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THE LEGAL REGULATION OF
THE EUROPEAN UNION'S
FINANCIAL SECTOR: PROBLEMS
AND POSSIBLE SOLUTIONS

Summary of the Doctoral Thesis
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INTRODUCTION

The financial sector of the European Union (hereinafter also - EU) is a relatively abstract concept affecting the well-being of the entire community. In the last decade, the EU has increasingly developed conditions, primarily on the activities of credit institutions with a view to avoiding systemic problems. However, sources of jurisprudential academic literature after the so-called financial crisis in 2007 too often formulate normative expositions without doctrine of interaction with ownership rights. There is also a lack of academic debate in Latvia about important nuances of law, such as fiat money issuance, positive national responsibilities for controlling monetary inflation, the universal nature of sustainable development, etc. Therefore, the study is about the systemic content of the legal framework of the EU financial sector, insofar as the quality of property rights protection is affected.

The topicality and scope of the study stems from the fact that the purpose of the regulatory changes is to avoid systemic problems that became commonplace events of the t.s. the global financial crisis 10 years ago. Before 2007 quite extensive interdisciplinary studies on the EU financial system were carried out. The study of the Turkish researcher Ali Riza Choban (in Turkish - *Ali Riza Çoban*) should be highlighted, reflecting the problem of property rights in the unpredictable changes of the free market economy.¹ The mentioned author has also specifically made an assessment of inflation, rather, of price increases, according to the case-law of the European Court of Human Rights, finding that inappropriate compensation is a violation of property rights that the European Court of Human Rights can recognise without specific criteria as

¹Çoban, A.R. 2004. *Protection of Property Rights Within the European Convention on Human Rights*. Hants: Ashgate Publishing Limited, 10.

disproportionate and that countries may be left without confidence in the legitimacy of their actions.² It should be added that the relevance of such knowledge also exists in today's case law.

It should be emphasized that, when using legal tools for solving financial problems, one must understand the causal relationships between these problems and their interaction with regulatory enactments. Thus, the author has prepared an interdisciplinary study in the jurisprudence of Latvia of international law using the necessary norms and doctrines of economics, history, accounting, philosophy of science, psychology and pedagogy in which the object is the financial sector of the European Union and the subject is the legal framework (see Fig. 1), raising and proving the hypothesis and modelling a juristic theory.



Fig. 1. Illustration of the object and subject of the study

Given the wide-ranging nature of the financial sector, this study provides a fundamental insight into only the most essential and most relevant issues for society, namely, the latest developments and the scope of credit, insurance and investment business rights are explored, emphases and generally described subjects are identified. Whereas, the presentation of legal practice

²Çoban, A.R. 2005. Inflation and Human Rights: Protection of Property Rights against Inflation under the European Convention on Human Rights. In: *Essex Human Rights Review*, Volume 2 Number 1. Essex: University of Essex, 62-78, 77. Available from: <http://projects.essex.ac.uk/ehrr/Vol2No1.html>[viewed 28.09.2017.]

covers court-established protection aspects of property rights that are part of the management of the financial sector.

The research is based on the current events from September 2014 to February 2018 and it should be added that for the first time in Latvia, a doctoral thesis in law after the preparation of the final version will be available as a recorded reading in mp3 format³, and there will be a prepared videocommentary⁴ for viewing on the internet as well.

The aim of the doctoral thesis is to clarify the topical systemic content of the legal framework of the financial sector of the European Union, identifying its shortcomings and any possibilities for legal solutions. Hypothesis: *the inheritance of inflationary monetary policy within the changes of the regulatory enactments of the financial sector of the European Union infringe on property rights of the majority of society without constitutional necessity*. Following objectives are set:

- To clarify the development of the financial sector in the European Union, as well as the content of the participants and concepts of the European system of law by identifying the dominant legal institutes.
- To compare the impact of public-legal relationships existing in the European Union's monetary policy and the private financial sector on private-law relationships and vice versa.
- To investigate the accountability of supervisory authorities as well as the case-law of the European Court of Human Rights and the

³ Bočs L. 2018. Klausāmtraksts "Eiropas Savienības finanšu sektora tiesiskais regulējums: problēmas un iespējamie risinājumi". Laura Boča publisko failus araksts. Iegūstams In: failiem.lv/laurisbochs

⁴ Bočs L. 2018. Videokomentārs disertācijas darbam "Eiropas Savienības finanšu sektora tiesiskais regulējums: problēmas un iespējamie risinājumi. Iegūstams In: youtube.com

European Union regarding the protection of financial interests and property rights.

- To analyze the means available to national legislators for creating a legal framework for the financial sector within the common legal system of the European Union.
- To identify shortcomings and advance solutions suggestions, pointing out possible guiding principles for future regulatory enactments.

To ensure a traceable analysis of the little studied financial sector components in the doctrine of jurisprudence, the following main questions were also raised: 1) What is the content, development and changes in the legal framework of the financial sector in the EU? 2) How do legal norms and case-law affect the related responsible institutions, the legislative process and the ownership rights of individuals? 3) What is the responsibility of the monetary legislator to protect the ownership rights of individuals? 4) In what amount and form does inflation have a legitimate objective and proportionality in the EU and member states? 5) What are possible improvements and solutions in the EU and member states for the identified problems? The rebuttal of the hypothesis would be the conclusion that the legal framework of the EU financial sector and the related monetary inflation processes are constitutionally enshrined with a legitimate aim and proportionate according to property protection requirements provided by EU fundamental rights and judicial practice.

The methodology and instrumentation used includes a dialectical study and analysis of normative, jurisprudence and doctrinal sources (analytical, historical, inductive, deductive, comparative) by interpretation within the context of historical and current legal positivism, evaluation of the dominant consensus and legal and technical synthesis of possible solutions to legal shortcomings. Besides, collecting statistical data, content analysis for

money and other terms, as well as use of legal anthropology, mainly through doctrine and field research, i.e., primary data sources.

In several places the text may be influenced by foreign sources, insofar as the thought for jurists is maintained. Repeated references in certain contexts are intended to emphasize and reinforce the meaning, and meaning of used terms is according to general grammatical and legal practice conditions, unless stated otherwise. Used sources are in Latvian, English, German and French.

The conclusions and theses are obtained after research subsumption to contain valid deductive arguments with facts and an empirical basis.⁵ To obtain the results there were also used the conditions of demarcation, more exactly, of research results on which the conclusions cannot be true, developed by science philosopher Karl Popper.⁶ The findings are based on heuristic, that is, sufficient data, based on facts within the so-called Occam's razor, which is the principle of most suitable simplicity for answers⁷, to maintain topicality until the objective situation of the actual circumstances changes. Consequently, the conclusions are of an indefinite duration with maximum research traceability and an emphasis on the logical legal analysis of content based on the notions of "from known to unknown" and the so-called Pareto Principle, assuming that about 20% of research accounts for 80% of the effective results.

Several national and international academics and professionals shared their responses, suggestions and information for the development of this study.

⁵van der Steen, W.J. 1993. *A Practical Philosophy for the Life Sciences*. New York: State University of New York Press, 127, via GoogleBooks.

⁶Popper, K. 2002. *The Logic of Scientific Discovery*. London: Routledge, 18, via GoogleBooks.

⁷Mārtinsons, K. 2016. Zinātne un pētniecības: jautājumi ievirzei. In: *Pētniecība: teorija un prakse*. Mārtinsons, K., Pipere, A., Kamerāde, D., zin.red. Rīga: Raka, 34.

The structure of the doctoral thesis consists of an introduction, four sections with further subsections, a summary, acknowledgments, a list of bibliography and references, and four attachments. Each section opens with an introductory part giving an overview of the issues discussed therein, while at the end of the paragraphs of the sections there is a laconic summary of the theme of the paragraph and at the end of the sections there are highlighted the main results of the section. The author also presented a significant part of the research results in individual publications, additionally producing audio articles and videocommentaries. Such a model of layout is intended to apply the principles of modalities, i.e., individual content and its combinations within the Cone of Experience developed by the American pedagogue Edgar Dale.⁸ Specifically, the text should be presented in such a way that ideas can be readily understood also by means of structurally combined points of attention.

In the summary, the main conclusions and proposals of the study are summarized, defining and presenting 20 theses for defense.

Approbation and results are provided in the compulsory scientific research part of the doctoral studies, both in mainly reviewed scientific publications, as well as in conferences, courses and training seminars:

1. International scientific publications and theses⁹:

1.1. Bočs L. 2018. Inflationary proportionality of the European Union's financial sector. In: *VI starptautiskās zinātniski praktiskās konferences „Transformācijas process tiesībās, reģionālajā ekonomikā un ekonomiskajā politikā: ekonomiski - politisko un tiesisko attiecību aktuālās problēmas”*

⁸Kovalchik, A., Dawson, K., eds. 2004. *Education and Technology: An Encyclopedia. Volume 1: A-I*. Santa Barbara: ABC-CLIO, 162, via GoogleBooks.

⁹ Publicēto darbu saraksts, informācija par pāris npublicētiem rakstiem pieejama: <https://faiiem.lv/u/ypuqt47c> [viewed 20.02.2018.]

rakstu krājums. Rīga: Baltijas Starptautiskā akadēmija, 315 – 319. In: <http://bsa.edu.lv/docs/2018/sbornik08122017.pdf> [viewed 16.02.2018.];

1.2. Bočs L. 2018. Legal Analysis of Systemic Investment Protection Regulation in the European Union's Financial Sector. In: *6th International Interdisciplinary Scientific Conference SOCIETY. HEALTH. WELFARE. Conference Proceedings*. Parc d'activités de Courtabœuf: EDP Sciences (SHS Web of Conferences 40), 01007, 1-6, Available from: <https://doi.org/10.1051/shsconf/20184001007> [20.02.2018.];

1.3. Bočs L. 2017. Property Right Limitations Within the Fiat Monetary System of the European Union. In: *4th International Multidisciplinary Scientific Conference on Social Sciences and Arts, Conference Proceedings*. Vienna: SGEM Vienna, Book I, Volume I, 421 - 427. ISBN 978-619-7105-93-3. DOI: 10.5593/SGEMSOCIAL2017/HB11/S02.053, abstract available from: <https://sgemworld.at/ssgemlib/spip.php?article3742&lang=en> [viewed 13.10.2017.];

1.4. Bočs L. 2017. Insurance industry's legal importance to financial sector stability in the European Union. In: *V starptautiskās zinātniski praktiskās konferences „Transformācijas process tiesībās, reģionālajā ekonomikā un ekonomiskajā politikā: ekonomiski - politisko un tiesisko attiecību aktuālās problēmas” rakstu krājums*. Rīga: Baltijas Starptautiskā akadēmija, 342. – 346. In: <http://bsa.edu.lv/nauka/sbornik/21022017.pdf> [viewed 11.10.2017.];

1.5. Bočs, L. 2016. Legal analysis of modern monetary inflation. In: *Twenty-five years of Renewed Latvia, Lithuania, and Estonia: Experience of the Baltic States in Europe*. Materials of International Scientific Conference. Riga: Latvian Academy of Sciences Baltic Center for Strategic Studies, 120 – 126. ISBN 978-9934-8515-4-4;

1.6. Bočs, L. 2016. The difficulties with the European Union's financial sector's legal regulation. In: *5th International Interdisciplinary Scientific*

Conference SOCIETY. HEALTH. WELFARE. Conference Proceedings. Parc d'activités de Courtabœuf: EDP Sciences (SHS Web of Conferences 30), 00019, 1-6, Available from: <https://doi.org/10.1051/shsconf/20163000019> [viewed 10.10.2017.];

1.7. Bočs, L. 2015. The legal protection of financial interests in a democratic society. *Administratīvā un kriminālā justīcija*. 1 (70), 45. - 50. ISSN 1407-2971;

1.8. Bočs, L. 2015. The interplay of economic interests with the European Union's foreign policy. In: *Starptautiskās zinātniski praktiskās konferences "Drošības nostiprināšanas aktuālās problēmas: politiskie, sociālie, tiesiskie aspekti" publicētās tēzes*. Rīga: Rīga Stradiņš University, 46. - 47. In: https://www.rsu.lv/sites/default/files/book_download/drosibas_nostiprinasana_konf_tezes_apr2015.pdf [viewed 10.10.2017.];

1.9. Bočs, L. 2015. Eiropas Savienības finanšu sektora ģenēzes tiesiskie aspekti. In: *III starptautiskās zinātniski praktiskās konferences „Transformācijas process tiesībās, reģionālajā ekonomikā un ekonomiskajā politikā: ekonomiski - politisko un tiesisko attiecību aktuālās problēmas” rakstu krājums*. Rīga: Baltijas Starptautiskā akadēmija, 211.-215. In: http://bsa.edu.lv/docs/12122014rk_lv.docx [viewed 11.10.2017.];

2. National scientific publications and theses:

2.1. Bočs, L. 2016. Contemporary Realization of Sovereign's Money Creation Rights. In: *Ārvalsts investīcijas: kad tiesības mijiedarbojas*. University of Latvia 74. zinātniskās konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds, 328. – 334. In: http://www.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juristi_74.pdf [11.10.2017.]

