs, especially in the three-pillar structure of the Maastricht-era. While this structure has been simplified by subsequent amendments (such as the Amsterdam Treaty and the Lisbon Treaty), elements remain where the logic of the two models intersect, such as the mechanism of enhanced cooperation (as in the case of EPPO) or the area of Common Foreign and Security Policy/Common Security and Defence Policy (CFSP/CSDP). These intersections largely emerge when "a supranational and an intergovernmental principal delegate powers to the same agent" (Brandsma and Adriaensen 2017, 46). In the case of the PIF and EPPO, there is the interest of the Commission, a supranational body, which is the main driving force of the legislature in the Union. There is also the interest of the MSs, which can often contradict that of the Commission's in cases relating to sovereignty-transfers and especially the principle of subsidiarity. (Szarek-Mason 2010, 43; Vervaele 2018, 44–45)

1.1.2. European integration theories

For several decades neofunctionalism, as advanced by Ernst B. Haas, has been the main theory dominating academic discourse. In the 1990s however, several other theories, such as Andrew Moravcsik's liberal intergovernmentalism (LI) and Alexander Wendt's constructivism, have begun to reassess the course of the Union. Many scholars agree that one theory cannot explain integration as a whole, different theories focus on different aspects (Rosamond 2007). In the following section I am going to link LI and neofunctionalism to the two models of integration and their interaction. The models describe integration by exploring the Union's history. They characterise the treaty-creating and treaty-modifying moments and the various events leading up to them, i.e. European

conventions. Most of these integration theories differ in their assumptions about the aims of the numerous actors in the Union and give varying importance to either the IBOAs, the MSs or the people of the MSs.

1.2. The integrational forces in JHA/AFSJ

To understand why the creation of EPPO raises concerns for many MSs, how integration proceeded in its respective areas must be understood. The origins of AFSJ can be found in the later periods of the European Communities, namely in Title IV (Article K) of the Maastricht Treaty. Integration in this area (JHA) can be characterised by the transition of decision-making structures from the intergovernmental level to the Community level, namely in the Police and Judicial Co-operation in Criminal Matters (PJCC). Despite neorealist accounts, integration in the EU as a whole and in this area have been, to a certain degree, accomplished. Therefore, before addressing the transition from the JHA to the AFSJ, I am going to clarify how and why the neorealist discourse has failed to accurately assess the integrational forces in the EC/EU.

1.2.1. The misinterpretation of JHA/AFSJ in neorealist discourse

Structural realists or neorealists define the international sphere as an anarchic realm. In this model, nation states are the main political actors and their interactions are reliant on cooperation and harmonisation, rather than integration. Integration in their view inevitably leads to the consolidation of one central authority, which replaces the many nation states. Through the anarchic realm every nation's natural goal is acquiring and maintaining security, either by using force or peaceful cooperation. Neorealists thus assume that the existence of a supranational authority that protects states from each other is unlikely. (Waltz 1979; Mearsheimer 1994; Walt 2017)

Due to the lack of central authorities, nation states have to rely on their material and immaterial capabilities to secure their survival. States however do form alliances in order to secure their positions, but realists say these are always short-term and usually happen due to outside pressure. Contrary to institutionalists,

their view is that international institutions only marginally contribute to stability or peace. They claim these only reflect the power-structures of nations and do not influence state behaviour (Mearsheimer 1994). They, however, can explain how there would be a natural resistance of MSs to resist integration. Sovereignty transfer weakens the independence of nation states, which is objectively a less favourable position, which yields lesser capabilities for security. (Waltz 2000, 14–15)

In the case of European integration after the Second World War, most realists consider the bipolar nature of the Cold War and the Soviet threat to be the driving forces in European cooperation, and both Mearsheimer and Waltz theorised that with the emergence of a multipolar international scene after the fall of the Soviet Union, European cooperation would not continue. While Mearsheimer asserted that without Soviet pressure, the nationalist conflicts will return to the European continent; Waltz compliments the EC of having maintained an unprecedented level of economic integration, but states that MSs have not been able to maintain a common foreign and military policy and without outside pressure, they are even less likely to do so. (Mearsheimer 1990; Grieco 1995, 28; Waltz 2000, 31)

Despite these accounts, a gradual expansion of the Union's policy-scope can be seen. Alas, the integrative steps in the 1990s were slow and uneven, the 2000s proved to improve the interaction between the institutions of the Union and vis-à-vis the MSs.

Thus, neorealists have a limited understanding on how cooperation in the Union has been facilitated by the continuing interdependence of European states during the Cold War period and after. Despite the fact – that with the start of the Maastricht-era – there still was no central authority above nation states in Europe and the bipolar state of the international scene had ended, European states still furthered cooperation in the area, nonetheless through the strengthening of Community institutions. While neorealist interpretations of the economic integration in this era can be found (Grieco 1995), they also provide

some insight to why states would agree to integration outside of economic terms. Rosato explains how mutual commitment to integration was facilitated by power-balances. He claims that states agreed to integration in the fear of other states taking control of international cooperation, and in turn, MSs agreed to create common institutions to prevent other MSs from acquiring a dominant position. (Grieco 1988; Rosato 2010, 207–25)

While this argumentation did explain the creation of new economic structures, such as the European Central Bank and the European Exchange Rate Mechanism, in the case of JHA/AFSJ these explanations do not hold. Although initial cooperation in the Maastricht era started with two conventions; one on Europol and the other on the PIF (Council 1995a, 1995b); the need for integration was expressed on the basis of improving an already existing policy structure (something which neofunctionalists explain with the spillover effect). and not for the act of balancing European powers (N. Walker 1998, 223–24).

Integration happened to ease cooperation between MSs. A 1997 study, Corpus Juris, which envisaged a single European legal area, had set a range of integrational efforts into motion. Such an effort was the 1999 Council meeting in Tampere, where the idea of Eurojust was first mentioned (European Parliament 1999, para. 46); and three years later the implementation of the European Arrest Warrant (Council 2002). These areas are highly non-competitive, and there is little reason to see why MSs would try to shift the balance of power as Rosato would suggest.

Realists are right in explaining state resistance against sovereignty transfers as straightforward, as the MSs were not ready for a vertical integration in these fields, but nonetheless they supported horizontal approaches (Csúri 2016, pt. III). A central authority has formed without a leading power dictating integration, but rather with an international hierarchy through MSs and institutions (Vollaard 2018, 41).

1.2.2. The two models of the Maastricht-era: Intergovernmentalism and supranationalism

The international hierarchy of the JHA were described in the provisions of Title IV of the Maastricht Treaty, which formalised institutions and enabled policymakers to achieve more through policy lock-in mechanisms (Shelton 2013, 34). The third pillar was mostly intergovernmental in nature, thus it fell outside of EC competence. This intergovernmental cooperation was nonetheless a process of expanding the economic integration into other, supporting policy areas, such as the PIF.

The legal basis of the PIF was laid down in Article 280 of the Maastricht Treaty (Article 325 TFEU); however, in the pillar structure combating Union level fraud was divided between the first pillar, as in measures relating to anti-EU fraud; and the third pillar (JHA), as in combating EU crime in general. As such, this created an ambiguous position – since the first pillar involved supranational legislation, while the third relied only on intergovernmental cooperation. However, integration in the JHA in the 1990s was only conducted by intergovernmental conventions, and only later – with the Amsterdam Treaty – was it divided between the two pillars. Decision-making in the JHA was equipped with a unanimous voting system in the Council of Ministers. Although the process did involve several Community institutions, the role of the Commission and the Parliament was fairly limited, and in some cases without concretised legal bases. The Court of Justice had no authority in the pillar at all. Because of these elements, progress in the JHA (and in the PIF) was slow and uneven. (N. Walker 1998, 234–37; Staelens 2014, 24–26)

Liberal intergovernmentalists (LI), taking on the basic assumptions of both neorealists and intergovernmental institutionalists, assert that international institutions play only a little role in integration. Moravcsik describes the EU as an "international regime for policy-coordination" (1993, 480), in his analysis nation states, which are the main actors of the international scene, are providing the aims and policies that international institutions follow. Intergovernmental

conventions thus are the main policy drivers in the European integration process.

Through a series of intergovernmental bargaining, MSs following their domestically constructed foreign policy goals engage in negotiations with each other. (Moravcsik 1993, 480–81) As I have mentioned above, the agency relations in which they do this are quite simple: MS governments, as agents of their domestic principals (the voters), carry out their multilateral negotiations with other MSs. Together these MSs become a set of principals of their own by creating their agents (the institutions of the Union) to foster cooperation and ease harmonisation.

Before the Maastricht Treaty, the policy areas that the EC has governed in this way were congruent only to matters relating to the economies of MSs, and the trade and custom unions between them. With the Maastricht Treaty came a more comprehensive model, which created and advanced the second and third pillars through a series of intergovernmental conventions.

On the other hand, neofunctionalist accounts categorise these European conventions as partial agreements that resolve negotiations only on the basis of a minimum common denominator (Haas 1961, 373). These kind of agreements are the least demanding towards the MSs, but have proved to be uneven, slow and ineffectual, regarding JHA. As Walker (1998, 236) writes the third pillar was slow, because of the reluctance of MSs to move forward, due to their fear of losing sovereignty. Both its narrow scope and its delayed decision-making is "determined by the most cautious" MS, which prevents the spillover effect of integration that neofunctionalist theory is centred around.

Neofunctionalists argue that international institutions create supranational decision-making systems, by changing the behaviour of actor groups, who in turn delegate some of their sovereignty to such systems; which process is then reinforced by the spillover effect. Haas formulates three preconditions to integrations of such kind: the existence of potential to mitigate the negative externalities of the Union; the existence of European elites (principals), who

prefer to solve these externalities on the regional, supranational level, as opposed to the national; and the existence of supranational IBOAs (agents) with clear competences and rules for governance (Haas 1961, pt. 2; Jones, Menon, and Weatherill 2012, chap. 2).

Due to the torn nature of the PIF between the pillars, the supranational level lacked the latter precondition. Regarding externalities, the early lack of coordination of judicial matters in the EC/EU can be attributed to the lack of relayed information, which caused MSs to be wary of integration. Fraud in the Union has been (and still is) a majorly overlooked field of crime, despite its high number of occurrences. As Benyon in 1994 writes "[e]nhanced cross-national police cooperation against fraud appears to be needed, but at the present, this does not seem to be a matter of serious concern to the member states, as it is not perceived to be a threat to national security or social stability". In the terms of agency theory, the MSs, as the principals, failed to recognise the harm that missed integration (or otherwise the missed benefits of further integration) created both for the Union and the MSs; thus in the intergovernmental pillar they made little efforts to relay this policy goal to their agents, the institutions of the Union.