2.2. Bočs, L. 2015. The legal importance of money creation. In: *Socrates: Rīga Stradiņš Universitys Juridiskās fakultātes elektroniskais*

juridisko zinātnisko rakstu žurnāls. 2 (2), 31. - 36. In:
https://www.rsu.lv/sites/default/files/imce/Dokumenti/izdevumi/socrates_2_2015.pdf[viewed10.10.2017.];

2.3. Bočs, L. 2015. The legal protection boundaries of international economic relations in the European Union. In: *Tiesību efektivitāte postmodernā sabiedrībā*: University of Latvia's 73. zinātniskās konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds, 215.-220. In:
https://www.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juristi_73-konf.pdf[viewed10.10.2017.];

3. Presentations in international scientific conferences¹⁰:

3.1. Bočs L. 11.10.2018. „The proportionality of monetary policy as a macro-juristic theory”. *7th International Interdisciplinary Scientific Conference SOCIETY. HEALTH. WELFARE*. Rīga: Rīgas Stradiņš University;

3.2. Bočs L. 08.12.2017. „Inflationary proportionality of the European Union's financial sector”. *VI starptautiskā zinātniski praktiskā konference „Transformācijas process tiesībās, reģionālajā ekonomikā un ekonomiskajā politikā: ekonomiski - politisko un tiesisko attiecību aktuālās problēmas”*. Rīga: Baltijas Starptautiskā akadēmija;

3.3. Bočs, L. 29.03.2017. „Property Right Limitations Within the Fiat Monetary System of the European Union”. *4th International Multidisciplinary Scientific Conference on Social Sciences and Arts, Conference Proceedings*. Vienna: SGEM Vienna;

3.4. Bočs L. 09.12.2016. „Insurance industry's legal importance to financial sector stability in the European Union”. *V starptautiskā zinātniski praktiskā konference „Transformācijas process tiesībās, reģionālajā ekonomikā*

¹⁰ Bočs, L. [B.g.] Prezentācijas un konferenču materiāli. In:
failiem.lv/laurisbocs[viewed12.10.2017.]

un ekonomiskajā politikā: ekonomiski - politisko un tiesisko attiecību aktuālās problēmas". Rīga: Baltijas Starptautiskā akadēmija;

3.5. Bočs L. 24.11.2016. „Legal Analysis of Systemic Investment Protection Regulation in the European Union’s Financial Sector”. *5th International Interdisciplinary Scientific Conference SOCIETY. HEALTH. WELFARE*. Rīga: Rīgas Stradiņš University;

3.6. Bočs, L. 12.06.2015. „Commercial bank regulation in the European Union”¹¹. *Starptautiskā zinātniskā konference „European Integration and Baltic Sea Region: Diversity and Perspectives – 2015”*. Rīga: University of Latvia;

3.7. Bočs, L. 23.04.2015. „The interplay of economic interests with the European Union’s foreign policy. *Starptautiskā zinātniski praktiskā konference "Drošības nostiprināšanas aktuālās problēmas: politiskie, sociālie, tiesiskie aspekti"*. Rīga: Rīgas Stradiņš University;

3.8. Bočs, L. 25.03.2015. „Human rights within the European Union’s financial sector”. *Rīga Stradiņš Universitys starptautiskā studentu konference „Health and social sciences 2015”*. Rīga: Rīgas Stradiņš University;

3.9. Bočs, L. 12.12.2014. „Eiropas Savienības finanšu sektora ģenēzes tiesiskie aspekti”. *III starptautiski zinātniski praktiskā konference „Transformācijas process tiesībās, reģionālajā ekonomikā un ekonomiskajā politikā: ekonomiski - politisko un tiesisko attiecību aktuālās problēmas”*. Rīga: Baltijas Starptautiskā akadēmija;

3.10. Bočs, L. 26.-27.11.2014. Poster „The difficulties with the European Union's financial sector's legal regulation”. *Starptautiskā zinātniskā*

¹¹ Bočs, L. 2015. Presentation „*Commercial bank regulation in the European Union*”. Also available from: <http://www.lu.lv/eibsr2015/programme/>[viewed 12.10.2017.]

konference” 5th International Interdisciplinary Scientific Conference SOCIETY. HEALTH. WELFARE.” Rīga: Rīgas Stradiņš University;

4. Presentations in national scientific conferences:

4.1. Bočs, L. 27.03.2015. „Representation of economic interests within the legislation of the European Union”. *Rīga Stradiņš Universitys 2015. gada zinātniskā konference*. Rīga: Rīga Stradiņš University;

4.2. Bočs, L. 18.03.2015. „Legal nature of social insurance”. *Rīga Stradiņš Universitys 15. zinātniskā konference*. Rīga: Rīga Stradiņš University.

4.3. Bočs, L. 13.02.2015. „The legal protection boundaries of international economic relations in the European Union”. *University of Latvia 73. zinātniskā konference “Tiesību efektivitāte postmodernā sabiedrībā”*. Rīga: University of Latvia;

5. Participation in other scientific events with presentation of thesis¹²:

5.1. Seminar. 15.04.2016. *Kā publicēties augstas ietekmes recenzētos zinātniskos izdevumos?* Rīga: Rīga Stradiņš University;

5.2. Oral presentation. 26-27.10.2015. *PhD Course „Research Methodologies in Public International Law and Human rights”*. Rīga: Rīga Graduate School of Law and the University of Copenhagen Faculty of Law;

5.3. Participation in Latvian and German juristic student cooperation course. 03.-10.08.2015. *Netzwerk Ost-West: Austauschseminar Berlin-Rīga Herausforderung Digitale Welt – Ausgewählte Probleme des Medienstraf- und -zivilrechts im Umgang mit dem Internet*. Rīga: University of Latvia.

5.4. Participation in seminar. 20.05.2015. *How to get published with Oxford Journals*. Rīga: Oxford University Press;

In the end a juristic theory for inflationary proportionality was made.

¹² Bočs, L. 2018. Publisko failu saraksts. Promocijas darba materiāli. In: <https://faiiem.lv/u/ypuqt47c> [viewed 17.12.2017.]

1. THE ESSENCE OF THE EUROPEAN FINANCIAL SECTOR'S LEGAL INSTITUTE

The legally regulated origin of the financial sector becomes evident with the systematization of social civilization processes, including the granting of debt and third party payment funds to other persons against promises and collateral, as well as promoting the security of their property against certain risks in the physical or economic environment.¹³ This section describes the content of the research object, the origin of the legal institute, and the components of the subject of the study.

1.1 The origins and development of the European financial sector

The existence of a regulated financial market is a phenomenon of modern times, while the emergence of a systemic market economy can be established already more than five thousand years ago, along with the documented organization of civilization in the Middle East region. The direction of European economic processes, including the development of financial affairs, was based on *ius civilis*, i.e., private-law transactions under the legal practice widely established by Roman law. As a fundamental promoter of economic processes contract law became crucial, where *bonae fidei*, or the principle of good faith, served not as a strict reservation, but as a means of interpreting the generally binding obligations of the legal system.¹⁴ Following

¹³Claessens, S., Feijen, E. 2006. *Financial Sector Development and the Millennium Development Goals*. Washington, D.C.: World Bank Working Papers Nr.89, 15, via GoogleBooks.

¹⁴Riggsby, A.M. 2010. *Roman Law and the Legal World of the Romans*. Cambridge: Cambridge University Press, 125, via GoogleBooks.

the formation of the regulatory environment, the further development of the financial system was facilitated by the development of technical capabilities.

In the age of enlightenment, when in the eighteenth century in Europe, cooperation ties developed between many countries, there also emerged an emphasis on a scientific and research-based quality approach to the economy, reinforcing important philosophical and political concepts. Such rationalism was based, for example, on the theory of public contract about the society's desire to organize themselves in civilizations, avoiding chaotic order proposed by Thomas Hobbs, Jean-Jacques Rousseau, and other authors, as well as the pursuit of the aforementioned economic interests through the selfishness of individuals and the relative invisible hand steering the relative benefits of the common good, as mentioned in the work „*An Inquiry into the Nature and Causes of the Wealth of Nations*” by Adam Smith in 1776¹⁵. An important point of J.J. Rousseau's analysis was the novelty of the financial concept and the identification of the related economic risks in the economy, in which monetary issues can divert attention from considerations of industriousness.¹⁶ Such a cultural environment of intellectualism in Europe created an unseen manifestation of critical thought also for the future.

In the second half of the twentieth century the relations between the representatives of the capitalist and socialist economic systems were hindered, however, already during the war a significant international law agreement was reached between the Western Allies, namely the International Monetary Fund and the International Bank for Reconstruction and Development or the so-

¹⁵Mitchell, R.E. 2016. *The Language of Economics: Socially Constructed Vocabularies and Assumptions*. Springer: New York, 37, via GoogleBooks.

¹⁶Wokler, E. 2012. *Rousseau, the Age of Enlightenment, and Their Legacies*. Princeton: Princeton University Press, 104, via GoogleBooks.

called World Bank were established in July 1944 at the conference in Bretton Woods, New Hampshire, USA, also pegging world currencies to the US dollar, with its actually fixed exchange value per ounce of gold 35:1 as a nominal currency anchor mechanism.¹⁷ As a result, an international order was initialized with the global integration mechanism built in.

In Europe with the so-called Maastricht criteria it was politically agreed to reinforce conditional benchmarks for EU membership by imposing requirements such as public debt, budget deficits, and other minimum requirements for national economies.¹⁸ The global economic hardships after 2007 experienced explicitly by the economies of the Western countries showed risks not only to the solvency of private financial institutions, but also in relation to the sovereign competence of countries to borrow in private financial markets and the risks to national solvency, such as certain southern European countries, due to external debt.¹⁹ Consequently, the financial and budgetary difficulties initiated by the international role of transactions of private financial institutions in particular also transferred into problems of public policy.

Long-term legal obstacles can turn directly into the solution of fundamental EU issues in the so-called *acquis communautaire* (translated from French - community gain), i.e., within the overall legal framework of the EU on

¹⁷Obstfeld, M. 1993. The Adjustment Mechanism. In: *A Retrospective on the Bretton Woods System: Lessons for International Monetary Reform*. Bordo, M.D. and Eichengreen, B., eds. Chicago: University of Chicago Press, 247, via GoogleBooks.

¹⁸Gandolfo, G. 2002. *International Finance and Open-Economy Macroeconomics*. Berlin: Springer, 360, via GoogleBooks.

¹⁹Pagoulatos, G., Quaglia, L. 2013. Turning the Crisis on its Head: Sovereign Debt Crisis as Banking Crisis in Italy and Greece. In: *Market-Based Banking and the International Financial Crisis*. Hardie, I. & Howarth, D., eds. Oxford: Oxford University Press, 197, via GoogleBooks.

a global scale.²⁰ Consequently, the EU financial sector developed to a politically centralized union with a single economic policy, in spite of regional differences in competitiveness resulting from the prerogatives or mandates of the national jurisdictions.

1.2 Legal context of the study subject components in the EU

The European Union is the name of the organization using a geographic name. Currently, as a legal entity, it is a political organization by the European subcontinent countries that unites and represents the consensus goals of the Member States' societies ever since the Maastricht Treaty, which founded the EU.²¹ Consequently, the term is a grammatical structure of political origin, which previously was not in use for literary or colloquial purposes.

The financial sector, on the other hand, is a combination of two generic terms. Finance is money held by a person or organization.²² Financing is understood as an action using payment means for the management of certain transactions or capital, i.e., tangible assets and for the implementation of certain economic goals.²³ A sector is a designation for a certain part of the economy or

²⁰Ringe, W.-G. 2016. *The Deconstruction of Equity: Activist Shareholders, Decoupled Risk, and Corporate Governance*. Oxford: Oxford University Press, 2016,227, via GoogleBooks.

²¹07.02.1992. Treaty on European Union, as signed in Maastricht, Article A. Available from: http://europa.eu/european-union/sites/europaeu/files/docs/body/treaty_on_european_union_en.pdf [viewed 30.12.2016.]