Thus Haas' prediction comes down to the lead of the European elites, that made the necessary integrative steps possible, although at the time neofunctionalists fail to explain the process of integration through this practice alone. This explanation is much closer to the actor-oriented methods that LI claims. However, the sequences of treaties that were formalised by the Treaties of Maastricht, Amsterdam, Nice and lastly Lisbon show an existence of a huge number of interdependencies that were fostered by changing supranational and national positions, and by the recognition of existing externalities; and as such ex post validate many claims made by neofunctionalists. (Schmitter 2005)

1.2.3. The drivers leading up to AFSJ: spillover and rationalist bargaining theory

In the 1990s, it was the product of the European elites, which lead to a quick succession of integrative steps that happened after the turn of the century. The frequency of treaty-amending conferences increased and three contesting theories offer two explanations. Moravcsik's LI describes this as a prime example of rational bargaining. In the agency relations, principals constructed the conventions to limit the influence of the institutions of the Union. The varying policy solutions that were formalised in the negotiations were a mapping of already existing domestic preferences, thus the negotiations acted as a harmonisation tool, while real negotiations were taking place in the MSs themselves. Negotiators from the MSs together with the institutions mapped out the preferences of MSs, and agreed to take back the issues to their respective governments and parliaments. The more defined the policy area was, the more harmonisation could take place. (Moravcsik and Nicolaïdis 1999, 66; Laursen 2006, 2)

As the Commission was criticised of overplaying his hand in the Maastricht negotiations (Jones, Menon, and Weatherill 2012, chap. 10.3) it did take up on a more passive role in the conferences afterwards, but the other two theories assert that the Commission did not need to take on a more active role to influence the direction of the negotiation process. Both neofunctionalism and new institutionalism (NI) offer that the MSs are no longer or are only partly in control of European integration, and although they reach this conclusion from two different bases, neofunctionalism offers a wider explanation. Thus, agency became a shared tool that both the principals and the agents exercise.

NI asserts that institutions are not simply arenas, but they constitute as a system of structured influences in the Union. They described the Union as a multi-tiered governance system that operates within governance regimes. These regimes, through the work of the institutions, create institutional culture, which is to be understood as procedural norms rather than shared policy goals. The MSs face serious shortness of time, information and delegation, which causes "gaps" in

their control over integration. On the other hand, the Commission has considerable oversight of policy formation and more information about policy processes. In the case of the intergovernmental pillars, this means that the Commission only needed to assert a framework on how the intergovernmental pillars should work, and then, through path dependency, integration in these areas will develop a need to be furthered on. This does not necessarily mean that the will of the Commission is ultimate. International bargaining still happens in this model, but MSs have significantly lesser agency in negotiations. (Bulmer 1993; Pierson 1996)

Neofunctionalists similarly argue that spillover processes, actor socialisation and integration learning processes had influenced these conferences (Laursen 2006, 2). Amongst the various spillover effects, both political and cultivated – in addition to functional spillover – took place, especially in the JHA. With the ratification of the Amsterdam Treaty of 1997 the area of JHA was transformed and the separation of the first and the third pillars that the Maastricht Treaty had established, was no longer as rigid as before (Norman 2016, 53). OLAF was established in 1999 by gradual (functional) expansions of a previous task force, UCLAF. Due to political spillover, a provisional judicial cooperation unit, named Pro-Eurojust, was set up in 2000 on the initiative of several MSs, although it did not have any legal base in the Treaty. Pro-Eurojust later became Eurojust in 2002 after it received the necessary legal base and additionally its powers were increased (Staelens 2014). There are, as in the NI model, some bargaining exchanges, as not all of the ideas of the Commission went as planned. Eurojust became an intergovernmental body instead of the supranational EPPO that the Commission wanted to establish at the time, which was due to MSs' continued reluctance to give up parts of their sovereignty relating to these areas. Nevertheless these processes can be attributed to the unintended consequences of both the four freedoms of the Union and its successive enlargements, which account for both functional and cultivated spillover, as well as differentiated (dis)integration in the Union (Bardi, Rhodes, and Nello 2002; Schimmelfennig 2014).

In conclusion, LI explains integrative continuity and predictability in policy areas that have more common policy goals amongst the MSs, such as agriculture and trade. Equally LI offers less explanations regarding policy areas that are not as defined on the national level, possibly because it rejects the importance or existence of spillovers. Additionally LI rejects the lead of intstitutions. Consequently, it cannot properly predict integration in areas not defined on the national level, while NI and neofunctionalism provide explanations, in the form of path dependency and spillover. JHA mostly falls under the second category, since MSs were not only not anticipating sovereingty-transfers, they continuously rejected them in the matters of the judiciary and policing, thus slowing down integration.

1.2.4. Constructivist theory

Conversely social constructivist theory offers a different viewpoint on how intergovernmental cooperation happened in the 1990s. Constructivists do not introduce a new integration theory and do not make claims to explain European integration, although their explanations did – indirectly – create a middle ground between the actor-oriented LI and the process-oriented neofunctionalists. Furthermore, these two theories mostly focus on the European level, while constructivism tries to explain the social connections through how society generates or builds these structures. (Checkel 2006, 12–14; Wiener and Diez 2009, 144–47)

Constructivist theory puts emphasis on this social structuring of politics, which are dependent on the historical contingency of these social structures. Political values, and in extension foreign policy aims, are thus intersubjective understandings of the varying social groups that create a nation state. They only function if a majority or all social players accept the notion of foreign policy aims and integration. (Wendt 1999; Barkin 2009; McGlinchey, Walters, and Scheinpflug 2017, chap. 4)

On the same basis, constructivist theory disputes the argument of LI, that governments are ready for the international bargaining process. The actions and

notions of states are not singular in this respect, and international bargaining is not just a product of material power plays. Ideas, norms and identities are inherently influencing decision-making, and governments do not necessarily realise social pressure in its intended way or scope. Constructivist theory additionally puts more emphasis on the personality of the leaders and of influential persons in politics, and also on the use of linguistics (Checkel 2006; Rekasi 2010). (Wiener and Diez 2009, 145–50; McGlinchey, Walters, and Scheinpflug 2017, 41)

Thus, it is understandable why the third pillar was mostly intergovernmental and why that caused it to be slow and uneven. Neither the political nor the public groups of the MSs were concerned with matters of fraud, mostly because they either profited from it (i.e. corruption) or did not have the necessary information about it. Transparency and the democratic control in these issues, while not sufficient, are influential co-efficients in the fight against corruption and fraud (Lindstedt and Naurin 2010).

Due to the lack of social pressure and the visibility of these issues (Benyon 1994), MSs have resorted to their "default" behaviour of resisting sovereignty-transfers and maintaining their legal status quo. This is in line with LI assertions, that harmonisation is less likely to occur in policy areas that are only marginally defined by the nation state, such as JHA. Constructivist theory complements these arguments with the added level of analysis, on the social structures of each MSs and on similar structures cross-MSs.

1.2.5. Lisbon-era and the creation of EPPO

The Convention on the Future of Europe in 2003 marks the next phase of integration. The failed "Constitutional Treaty" has led to the simplification of many areas of the Union, especially in the JHA. The Lisbon Treaty carries over much of the harmonising steps in the JHA with no less Commission oversight, and surprisingly with the exclusive right for it to initiate legislation, and the use of the Community-method in most of its issues. The disappearance of national

barriers explains most of the decisions made in JHA, and thus diminishes the intergovernmental nature of the area. (Donnelly 2008)

In the Constitutional Treaty of 2005, EPPO gained a clear legal basis. The article was copied over to the Treaty of Lisbon, with two additional paragraphs. These paragraphs introduce the possibility of establishing the office by an enhanced cooperation if the Council fails to make a unanimous decision. This change shows an anticipation of further resistance from MSs, after their resistance to the Constitutional Treaty. The Commission was still worried about the amount of MSs that would support this office, although the Lisbon Treaty lead to the more important consequence that with the abolition of the pillar system the Union gained the competence to make supranational action possible, thereby furthering integration and harmonisation in many areas, including the AFSJ (Staelens 2014). However, the Commission's fear was confirmed by the events which in 2017 led to the regulation implementing an enhanced cooperation for EPPO (Council 2017).

1.3. Why is the PIF ineffective?

After I explained how integration went down in the JHA/AFSJ, I can use the theoretical and historical accounts to explain the narrative, legal and structural problems that EPPO solves. In this thesis, I will not go into the fine details of how EPPO aims to resolve these issues or how effective this new office will be, considering there is a serious amount of literature on that. Rather this section of the thesis will portray the problems that are present in the Lisbon-era, and which are the product of how integration has happened since the Maastricht-era. I will differentiate between two sets of problems, one on how MSs relate to the AFSJ and one on how the Commission is prevented from implementing a greater AFSJ.

1.3.1. Member State (agent) compliance

Spillover in the JHA/AFSJ can be related to the enlargement process of the Union. This problem is two-fold. On the one hand, there is the process of

accession and the post-accession compliance of MSs. On the other hand, the process of enlargement created more discord in the integrational aims of the Union, thus prompting the Union to formalise institutional settings that enable differentiated integration (Leuffen, Rittberger, and Schimmelfennig 2013). This section will focus on the former issue.

Applicant states to the Union have to fulfil a set of requirements which were formalised in the Copenhagen Criteria (Veebel 2011). The Union has the right to reject applicant states if there is an indicated level of anti-corruption measures missing from the state legislation and practice. Although the technical details, for example the measurements of corruption and anti-corruption, are not very clear, the Union essentially loses this enforcement power against MSs. (Schroth and Bostan 2004; Cirtautas and Schimmelfennig 2010)

While it is true that new-MSs are more compliant with the Commission, Sedelmeier warns, that this may be the result of a habitual behaviour acquired in the accession-period and it may disappear in the future (Schimmelfennig and Trauner 2009, 2). The accession process has a much lesser effect on the social and political structures of applicant states than expected. The Schimmelfennig study's conclusion about the difference between pre-accession and post-accession compliance shows that the transition "had a much less dramatic influence on the new member states' compliance than suggested by pessimistic accounts" (2009, 6), but they do point out that some areas, namely the transposition, enforcement and application of law, is problematic and that domestic opposition to EU rules is more apparent. The study also points out the importance of NGOs in keeping the MS governments in line with EU law. Furthermore, "the impact of EU conditionality on enforcement and application had been weak even before accession, and it […] had always depended on supportive governments and administrative structures in the candidate countries, […] alternative EU incentives and influences ranging from sanctions to social learning compensate […] to some extent" (2009, 7). What this means for my case is that these MSs can have a tendency to tolerate or even facilitate anti-EU elements (i.e. political and bureaucratic corruption), because their social

structures inhibit their effective recognition and fight against corruption; regrettably, it is by the same logic why they are reluctant to support EPPO.

This tendency arises from the complex nature of the principal-agent model in the Union as shown before. The prosecution of fraudulent cases is in the power of the MSs due to the principle of subsidiarity (Article 5(3) TEU) and as neither the Court of Justice, nor Europol are equipped with these competences (Articles 251-281 TFEU), this effectively means that the prosecution of fraud committed by the institutional partners of the EU (i.e. the MS and their governments) is in the hands of the same institutional players that benefit from these frauds. The Union is currently unable to force MSs to conduct their investigations, or to manage the enforcement of said investigations. OLAF's own research has found that in the period of 2009-2016 about half of its recommendations were dismissed by national courts (OLAF 2017, 32). It also found that MS investigations devalue the financial impact of these irregularities regarding the MS and Union budgets (2017, 29). In states like Hungary (Scheppele 2014; Pech and Scheppele 2017; Reuters 2018) or Poland (Financial Times 2017; EUobserver 2018), where the independence of the judiciary and the freedom of the civil sphere are open to doubt; in Romania and Bulgaria, which have complicated histories with institutional corruption and fraud (Schroth and Bostan 2004; Carausan 2009; Guarascio 2016); this raises the question whether these states will slip back from their efforts 'for compliance with the EU' (as Sedelmeier warns about), and whether their investigations will be conducted properly, in the few cases when they do choose to investigate.

In an attempt to address these issues "[t]he EPPO's proposal envisages a multilevel and integrated normative system", writes Caianiello (2013, 120–21). This multilevel system is an inherited attribute. Taking into consideration the long integrational processes in the first and second pillars of the Union, IBOAs always start out with incomplete legislation, sometimes not involving all MSs, moreover rarely discarding entire ideas or proposals, but rather changing and amending them (Wilga 2008; Clougherty et al. 2014; Cuyvers 2017). What is more important for MSs is the effects of integration. As in EPPO's case, the

national law has to be applied and the judicial review mechanisms are assigned to national jurisdictions (Klip 2012). This integration, however, is still fragmented due to the difference in MS legislatures. Without further harmonisations EPPO's powers could remain dangerously dependant on the national law, which could lead to the same inefficacy that OLAF experiences (The European Criminal Law Associations' Forum 2017a, 100, 2017b).

1.3.2. Commission (principal) limitations

The negative narrative that I can explain through integration theories is the lack of Commission's capabilities. As LI explains, the European conventions serve as a harmonisation tool for MSs, but also provide an opportunity to prescribe and therefore limit the capabilities of the agents of the Union. Such limitations are created by both functional and structural/institutional means.

The structural limitation, with having the Commission act as a supervisor of policy implementation, is its lack of resources. Previously, in 1998, UCLAF, the precursor of OLAF, had only 130 staff members (Nugent 1999, 128). The substantial argument is that the Commission has a limited scope of availability. First and foremost, there is a "bureaucratic segmentation" in the Commission, as Lequesne puts it (2000, 45–46). Second, with various crises following each other (such as the Euro-crisis, the migration crisis) the Commission cannot focus on its implementation of "marginal", regulatory practices; it has to delegate these responsibilities to IBOAs outside its institutional framework. This kind of debilitation can be improved by granting an independent office – like EPPO – the necessary legal bases and financial tools.

The functional problem focuses more on the policy areas than the limitations of the Commission itself. The implementation of some policy areas can fail, even if MSs cooperate with the Commission. In other areas, which involve greater sovereignty-transfers (such as the AFSJ), MSs might actively try to prevent proper implementation, while the Commission lacks the legal and political power to counteract these intentions. (Nugent 1999, 129)

1.3.3. The introduction of a supervisor

Additionally, a new supervisor – due to the principal-agent problem – might make advancements on another problem at the agent level. OLAF, besides investigating MSs using EU funds, is also responsible for monitoring EU institutions, having completed 48 investigations concerning EU Staff in 2016 (OLAF 2017). The problem here is that OLAF is not a fully independent agency. While it mostly conducts its own investigations, it is not only elected by the same body it is supposed to keep in check; but it is part of the Commission itself (Sgueo 2017). As Brandt and Svendsen suggest: "[c]learly, one main policy recommendation would be to base OLAF entirely outside the Commission" (2013, 597). EPPO could serve as an agency with similar competences as OLAF, while also having harmonised institutional relations with Eurojust. However, EPPO would operate with the additional value of independence, both in its appointment and investigations. This is buttressed by several safeguards, e.g. even OLAF will act independently of the Commission in all actions when supporting EPPO (Council 2017, para. 104), and that EPPO is granted full autonomy over its budget (para. 111).

This shows a strong determination from the Commission in favour of establishing this office, since regarding the PIF, it acts as a principal creating an independent supervisor between itself and the MSs, who (acting as agents) are supposed to investigate these crimes in their compliance with the Treaties. This reinforces the notion that the Commission can act as a principal in some policy areas. The self-regulatory act of enacting EPPO is certainly not at the interest of most MSs, given the fact that many MSs used the yellow card procedure to halt its creation. As the supranational nature of the AFSJ strengthens, the Commission takes on the initiative of agency, thus increasing its set of requirements against the MSs. Furthermore, the Commission mitigates its own set of drawbacks with the implementation of this new supervisor.

1.3.4. The changes in the principal-agent relations of the Union

The introduction of EPPO greatly changes the agency distribution of the Union, by reinforcing the area of the PIF, policing and criminal law in the supranational level. Consequently, the creation of EPPO has sometimes been described as a federalist moment (Reding 2013). While the Union is not a federation, it is also not a loose collection of cooperating states either. Its sui generis nature contains elements from both formations; the exclusive and shared competences are the most apparent example of this. It should also be noted that EPPO does not have a federal nature either (Erkelens, Meij, and Pawlik 2014, 214–15), but the logical implications are similar. Offences committed against the finances of the Union, on the Union's level or in cross-border crimes, can be more effectively handled by an IBOA on the same level. This section will not argue for or against the notion that the Union is federalising, instead it will draw conclusions from the parallels between federalist theory and the integration of the EU. It should also be noted that the damage arising from federalist literature is somewhat negated by the fact that the EU is not a federal system.

In federalist integration theory exists a concept of "robustness" as expressed by Jenna Bednar. "Bednar suggests that a federation's robustness increases as its set of self-reinforcing safeguards expands" (Vollaard 2018, 72). In a federation, disintegration happens when a participant state violates the basic rules that uphold the federation or shrinks from its responsibilities, which processes she calls non-compliance. This model also distinguishes between asymmetric federalism (the federalist equivalent of the EU's differentiated integration) and disintegration, saying the latter only happens if the asymmetry does not "[sustain] the basic federal rules of the game that underpin the EU" (Vollaard 2018, 69).

EPPO's establishment is currently an example of differentiated integration, as it is established in an enhanced cooperation. As I have expressed, the creation of EPPO solves a variety of narrative, legal and structural problems in the Union, many of which inhibit the proper reallocation of its resources. Resource

efficiency is not only an important aspect of regional organisations, security co-operations (Bailes and Cottey 2016, 218) and economic unions (Podkaminer 2016), it is the very purpose of many EU policy areas, e.g. the Common Agricultural Policy and the Cohesion Policy.

Since forceful correction is impossible in the EU, it can be argued that the creation of EPPO is a self-reinforcing safeguard, and more precisely a structural safeguard, which "relate to the fragmentation of power by means of shared competences and enshrined checks and balances" (Vollaard 2018, 72). The introduction of EPPO as a supervisor and the transition of the AFSJ from an intergovernmental cooperation to a Community-level structure fit these descriptions well.

The process of policy lock-in and the creation of loyalty in the Union can also buttress this point. For example, the combined factor of the public gaining knowledge about domestic corruption and that they perceive the EU as less corrupt has been found to increase public support for the Cohesion Policy (Bauhr and Charron 2019). It would not be so premature to assume that other policy areas, especially the ones relating to trade and agriculture (the Common Agricultural Policy) can encompass a similar mechanism. This mechanism is especially important if I look at how the EU spends its budget, as these areas take up around three-quarters of the budget (European Commission 2015, 2017).

Conclusively, the regulation of the PIF – through the implementation of EPPO – is a cornerstone to the efficient redistribution of the Union's budget, which is pertaining to the main policy areas of the Union creating policy lock-in and thus increasing the overall loyalty in the Union. The creation and maintenance of loyalty on the part of the Union is one of the main co-efficients that validate the sovereignty-transfers that take part in the integration of the Union, and in turn would validate EPPO.

2. The rejection of EPPO as a sign of disintegration

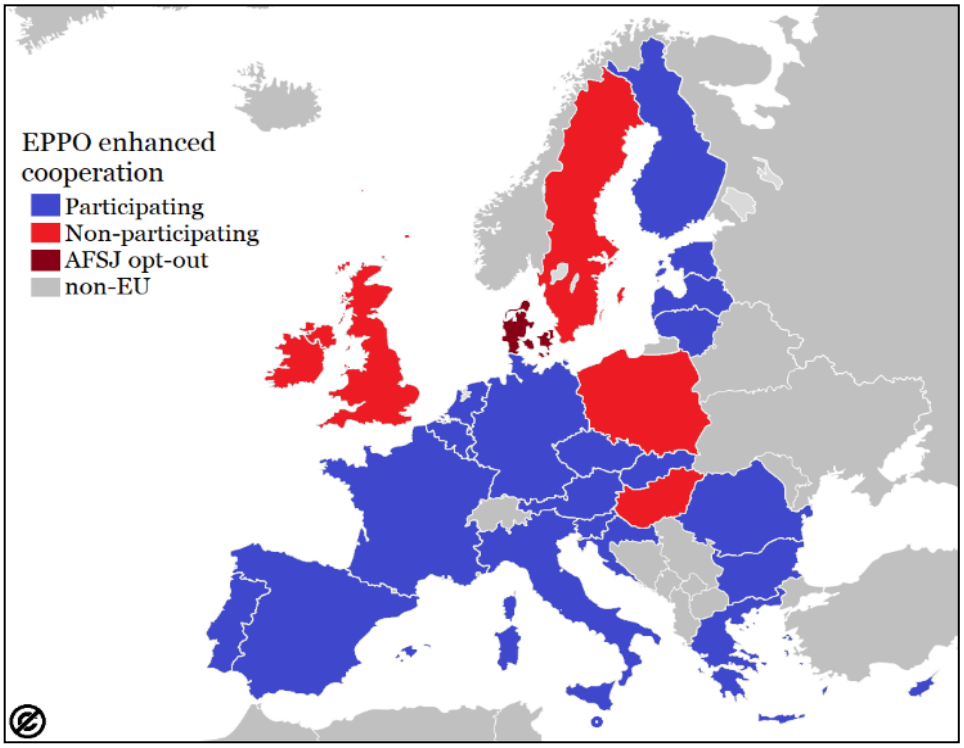

Image 1 (source: the author): members of the enhanced cooperation of EPPO, as of August 2018

The Union has been facing non-integrative and disintegrative factors since its conception. The EC/EU integration was successful because European states, seeing the economic benefits, decided that other international and national alternatives were less feasible; and the integration continued to be, because of its policy lock-in capacities. The cost of exits, or national withdrawal, became both economically and politically high (Vollaard 2018, chap. 7).

In the second part of the thesis, I am going to discuss the rejection of EPPO. First, I recollect a short summary of how EPPO is created through an enhanced cooperation rather than through EU decision-making. Then I am going to connect my previous analysis with Vollaard's theory to explain how the changes in agency-relations can cause dissatisfaction, which is then translated to disintegration. With this analysis, I construct three avenues of disintegration to explain how the rejection of EPPO can indicate disintegration in some MSs.