²²Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "AkadTerm". "Finanses". In: <http://termini.lza.lv/term.php?term=finanses&list=&lang=&h=> [viewed 29.12.2016.]

²³Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "AkadTerm". "Finansēšana". In: <http://termini.lza.lv/term.php?term=finans%C4%93%C5%A1ana&lang=LV> [viewed 29.12.2016.]

an area of social or economic significance.²⁴ However, the concept of the financial sector may have specific legal definitions, covering, for example, commercial companies in the credit, insurance and investment service sectors and mixed financial management companies in the context of regulatory framework for financial conglomerates.²⁵ Within development strategy and policy planning documentation, the financial sector is also described as a set of financial intermediary institutions dominated by commercial banks.²⁶ Consequently, the financial sector, as a functional umbrella term, covers a set or part of persons in the economy that provides payment and asset or property management services as intermediaries or ultimate providers of services.

In view of the global financial problems after 2007, the functioning of credit institutions throughout the EU has been significantly affected by regulatory changes and the growth of legal requirements, especially in the so-called euro area countries, creating the so-called Banking Union.²⁷ Thus, the concept of the financial sector in the doctoral thesis mainly covers segments of credit institutions, insurance and investment sectors in the Banking Union.

Legal framework in a general context means all the rules in force in a legal community.²⁸ The term of problems involves the need for research for

²⁴Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "AkadTerm". "Sektors". In: <http://termini.lza.lv/term.php?term=sektors&lang=LV>[viewed29.12.2016.]

²⁵ 28.06.2005. Finanšu konglomerātu likums: Latvijas Republikas likums. *Latvijas Vēstnesis*. 99, 1.p.3.punkts.

²⁶ 02.04.2014. Par Finanšu sektora attīstības plānu 2014.–2016.gadam: LR Ministru kabineta 2014. gada 31. martarīkojumsNr. 139. *Latvijas Vēstnesis*, 66, 2.iedaļa.

²⁷Finanšu un kapitāla tirgus komisija. B.g. *Ko nozīmē Eiropas Banku savienība?* In: http://www.fktk.lv/texts_files/Infografika_VUM_pdf.pdf[viewed02.01.2017.]

²⁸Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "AkadTerm". "Tiesiskais regulējums".

In:[http://termini.lza.lv/term.php?term=tiesiskais%20regul%C4%93jums&list=&lang=&h=\[viewed02.01.2017.\]](http://termini.lza.lv/term.php?term=tiesiskais%20regul%C4%93jums&list=&lang=&h=[viewed02.01.2017.])

complex theoretical or practical issues.²⁹ The term of opportunities should be evaluated as a practical credibility and technical applicability of the results of the analysis.³⁰ Solutions denote reactions for responses to individual questions or the use of opportunities.³¹ Given the importance of formulation of questions in problem identification, in this study the legal framework should be understood as the European Union's current regulatory framework for the general system of the financial sector, which as a technical term means a set of objects, procedures or techniques and their interrelationships, forming a functionally integrated entirety.³² The amount of money available is also related to the concept of monetary policy, which denotes central bank decisions regarding money supply in the national economy for certain purposes.³³ Thus, in the study, monetary inflation is used in the context of the money supply, price inflation in the context of the expensiveness of commodities and services. All denote the loss of purchasing power of monetary units as a component of long-term development and welfare, which in the constitutional sense should be evaluated in the context of proportionality. The study describes the process of inflation also as inflationary.

²⁹Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "*AkadTerm*". "Problēma". In:<http://termini.lza.lv/term.php?term=probl%C4%93ma&lang=LV>[viewed03.01.2017.]

³⁰Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "*AkadTerm*". "Iespējams". In:<http://termini.lza.lv/term.php?term=iesp%C4%93jams&lang=LV>[viewed03.01.2017.]

³¹Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "*AkadTerm*". "Risinājums". In:<http://termini.lza.lv/term.php?term=risin%C4%81jums&lang=LV>[viewed03.01.2017.]

³²Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "*AkadTerm*". "Sistēma". In: <http://termini.lza.lv/term.php?term=sist%C4%93ma&lang=LV>[viewed19.10.2017.]

³³Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze. "Monētārā politika". In: <http://termini.lza.lv/term.php?term=monet%C4%81r%C4%81%20politika&lang=LV>[viewed30.10.2017.].

2. LEGAL FRAMEWORK OF THE EU'S FINANCIAL SECTOR

In this section a considerable emphasis is on the overall EU legal framework, with a view to reflect current developments in the financial sector, also assessing the economic considerations that influences the systemic management of the financial sector. Thus, the research covers both the regulatory enactments and doctrines, the findings of the European Court of Human Rights (ECHR) and Court of Justice of the European Union (CJEU) practice on material and procedural norms in the realization of private and public economic interests, allowing to obtain the necessary data for the legal analysis of the financial sector as a whole.

2.1 Current legislation and subordinate subjects

The structure of the current system of **crediting and investing management** was strengthened in 2014, based on the global aftermath of economic problems of 2008, with a regulation for prudent supervision and capital requirements, for example, setting a total capital level of at least 8%.³⁴ In addition a directive was introduced for uniform minimum investments in capital and a framework for the freedom of entrepreneurship for credit institutions and investment brokerage firms in the financial sector.³⁵ Since the definition of absolute levels of capital with directives has taken place multiple

³⁴27.06.2013. Eiropas Parlamenta un Padomes regula Nr.575/2013 par prudenciālajām prasībām attiecībā uz kredītiestādēm un ieguldījumu brokeru sabiedrībām, un ar ko groza Regulu (ES) Nr.648/2012. *Eiropas Savienības Oficiālais Vēstnesis*, L 176, 92.pants.

³⁵ 26.03.2013. Eiropas Parlamenta un Padomes direktīva 2013/36/ES par piekļuvi kredītiestāžu darbībai un ieguldījumu brokeru sabiedrību prudenciālo uzraudzību, ar ko groza Direktīvu 2002/87/EK un atceļ Direktīvas 2006/48/EK un 2006/49/EK. *Eiropas Savienības Oficiālais Vēstnesis*, L 176, 338, 33.pants.

times so far, the two sets of the mentioned rules are abbreviated as CRD IV (*Capital Requirements Directive IV*), denoting the current generation with capital requirements among other things in compliance with the so-called Basel III regulations.³⁶ The aforementioned rules were developed by the Bank for International Settlements, providing for current recommendations for the financial sector liquidity and risk management procedures.³⁷ Therefore, after the so-called global financial crisis in the operating conditions of credit institutions and investment brokerage firms there have been introduced regular increases in capital requirements, as well as additional supervisory conditions developed that allow national and EU institutions to obtain more data on the balance sheet figures of licensed institutions.

Regulation of legislative considerations in the systemic framework of the euro currency countries are known as the Banking Union, while in the context of all the EU Member States it is known as the European System of Financial Supervisors (ESFS), which operates in a single set of rules with a number of supervisory authorities: national supervisory authorities, the European Supervisory Authorities (ESAs) - the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Securities and Markets Authority (ESMA) - and their combined Joint Committee (JC), as well as the European Systemic Risk Board (ESRB).³⁸

³⁶Maloney, N. 2014. *EU Securities and Financial Markets Regulation*. Third Edition. Oxford: Oxford University Press, 34, via GoogleBooks.

³⁷2010. *Basel III: A global regulatory framework for more resilient banks and banking systems*. Basel Committee on Banking Supervision. Basel: Bank for International Settlements, 17, Art.40. Available from: <http://www.bis.org/publ/bcbs189.pdf>[viewed 09.03.2017.]

³⁸Eiropas Komisija. 08.08.2014. *Ziņojums Eiropas Parlamentam un Padomei par Eiropas Uzraudzības iestāžu (EUI) un Eiropas Finanšu uzraudzības sistēmas (EFUS) darbību*. Brisele: Eiropas Komisija, 2. In:<http://eur->

Consequently, the supervision system is intertwined with several unifying goals, which make it possible to evaluate both individual roles and the effectiveness of collective work.

The insurance sector's long-term uniting regulation in the EU stemmed from the directive adopted on July 24, 1973 regarding the conditions for insurance companies, while drawing, for example, calculations of technical reserves or accruals for accounting purposes to the provisions of the national regulatory enactments.³⁹ After multiple year delays the directive for integrated insurance supervision in the EU single market came into force on January 1, 2016. That means that in the systemic study of the so-called Solvency II Directive by this time there are already usable academic research debates by aims such as subject profile analysis, risk management, independent problem assessment, lending intensity and proportion of influence of other macroeconomic factors in the global competitiveness of the industry, etc.⁴⁰ For example, following the requirement under the third paragraph of the Article 101 of the Directive, the need to hold a capital at 99.5% of the reliability level in at least simulated calculations would suggest that the insolvency of subordinated insurers can occur only once in 200 cases that can be mathematically mistrusted due to differences in prudential calculation.⁴¹ It creates uncertainties of technical reserves in relation to volatility.

lex.europa.eu/resource.html?uri=cellar:52c42d53-1ef0-11e4-8c3c-01aa75ed71a1.0003.02/DOC_1&format=PDF[viewed 14.03.2017.]

³⁹ 16.08.1973. Eiropas Padomes direktīva par normatīvo un administratīvo aktu koordināciju attiecībā uz uzņēmējdarbības sākšanu un veikšanu tiešās apdrošināšanas nozarē, kas nav dzīvības apdrošināšana (73/239/EEK). *Oficiālais Vēstnesis. L 228, 24.p.*

⁴⁰Charmaine, B. et al. 2017. The European Insurance Industry: A PEST Analysis. *International Journal of Financial Studies*. 5(2), 14, 3. Available from: doi:10.3390/ijfs5020014 [viewed 24.10.2017.]

⁴¹Bolviken, E. 2017. *Solvency II in life insurance*. Oslo: University of Oslo, 14, via GoogleScholar.

The aspects of the Solvency II System are both professionally and academically valued for several years, so innovative conclusions are expected in mathematical and other areas of research,⁴² but not in law. As the Article 3 of the Solvency II Directive excludes compulsory social security schemes of the Member States, the author will focus further on that element, mainly with the analysis of retirement pensions, since, for example, in Latvia, it is based on compulsory membership and accumulative investments.⁴³ Therefore, the system of social insurance, especially pensions, allows an illustrative analysis of insurance and investment interactions in the financial sector for the most economically active people in a comprehensible way.

The social security system at the EU level is based on a regulatory framework that consolidates the main operational principles for the organization of transnational social security, distinguishing both the purposes and the boundaries of the single system.⁴⁴ At least the protection of additional pension capital of the private pension funds at the EU level, with a directive, separates the reliance on a variety of external factors, such as, for example, national supervision of self-control of the funds and the impact of credit ratings on decisions.⁴⁵ Whereas, the state-funded pension schemes are the

⁴²Weber, S. 2017. *Solvency II, or How to Swipe the Downside Risk Under the Carpet*. Cornell University Library Database, 3, via GoogleScholar.

⁴³ 08.03.2000. Valsts fondēto pensiju likums. Latvijas Republikas likums. *Latvijas Vēstnesis*. 78/87, 3.p.

⁴⁴ 30.10.2009. Eiropas Parlamenta un Padomes Regula (EK) Nr. 988/2009 (2009. gada 16. septembris), ar ko groza Regulu (EK) Nr. 883/2004 par sociālās nodrošināšanas sistēmu koordinēšanu un ar ko nosaka tās pielikumu saturu. *Eiropas Savienības Oficiālais Vēstnesis*. L 284/13, 1.p.

⁴⁵ 31.05.2013. Eiropas Parlamenta un Padomes direktīva Nr. 2013/14/ES (2013. gada 21. maijs), ar ko groza Direktīvu 2003/41/EK par papildpensijas kapitāla uzkrāšanas institūciju darbību un uzraudzību, Direktīvu 2009/65/EK par normatīvo un administratīvo aktu koordināciju attiecībā uz pārvedamu vērtspapīru kolektīvo ieguldījumu uzņēmumiem (PVKIU) un Direktīvu 2011/61/ES par alternatīvo

responsibility of the respective state insofar as it is necessary to comply with the legal provisions, on which, for example, in Latvia, the accounts are prepared in accordance with the provisions of the Financial and Capital Market Commission (hereinafter referred to as – the FCMC).⁴⁶ Consequently, the implementation of the European Union's social security principles is the responsibility of national legislators and supervising authorities by providing conditions at the EU and national level.