Originally (in October of 2013), 11 MSs have submitted their reasoned opinions as in issuing a "yellow card" (Article 7(2) of Protocol No. 2 TFEU), stating that the proposal was not respecting the principle of subsidiarity. Their reasoning included the problem of limiting national sovereignty in a disproportionate way (Article 5(4) TEU), favouring Union competences without appropriate reason. They also had concerns regarding EPPO's incompatibility with national law; they oft question the added value of the Regulation (Article 5(2) TEU); on the other hand, some of them state that its competences are not clear enough and reach too far (Article 5(4) TEU). There was also the somewhat incorrect assumption that OLAF would be discontinued (von der Steur 2014). They were sceptical about the "double hat" nature of European Delegated Prosecutors, fearing that "EPPO's orders could easily override national priorities" (Franssen 2013). Italy, on the contrary, argues that the Regulation should be more potent with competences besides the PIF, e.g. the right to prosecute individuals "accused of trafficking, terrorism and organized crime" too, (Cooper 2016). Overall, the legal reasons which the MSs have raised can be summarised to the principles of subsidiarity, conferral and proportionality (Erkelens, Meij, and Pawlik 2014, chap. 10).

The Commission, furthering on its own initiative, has concluded an extensive communication with the MSs defending its position, whose results were presented at an inter-parliamentary meeting on 17th September 2014, where 16 national parliament members discussed decentralising EPPO and supported a common declaration for its establishment (European Commission 2013). In the following month, they adopted the Regulation establishing a more decentralised EPPO, than its original conception (White and Dorn 2012). At the start of the enhanced cooperation, eight countries have not joined the Regulation. This number was then reduced to six, with Malta opting in on March 9th 2018 (Vella 2018), and the Netherlands opting in on August 1st 2018 (European Commission 2018).

The main question that I am trying to answer now is how a horizontally differentiated integration expresses itself as horizontally differentiated disintegration in the MSs that do not join the enhanced cooperation.

2.1. The rejection of EPPO as seen through disintegration theories

To assess how the rejection of EPPO effects the integrational and disintegrational processes of the Union, I first have to define what I mean by these terms. In my thesis, disintegration, as opposed to integration, is the dissolution of both supranational and intergovernmental agency in favour of national agency. The integrative forces of intergovernmental bargaining and spillover create certain institutional settings that converge in the agent-level of the Union, which in return creates the prerequisites of policy lock-in, increasing the overall loyalty of the principals (and that of their principals, the voters) to the system of integration. (Vollaard 2018, chaps. 6.4-6.5)

Disintegration can manifest itself in the institutional environment of the Union. MS cooperation with the Commission, if the latter assumes the role of the principal, is crucial to the dynamic to sustain the system of integration the MSs have achieved. Consequently, MS compliance with the IBOAs of the Union is equally important (Erkelens, Meij, and Pawlik 2014, chap. 10.1). I can draw parallels with Bailes and Cottey's criteria to security cooperation (2016, 215–18): hegemonic decision-making, zero-sum games, rigid, cooperative structures and superficial declarations weaken such cooperation. As I have previously mentioned, one other criterion would be the efficient use of resources, which – in the case of the EU – the creation of EPPO would try to safeguard. Thus, MS compliance with the decision-making process that takes part in the institutions of the Union is an important factor for integration. On the contrary, disintegration presupposes but does not automatically stem from non-compliance and dissatisfaction. Disintegration can manifest if non-compliance damages the institutional environment of the Union, thus not just halting

cooperation, but endangering it. On the other hand, it should be noted that disintegration is not simply the reverse of integration (Vollaard 2018, chap. 6.2).

Disintegration is a complex application of Hirschman's triad of exit, voice and loyalty. Dissatisfaction always exists in a polity, for without dissatisfaction political discourse would cease (Vollaard 2018, 136–37). The main question is how do units of such polities deal with dissatisfaction. States in this question have two main options; raise their voice to let others hear their complaints, while remaining a member of such polities, or exit from them (Hirschman 1970, 1978). The choice between the two is determined by their relative cost for the state, in Hirschman's analysis exit is often less costly than voice, except in the cases where loyalty exists between the unit (the state) and the system (Hirschman 1970, 76–78).

2.1.1. The mechanism of disintegration in the European Union

Following Vollaard's theory of European disintegration, I can place the effects of EPPO's establishment and the effects of its rejection in the terms of disintegration. Vollaard builds upon the work of Stefano Bartolini on polity formation.

There are two notions that need to be explained regarding polity formation: external and internal consolidation/construction. The former denotes a system's locking-in capacity of its actors by controlling its boundaries and generating loyalty. While the latter (being facilitated by external consolidation) denotes the formation of voice structures and the ways of further interaction in the system (2018, 130). In the terms of the Union, integration is the "process of boundary re-definition", as it restructures the competences that MSs and IBOAs hold. The integration of the Union causes the MSs to "disintegrate" in their own polity. Vollaard describes the underlying process as such:

The internal consolidation of the Union weakens the external construction of its MSs. The external deconsolidation of MSs weakens their internal construction, which in turn generate dissatisfaction. This dissatisfaction is then translated to

either voice or exit, or in other words, increases the chance of disintegration, depending on how much loyalty and opportunity for voice there is in the Union. If the cost of full exits or loyalty is high, then dissatisfaction is translated to partial exits. If however alternatives are available from the international scene, MSs' interests towards a full exit are more likely (Vollaard 2018, chaps. 6–10).

This explanation of European (dis)integration can be linked to the process of sovereignty-transfers and the duality of agency relations. The transition of the AFSJ from an intergovernmental cooperation to a supranational one increased the agency of the IBOAs of the Union. In other terms, the boundary re-definition of these competences has devolved the agency of the MSs thus weakening their external construction. In the specific case of EPPO, the right to investigate and prosecute crimes would no longer be exclusive to the MS. As Vervaele (2018, 12–14) writes: "Both, transfer of powers and Europeanisation of domestic criminal justice at the operational level is for most Member States an uneasy scenario in the area of criminal justice". During the renegotiation of EPPO, the MSs have diluted the Commission's proposal, by removing such concepts as the "single European legal space", specifically to prevent the functional spillover of harmonising national procedures. Particularly, unlike the MS-initiated Pro-Eurojust (Staelens 2014, 29), the initiative for EPPO comes from the Commission. MSs have thus used their voice to alter the course of integration with the yellow card procedure, while for a remaining number of them the use of voice was insufficient, therefore they decided for a softer version of exit, which – in the case of the EU's enhanced cooperation – is non-entry. This choice was taken, because the AFSJ is a marginal area compared to the overall benefits of the Union and because the cost of exit is relatively high.

This is especially important, if I look at the origin of dissatisfaction and how the Union addresses it. Vollaard says dissatisfaction comes from those groups who become "disappointed in the EU for socio-economic reasons" (Vollaard 2018, 229) and that the Union reduces this by offering a greater redistribution of the benefits of integration than the costs of membership. The purpose of EPPO here comes into a critical place, since it is aimed to solve the narrative, legal and

structural problems I derived from the agency problem in the first part of this thesis. It is effectively a new IBOA aimed to preserve and maintain the redistributive effects of European integration, by protecting it from fraud and corruption. While a constructivist framing of integration would stop here, stating that the "infamy" of the Union is preventing it from saving itself; other integration theories do offer more explanation on how the rejection of EPPO could be constituted as disintegration by non-entry. MSs who do not support this office are not only halting integration but also are showing some signs of disintegration.

In the following parts, I will re-examine the previous integration theories and present how the rejection of EPPO can be categorised in these avenues of disintegration. MSs take these avenues in response to European integration and by following them, they are inhibiting the creation and functioning of EPPO. If the Union wants to increase its financial safeguards in this way, it needs to find solutions to the problems I will present.

2.2. Avenues of disintegration

Before I start to address these problems, I have to specify three MSs in special. These MSs are unlikely to join the Regulation, although even without their participation the enhanced cooperation may become part of the EU law. Denmark resorts to its special AFSJ opt-out mechanism. The UK is on the road to leaving the Union, while Ireland sustains its concerns about compatibility with Irish constitutional protections, but reassured that they would co-operate with the office when its already existing (Smyth 2017). As such, their rejection of EPPO cannot fully be explained by my analysis, since they are part of a wider explanations on opt-outs (Sorensen 1993; Sion 2004). I can only assert, that the exit of these 3 states do not necessarily mean that the entire system would be impaired, or that these particular MSs would be disintegrating from the Union because of their rejection of EPPO (Vollaard 2018, 121).

2.2.1. A Member State becomes a rule-breaker or a dead-lock state

As I have mentioned, MS compliance with the IBOAs of the Union is crucial to their common functioning. The diversification and simplification of decision-making in the Union has enabled more interaction between MSs and IBOAs, as the inclusion of the European Parliament is bringing the European demos closer to the Union's decision-making (Lodge 1994), although the problem of democratic deficit is still present here (Goodhart 2007). With regards to integration theories, this can be equated to MSs trying to reassert their intergovernmental superiority in Union decision-making, in spite of the growing supranationalisation of certain areas, by impeding the latter.

Therefore, I define this avenue of disintegration as the following: a MS, having no option for exit, and failing to effectively use its voice, becomes an obstacle in the process of integration, by non-complying with the IBOAs. A MS could achieve this by either refusing to take part in the decision-making process or by violating their obligations under the Treaties or secondary legal sources of the Union.

The former can have a negative influence in matters where unanimity is required. In such cases an "institutional sclerosis" can hit the Union by creating a dead-lock (Vollaard 2018, 69). Such situations do not automatically lead to disintegration, that logical connection is always dependant on the respective policy areas. Equally, political disintegration is not integration in reverse and has many aspects and variables to consider (Vollaard 2018, 112). Similarly, in the latter, which can be seen in infringement procedures, the context defines the degree of disintegration. However creating such dead-locks in areas which go against the fundamental values of the Union (Budapest Sentinel 2015; Amnesty International 2018; Zalan 2018; hvg.hu 2019) or risk the security of the EU (Fox 2018; EU Experts 2019) can be seen as a MS effort to lower the costs of exit by inhibiting further integration.

The creation of EPPO is one of the corrective steps that the Lisbon Treaty implemented, as it creates an EU-level IBOA that restricts individual MS action.

The transfer of this supervisory function from the national level to the Union level devises a safeguard against MS interference in the monitoring of EU funds. Thus, its rejection displays two possibilities. On one hand, the MS is afraid of integration because it cannot see beyond it (Vollaard 2018, 21). Its temporal limitations (i.e. general elections) yield in its limited understanding of the complex interdependencies that account for spillover and thus the MS prevents its further external deconsolidation by preventing integration. On the other hand, if a MS is not constrained by such temporal limitations, because its democratic processes and its rule of law are deteriorating (Financial Times 2017; Freedom House 2017; Salmi 2017; S. Walker and Boffey 2018; European Parliament 2018; Rankin 2018), the MS can take on the path of deliberate non-compliance with IBOAs. This can also result in increased corruption and decreased transparency in the MS (Civitas Institute 2018), contrary to what EPPO would try to achieve. Furthermore, it also causes the MS to devalue the financial loss of PIF-related offences, which notion was confirmed by OLAF's own investigations.

2.2.2. A Member State becomes Eurosceptic or experiences rising Euroscepticism

The avenue of Euroscepticism could be seen as an extension of the previous one. Euroscepticism has a wide range of definitions and the term itself has gained lots of criticism in scholarly discourse (Leconte 2015, 254–55), but it can nonetheless be defined by the expression of dissatisfaction of the voters through electing parties with Eurosceptic agendas. Euroscepticism is also heavily linked with populism (Leconte 2015). As opposed to the previous avenue, this avenue relies on the explanation of constructivist and neorealist theory, and explains a connection not between the MSs and IBOAs, but between the voters in the MSs and the Union.

Following the former theory, political parties aggregate the countless number of social interactions, which express dissatisfaction to EU policies. Media coverage and especially online media have also a greater effect (Daddow 2012;

Michailidou 2015; Startin 2015). Domestic realisation of how integration has domestic benefits is crucial to European integration, as national players realise integration is a valuable product, their decision-making and pressure will focus on promoting integration. If in a pluralistic society some players downplay or reject the effects of a spillover (like EPPO), then integration in the field becomes a subject of internal rhetoric.

At the latter theory, populist action relies heavily on creating a zero-sum game of European integration, while also mystifying the Union and its activities. Additionally, it creates an us-versus-them mentality between MSs and between the Union and the MSs (Verney 2015, 281–82). The electorate was first motivated by the Euro-Atlantic integration, but then together with the elites they moved back to the issues of (national) security and welfare (Riishøj 2007). This neorealist notion is buttressed by Ilonszki's findings (2009) amongst MSs in the CEE region: where national discontent is higher, people tend support European integration more in both general and respective policy matters; while where the government's work is more supported, Euroscepticism seems to be more widespread.

The us-versus-them notion can also be derived from the constructivist theory, as this dimension is "closely connected to the communist and pre-communist past" of the new eastern MSs (Riishøj 2007, 513–14), which is relevant, since – despite the Copenhagen criteria of accession – these MSs have carried over their vulnerabilities (e.g. distrust of government and authority) from the Communist and pre-Communist era (The World Bank 2000; Schroth and Bostan 2004, 647–49). Since "the most important sanctioning mechanism for citizens in a political system is the ability of people to choose their government in general elections" (Lindstedt and Naurin 2010, 305), these vulnerabilities enable both the political and the bureaucratic corruption of the agent (the MS). The former means having a goal of empowering a political unit (party), while the latter being more destructive "for the enrichment of the corruptor and the corrupted at the expense of the corruptee, the public" (Brandt and Svendsen 2013, 557). As Vollaard states, with the external deconsolidation of a MS, its internal

construction also weakens, which means the sanctioning mechanism described above is also impeded.

The notions described by these two theories echo through the literature on Euroscepticism and populism, especially when inflated by the various crises in the Union (Leconte 2015, 255–59; Verney 2015; Grimm 2015; Brack and Startin 2015; Mudde and Kaltwasser 2017). Both notions are also most prominently featured in the extreme ends of the political spectrum, either on the far-right or the far-left (Gandesha 2018). The Union challenges national identity, without offering sufficient alternatives, such as the creation of a European demos or polity (cf. Pelinka 2011). It effectively questions the future of nation states, where populist parties claim to give back decision-making to the people of the nation state. This process of diminishing national identities is lowering the overall loyalty of the Union as a system, making opportunities for exit more feasible. In order for the Union to counter these processes, it would need to create its own narratives, its own myths (Riishøj 2007, 505), but right now, and especially in new MSs, the European identity severely lags behind the notion of national identity (Mansfeldová and Stašková 2009).

If I look at the case of EPPO, it seems that the level of loyalty is not sufficient for yet another IBOA that transfers agency from the MSs. Looking at the MSs who initially rejected EPPO or have not opted-in to the cooperation, I can see several signs of Euroscepticism.

Although I have indicated the United Kingdom to be an exemption regarding EPPO due to its opt-out mechanism, the rise in demand for Brexit can be seen as a critical example of Euroscepticism. In other words, the most apparent example of this avenue is the "success" of Brexit (Schimmelfennig 2018). The UK has travelled down these two avenues. From the early periods of the EC/EU, the UK has been historically a deadlock in many policy areas, especially those involving identity. The rise of Euroscepticism has manifested itself in the rise of the Eurosceptic UK Independence Party, whose rhetoric (voice at the

domestic level) has lowered to cost of exit sufficiently for that exit to become a reality in the 2016 referendum (Hunt 2014).

In the Netherlands, with the anti-EU "Party of Freedom" gaining ground, centre-right MPs were reluctant to support a powerful new EU agency (Cooper 2016). It was only after the general elections – when a new government coalition was established – that the Netherlands has opted in to the enhanced cooperation (DutchNews.nl 2017a, 2017b). Euroscepticism has also increased in the Swedish Parliament (Cleppe 2018; Neuding 2018). The Netherlands and Sweden have conveyed that their regulatory bodies already guarantee the efficient monitoring of EU funds, and that their opting-in is not necessary; this can be seen as the mystification of the added value of EPPO. Additionally they are enhancing the effectiveness of their own national offices against the added value of EPPO, which by the mechanism above can also foster Euroscepticism.

Besides them, Czechia, Poland and Hungary are facing a growing tide of anti-EU views, which is extremely concerning with the increase of corruption and the decrease in the rule of law in the two countries, both tendencies of which EPPO seeks to reverse (Pawlak 2016; Financial Times 2017; Rankin 2018; Ryan 2018; Shalal 2018; Civitas Institute 2018; Havlík and Havlík 2018; Transparency International 2019a, 2019b).

2.2.3. A Member State is undertaken by integration from outside the Union

The final avenue of disintegration is the hardest regarding the level of disintegration, since it comes from the process of spillback and reintegration. This avenue states that MSs who find sufficient national or international alternatives to European integration will by using the previous avenues to lower the cost of their exits to the point of horizontal disintegration. This is also supported by their efforts to disrupt the loyalty between their voters and the Union, by creating new loyalties outside the Union.

A spillback is the decision of MSs to discontinue supranational cooperation. Similarly to the previous avenue, far-right and far-left parties readily advocate for such spillbacks (Schmitter and Lefkofridi 2016, 3). Reintegration is a further step from spillback. As spillover and policy lock-in can generate integration inside the Union, the same development can affect MSs from outside the Union. If MSs find better international alternatives that are parallel to EU policies, then it is likely that these alternatives will be adopted, even at the expense of existing structures (Vollaard 2018, 21). Following Hirschman's triad of exit, voice and loyalty; if the political loyalty of a MSs towards the Union is low and it has little options to use voice as a means of addressing its dissatisfaction with the Union, the MS will try to lower its costs of exit or partial exit from the Union through the first two avenues. If this attempt also brings about a spillover or integrational process the MS begins on this avenue of disintegration, that could enable it to align itself more with the political, social and economic values of the source, rather than the Union's values.

Concerning this avenue, there are not many concrete examples. Furthermore, this avenue cannot be directly backed by the rejection of EPPO. Nevertheless, it is a consequence of the previous avenues and it fits into my explanations, even if no MS has taken this avenue.

I can see implicit examples of reintegration in the foreign policy of the MSs. These developments however, do not perfectly fit my description of disintegration, as the area of CFSP is a complex shared competence of the Union, which often requires unanimity (Eeckhout 2011). Nevertheless the aspirations of Hungarian foreign policy are often at odds with the rest of the Union (and the Visegrad countries), regarding either China (Balogh 2018; Peragovics 2019) or Russia (euractiv 2018; Newton 2018; Zarembo, Solodkyy, and Levoniuk 2018). These kinds of attachment might propel these countries to lower their standards regarding transparency and the rule of law, which can also influence their public procurement and other practices, i.e. matters that are crucial to the PIF.

Conclusion

This thesis's main aim was to explain why MSs would reject the creation of EPPO. The arguments in this thesis form two logical steps for this purpose: one argumentation about the integration in the JHA/AFSJ, and another about the disintegration of those MSs who resist it.

Through the construction of a synthesis between agency theory and various integration theories concerning the EU, I have shown that the Union and the MSs have profoundly transformed decision-making in the JHA/AFSJ. The original model of intergovernmental cooperation, where the distinction between the principals (the MSs) and their agents (the IBOAs) was well-defined, was changed through a series of intergovernmental bargaining procedures, as well as the processes of cultivated, functional and political spillover; thus creating a supranational model. The fusion of these two models has weakened the delineation of the principal-agent pairs in the JHA/AFSJ, which enabled to Commission to pursue its interest as a principal, in the creation of a supranational agency that is effective in the PIF. However, due to the disagreements between the MSs and the Commission (which are the result of the interaction between the two models of European decision-making), the way the Union conducts the PIF is characterised by ineffectiveness.

I have strengthened the Commission's disposition by presenting narrative, legal and structural problems that the creation of EPPO will solve. I have found such problems on the level of both the MSs and the Commission. After characterising EPPO's place in the principal-agent model, I have explained why the changes it puts into effect are fundamental to the successful conduction of the PIF. This is important since it helps the policy lock-in and loyalty creating processes of the Union, which safeguard its existence and its rules.

In the second part of this thesis, I reversed the logic that I used in my argumentation. While the first part analyses integration, the second argues that those MSs who reject EPPO, are on the way of disintegration. Using Vollaard's theory of European disintegration and the changes that EPPO makes in the

principal-agent relations, I have constructed three avenues of disintegration that MSs step onto, in order to lower their cost of exiting the Union. MSs start on these avenues because of their increasing volume of dissatisfaction. This dissatisfaction is the result of the external deconsolidation of the MSs, generated by the transitions I illustrated in the JHA/AFSJ.

The creation of EPPO weakens the external construction of MSs because it interlopes with the judicial and criminal matters of the MSs, as these areas are considered exclusive to the MSs. Since MSs fear intergovernmental cooperation in these matters, they resist further harmonisation. In the initial talks about EPPO 14 MSs used the yellow-card procedure to stop the introduction of EPPO, which, according to them, was disproportionately centralised. After this, the Commission, consulting with the MSs, put forward a new proposal now envisaging a decentralised EPPO. Following this, EPPO was acceptable to most, but not to all MSs.

The latter group of MSs appear to have failed to effectively voice their concerns with the conventional methods in the Union and thus are looking at different options to either draw attention and support to their position or to lower their cost of exit. Both of these I defined as some form of disintegration, since they seek to prevent the creation of a safeguard in the PIF. The three avenues I constructed contain tools that the MSs use to disrupt loyalty either between the MSs and the Commission or between the voters in the MSs and the Union itself. The third tool I categorised can also be used to create a different set of loyalties outside the Union, and as such weaken the loyalties inside it. MSs can take a multiple of these avenues and it is possible MSs are disintegrating by other means that do not involve an effort to lower the cost of exit. These avenues can also be seen as complementary to each other. In the case of EPPO I found reasons for its rejection in the first two avenues.