2.2 The framework for interactions between national and EU level jurisdictions

The interests of the EU Member States have mainly been the protection of local market participants, while within the EU since the beginning the main emphasis has been to promote competition within the single market. For example, in the field of credit institutions, it covers the withdrawal from the role of central banks in the supervision of competition by transferring it to general competition supervising authorities.⁴⁷ Similar considerations apply to the insurance area in the EU, as within both competition and consumer rights, the EU focuses on developing a united operation of international markets and, for example, ensuring the parallel functioning of credit institutions and insurance companies as financial institutions.⁴⁸ Whereas, in the attraction of

ieguldījumu fondu pārvaldniekiem attiecībā uz pārmērīgu paļaušanos uz kredītreitingiem. *Eiropas Savienības Oficiālais Vēstnesis*. L 145/1, 1.p.

⁴⁶ 08.03.2000. Valsts fondēto pensiju likums. Latvijas Republikas likums. *Latvijas Vēstnesis*. 78/87, 14.p.

⁴⁷ Carletti, E., Vives, X. 2009. Competition Policy in the Banking Sector. In: *Competition Policy in the EU: Fifty Years on from the Treaty of Rome*. Vives, X., ed. Oxford: Oxford University Press, 267, via GoogleBooks.

⁴⁸ Lista, A. 2013. *EU Competition Law and the Financial Services Sector*. Abingdon: Routledge, 17, via GoogleBooks.

investments the harmonization in the supervision of the financial sector of the EU Member States has been politically regarded as an advantage in the attractiveness and security of the market. However, raising capital does not constitute a completely unavoidable consideration of the prevalence of national interests of the Member States and the creation of appropriate opportunities for so-called forum shopping without the implementation of the need for competitiveness of the general market.⁴⁹ Thus, the EU regulatory framework for the financial sector covers mainly unified conditions for the operation and supervision of credit institutions, insurance and investment management companies in all EU Member States, leaving Member States with a limited scope for individualising regulatory and enforcement requirements to reduce fragmentation in economic growth.

The inclusion and implementation of national interests in transnational decision-making, for example, also in the EU's negotiations with third-country representatives has been recognized by the Organization for Economic Co-operation and Development (OECD) as a prerequisite for the ensuring of transparency of EU policies.⁵⁰ Equally strong reservations are expressed about the political interest at the EU level of issuing solidarity-based securities, which are critically perceived particularly in relation to the individual interests and regional characteristics of different countries.⁵¹ Consequently, at the EU level,

⁴⁹Avgerinos, Y. 2003. *Regulating and Supervising Investment Services in the European Union*. New York: Palgrave Macmillan, 109, via GoogleBooks.

⁵⁰Organisation for Economic Co-operation and Development. 2017. *Für eine bessere Globalisierung: Wie Deutschland der Kritik Begegnen Kann*. Paris: OECD publishing, 18. Available from: <http://www.oecd.org/berlin/publikationen/Fur-eine-bessere-Globalisierung-Wie-Deutschland-der-Kritik-begegnen-kann.pdf>[viewed 24.05.2017.]

⁵¹Berens, R.A. 2014. *Europa auf dem Weg in die Transferunion?: Bankenrettung & Staatenrettung & Eurorettung und kein Ende - Eine Bestandaufnahme aus ökonomischer und rechtlicher Sicht*. Berlin: LIT Verlag, 420, via GoogleBooks.

there are several preconditions for market unification that have not been fulfilled, but further financial management initiatives for the single financial market are already being discussed.

2.2.1 Importance of Member State jurisdiction

The regulatory management of the financial sector is being centralized, however also practical considerations from the EU institutions allow for the representation of national interests of Member States.⁵² Therefrom stems the so-called divergences of the EU Member States or differences within the EU against the EU regulatory framework, such as consumer protection or the liability of financial institutions in certain jurisdictions.⁵³ The reasons for market divergences stem from, amongst other things, the possibilities for national social responsibility and welfare policies, which, for example, make also different economic competitiveness due to differences in the minimum wage of the EU Member States.⁵⁴ However, it is acknowledged that, with the beginnings of globalization, the global competitiveness of EU countries grew just when the legal basis of the economies of EU Member States was unified and integrated.⁵⁵ From the aforementioned developed the view that in certain

⁵²Leino, P. 2017. Accountability dilemmas of regulating financial markets through the European Supervisory Agencies. In: *Research Handbook on EU Administrative Law*. Harlow, C., Leino, P., Cananea, G., eds. Cheltenham: Edward Elgar Publishing, 221, via GoogleBooks.

⁵³Tsagas, G. 2016. The Regulatory Powers of the European Supervisory Authorities: Constitutional, Political and Functional Considerations. In: *Regulating and Supervising European Financial Markets: More Risks than Achievements*. Andenas, M., Deipenbrock, G., eds. Berlin: Springer, 109, via GoogleBooks.

⁵⁴Martin, A. 2015. Eurozone Economic Governance: "A Currency Without a Country". In: *European Social Models from Crisis to Crisis: Employment and Inequality in the Era of Monetary Integration*. Dolvik, J.E., Martin, A., eds. Oxford: Oxford University Press, 44, via GoogleBooks.

⁵⁵Woolcock, S. 2012. *European Union Economic Diplomacy: The Role of the EU in External Economic Relations*. New York: Routledge, 91, via GoogleBooks.

circumstances, with an internationally similar legal basis, without creating additional threats to the sustainability of regional economies, within the collective competitiveness forms so-called dichotomies or important contrasts.⁵⁶ Consequently, it is in the interests of EU collective policies to centralize the promotion of the EU's competitiveness, while the political intentions of national jurisdictions are conditional protectionism so the regional economy is not excessively integrated into risks of supranational economies.

2.2.2 The importance of monetary policy

Although monetary policy of central banks is based on the aim of avoiding excessive price rises, i.e., price inflation, it is nevertheless evident from the economic analysis that central banks are not in exclusive position to directly affect it, as the loss of the purchasing power of money is to be studied in conjunction with the activity of economic segments, including the total lending of credit institutions.⁵⁷ In practice, monetary policy initiatives to tackle price inflation are mainly based on analysts' forecasts of the direction of the economic decisions of society, such as household and consumer spending.⁵⁸ Following such criteria, the determination of the reserve ratios of credit institutions, as well as the rates of lending among credit institutions, is used to implement the set policy objectives, while establishing the so-called

⁵⁶Cottier, T., Lsatra, R.M. 2012. Conclusions. In: *International Law in Financial Regulation and Monetary Affairs*. Cottier, T., Jackson, J.H., Lastra, R.M., eds. Oxford: Oxford University Press, 419, via GoogleBooks.

⁵⁷Arestis, P., Sawyer, M. 2006. Monetary policy when money is endogenous. In: *Complexity, Endogenous Money and Macroeconomic Theory: Essays in Honour of Basil J. Moore*. Setterfield, M., ed. Cheltenham: Edward Elgar Publishing, 230, via GoogleBooks.

⁵⁸de Haan, J., Eijffinger, S.C.W., Waller, S. 2005. *The European Central Bank: Credibility, Transparency, and Centralization*. London: The MIT Press, 37, via GoogleBooks.

transmission mechanism through which the economic development is intended to be influenced.⁵⁹ As these considerations in the EU stem from the autonomous competence of the ECB, economists have criticized the procedure as the ECB has no direct responsibility to other institutions.⁶⁰ In this situation, the involvement of monetary policy makers in decision-making initiatives is encouraged, so that the ECB's activities are not at least formally left without political care.⁶¹ Also from the single currency system stems the conditional equilibrium of the securities market of the Member States with regard to the amounts of interest rates.⁶² Private investors are interested in both favourable terms for profits and security for currency exchange rates, so limiting national political decisions helps to prevent, for example, the risks of devaluation etc.⁶³ Therefore, legally, the ECB is an independent body in charge of EU monetary policy, while the EU political organizations are showing initiatives of symbiotic cooperation with a view to promoting the stability of the financial sector in the EU in the long term.

⁵⁹Barwell, R. 2016. *Macroeconomic Policy after the Crash: Issues in Monetary and Fiscal Policy*. London: Palgrave Macmillan, 8, via GoogleBooks.

⁶⁰Kaczorowska-Ireland, A. 2016. *European Union Law*. Fourth Edition. New York: Routledge, 31, via GoogleBooks.

⁶¹Jancic, D. 2017. Accountability of the European Central Bank in a Deepening Economic and Monetary Union. In: *National Parliaments After the Lisbon Treaty and the Euro Crisis: Resilience Or Resignation?* Jancic, D., ed. Oxford: Oxford University Press, 152, via GoogleBooks.

⁶²Madura, J. 2016. *International Financial Management*. Abridged, 12th Edition. Boston: Cengage Learning, 199, via GoogleBooks.

⁶³de Mesquita, B.B. 2014. *Principles of International Politics*. 5th Edition. London: SAGE, 364, via GoogleBooks.

2.3 Appraisal of property rights and financial interests in legal practice

The ECHR case materials do not include legal proceedings, where the importance of fiat money is assessed or analysis of legal content is performed.⁶⁴ The only legal proceeding, where the nature of accounting of savings in credit institutions was reviewed for at least a small degree, covered the claim of citizens of Bosnia and Herzegovina when they could not recover past currency deposits, the legal nature of which was not commented by the court itself, but by an individual judge in a dissenting opinion.⁶⁵ In the aforementioned opinion, it was pointed out that deposits in banks are „book money” i.e. accounted money, which is a claim against a subject, about which the Grand Chamber of the Court, in the final judgment in the proceeding, stated only that the respective countries were responsible for the establishment of the banking system and, in cases where the state-owned bank takes over the liabilities, it is necessary to ensure that this loss of money is compensated as damage to property, including the increase in sums caused by inflation.⁶⁶ Consequently, the ECHR practice has at least reviewed the legal nature of fiat money and the relation to the protection of property rights.

The ECHR, finding that the national requirements enabled a private person to act in a certain way to protect its property rights, but the person has

⁶⁴HUDOC database search form for European Court of Human Rights, term "fiat money". Available from:<http://hudoc.echr.coe.int/eng>[viewed 05.06.2017.]

⁶⁵06.11.2012.Eiropas Cilvēktiesību tiesas nolēmums lietā: Ališić and others V. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia, dissenting opinion of judge Zupančič., 60642/08. In: <http://hudoc.echr.coe.int>[viewed 07.06.2017.]

⁶⁶16.07.2014. Eiropas Cilvēktiesību tiesas lielās palātas nolēmums lietā: Ališić and others V. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia. 60642/08, para.146. In: <http://hudoc.echr.coe.int>[viewed 08.06.2017.]

not used the most effective means to protect its legal interests still acknowledges that from the general circumstances of the case it is necessary to assess whether the person has expressed objections to the state in a clear way, which can resolve the dispute about an unwarranted violation of property rights.⁶⁷ Such considerations are included in the considerations concerning the protection of property of a private person as an owner *bona fide* or in good faith, while assessing whether the individual legal interests of a third party are affected.⁶⁸ Therefore, the examination of general violations of the EU legal system by the ECHR in its practice is based on the application of the EU body of law, as well as on the findings of the CJEU within EU law.⁶⁹ Thus, the ECHR in its practice has consolidated, firstly, the fundamental link between the property rights as a basic rights and active and forward-looking policy of countries; secondly, the engagement of a market situation in the assessment of proprietary interests; and, thirdly, the superiority of the EU common legal system and the conclusions of the CJEU as above national regulations.

In CJEU cases there has also not been an individual legal assessment, for example, for fiat money as a legal institute.⁷⁰ Whereas, the concept of purchasing power of money in the CJEU database is mentioned only once in the context of the advocate general's view, which identically to the one already

⁶⁷ 28.03.2017. Eiropas Cilvēktiesību tiesas spriedums lietā: VOLCHKOVA AND MIRONOV v. RUSSIA, 45668/05 and 2292/06, para. 126. In: <http://hudoc.echr.coe.int/eng?i=001-172314>[viewed06.07.2017.]

⁶⁸ 03.10.2013. Eiropas Cilvēktiesību tiesas spriedums lietā: ŽÁKOVÁ v. THE CZECH REPUBLIC, 2000/09, para. 93. In: <http://hudoc.echr.coe.int/eng?i=001-126544>[viewed07.07.2017.]

⁶⁹ 02.07.2013. Eiropas Cilvēktiesību tiesas spriedums lietā: R.Sz. v. HUNGARY, 41838/11, para. 59. In: <http://hudoc.echr.coe.int/eng?i=001-121958>[viewed07.07.2017.]