By constructing this framework, I provide grounds for further research regarding disintegration in the Union. In this thesis, I have provided some examples of why MSs would begin on these avenues, but I have not presented

concrete examples of how they travel them, nor did I categorise the non-complying MSs. Therefore, the most important recommendation for further research would be to apply the theoretical framework I have created and apply it in not only the AFSJ, but also regarding other policy areas; and link the empirical evidences of non-compliance to my framework. Another such recommendation would be the operationalisation of the framework; a critical evaluation of varying indexes of corruption, rule of law, independence of the judiciary, effectiveness of policing in the MSs, measures of dissatisfaction and voter opinions regarding the AFSJ, European integration and other areas could be used to better understand disintegration as defined by my framework. I think it is extremely important to research European disintegration, as it is still a majorly overlooked area regarding empirical studies. Furthermore, data analysis based on my framework could supply policy recommendations for both the MSs and the Commission. These recommendations could solve the external and internal deconsolidation of MSs that prompt them to begin on these avenues of disintegration.

Additionally, more research could be done on the links between the larger literature on opt-outs and my framework of disintegration. In this thesis, I resorted to constitute the United Kingdom, Ireland and Denmark as exemptions from these avenues, due to their opt-outs from the AFSJ. Nonetheless, additional research could show further implications regarding these countries, and possibly connect it to the evolving literature on Brexit.

Bibliography

Books

Bartolini, Stefano. 2005. *Restructuring Europe: Centre Formation, System Building and Political Structuring between the Nation-State and the European Union*. Oxford ; New York: Oxford University Press.

Civitas Institute. 2018. *Black Book – Corruption in Hungary between 2010 and 2018*. Budapest, Hungary.

Delreux, Tom, and Johan Adriaensen, eds. 2017. *The Principal Agent Model and the European Union*. Palgrave Studies in European Union Politics. Cham, Switzerland: Palgrave Macmillan.

Erkelens, L.H., A.W.H. Meij, and M. Pawlik, eds. 2014. *The European Public Prosecutor's Office; an Extended Arm or a Two-Headed Dragon?* New York: Springer.

Geelhoed, Willem, Leendert H. Erkelens, and Arjen W.H. Meij, eds. 2018. *Shifting Perspectives on the European Public Prosecutor's Office*. The Hague: T.M.C. Asser Press.

Hirschman, Albert O. 1970. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. 1st ed. Cambridge, Massachusetts and London, England: Harvard University Press.

Jones, Erik, Anand Menon, and Stephen Weatherill, eds. 2012. *The Oxford Handbook of the European Union*. 1st ed. Oxford University Press.

McGlinchey, Stephen, Rosie Walters, and Christian Scheinpflug. 2017. *International Relations Theory*. Bristol, England: E-International Relations.

Mudde, Cas, and Cristobal Rovira Kaltwasser. 2017. *Populism : A Very Short Introduction*. Very Short Introductions. New York, NY: Oxford University Press.

Norman, Ludvig. 2016. *The Mechanisms of Institutional Conflict in the European Union*. Routledge.

Nugent, Neill, ed. 1999. *The Government and Politics of the European Union*. 4th ed. The European Union Series. London: Macmillan Education UK.

Rosato, Sebastian. 2010. *Europe United: Power Politics and the Making of the European Community*. 1st ed. Cornell Studies in Security Affairs. Ithaca, New York: Cornell University Press.

Szarek-Mason, Patrycja. 2010. *The European Union's Fight Against Corruption: The Evolving Policy towards Member States and Candidate Countries*. Cambridge: Cambridge University Press.

The World Bank, ed. 2000. *Anticorruption in Transition A Contribution to the Policy Debate*. Anticorruption in Transition, The World Bank ; [1]. Washington, DC: World Bank.

Vollaard, Hans. 2018. *European Disintegration: A Search for Explanations*. Palgrave Studies in European Union Politics. London: Palgrave Macmillan.

Walt, Stephen M. 2017. *Realism and Security*. Vol. 1. Oxford University Press.

Waltz, Kenneth N. 1979. *Theory of International Politics*. Addison-Wesley Series in Political Science. California: Addison-Wesley Publishing Company.

Wendt, Alexander. 1999. *Social Theory of International Politics*. Vol. 67. Social Theory of International Politics. Cambridge, United Kingdom: Cambridge University Press.

Wiener, Antje, and Thomas Diez. 2009. *European Integration Theory*. 2nd ed. Oxford ; New York: Oxford University Press.

Winter, Lorena Bachmaier, ed. 2018. *The European Public Prosecutor's Office: The Challenges Ahead*. 1st edition. New York, NY: Springer Berlin Heidelberg.

Book chapters

Bailes, Alyson J. K., and Andrew Cottey. 2016. "Regional Security Cooperation in the Early 21st Century." In *SIPRI Yearbook 2006 – Armaments, Disarmament and International Security*, by Stockholm International Peace Research Institute. SIPRI Yearbook Series 37. Oxford: Oxford University Press.

Brandsma, Gijs Jan, and Johan Adriaensen. 2017. "The Principal–Agent Model, Accountability and Democratic Legitimacy." In *The Principal Agent Model and the European Union*, edited by Tom Delreux and Johan Adriaensen, 35–54. Cham: Springer International Publishing.

Cuyvers, Armin. 2017. "The Road to European Integration." In *East African Community Law*, edited by Emmanuel Ugirashebuja, John Eudes Ruhangisa, Tom Ottervanger, and Armin Cuyvers, 22–42. Institutional, Substantive and Comparative EU Aspects. Brill.

Eeckhout, Piet. 2011. "Competence to Conduct a Common Foreign and Security Policy." In *EU External Relations Law*, by Piet Eeckhout, 2nd ed. Oxford, United Kingdom: Oxford University Press.

Gandesha, Samir. 2018. "Understanding Right and Left Populism." In *Critical Theory and Authoritarian Populism*, by Boston College, Massachussetts, US and Jeremiah Morelock, 9:49–70. Simon Fraser University, CA: University of Westminster Press.

Laursen, Finn. 2006. "The Politics of the Constitutional Treaty: Elements of Four Analyses." In *Europe's Nascent State? Public Policy in the European Union. Essays in Honour of Kjell A. Eliasen*, edited by Johan From and Nick Sitter, 16. Oslo: Gyldendal Akademisk.

Lequesne, Christian. 2000. "The European Commission: A Balancing Act between Autonomy and Dependence." In *Institutional Dynamics and Prospects for Democracy*, by Karlheinz Neunreither and Antje Wiener, 36–51. Oxford University Press.

Leuffen, Dirk, Berthold Rittberger, and Frank Schimmelfennig. 2013. "The European Union as a System of Differentiated Integration." In *Differentiated Integration*, by Dirk Leuffen, Berthold Rittberger, and Frank Schimmelfennig, 1–28. London: Macmillan Education UK.

Vervaele, John A.E. 2018. "The European Public Prosecutor's Office (EPPO): Introductory Remarks." In *Shifting Perspectives on the European Public Prosecutor's Office*, edited by Willem Geelhoed, Leendert H. Erkelens, and Arjen W.H. Meij, 11–19. The Hague: T.M.C. Asser Press.

Journal articles

Bardi, Luciano, Martin Rhodes, and Susan Senior Nello. 2002. "Enlarging the European Union: Challenges to and from Central and Eastern Europe: Introduction." *International Political Science Review / Revue Internationale de Science Politique* 23 (3): 227–33.

Barkin, Samuel. 2009. "Realism, Constructivism, and International Relations Theory." *American Political Science Association*, APSA 2009 Toronto Meeting Paper.

Bauhr, Monika, and Nicholas Charron. 2019. "The EU as a Savior and a Saint? Corruption and Public Support for Redistribution." *Journal of European Public Policy*, February, 1–19.

Beckerhoff, Petra. 2017. "Reform Des Europäischen Datenschutzrechts : Ein Überblick Unter Besonderer Berücksichtigung Des Datenaustausches Zwischen Polizei-, Strafjustiz- Und Geheimdienstbehörden." *Eucrim - The European Criminal Law Associations' Forum*.

Benyon, John. 1994. "Policing the European Union: The Changing Basis of Cooperation on Law Enforcement." *International Affairs* 70 (3): 497.

Brack, Nathalie, and Nicholas Startin. 2015. "Introduction: Euroscepticism, from the Margins to the Mainstream." *International Political Science Review / Revue Internationale de Science Politique* 36 (3): 239–49.

Brandt, Urs Steiner, and Gert Tinggaard Svendsen. 2013. "Why Does Bureaucratic Corruption Occur in the EU?" *Public Choice* 157 (3–4): 585–599.

Bulmer, Simon J. 1993. "The Governance of the European Union: A New Institutionalist Approach." *Journal of Public Policy* 13 (04): 351.

Caianiello, Michele. 2013. "The Proposal for a Regulation on the Establishment of an European Public Prosecutor's Office: Everything Changes, or Nothing Changes?" *European Journal of Crime, Criminal Law & Criminal Justice* 21 (2): 115–125.

Carausan, Mihaela V. 2009. "Institutional Uncertainties of the Rule of Law - The Public Prosecutor's Office between the Executive and the Judiciary." *Transylvanian Review of Administrative Sciences* 2009 (28): 104–29.

Checkel, Jeffrey T. 2006. "Constructivist Approaches to European Integration." *Handbook of European Union Politics*, 20.

Cirtautas, Arista Maria, and Frank Schimmelfennig. 2010. "Europeanisation Before and After Accession: Conditionality, Legacies and Compliance." *Europe-Asia Studies* 62 (3): 421–41.

Clougherty, Joseph A, Klaus Gugler, Lars Sørgard, and Florian W Szücs. 2014. "Cross-Border Mergers and Domestic-Firm Wages: Integrating 'Spillover Effects' and 'Bargaining Effects.'" *Journal of International Business Studies* 45 (4): 450–70.

Csúri, András. 2016. "The Proposed European Public Prosecutor's Office – from a Trojan Horse to a White Elephant?" *Cambridge Yearbook of European Legal Studies* 18 (December): 122–51.

Daddow, Oliver. 2012. "The UK Media and 'Europe': From Permissive Consensus to Destructive Dissent." *International Affairs (Royal Institute of International Affairs 1944-)* 88 (6): 1219–36.

Donnelly, Brendan. 2008. "Justice and Home Affairs in the Lisbon Treaty: A Constitutionalising Clarification?" Edited by European Institute of Public Administration. *EIPASCOPE* 2008 (1): 19–23.

Fromage, Diane. 2016. "The Second Yellow Card on the EPPO Proposal: An Encouraging Development for Member State Parliaments?" *Yearbook of European Law* 35 (1): 5–27.

Goodhart, Michael. 2007. "Europe's Democratic Deficits through the Looking Glass: The European Union as a Challenge for Democracy." *Perspectives on Politics* 5 (3): 567–84.

Grieco, Joseph M. 1988. "Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism." *International Organization* 42 (3): 485–507.

———. 1995. "The Maastricht Treaty, Economic and Monetary Union and the Neo-Realist Research Programme." *Review of International Studies* 21 (1): 21–40.

Grimm, Robert. 2015. "The Rise of the German Eurosceptic Party Alternative Für Deutschland, between Ordoliberal Critique and Popular Anxiety." *International Political Science Review / Revue Internationale de Science Politique* 36 (3): 264–78.

Haas, Ernst Bernard. 1961. "International Integration: The European and the Universal Process." *International Organization* 15 (3): 366–92.

Hirschman, Albert O. 1978. "Exit, Voice, and the State." *World Politics* 31 (1): 90–107.

Ilonszki, Gabriella. 2009. "National Discontent and EU Support in Central and Eastern Europe." *Europe-Asia Studies* 61 (6): 1041–57.

Kassim, Hussein, and Anand Menon. 2003. "The Principal-Agent Approach and the Study of the European Union: Promise Unfulfilled?" *Journal of European Public Policy* 10 (1): 121–39.

Klip, Andre. 2012. "The Substantive Criminal Law Jurisdiction of the European Public Prosecutor's Office." *European Journal of Crime, Criminal Law & Criminal Justice* 20 (4): 367–76.

Leconte, Cécile. 2015. "From Pathology to Mainstream Phenomenon: Reviewing the Euroscepticism Debate in Research and Theory." *International Political Science Review / Revue Internationale de Science Politique* 36 (3): 250–63.

Ligeti, Katalin. 2016a. "Introduction to the Model Rules."

———, ed. 2016b. "Model Rules for the Procedure of the EPPO."

Lindstedt, Catharina, and Daniel Naurin. 2010. "Transparency Is Not Enough: Making Transparency Effective in Reducing Corruption (La Transparence Ne Suffit Pas: Rendre La Transparence Efficace Dans La Lutte Contre La Corruption) (La Transparencia No Basta: Cómo Crear Una Transparencia Efectiva Para Reducir La Corrupción)." *International Political Science Review / Revue Internationale de Science Politique* 31 (3): 301–22.

Lodge, Juliet. 1994. "The European Parliament and the Authority-Democracy Crises." *The Annals of the American Academy of Political and Social Science* 531: 69–83.

Mansfeldová, Zdenka, and Barbora Špicarová Stašková. 2009. "Identity Formation of Elites in Old and New Member States (With a Special Focus on the Czech Elite)." *Europe-Asia Studies* 61 (6): 1021–40.

Matera, Claudio. 2013. "Much Ado About 'Opt-Outs'? The Impact of 'Variable Geometry' in the AFSJ on the EU as a Global Security Actor." *SSRN Electronic Journal*.

Mearsheimer, John J. 1990. "Back to the Future." *International Security* 15 (1): 5–56.

———. 1994. "The False Promise of International Institutions." *International Security* 19 (3): 5–49.

Michailidou, Asimina. 2015. "The Role of the Public in Shaping EU Contestation: Euroscepticism and Online News Media." *International Political Science Review / Revue Internationale de Science Politique* 36 (3): 324–36.

Mitnick, Barry. 2013. "Origin of the Theory of Agency: An Account by One of the Theory's Originators." *SSRN Electronic Journal*, March.

Moravcsik, Andrew. 1993. "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach." *JCMS: Journal of Common Market Studies* 31 (4): 473–524.

Moravcsik, Andrew, and Kalypso Nicolaïdis. 1999. "Explaining the Treaty of Amsterdam : Interests, Influence, Institutions." *Journal of Common Market Studies* 37 (1): 59–85.

Pech, Laurent, and Kim Lane Scheppele. 2017. "Illiberalism Within: Rule of Law Backsliding in the EU." *Cambridge Yearbook of European Legal Studies* 19 (August): 3–47.

Pelinka, Anton. 2011. "The European Union as an Alternative to the Nation-State." *International Journal of Politics, Culture, and Society* 24 (1/2): 21–30.

Perillo, Ezio. 2016. "EPPO, the European Public Prosecutor's Office. European Only in Name or Also in Law?" *Revista Româna de Drept European*, no. 1 (January): 85–95.

Pierson, Paul. 1996. "The Path to European Integration: A Historical Institutionalist Analysis." *Comparative Political Studies* 29 (2): 123–63.

Podkaminer, Leon. 2016. "Economic Disintegration of the European Union: Not Unavoidable, but Probable." *Acta Oeconomica* 66 (s1): 49–60.

Pollack, Mark A. 1994. "Creeping Competence: The Expanding Agenda of the European Community." *Journal of Public Policy* 14 (2): 95–145.

———. 1997. "Delegation, Agency, and Agenda Setting in the European Community." *International Organization* 51 (1): 99–134.

Riishøj, Søren. 2007. "Europeanization and Euroscepticism: Experiences from Poland and the Czech Republic." *Nationalities Papers* 35 (3): 503–35.

Rokkan, Stein. 1975. "Dimensions of State Formation and Nation-Building : A Possible Paradigm for Research on Variations within Europe." *The Formation of National States in Western Europe*, The formation of national states in Western Europe. - Princeton, NY : Univ. Press, ISBN 0691052190. - 1975, p. 562-600.

Rosamond, Ben. 2007. "European Integration and the Social Science of EU Studies: The Disciplinary Politics of a Subfield." *International Affairs (Royal Institute of International Affairs 1944-)* 83 (2): 231–52.

Salmi, Senni. 2017. "Democratic Backsliding in Hungary and Poland."

Schimmelfennig, Frank. 2014. "EU Enlargement and Differentiated Integration: Discrimination or Equal Treatment?" *Journal of European Public Policy* 21 (5): 681–98.

———. 2018. "Brexit: Differentiated Disintegration in the European Union." *Journal of European Public Policy* 25 (8): 1154–73.

Schimmelfennig, Frank, and Florian Trauner. 2009. "Post-Accession Compliance in the EU's New Member States." *European Integration Online Papers (EIoP)* 13 (Special Issue 2).

Schmidt, Vivien A. 2016. "The New EU Governance: New Intergovernmentalism, New Supranationalism, and New Parliamentarism." *Istituto Affari Internazionali*, Governing Europe, IAI Working Papers 16.

Schmitter, Philippe C. 2005. "Ernst B. Haas and the Legacy of Neofunctionalism." *Journal of European Public Policy* 12 (2): 255–72.

Schmitter, Philippe C., and Zoe Lefkofridi. 2016. "Neo-Functionalism as a Theory of Disintegration." *Chinese Political Science Review* 1 (1): 1–29.

Schroth, Peter W., and Ana Daniela Bostan. 2004. "International Constitutional Law and Anti-Corruption Measures in the European Union's Accession Negotiations: Romania in Comparative Perspective." *The American Journal of Comparative Law* 52 (3): 625.

Sorensen, Christian. 1993. "The Danes, Maastricht and European Federalism." *Economic and Political Weekly* 28 (10): 383–84.

Startin, Nicholas. 2015. "Have We Reached a Tipping Point? The Mainstreaming of Euroscepticism in the UK." *International Political Science Review / Revue Internationale de Science Politique* 36 (3): 311–23.

The European Criminal Law Associations' Forum. 2017a. "The European Criminal Law Associations' Forum 2017/3." *Max Planck Society for the Advancement of Science c/o Max Planck Institute for Foreign and International Criminal Law* 2017 (3): 93–160.

———. 2017b. "The European Criminal Law Associations' Forum 2017/4." *Max Planck Society for the Advancement of Science c/o Max Planck Institute for Foreign and International Criminal Law* 2017 (4): 161–200.

Veebel, Viljar. 2011. "Relevance of Copenhagen Criteria in Actual Accession: Principles, Methods and Shortcomings of EU Pre-Accession Evaluation." *Studies of Transition States and Societies* 3 (3): 3–23.

Verney, Susannah. 2015. "Waking the 'sleeping Giant' or Expressing Domestic Dissent? Mainstreaming Euroscepticism in Crisis-Stricken Greece." *International Political Science Review / Revue Internationale de Science Politique* 36 (3): 279–95.

Walker, Neil. 1998. "Justice and Home Affairs." *The International and Comparative Law Quarterly* 47 (1): 231–38.

Waltz, Kenneth N. 2000. "Structural Realism after the Cold War." *International Security* 25 (1): 5–41.

White, Simone, and Nicholas Dorn. 2012. "Towards a Decentralised European Public Prosecutor's Office." *Amicus Curiae* 2012 (89): 2–8.

Wilga, Maciej. 2008. "The CFSP in Synergetic Theorising: Explaining the CFSP via a Multi-Causal and Multi-Level Analytical Model." Edited by Maciej Wilga and Jean Monnet. *Jean Monnet/Robert Schuman Paper Series* 8 (7).

Wolfstädter, Laura Maria, and Valentin Kreilinger. 2017. "European Integration via Flexibility Tools: The Cases of EPPO and PESCO." *Jacques Delors Institut Berlin*, Policy Paper, , no. 209 (November).

Conference papers and theses

Havlík, Vratislav, and Vlastimil Havlík. 2018. "Europeanisation of Czech Eurooptimist Political Parties: A New Way of Explaining the Reasons for Euroscepticism?" In *ECPR Standing Group Conference 2018*. Masaryk University.

Rekasi, Eszter. 2010. "Overlapping Frontiers: Constructivist – Post-Structuralist Incompatibility Approached via Language." Essay, Budapest, Hungary: Central European University.

Shelton, Michael. 2013. "Principal-Agent Theory and the EU: Evaluating a Changing Relationship." Master of Arts Thesis, Lawrence, KS, USA: University of Kansas.

Sion, Maya. 2004. "The Politics of Opt-Out in the European Union: Voluntary or Involuntary Defection?" In *Thinking Together. Proceedings of the IWM Junior Fellows' Conference, Winter 2003*, 16:17. 7. Vienna, Austria: IWM Junior Visiting Fellows' Conferences.

Staelens, Jana. 2014. "The European Public Prosecutor's Office: The Future?" Ghent, Belgium: Faculty of Law Ghent University.

Statutes, reports, communiqués, press releases and other official documents

Council of the European Union. 1995a. *Council Act of 26 July 1995 Drawing up the Convention Based on Article K.3 of the Treaty on European Union, on the Establishment of a European Police Office (Europol Convention). Official Journal of the European Communities. OJ C 316, 27.11.1995, p. 1–32.*

———. 1995b. *Council Act of 26 July 1995 Drawing up the Convention on the Protection of the European Communities' Financial Interests. Official Journal of the European Communities. OJ C 316, 27.11.1995, pp. 48-57.*

———. 2002. *2002/584/JHA: Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States - Statements Made by Certain Member States on the Adoption of the Framework Decision. OJ L 190, 18.7.2002, p. 1–20.*

———. 2017. *Council Regulation (EU) 2017/1939 of 12 October 2017 Implementing Enhanced Cooperation on the Establishment of the European Public Prosecutor's Office (the EPPO). OJ L 283, 31.10.2017, p. 1–71.*

European Anti-Fraud Office (OLAF). 2017. "The OLAF Report 2016." OLAF.

European Commission. 2013. "Communication from the Commission to the European Parliament, the Council and the National Parliaments on the Review of the Proposal for a Council Regulation on the Establishment of the European Public Prosecutor's Office with Regard to the Principle of Subsidiarity, in Accordance with Protocol No 2." *COM/2013/0851.*

———. 2015. "The Budget Explained - Where Does the Money Go?" 2015. http://ec.europa.eu/budget/explained/budg_system/fin_fwk0713/fin_fwk0713_en.cfm.

———. 2017. "Interactive Chart: EU Expenditure and Revenue - Budget 2014-2020." EU Expenditure and Revenue 2014-2020. 2017. http://ec.europa.eu/budget/figures/interactive/index_en.cfm.