⁷⁰Case-law of the Court of Justice. Search form text for "fiat money". Available from: <http://curia.europa.eu/juris>[viewed 11.07.2017.]

outlined in this research, specifies that as a result of inflation, price increases inevitably reduce the value of nominal income, namely, the purchasing power of money decreases.⁷¹ In the CJEU proceedings the concept of inflation is mainly used in the arguments of the parties to the proceedings, as well as in references, such as the views of advocates general on business interests in price control and competition circumstances.⁷² Whereas, the importance of stability of the financial sector was also assessed by the CJEU through the capital requirements of credit institutions and specified that, in certain cases, where a write-off of a certain amount of debt would improve the measurements of capital requirements, it should be done to the extent that allows to overcome the critical measurement threshold.⁷³ On the other hand, the involvement of EU institutions in stabilizing national financial markets has been recognized by the CJEU as acts by EU institutions, which is also subject to the interpretation of the jurisdiction of the CJEU.⁷⁴ Consequently, in creating a financial sector in Member States, EU law creates guaranteed legal circumstances, however, it does not prevent Member States from imposing their national requirements, when they are harmonized with EU law and do not contradict decisions of EU institutions, whose actions can also be inspected by the CJEU.

⁷¹ 10.12.1998. Opinion of Advocate General Saggio in *Mulder and Others v Council and Commission*, Joined Cases C-104/89 and C-37/90, I-244. Available from: <http://curia.europa.eu/juris>[viewed 11.07.2017.]

⁷² 12.11.1985. Opinion of Advocate General Verloren van Themaat in: *Metro v Commission*, Case 75/48, P. 3065. In: <http://curia.europa.eu/juris>[viewed 11.07.2017.]

⁷³ 19.06.2016. Eiropas Savienības Tiesas nolēmums lietā: *Tadej Kontik and others v Državni zbor Republike Slovenije*, C-526/14, para. 101. In: <http://curia.europa.eu/juris>[viewed 21.07.2017.]

⁷⁴ 13.06.2017. Judgment of the Court of Justice of the European Union: *Eugenia Florescu and others v Casa Județeană de Pensii Sibiu and others*, C-258/14, para. 69.1. Available from: <http://curia.europa.eu/juris>[viewed 21.07.2017.]

3. CHALLENGES OF THE LEGAL REGULATION OF THE EU'S FINANCIAL SECTOR

From the aforementioned developments in regulatory enactments, as well as the cases of ECHR and CJEU, the author concludes that financial stability is linked to the provision of fair purchasing power in economic relations, but EU jurisdiction does not affect the right to issue fiat money or specify social security criteria. Therefore, this section discusses aspects of legal institutes not resolved by legal and juridically-political priorities⁷⁵, including issues whether issuing money is a privilege in monetary policy planning; whether money's purchasing power is a basic right in rem, i.e., fundamental property right; whether the legislator at the EU and national level has competence to regulate financial stability, etc.

3.1 Right to property

The legal doctrine of Latvia recognizes the concept of property right as a synonym for right to property.⁷⁶ However, it is clear from the civil-law understanding of the subject-matter of property that in constitutional analysis and research, it is possible to avoid misunderstandings, when discussing

⁷⁵ 23.03.2017. Par Finanšu sektora attīstības plānu 2017.-2019. gadam: Ministru kabineta 2017. gada 21. marta rīkojums Nr. 126. *Latvijas Vēstnesis*. 61, 2. Plāna paredzētie uzdevumi un pasākumi.

⁷⁶ Balodis, K. 2012. 105. Ikvienam ir tiesības uz īpašumu. Īpašumu nedrīkst izmantot pretēji sabiedrības interesēm. Īpašuma tiesības var ierobežot vienīgi saskaņā ar likumu. Īpašuma piespiedu atsavināšana sabiedrības vajadzībām pieļaujama tikai izņēmuma gadījumos uz atsevišķa likuma pamata pret taisnīgu atlīdzību. In: *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Autoru kolektīvs. Rīga: *Latvijas Vēstnesis*, 459-478, 460.

particularly the right to property.⁷⁷ Apart from the author's publications, in 2017 the first publication dealing with the legal understanding of money and property rights was published in Latvia, and one of the main conclusions was that at least fiat money has not a proprietary, but rather a liability nature, because it is a claim, and not a subject of property rights.⁷⁸ The author, insofar as it refers to terminology, agrees with the authors of the article, therefore, the following outline gives an assessment of the right to property as a broader legal concept.

At least since 2007, for example, in Latvia, the link between right to property and inflation has been strengthened judicially-politically, i.e., to eliminate inflation the government of Latvia approved the so-called Inflation Reduction Plan, the introduction of which also recognizes that inflation distributes income from fixed income entities (pensioners, workers, etc.) to variable income entities (capital holders, whose profit increases along with inflation).⁷⁹ Thus, legal risks to right to property were also recognized.

In the context of monetary inflation, it is worth emphasizing the role of the legal system today - to promote prosperity, the cultural environment, as well as everyday life of fellow citizens, fulfilment of general and other human needs, which, for example, are recognized as fundamental values in the

⁷⁷ Rozenfelds, J. 2008. *Pētījums par Civillikuma lietu tiesību daļas pirmās, otrās un trešās daļas modernizācijas nepieciešamību*. 21. In: http://at.gov.lv/files/uploads/files/7_Resursi/Petijumi/lv_documents_petijumi_civillikum_a_modernizacija.doc[viewed 06.11.2017.]

⁷⁸ Kārklīņš J., Rozenbergs J. 21.02.2017. Bezskaidras naudas līdzekļu juridiskais statuss, civiltiesiskie un kriminālprocesuālie aspekti. *Jurista Vārds*, 8, 8.-17., 9.

⁷⁹ Finanšu ministrija. 06.03.2007. *Ziņojums par patēriņa cenu inflācijas attīstību un samazināšanas priekšlikumiem*, 1. In: <http://www.fm.gov.lv/lv/aktualitates/jaunumi/25651-inflacijas-samazinanas-plans-atbalstis-ministru-kabineta>[viewed 07.11.2017.]

Constitution (*in Latvian – Satversme*) of the Republic of Latvia.⁸⁰ Therefore, regarding monetary policy it can be concluded that in the legal system of the EU the powers of monetary policy are entrusted to an independent central bank institution, which thus replaces a traditional legislator outside other constitutional functions such as social security.

According to the Constitutional Court of the Republic of Latvia in the so-called Pension Cases - No. 2001-12-01 and 2009-43-01 - reliance on social security means that the requirements of the Article 109 of the Constitution must be implemented at least to the minimal extent, insofar as it stems from a fair balance between the priority of state spending limits and exposed social groups.⁸¹ Whereas in the proceedings of 2017 concerning the Solidarity Tax introduced in 2016 - No. 2016-14-01 and 2016-16-01 - the court acknowledged that the legislator should not impose simplicity of implementation of laws as an independent legitimate objective, because it should ensure tax regulation as fair and solid redistribution of income in society.⁸² So monetary policy and social policy were two roles of the initial legislator, but only in social politics has it retained powers and obligations that must be used in a socially just manner.

The money-issuing powers as a specific legal institute were identified by the author in the research and approbation process as the most significant

⁸⁰01.07.1993.Latvijas Republikas Satversme: Latvijas Republikas likums. *Latvijas Vēstnesis*. 43, preambula.

⁸¹22.12.2009. Par likuma "Par valsts pensiju un valsts pabalstu izmaksu laika periodā no 2009.gada līdz 2012.gadam" 2. panta pirmās daļas atbilstību Latvijas Republikas Satversmes 1. un 109. pantam un 3. panta pirmās daļas atbilstību Latvijas Republikas Satversmes 1., 91., 105. un 109. pantam: Latvijas Republikas Satversmes tiesas 2009. gada 21. decembra spriedums lietā Nr. 2009-43-01.*Latvijas Vēstnesis*. 201, 31.2. para.

⁸²17.11.2017. Par Solidaritātes nodokļa likuma 3., 5. un 6. panta atbilstību Latvijas Republikas Satversmes 91. panta pirmajam teikumam: Latvijas Republikas Satversmes tiesas 2017. gada 16. novembra spriedums lietā Nr. 2016-16-01. *Latvijas Vēstnesis*, 229, 19. para.

shortage in modern jurisprudence, as it is not only academically remotely studied, but also practitioners do not have much practice on a daily basis. As the author has already set out the legal analysis in a number of publications about the issue of money, it is possible to highlight the very latest fundamental publication of international research on this topic, established by professor of economics Richard Werner. Namely, in a 2016 publication, R. Werner conducted the first worldwide empirical test, affirming credit theory with accountancy statements of a German credit institution. While examining the theories of intermediaries, reserves and credit he proved that fiat money was generated in the course of a real lending process, which enters the economic circulation without any importance to, for example, the central bank's reserve ratio. So the publication emphasized the need to re-evaluate the current monetary policy assumptions about the effectiveness of decisions.⁸³ As for more than a hundred years there has not been any empirical data, which has not prevented the creation of various economic theories for monetary policy decisions, the author concludes that a large impact of this publication on monetary policy will be very likely omitted.

In Latvia, for lawyers without accounting qualification such accounting concepts as balance sheet, accounting, debit, credit, asset, liability, etc., as well as their interactions, could most easily be perceived in the Cabinet of Ministers Regulation No. 339 "Regulation on the arrangement and organization of accounting in companies" dated November 7, 1995, as their content emphasizes relevant descriptions and definitions.⁸⁴ Yet currently the only regulatory

⁸³ Werner, R. 2016. *International Review of Financial Analysis*. Volume 46, 361-379, 377. Aivalable from: <https://doi.org/10.1016/j.irfa.2015.08.014>[viewed 20.11.2017.]

⁸⁴17.11.1995. Noteikumi par uzņēmumu grāmatvedības kārtošānu un organizāciju: Ministru kabineta 1995. gada 7. novembra noteikumi Nr. 339. *Latvijas Vēstnesis*. 179, I.

enactment with a sample accounting plan is in the regulations of the Cabinet of Ministers regarding the accounting accounts used by the state budget institutions.⁸⁵ The content of these regulations is systemic and universal, and their terminology and structure is used consistently, therefore the author has prepared Table 3.1. showing the importance of a balance sheet and its items.

Table 3.1

Content of assets and liabilities of balance sheet items in accounting

Assets	Liabilities
Given in cash values of properties or claims against debtors	Given in cash liabilities to investors, lenders or other creditors
Accounts with starting digits 1-2	Accounts with starting digits 3-5

Perhaps the easiest analogue model for a loan issuance account would be when there is a fixed amount of funds, but with a letter of guarantee which promises the missing sums to the borrower as well. Compared to a non-bank lender, such a letter from a credit institution, when it is recorded electronically in an account with a particular borrower, becomes a fiat money amount in the client's current account. This fact is of practical significance which is also confirmed by the Figure 3.1. showing a graph of the leverage ratio of the EU's financial sectors about the proportion of the collective equity of the financial institutions against debt-based assets.

⁸⁵ 28.12.2009. Kārtība, kādā budžeta iestādes kārtu grāmatvedības uzskaiti: Ministru kabineta 2009. gada 15. decembra noteikumi Nr. 1486. *Latvijas Vēstnesis*. 203, 1. pielikums.

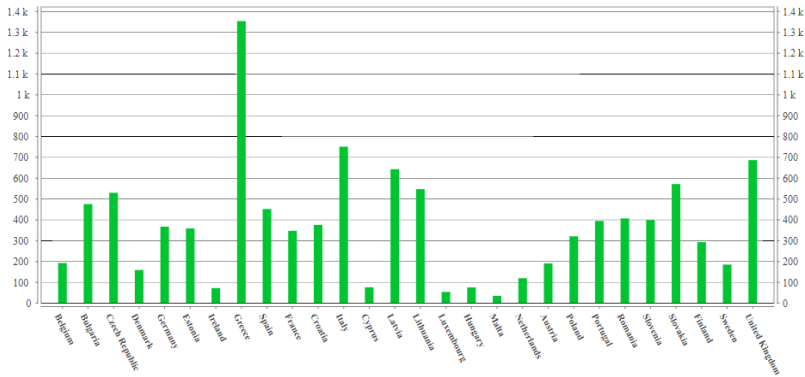


Fig. 3.1 The borrowing ratio of the financial sector of the EU Member States in 2016 (%)⁸⁶

3.2 Administration of legislation

From the aforementioned stems the need to set legally defined roles in the legislative process. EU member states are mainly republics, where the authority is executed by temporarily elected officials for the benefit of society (21 out of 28)⁸⁷. As within the framework of the thesis it is concluded that the main aspects of the EU financial sector are regulated through the transposition processes of EU directives, the author will utilize the jurisdiction of Latvia as the most accessible Member State for illustrating the necessary insight into the practical legislation aspects.