———. 2018. "Press Release - European Public Prosecutor's Office: The Netherlands Becomes 21st Country to Join Common Efforts to Protect EU Budget against Fraud." *European Commission Press Releases*, August 1, 2018.

European Parliament. 1999. "Tampere European Council 15-16.10.1999: Conclusions of the Presidency - European Council Tampere 15-16.10.1999: Conclusions of the Presidency."

———. 2018. "The Situation in Hungary — European Parliament Resolution of 12 September 2018 on a Proposal Calling on the Council to Determine, Pursuant to Article 7(1) of the Treaty on European Union, the Existence of a Clear Risk of a Serious Breach by Hungary of the Values on Which the Union Is Founded (2017/2131(INL))." *P8_TA-PROV(2018)0340.*

Mańko, Rafal. 2016. "Convention on the Protection of EU Financial Interests – Briefing July 2016." Briefing *PE 586.631*. European Parliament. europarl.europa.eu.

Reding, Viviane. 2013. "Establishing a European Public Prosecutor's Office – A Federal Budget Needs Federal Protection." European Commission.

Sgueo, Gianluca. 2017. "The European Union Institutional Network on Anti-Fraud." University of Coimbra; New York University: European Parliamentary Research Service; Center for Social Studies.

Steur, Gerard Adriaan "Ard." 2014. "House of Representatives of the States General Position Paper with Regard to the Establishment of a European Public Prosecutor's Office (EPPO)." Parliamentary report. The Hague: Tweede Kamer.

Weyembergh, Anne, and Chloé Briere. 2016. "Towards a European Public Prosecutor's Office (EPPO)." Policy Department (C) for Citizen's Rights and Constitutional Affairs.

———. 2017. "The Future Cooperation between OLAF and the European Public Prosecutor's Office." In-Depth Analysis PE 603.789. Brussels: European Parliament's Policy Department for Budgetary Affairs.

Newspaper articles and blogs

Amnesty International. 2018. "EU Ministers Must Break the Deadlock on Hungary and Poland." *Amnesty International*, December 6, 2018, sec. European Institutions Office. https://www.amnesty.eu/news/eu-ministers-must-break-the-deadlock-on-hungary-and-poland/.

Balogh, Eva S. 2018. "Hungary's Recent Encounters with Japan and the Czech Republic." *Hungarian Spectrum* (blog). October 24, 2018. http://hungarianspectrum.org/2018/10/24/hungarys-recent-encounter-with-japan-and-the-czech-republic/.

Budapest Sentinel. 2015. "Hungary Withholds Full Cooperation from European Anti-Fraud Office (OLAF)." *The Budapest Beacon* (blog). October 20, 2015. https://budapestbeacon.com/hungary-withholds-full-cooperation-with-european-anti-fraud-office-olaf/.

Cleppe, Pieter. 2018. "Swedish Election Shows Chaotic Migration Policies Endanger Liberal Order." *EUobserver*, September 13, 2018, sec. Opinion. https://euobserver.com/opinion/142827.

Cooper, Harry. 2016. "Dutch Set to Block New EU Prosecutors' Office." *POLITICO* (blog). December 6, 2016. https://www.politico.eu/article/vera-jourova-ard-van-der-steur-dutch-set-to-block-new-eu-prosecutors-office/.

DutchNews.nl. 2017a. "The Netherlands Won't Join EU's Fraud Public Prosecution Office." *DutchNews.Nl*, January 27, 2017. https://www.dutchnews.nl/news/2017/01/the-netherlands-opts-out-of-eus-fraud-prosecution-plan/.

———. 2017b. "The Netherlands Will Join EU Fraud Prosecution Office after All." *DutchNews.Nl*, October 13, 2017. https://www.dutchnews.nl/news/2017/10/the-netherlands-will-join-eu-fraud-prosecution-office-after-all/.

EU Experts. 2019. "A Never Ending (Migrant) Crisis in EU." *EU Experts Blog* (blog). February 20, 2019. https://euexperts.eu/2019/02/20/a-never-ending-migrant-crisis-in-eu/.

EUobserver. 2018. "Hungarian and Polish NGOs Urge EU Funds against Crackdown." *EUobserver*, November 22, 2018. https://euobserver.com/political/140484.

euractiv. 2018. "EU Unlikely to Heed British Call for More Russia Sanctions." *Euractiv.Com*, August 23, 2018, sec. Global Europe. https://www.euractiv.com/section/europe-s-east/news/eu-unlikely-to-heed-british-call-for-more-russia-sanctions/.

Financial Times. 2017. "Poland's Assault on the Separation of Powers." *Financial Times*, July 18, 2017. https://www.ft.com/content/70dc6b76-6bcc-11e7-bfeb-33fe0c5b7eaa.

Fox, Benjamin. 2018. "MEPs Hope to Break Deadlock on Migration Reform." *Euractiv.Com* (blog). May 31, 2018. https://www.euractiv.com/section/justice-home-affairs/news/meps-hope-to-break-deadlock-on-migration-reform/.

Franssen, Vanessa. 2013. "National Parliaments Issue Yellow Card against the European Public Prosecutor's Office." *European Law Blog* (blog). November 4, 2013. https://europeanlawblog.eu/2013/11/04/national-parliaments-issue-yellow-card-against-the-european-public-prosecutors-office/.

Freedom House. 2017. "Poland's Radical Break from Democratic Norms Leaves Hungary in the Dust." *Freedom House* (blog). September 25, 2017. https://freedomhouse.org/blog/poland-s-radical-break-democratic-norms-leaves-hungary-dust.

Guarascio, Francesco. 2016. "EU Budget Lost Nearly Billion Dollars to Fraud Last Year." *Reuters*, May 31, 2016. https://uk.reuters.com/article/us-eu-fraud/eu-budget-lost-nearly-billion-dollars-to-fraud-last-year-idUKKCN0YM0Q8.

Hunt, Alex. 2014. "How UKIP Became a Political Force," November 21, 2014, sec. UK Politics. https://www.bbc.com/news/uk-politics-21614073.

hvg.hu. 2019. "ENSZ-szakértő: Veszélyben a magyar bíróságok függetlensége." *hvg.hu*, April 8, 2019. https://hvg.hu/itthon/20190408_ENSZszakerto_Veszelyben_a_magyar_birosagok_fuggetlensege.

Marini, Adelina. 2017. "Finally the European Prosecutor's Office Is Born." *Euinside.Eu*, October 18, 2017. http://www.euinside.eu/en/news/the-eppo-has-finally-been-born.

Neuding, Paulina. 2018. "So Long to Swedish Political Stability." *Politico.Eu*, September 10, 2018. https://www.politico.eu/article/swedens-stability-comes-to-an-end/.

Newton, Creede. 2018. "Does Hungary's Relationship with Russia Send a Message to the EU?" *Al Jazeera*, September 19, 2018, sec. Hungary. https://www.aljazeera.com/news/2018/09/hungary-relationship-russia-send-message-eu-180919131248490.html.

Pawlak, Justyna. 2016. "Eurosceptic Poland Wants New EU Treaty after Brexit." *Reuters*, June 24, 2016. https://www.reuters.com/article/us-britain-eu-poland-kaczynski/new-european-treaty-needed-polands-kaczynski-says-idUSKCN0ZA24W.

Peragovics, Tamás. 2019. "Brothers in Arms? Recent Developments in Hungary-Huawei Relations in the Context of Global Huawei Phobia." *Institute of World Economics Blog* (blog). February 27, 2019. https://vilaggazdasagi.blog.hu/2019/02/27/brothers_in_arms_recent_developments_in_hungary-huawei_relations_in_the_context_of_global_huawei_pho.

Rankin, Jennifer. 2018. "Viktor Orbán: Re-Election of Hungary's Anti-Immigrant Leader Is Major Challenge for EU." *The Guardian*, April 9, 2018. http://www.theguardian.com/world/2018/apr/09/viktor-orban-re-election-hungarys-anti-immigrant-leader-major-challenge-for-eu.

Reuters. 2018. "Civil Organizations in Hungary Brace for Government Crackdown on NGOs." *Reuters*, April 25, 2018. https://www.reuters.com/article/us-hungary-orban-ngos-idUSKBN1HW1ZN.

Ryan, Danielle. 2018. "Orban's Win Speaks to Growing Tide of Anti-EU Feeling." *RT International*, April 9, 2018. https://www.rt.com/op-ed/423629-hungary-orban-election-anti-eu/.

Scheppele, Kim Lane. 2014. "Guest Post: Hungary's Attacks on the Rule of Law and Why They Matter for Business." *Financial Times*, February 5, 2014. https://www.ft.com/content/6c538e70-168f-3d1e-ba92-8a80790a6247.

Shalal, Andrea. 2018. "Hungary Slides Deeper down Corruption Index, Watchdog Says." *Reuters*, February 21, 2018. https://www.reuters.com/article/us-global-corruption/hungary-slides-deeper-down-corruption-index-watchdog-says-idUSKCN1G52E6.

Smyth, Patrick. 2017. "European Public Prosecutor's Office Set up, but Ireland Opts Out." *The Irish Times*, June 8, 2017. https://www.irishtimes.com/news/crime-and-law/european-public-prosecutor-s-office-set-up-but-ireland-opts-out-1.3112454.

Vella, Matthew. 2018. "Malta Requests to Join European Public Prosecutor's Office on Tax Evasion and Fraud." *Maltatoday*, March 9, 2018. https://www.maltatoday.com.mt/news/europe/85152/malta_finally_joins_european_public_prosecutors_office_on_tax_evasion_and_fraud.

Walker, Shaun, and Daniel Boffey. 2018. "Hungary Election: OSCE Monitors Deliver Damning Verdict." *The Guardian*, April 9, 2018, sec. World news. https://www.theguardian.com/world/2018/apr/09/hungary-election-osce-monitors-deliver-damning-verdict.

Zalan, Eszter. 2018. "EU Action on Hungary and Poland Drowns in Procedure." *EUobserver*, November 13, 2018, sec. Political Affairs. https://euobserver.com/political/143359.

Zarembo, Kateryna, Sergiy Solodkyy, and Tetiana Levoniuk. 2018. "Sanctions against Russia Don't Damage the EU. But Italy, Hungary, and Austria Might Try to Get Them Scrapped |." *Euromaidan Press*, December 11, 2018, sec. Russian Aggression. http://euromaidanpress.com/2018/12/11/sanctions-against-russia-dont-damage-the-eu-but-these-three-countries-want-them-scrapped/.

Other documents and web pages

Stavrou, Protesilaos. 2016. "The Distribution of Competences in the EU." Independent web based publisher. Protesilaos Stavrou. April 17, 2016. https://protesilaos.com/euguide/distribution-competences-eu/.

Transparency International. 2019a. *Corruption Perceptions Index 2018 – Executive Summary*. Berlin, Germany: Transparency International. https://www.transparency.org/files/content/pages/2018_CPI_ExecutiveSummary.pdf.

———. 2019b. "Western Europe and EU: Stagnating Anti-Corruption Efforts and Weakening Democratic Institutions." Regional Analysis. Www.Transparency.Org. January 29, 2019. https://www.transparency.org/news/feature/cpi2018-western-europe-eu-regional-analysis.