The essence of the constitutional structure is related to the concept of basic norms within the theory of pure law by the Austrian legal philosopher Hans Kelsen, which implies the effect of unwritten ideology on the content of

⁸⁶Eurostat. Financial sector leverage (debt to equity), non-consolidated - %, 2016.

Available from:

ec.europa.eu/eurostat/tgm/graph.do?tab=graph&plugin=1&pcode=tipsfs20&language=en&toolbox=data [viewed 13.12.2017.]

⁸⁷ European Union. 2017. *The 28 member countries of the EU*. Available from:

https://europa.eu/european-union/about-eu/countries_en#tab-0-0 [viewed 27.11.2017.]

the first written legal norms.⁸⁸ The text of Article 1 of the Constitution of the Republic of Latvia, stating that Latvia is an "independent democratic republic", refers to a democratic process. The author sees it as a subordinate concept, since the administration structure is made up of a republic with elected representatives as a legislator and the majority of proposed laws is based on the analysis of unelected officials of the executive branch⁸⁹ while balancing legal interests for specific issues, including by consulting with private entities.

The specific term "lobbying" or "lobby" for interest representation in the general sense denotes the representation of private economic interests in public authorities.⁹⁰ There is currently no common regulatory framework for lobbying in the EU, but the main conditions cover the procedures set up by the EU legislator for registration of representatives.⁹¹ There is also no legal definition in Latvia; accordingly, the author uses the notion of lobby in its wider sense, understanding it as interaction and realisation of private interests in public administrations by private initiative.

The level of academic research shall be highlighted as the cornerstone of skills for both private and public officials. For example, in Latvia, the legal institute of trusts was perceived as foreign and, to a certain extent, also incompatible with the Latvian jurisdiction, however, in Latvia its distinction

⁸⁸ Autoru kolektīvs. 2014. 1. Latvija ir neatkarīga demokrātiska republika. In: *Latvijas Republikas Satversmes komentāri: Ievads. I nodaļa. Vispārējie noteikumi*. Rīga: Latvijas Vēstnesis, 136-232, 148.

⁸⁹ Latvijas Republikas Ministru kabineta tiesību aktu projekti. Minsitru kabinetā skatītie likumprojekti 01.01.2016.-31.12.2016. In: <http://tap.mk.gov.lv/mk/tap/?page=14&dateFrom=2016-01-01&dateTo=2016-12-31&mk=&text=&org=0&area=0&type=17> [viewed 24.11.2017.]

⁹⁰ Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "AkadTerm". "Lobisms" un „Lobijs”. In: <http://termini.lza.lv/term.php> [viewed 07.11.2017.]

⁹¹ European Parliament. 2015. *Transparency of lobbying at EU level*. 3. Available from: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572803/EPRS_BRI\(2015\)572803_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/572803/EPRS_BRI(2015)572803_EN.pdf) [viewed 07.11.2017.]

from the classical model is diverse in terms of analogies, as it was demonstrated also by Dr.iur.Jānis Grasis in his doctoral thesis.⁹² Since according to data of the National Library of Latvia even 10 years later it is still the only academic research on this internationally important legal institute,⁹³ the author concludes that the development of research and understanding of certain internationally important legal institutes in Latvia may depend on very limited numbers of people. Therefore, the author together with the solely owned limited liability company LBI established the association LB trusts, whose *expressis verbis*, that is, the written aim was to establish trust relations and to carry out lobbying works in the interests of the author (see Supplement No. 2 to the doctoral thesis). It means that the author has openly established a legal entity in the jurisdiction of Latvia for development of the doctoral thesis by conduct of trust transactions and lobbying with the aim of clarifying and illustrating the realization of private interests in legislation.

In section 3.1. the author shows that the creation of fiat money in circulation occurs as a result of credit transactions performed by credit institutions. Whereas, the legislative competence of monetary policy in the EU has been transferred to central banks, which is also approved by the Constitutional Court of the Republic of Latvia, stating that the Bank of Latvia is entitled to issue external regulatory enactments in its exclusive field of

⁹²Grasis, J. 2008. *Trasta būtība, tā atzīšana un tiesiskais regulējums romāņu-ģermāņu tiesību saimes valstīs un iespējamā pārņemšanas Latvijā: promocijas darbs*. Rīga: University of Latvia.143. In:

https://dspace.lu.lv/dspace/bitstream/handle/7/5154/26535-Janis_Grasis_2008.pdf?sequence=1 [viewed 13.11.2017.]

⁹³Latvijas Nacionālā bibliotēka. Valsts nozīmes bibliotēku elektroniskais kopkatalogs. Meklēšana pēc vārda nosaukumā: „trusts”. In:https://kopkatalogs.lv/F/?func=option-update-Ing&file_name=find-b&local_base=Inc04&p_con_lng=lav [viewed13.11.2017.]

competence by its democratically legitimized legal authority.⁹⁴ In view of the aforementioned, until the legislative process does not strengthen the constitutional priority of the constant risk of inflation or loss of purchasing power of money, the democratic nature of the loss of money's purchasing power or compliance with the legal interests of the majority of the society is legally highly disputable. Namely, it can be considered to be a violation of the rights of the majority of society to property without a direct legitimate aim and proportionality. Thus, the genuineness of the hypothesis of the study *the inheritance of inflationary monetary policy within the changes of the regulatory enactments of the financial sector of the European Union infringe on property rights of the majority of society without constitutional necessity has been* confirmed with a sufficiently high probability.

Consequently, not only theoretical, but also practical solutions have to be developed, determining the conditions under which the restriction of the property rights of individuals may be in balance with the benefits of the majority of society.

⁹⁴ 04.03.2016. Par Latvijas Bankas 2014. gada 15. septembra noteikumu Nr. 141 "Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma finansēšanas novēršanas prasības, veicot ārvalstu valūtu skaidrās naudas pirkšanu un pārdošanu" 19. un 20. punkta atbilstību Latvijas Republikas Satversmes 1. un 64. pantam, kā arī 91. panta pirmajam teikumam": Latvijas republikas Satversmes tiesas 2016. gada 2. marta spriedums lietā Nr. 2015-11-03. *Latvijas Vēstnesis*. 45, 21.2. para.

4. POSSIBLE SOLUTIONS FOR THE SHORTCOMINGS OF THE EU'S FINANCIAL SECTOR

In the absence of precisely established criteria for the financial sector's proportionality by the EU regulatory enactments or case-law, the author has made the modelling of more cautious legal regulation possibilities in compliance with the issues described in section 3. Due to limitations, the author focuses on the challenges raised in the thesis according to their priority and the quantity of the affected right-holders.

4.1 Responsibility for systemic results

The dynamics of the national economy is nominally calculated mainly by the measurements of the gross domestic product, which in general can be described as a set of values of final sales of the commodities and services produced in the country, including remuneration for employees, deducting state subsidies and similar payments.⁹⁵ However, the calculation of national debt depends on the gross domestic product, which serves to illustrate the national fiscal discipline and long-term growth by showing loans on behalf of the state, for which the actual security is the re-distributed budget and assets of the state.⁹⁶ Consequently, the state manages public money and borrows, when there is not enough funds for budget spending.

⁹⁵Centrālā statistikas pārvalde. B.g. *Iekšzemes kopprodukts Latvijā kopā (EKS-2010)*. In: www.csb.gov.lv/statistikas-temas/metodologija/ieksezemes-kopprodukts-latvija-kopa-eks-2010-40899.html [viewed 04.12.2017.]

⁹⁶Valsts kase. B.g. *Kas ir valsts parāds?* In: <https://www.kase.gov.lv/valsts-parada-vadiba/kas-ir-valsts-parads> [viewed 04.12.2017.]

Statistically the average indebtedness of EU Member States considerably exceeds 60% of the gross domestic product⁹⁷ which is the Maastricht Treaty threshold.⁹⁸ For example, for Latvian state debt it is possible to borrow from both residents and foreign persons in legally described cases, including to ensure the return of previous loans, mainly through the issue of securities.⁹⁹ The competence of the state debt planning and attraction of loans is set by the Ministry of Finance and subordinated institutions in accordance with established requirements and needs.¹⁰⁰ Therefore, for the creation of state debt, the executive branch finances the shortage through the Ministry of Finance.

The dynamics of macroeconomic conditions in Latvia in recent years has contributed to an increase in the amount of state debt up to approx. 39%.¹⁰¹ Whereas, it stems from the figure 4.1. that in Latvia the amount of the so-called non-bank loans, excluding leasing and other loans has grown alongside the GDP growth and state debt growth, thus it can be concluded that deficits in household regular incomes has also grown.

⁹⁷Eurostat. *General government gross debt - 2016*. Available from: ec.europa.eu/eurostat/tgm/graph.do?tab=graph&plugin=1&pcode=teina225&language=en&toolbox=data [viewed 04.12.2017.]

⁹⁸ 29.07.1992. Treaty on European Union. *Official Journal of the European Communities*. C 191/1, Article 1.

⁹⁹ 06.04.1994. Likums "Likums par budžetu un finanšu vadību": Latvijas Republikas likums. *Latvijas Vēstnesis*, 41, 35. p. trešā daļa.

¹⁰⁰ 10.05.2014. Valsts vērtspapīru izlaišanas noteikumi: Ministru kabineta 2014. gada 6. maija noteikumi Nr. 237. *Latvijas Vēstnesis*, 89, 10.

¹⁰¹ Valsts kase. 2017. *Valsts parāda vadības pārskats 2016*. 15. In: https://www.kase.gov.lv/sites/default/files/public/SSD/P%C4%81rskati/Gada%20p%C4%81rskats/VK_parada_parskats_2016.pdf [viewed 04.12.2017.]

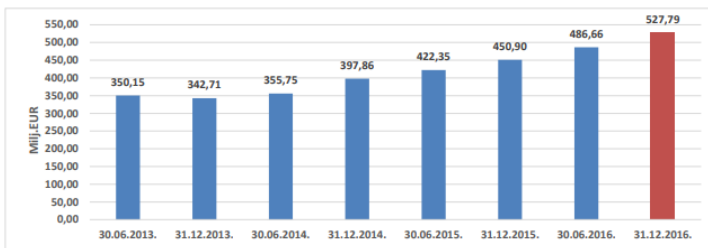


Fig. 4.1 The amount of Latvian non-bank loans from 2013 to 2016¹⁰²

The management of public and private debt differs primarily by the potential of collateral. It is notable that in the theoretical presentation of the separation of state powers the change in the value of money, for example, by replacing the metal used in coins, is highlighted as a cause for significant economic risks, since money retains public confidence in the exchange of commodities; therefore, the use of nominal monetary units should be avoided, while maintaining the material value of monetary units.¹⁰³ As within the framework of the international constitutional law it is possible to single out the progress of only the last century for developing internationally binding legal norms and the formation of appropriate political organizations,¹⁰⁴ it becomes necessary to prioritize the contemporaneity of constitutional principles of individual countries in solving large-scale social problems. Since the Latvian Constitution does not contain concepts or terms as, for example, *money*,

¹⁰²Patērētāju tiesību aizsardzības centrs. 2017. *Pārskats par nebanku patērētāju kredīšanas tirgus darbību 2016. gadā*. 12. In: www.ptac.gov.lv/sites/default/files/2016_parskats_par_nebanku_kredit_tirgu_0.pdf [viewed 11.12.2017.]

¹⁰³de Secondat de Montesquieu, C. 1995. *De l'esprit des lois*. 1758 éd. Livre 22, Chapitre III. Des monnaies idéales. Versini, L., éd. Paris: Éditions Gallimard, 253. De: http://ecole-alsacienne.org/CDI/pdf/1400/14055_MONT.pdf [vu 30.11.2017.]

¹⁰⁴Fassbender, B. 2005. The Meaning of International Constitutional Law. In: *Towards World Constitutionalism*. St. John Macdonald & Johnston, D.M., eds. Leiden: Martinus Nijhoff, 837-851, 846, via Google Scholar.

finances, currency, debt, etc. that would be related to the state's finance sector, the author also has compiled data on other EU Member States in order to ascertain whether, for example, the monetary and public liabilities management power has been consolidated in the current constitution of any EU Member State. The data were mainly based on the current English translations of constitutions of the Member States summarized by the Organization for Security and Co-operation in Europe.¹⁰⁵

The Constitutions of Latvia and the Czech Republic do not contain notions of money, finances, currency or debt, however, the majority of constitutional provisions of other states addresses a specific area as, for example, the financing of education or health care, as well as the procedural conditions for state budget management, monitoring and legislation, mentioning the terms sought as secondary. In the Constitutions of Belgium, Denmark and Luxembourg, the monarch is responsible for money issuance, but, for example, the Polish Constitution not only emphasizes the role of the central bank in issuing money and responsibility for the value of the currency, but Article 216 also sets a limit on state debt - 3/5 of the gross domestic product. Also Article 36 of the Hungarian Constitution provides the amount of the state debt, i.e., in general cases, the state debt may not exceed 50% of the gross domestic product. By contrast, Article 14b of the Austrian Constitution defines even a framework for the award of legal tenders. Consequently, even without specific references in the constitution, all EU Member States have central banks, state debts, etc., because the legislator has developed further regulations with an appropriate element of political will.

¹⁰⁵Organization for Security and Co-operation in Europe. *Constitutions*. Available from: www.legislationline.org/documents/section/constitutions [viewed 06.12.2017.]

Therefrom stems an important consideration regarding financial stability in solving state economic issues. Namely, from constitutional norms, at least in part, comes a confirmation of political will for further regulatory enactments without the influence of excessive subjective perceptions of the authors of the relevant regulatory enactments. The author concludes that in the twenty-first century there is a significant need of, at least in the strengthening of certain priority principles, direct constitutional norms as the highest legal force. Thus, the author in the thesis 18.1. of the paper expresses a couple of proposals for the purpose of supplementing the Constitution of the Republic of Latvia with a generally binding purpose of sustainable development for welfare, as the one already initially enshrined in the sixth paragraph of its introduction.

Purchasing power parity among EU Member States as an individual indicator, together with the aforementioned ones, allows us to understand the difference in the so-called cost of living, because it expresses the relative purchasing power of money within the EU. The author points out that the need for monetary policy inflation is controversial in at least two ways, because inflation also affects urgently needed commodities and services, while regular economic decisions are precisely based on benefits, such as special offers, discounts, and similar factors that save time or money.¹⁰⁶ It is therefore legally possible to set inflation limits insofar as it does not affect investments and needed assessment of the right to property as an amount of income for the time mostly spent on a particular occupation or profession.

As social security in the EU depends on national legislators, on whom the ECHR and CJEU cases impose direct obligations stemming from, for

¹⁰⁶SIA Maxima Latvija. 2017. *Maxima mazumtirdzniecības kompass*. Augusts, 6. In: https://www.maxima.lv/fileman/Uploads/Images/testas/MX_kompass_augusts_pdf_v6.pdf [viewed 13.12.2017.]

example, the principle of a socially responsible state, the author suggests improving the positive and negative responsibilities of the monetary power. Namely, the political responsibility of the monetary power is also to be consolidated in the legal provisions on the constructive results of monetary policy, such as the reduction of social inequality caused by the loss of money's purchasing power. As such obligations do not change the scope of the Treaty on the Functioning of the EU or the Treaty on EU and their initial competences of the ECB and the central banks within its system, it can be concluded that such a regulatory environment would ensure, firstly, the full distribution of competences between legislators and, secondly, the strengthening of legal responsibility of monetary policy, insofar as it requires reporting on what has been done, to no lesser extent than, for example, on the work by parliament.

After assessing the aforementioned and the conclusions of section 3, the author suggests **a legal theory of inflationary proportionality**, anticipating that the impact of economic results caused by loss of money's purchasing power on social security and general rights to property is not effectively monitored, if monetary and economic legislative power is not consolidated. Hence, inflationary proportionality would mean that only consolidated economic legislative power can ensure the targeted and proportionate implementation of economic conditions through the use of democratically legitimized power. It should be noted that the application of such a synthesized theory depends on both the political will of the original legislator and the level of development of research instruments, because, like theories on social contract, evolution by natural selection, heliocentrism or the Sun as the centre of the universe, the so-called blank slate (*in Latin - tabula rasa*) about the complete psychological equality of born people, etc., there is a causal relationship between contemporary ideology and the potential according to the contemporary level of knowledge and skills.

4.2 Hedonic regression analysis in jurisprudence

The use of the concepts of constitutional economy and behavioural economy is not a priority in legal doctrine; however, it is to be noted that both branches of economic analytics were developed in the second half of the twentieth century as constitutive and predictive branches with a legal aspect. For example, constitutional economy was consolidated by US economist James Buchanan by continuing to explore the interaction of the economic behaviour of the members of society with the regulatory framework.¹⁰⁷ In the literature on economics, J. Buchanan's position on the regulatory content of the monetary environment is positioned as unequivocal: the rules should promote the implementation of private and public interests in a socially beneficial way.¹⁰⁸ Thus, philosophical analysis of law to assess the stability of the financial sector has an interdisciplinary background.

It should be noted that fundamental considerations have already been used in legal doctrine at least since the nineteenth century after the analysis of Jeremy Bentham, the so-called pioneer of the theory of utilitarianism, on humane hedonistic actions, including the impact of useful and useless, pleasant and unpleasant matters on legal and practical behaviour, with possibilities of hedonic (felicific) calculation.¹⁰⁹ Although such terminology is no longer actively used, it shall be indicated that at least economic calculations nowadays undergo a correction analysis by applying the hedonic regression method to

¹⁰⁷ Backhaus, J.G. 2005. *The Elgar Companion to Law and Economics*. Cheltenham: Edward Elgar Publishing, 223, via GoogleBooks.

¹⁰⁸ Boettke, P.J., Salter, A.W., Smith, D.J. 2016. Money as Meta-Rule: Buchanan's Constitutional Economics as a Foundation for Monetary Stability. *George Mason University Working Paper Nr. 16-49*, 29, via GoogleScholar.

¹⁰⁹ Mitchell, W.C. 1918. Bentham's Felicific Calculus. *Political Science Quarterly*, Vol. 33, Nr. 2, 161-183, 165, via GoogleScholar.

compare the qualitative characteristics of the individual components of an object that may be useful in valuation of assets in various areas of the economy, such as real estate.¹¹⁰ Consequently, hedonic regression is a model used in modern analyses to express the independent axiological importance or value of individual units of the entire object.

There are no established models of hedonic regression in legal doctrine, insofar as regulatory enactments could identify the conformity of individual units with contemporary values, achievable goals, etc. However, in legal philosophy it should be emphasized that the entirety needs to create a greater value than the sum of its individual parts. The author points out that legal hedonism, hedonoscropy, and other similar concepts could be used to reference the same principle, however, the specifics of the concepts do not affect the objective to be achieved. Namely, the priority roles of the constituent elements of the jurisdiction and their adaptation to human needs.

Since the competent use of public funds can not only depend on legal norms, but also on the competence of those, who apply those norms, the author concludes that the most available sources of empirical modelling of public liability risks could be the reports of credit institutions if they also evaluated the impact of the systemic malfunctions of credit institution activities on public administration. Thus, the author in the thesis Nr.20 proposes to supplement the Stress Test section of the Basel III Regulation with a credit institution self-assessment table with systemic importance to model at least emergency contingency plans of state administrations.

¹¹⁰ 21.10.2005. Eiropas Komisijas regula (EK) Nr. 1722/2005 (2005. gada 20. oktobris) par mājokļu pakalpojumu novērtēšanas principiem saistībā ar Padomes Regulu (EK, Euratom) Nr. 1287/2003 par to, kā saskaņot nacionālo kopienākumu tirgus cenās. *Eiropas Savienības Oficiālais Vēstnesis*, L 276, pielikums.

The analysis of actions and cognitive, i.e., mental abilities as, for example, in psychology research's Cognitive Dissonance Theory is one of the most accessible areas in which one can see parallel priorities with both behavioural economy and legal qualification topic, as the particularly common denominator is human behaviour dichotomy, i.e., the division between rational and emotionally-based behaviour in a social environment.¹¹¹ The mistakes of human beings were documented also in the twentieth century, and, for example, even after the end of the Second World War, the Japanese lieutenant Hiroo Onoda (*Hiroo Onoda*) continued 29 years in the Philippines' jungle, maintaining beliefs against reality.¹¹² Thus, the subject of military law at higher education institutions could strengthen the doctrine of effective feedback on the strategic, operational and tactical level as universal administrative levels.

Since the legislative process depends on many factors, conditional eclecticism, i.e., versatility of abilities in legislation can serve as a reinforcement mechanism for the work results of the officials involved, insofar as the cases to be resolved extend beyond the natural intuition and do not contain universally consensual units of measurement. According to sub-section 3.2 the author emphasizes that the overwhelming proportion of legislation lies in the executive institutions as the developers of most legal norms. However, for example, the current state civil service law does not even have a minimum procedure for the long-term development of skills. Therefore, the author in thesis Nr.13.2. proposes to ensure, for example, in Latvia the adoption of the

¹¹¹ Leeuw, F.L., Schmeets, H. 2016. *Empirical Legal Research: A Guidance Book for Lawyers, Legislators and Regulators*. Cheltenham: Edward Elgar Publishing, 59, via GoogleBooks.

¹¹² McFadden, R.D. 17.01.2014. Hiroo Onoda, Soldier Who Hid in Jungle for Decades, Dies at 91. *The New York Times*. Available from: <https://www.nytimes.com/2014/01/18/world/asia/hiroo-onoda-imperial-japanese-army-officer-dies-at-91.html> [viewed 16.12.2017.]

draft law "Public Service Law", providing therein preconditions of malleability of skills and knowledge formation for officials with an annual inter-institutional apprenticeship, i.e., annual work in other state institutions in order to understand the areas and activities of the respective administration sector.

It stems therefrom that the impetuous continuation of traditions and maintaining the paradigm, can be dealt with by precisely applying the ability of critical analysis, which promotes the defining of problems. Whereas, the author learnt about the planning of the financial environment, while interviewing the press secretary of the Bank of Latvia Jānis Silakalns that due to the large flow of information of the financial sector, the Bank of Latvia carries out analyses that extend beyond its primary task to provide advice to the legislator and political decision-makers.¹¹³ Consequently, the central bank is now primarily a consultative body that has no further responsibility for the decisions taken.

From the theory developed by the author on inflationary proportionality, it stems that in cases, where monetary legislation is separated from other legislation, fiscal discipline and tax reforms ought to be continued in cycles of a couple of years to try to implement welfare policy. Consequently, it is legally easier to consolidate financial legislative power particularly in favour of central banks. Namely, central banks specialise in the analysis of the financial sector and also in a certain amount of judicial-policy modelling, therefore the most procedurally efficient model would be to delegate to them a unified legislative framework for sustainable development of the economy.

Taking into account the aforementioned, in the thesis Nr. 19 the author proposes to strengthen the responsibility of central banks in planning of sustainable development at the EU level, amending the first indent of the

¹¹³ Bočs, L. 14.11.2017. *LB visio #22 - Jānis Silakalns* [videoieraksts]. In: <https://youtu.be/2gybFq8r5pk> [viewed 17.12.2017.]

Article 127 (2) and the Article 282 (1) of the Treaty on the Functioning of the EU, as well as the first indent of paragraph 3.1 of Article 3 of the Statute of the ECB.

The role of central banks in the financial sector of the twenty-first century has an unpredictable intensity, as modern technology allows not only to create so-called collective lending platforms, but also independent settlement units such as so-called cryptographic currencies that are not associated with certain jurisdictions, however prices and purchasing power may fluctuate.¹¹⁴ The author points out that the alternatives of the traditional financial sector, such as the extensive evaluation of the opportunities created by financial technologies (FinTech), are beyond the scope of this research work, still it is clearly necessary to consider the most important aspects. Namely, the previous generation is only partially capable of transferring the accumulated knowledge, since future generations have new technological and social conditions that the previous generation has no experience with.

The author points out that the fundamental interaction of the current financial sector is reflexive, as the legislator's authorized central bank and private credit institutions issue money as a result of lending transactions, of which a significant proportion is attracted by assets used in the economy, more precisely, their owners, including insurance and investment management companies as institutional investors. For social security the legislator has created binding conditions, for example, in Latvia the so-called 2nd level of pensions, so that a part of the income is entrusted to private investment

¹¹⁴ Iwamura, M., Kitamura, Y., Matsumoto, T., Saito, K. 2014. Can We Stabilize the Price of a Cryptocurrency?: Understanding the Design of Bitcoin and Its Potential Compete with Central Bank Money. *Hitotsubashi University's Discussion Paper*, Series A Nr.617, 28, via GoogleScholar.

management companies. Whereas, these companies at least partially purchase government bonds as one of the safest securities because of the state's high solvency. Thus, the legislator has chosen an incomprehensibly complex way of financing social security - through private entrepreneurs.

It can be assumed that private investing can achieve a return at least, when it is based on an independent risk analysis. However, in the aforementioned circumstances, the author sees in the next couple of years an arithmetically progressive development, namely, the continuation of previous processes – the growth of the gross domestic product and state debt, tax initiatives developed due to social security budget burdens and tax initiatives identical to the Solidarity Tax, and an increase in the purchasing power parity index. Taking into account the aforementioned, the author in order to create a more informed circle of mandatory payment contributors, proposes in the thesis Nr. 18.3. to amend the first paragraph of Article 13 of the State Funded Pensions Law. The author also points out and critically assesses the legislator's action to empower two different bodies - the central bank and the state treasury - to carry out an actually reciprocal transaction resulting in newly issued money in economic circulation, thus increasing the amount of the state debt. Consequently, within the theoretic framework of inflationary proportionality, the author in the thesis Nr. 18.2. provides an amendment to the regulatory base of the Bank of Latvia in line with social security requirements¹¹⁵, including on publicly funded costs for sickness, maternity, pensions, etc.

¹¹⁵ Latvijas Zinātņu akadēmijas Akadēmiskā terminu datubāze "*AkadTerm*". "Sociālais nodrošinājums". In: <http://termini.lza.lv/term.php?term=soci%C4%81lais%20nodro%C5%A1in%C4%81jums&list=nodro%C5%A1in%C4%81jums&lang=LV> [viewed 17.12.2017.]

SUMMARY

As a result of the research the aim has been achieved, answering the posed research questions and confirming the hypothesis, so the author puts forward for defense the following theses in the form of conclusions (1-11) and proposals (12-20):

1. The financial sector of the European Union is a functional term which generally refers to systematic financing transaction relations in the Member States, in particular for lending, insurance and investment, with mainly fiat money as a *sui generis* and universal means of payment without an academically established legal doctrine in the European Union.
2. It would be misleading to assume that the financial sector of the European Union is unambiguously dependent on the legal framework, since the sectors need to be evaluated according to their individual circumstances, but jurisprudence has a priority role, since it also encompasses the possibilities for modelling early-stage interdisciplinary scenarios that are not widespread in shaping the legal framework of the single market of the European Union since the available data shows that there are usually political agreements, only later giving consideration to integrated implementation options.
3. Regarding the regulatory changes discussed in the thesis it is possible to emphasize that there is no guarantee of stability in the financial sector of the European Union, but rather increased monitoring and diligence criteria, which implies that at least inflation and social security stability risks are to be addressed by national legislators.
4. The author fully agrees with recent economic doctrines, such as the conclusions of pioneering economics professor Richard Werner that

economic analysis has a significant proportion with speculative probabilities. Therefore, the author concludes that legal analysis is also indispensable for monetary policy decision-making, including the legislator's competence to decide on legal acts of financial nature, which would be an indispensable benefit for the development of international law in this area.

5. The historical origins of the legal framework of the financial sector of the European Union are based on interests of private business entities in ensuring market surveillance so that outsider participation is punishable, that is to say, the market would consist of market approved participants, which means freedom of entrepreneurship through a licensing system.
6. Monetary policy gained a leading role in structuring financial transactions just after the United States unilaterally resigned from the commonly defined obligations of the Bretton Woods Agreement, in violation of international law, the subsequent international acceptance of which has led to the contemporary international monetary order with fiat money since August 15, 1971, for which legal doctrine lacks long-range analyses.
7. The dominant components of the financial sector are the areas of credit institutions, insurers and investment managers, which mostly operate in complexly structured financial institutions as conglomerates and concerns, creating both intergovernmental organizations and influencing political processes, insofar they implement systemic roles by so-called lobbying, that is not specifically regulated in EU jurisdiction, but has at least the primordial features that it could be in the future.

8. The regulatory framework and supervision of credit institutions in the European Union is centralized by a surveillance model through the so-called Banking Union, in world history a unique banking supervisory system without precedent for forecasting efficiency, the stability of the regulatory framework or its components.
9. The most significant changes in the insurance segment result from the so-called Solvency II Directive, which does not directly affect financial stability, but the freedom of services in the EU Member States, also allowing current market participants to expand.
 - 9.1. In relation to the system created by the Solvency II Directive the author has not found either systemic or individual legal deficiencies, at least in relation to the objectives pursued by the Directive, and assumes that such supervisory regulation of insurance companies will become a model for other international jurisdictions in the future.
10. In investment management, the status of a legal entity of the European Union since the so-called Treaty of Lisbon entered into force, means explicit limitation to the sovereignty of national legislators, at least with regards to the attraction of foreign direct investments, because there will be central decisions for regional investment potential, which has to be viewed critically on a national level at least for the realisation of short-term interests.
11. From the analyzed doctrine and court cases it stems that the loss of purchasing power of money is to be regarded as a violation of the right to property, the resolution of which is the responsibility of the executive power's developers of social security policy and the legislator, excluding the separate monetary policy legislator such as the central bank.

12. In jurisprudence there is a significant need for the expansion of research disciplines so the author suggests adding legal training in the following areas:

12.1 Financial law, to the extent that it covers the conditions of money and its public management, or would be at least comparable with behavioural economy, since after the Industrial Revolution, the education system has mainly built up knowledge about work execution, but there is an increasing need for planning skills of collective work, distribution of resources and providing sustainable projects with financial sources;

12.2. Legal anthropology in order to ensure the study of interactions between international regulatory enactments and cultural environment, and cross-state development, understanding the behaviour of people that shape legal norms and vice versa;

12.3. Military law, since in the financial sector as well as in other branches of law there may be a need for relatively identical models of analysis at the strategic, operational and tactical levels, as well as the use of the most appropriate means and the prevention of a nepotic or revengeful staff cultural environment;

13. It should be emphasized that, for example, the constitutional system of Latvia is a republic, so the main considerations ought to be the quality of interests of the representatives of society, so the author proposes:

13.1. at the current fundamental risks of lobbying conditions, when there may be systemic conflicts of interest that correspond to the letter of the law, but not to the notion, to publish on the internet at least the statistics of the legislator's visitors who represent commercial interests in order to have official data about most active sectors;

13.2. requiring that attainment of publicly responsible positions not only in the financial sector, but with a general social impact, must have legal conditions for improvement of cognitive and physical capacities. Thus, the author at least in Latvia proposes to adopt the Public Service Law in order to improve the skills of governmental officials in Latvia, or, at least to include the content in the below-mentioned wording, identical to the second and third paragraphs of the Article 19 of the draft-law into the current State Civil Service Law (alterations are underlined):

Article 19. Professional development

(..)

(2) *For officials and employees, who assume their duties in the public service, the State Administration School provides a training program on the activities of the public administration, while those employed for at least one year shall be provided with annual inter-institutional apprenticeships set up by the State Administration School.*

(3) *Officials and employees, who assume their duties in the public service, have a duty during the period of probation or, if no probationary period is stipulated within a maximum of three months to master of the program on the activities of the public administration of the Public Administration School. After mastering this program, the officials and employees are required to advance their professional knowledge in the training offered by the Public Administration School or implement other developmental activities no less than two business days a year. Inter-institutional apprenticeships should be held annually for 2-6 weeks.*

14. Financial rights belong to the so-called second generation of human rights, that is, in the field of economic and social human rights, therefore, from the point of view of fundamental constitutional rights, any Member State of the European Union should enshrine them within its constitution, i.e., highest legal act.

15. The regulation of the EU's financial sector ought to focus on Directives, which are an appropriate approach to policy unification of

the various regions of the EU to ensure individual responsibility of the EU regions, which is also highlighted by the analyzed court cases.

16. The author suggests to make social responsibility a legal prerequisite for future integration of the financial environment, because nowadays circular proof (*in Latin – circulus in probando*) becomes more evident, when to eliminate the systemic risks caused by exaggerated integration of elements of the financial sector proposals are made for even greater mutual integration.
17. The author as a result of the study proposes the theory of inflationary proportionality as a fundamental juristic theoretical model, which as its basis has conclusions that currently the original legislator has to solve monetary policy consequences and two thought experiments: first, monetary policy is a fundamental legislative branch (for instance, for ECB according to Article 132 of the Treaty on the functioning of the EU), where the originator of policy could enhance planning by dealing with results autonomously. Second, central banks are professionally more adept to react more effectively if they have delegated powers for economic policy as well. Thus, only a consolidated monetary legislative power, which decides not only on price stability and the amount of money, but also on the resulting economic performance, is able to provide the required level of social security. Therefore the author proposes at least in the short term to retain the power of monetary legislation delegated to central banks as professionally more competent institutions and to supplement it with the legislation for economic sustainability, which could enhance national and international law development in the financial sector.

18. For national law development, within the framework of the theory of inflationary proportionality, it is proposed to amend the following Latvian legal provisions (alterations are underlined):

18.1 The Article 66 of the Constitution of the Republic of Latvia is given in the following wording:

66. Annually, before the commencement of each financial year, the Saeima shall determine the State Revenue and Expenditure Budget, the draft of which shall be submitted to the Saeima by the Cabinet of Ministers. If the draft budget provides for an increase in the deficit, it is accompanied by a concept for sustainable income growth.

If the Saeima makes a decision that involves expenditures not included in the Budget, then this decision must also allocate funds to cover such expenditures.

After the end of the budgetary year, the Cabinet of Ministers shall submit an accounting of budgetary execution for the approval of the Saeima, as well as a report on the development of the welfare policy.

18.2 Article 3 of the Law "On the Bank of Latvia" is given in the following wording:

Article 3. The primary objective of the Bank of Latvia shall be to maintain price stability. Without prejudice to the primary objective, the Bank of Latvia shall support the general economic policies in the European Union in accordance with the Article 127(1) of the Treaty. The additional objective of the Bank of Latvia is the stability of social security, as far as it is affected by the decisions aimed at the implementation of the main objective.

The Bank of Latvia shall participate in the carrying out of the tasks of the system of the European Central Banks in accordance with the Treaty and the Statute.

The Bank of Latvia shall submit a report to the Saeima on the results of implementation of the objectives and subsequent plans within 90 days after the end of the year of operation referred to in the Article 16 of this Law.

18.3. The 1st paragraph of Article 13 of the State Funded Pensions Law shall be given in the following wording:

(..)

Article 13 Supervision of the activities of funded pension scheme asset managers and fund-holders

(1) *The Commission monitors the activities of funded pension scheme managers and fund-holders, as well as conducts a free-of-charge annual public seminar on the market overview and financial results of the previous year.*

19. For European Union law development, within the framework of inflationary proportionality, the author proposes to amend the following legal provisions (alterations are underlined):

19.1. The first indent of Article 127 (2) and the first paragraph of Article 282 of the Treaty on the Functioning of the European Union shall be given in the following wording:

Article 127.

(..)

2. The basic tasks to be carried out through the ESCB shall be:

— *to define and implement sustainable development planning and monetary policy of the Union,*

(..)

Article 282.

1. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks (ESCB). The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union and provide for the development of sustainable economic development plans for the Member States.

19.2 The first indent of paragraph 3.1. of Article 3 of Protocol 4 (Statute of the ECB) to the Treaty on the Functioning of the European Union shall be given in the following wording:

3.1. In accordance with Article 127 (2) of the Treaty on the Functioning of the European Union, the main tasks to be dealt with through the ESCB are:

- *define and implement the Union's sustainable development planning and monetary policy*;
 (..)

20. For international law development, within the framework of inflationary proportionality, the author proposes to include in the Stress Test section of the Basel III Regulation the self-assessment requirement on the cumulative effect of malfunctions of systemic credit institution operations on the performance of the national state administrations in compliance with at least the following table:

Sample table for a self-assessment performed by a systemic credit institution

Self-assessment of the impact of the credit institution's malfunctions on public administration	
Risks to be evaluated <i>(sample texts)</i>	Results in the state administration <i>(sample texts)</i>
<i>Malfunction occurs for up to 24 h</i>	<i>Temporarily suspended settlements of managed public accounts</i>
<i>Malfunction occurs for up to 24 h for all systemic credit institutions</i>	<i>Settlements of the public accounts are suspended for at least 48 h; possible disputes for tax administration.</i>
<i>As a result of market fluctuations, the value of total assets decreases by more than 40%</i>	<i>No impact on public administration</i>

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