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Renāte Fila

THE EUROPEAN UNION AS A SUBJECT OF LAW: PROBLEMS AND SOLUTIONS

Summary of the Doctoral Thesis
Submitted for the Doctor Degree in Legal Science
Subfield – International Law

Riga, 2014

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Secretary of the Promotion Council:

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1. GENERAL DESCRIPTION OF THE THESIS

1.1. Topicality of the theme

The European Union (hereinafter – the EU) – the international organisation established in the second half of the twentieth century under the impact of controversial international political and economic factors, is recognised to be one of the most complete forms of integration among international organisations. Cooperation typical for its originality is interpreted historically and explained as directed towards the merger of domestic and international processes which results in the possibility of establishing governance among the EU member states that resembles the government of a federal state.

In actual fact, such a theoretical possibility could exist if the EU was studied not only as an international organisation and research studies identified its inherent specific features of statehood, forms of governance and subjects of administrative law. Moreover, there are differences among subjects of EU law in the understanding of obligations of member states, their execution and impact or their suspension and termination.

Thus, the basis for the effective operation of the EU is the existence of a respective normative regulation, clarity of terms used and a uniform and unambiguous interpretation of the above by legislators as well as courts. Goals defined by the EU as well as tasks and authorisations for their achievement must be considered as a systemic entity but not as separate issues in isolation from others.

The research of the above topical issues is not sufficient, and these peculiarities can be, on the whole, explained by the complexity and dynamism of EU integration processes as well as lack of answers to questions concerning promotion of international solidarity required for the cooperation of subjects of EU law and the scale of the administrative legal personality of the EU. Even though separate research studies do not deny and do prove the existence of administrative legal relations within the frame of international organisations, the most

characteristic feature of these research studies is related to the absence of constructive discussion and ignoring of the *compatibility* potentials of two fields of law – international law and administrative law. It provides sufficient grounds to conclude that until now no *combined and comprehensive research* studies have been undertaken in the field of administrative law concerning the administrative legal personality of an international organisation and administrative legal competences.

The present Doctoral Thesis has relied on the research contribution of researchers from the USA[1] and various EU member states[2] about the EU as a subject of international law as well as a subject of administrative law; likewise interesting and relevant conclusions have been drawn from research studies that are not directly related to the research on the EU but rather discuss issues related to the understanding of administrative law and administrative procedure but still can be treated as related to the form and methods in implementing the administrative legal governance of the EU and can be referred to the subject of research identified in the Doctoral Thesis.

[1]Weiler, J.H.H. *Three Generations of Participation Rights in European Administrative Proceedings*. New York: NY 10012, USA, 2003. 33 pp. ISSN 1087-2221.

[2]Ruffert, Matthias. *The Transformation of Administrative Law in Europe/La mutation du droit administratif en Europe*. Munich: SellierEuropean Law Publishers, 2007. 326 pp. ISBN: 9783935808910, Matei, Anni. *The Development of the European Administration. Fundamental Concepts and Approaches*. Bucharest, Romania, 2009. pp. 18. Matei, Lucicia, Matei, Anni. *The Administrative System of the European Union – from Concpet to Reality*. Transylvanian Review of Administrative Sciences, no. 33 E/2011, pp. 170-196.. Vaczi Peter. *A Few Words About The Existence Of Constitutional European Administrative Procedural Law*. COFOLA 2007 Conference. Key points and ideas. Brno, 2007., Schmidt-Aßmann, Eberhard, Hoffmann-Riem, Wolfgang. *Strukturen des Europäischen Verwaltungsrechts*. Baden-Baden: Nomos-Verl. Ges. 1999. 393 pp. 3-7890-5951-X Kunststoff., Peretó, Francisco Cardona, Freibert, Anke. *The European Administrative Space and Sigma Assessments of EU Candidate Countries*. Hrvatska Javna Uprava, god. 7. (2007.), br. 1, 51–59 pp.

1.2. Research novelty and theoretical relevance

The research novelty of the Doctoral Thesis is a complex theoretical – practical research study of organisational legal problems in the establishment of administrative legal relations of the EU as a subject of international law, their existence, exercise in interaction with international law and development.

The most important challenge of the present research is the solutions proposed by the author for the applicability and suitability of terms contained in administrative law, in international law. It is proposed by the author as the simplest solution to explain and develop a uniform understanding about the place and significance of *member states*, including Latvia, in the EU.

Conclusions drawn in the Doctoral Thesis as well as proposed solutions could be applied also in the operational development of other international organisations and in defining the legal framework, in particular, for the management – within the scope of a derived legal personality – over countries participating in such an international organisation.

The Doctoral Thesis should be viewed as contribution to the development and strengthening of social perceptions prevailing among the population in Latvia as its results are directly applicable in explaining legal and social processes in practice, in further improvement of legal acts as well as examination of social perceptions of the population about problems in subsequent research studies. The research findings of the present Thesis can be used in subsequent research strudies that are related to the legal personality of the EU, the scope of competences and issues related to the status of an international organisation as well as used in the legal education process for the society by incorporating them in textbooks and study aids.

1.3.Hypothesis

The research hypothesis has been formulated taking into consideration on-going discussions of specialists and experts from various sectors concerning the model for the development of the EU governance system. The hypothesis of the Doctoral Thesis: The Treaty of Lisbon contains sufficient prerequisities to be treated as a social contract[3] that transforms the EU into a state with a federal government and its characteristic administrative governance mechanisms and functions or *an equivalent* subject of law.

1.4. The research goal and tasks

The goal of the Doctoral Thesis is to acquire proof that the organisational structure of the European Union is equivalent to a country with federal governance as well as to formulate proposals that provide possibilities for separating competences inherent in public organs from those governance rights that governance institutions of an international organisations are authorised to exercise in international relations.

The following tasks have been set for the achievement of the research goal:

1. to examine legal acts defining administrative competences of international organisations as well as to identify their scope and to prove the existence of administrative rights and ways for the exercise of these rights in the EU;
2. to analyse prerequisites for the establishment and development of the EU governance system and governance institute;

[3]Social contract (French: *contract social*), within the frame of the social contract theory is a covenant of the governor and the governed that is the origin of the governance competences; the governor is committed to govern while the governed are committed to obey. The basis of the social contract is the desire of individuals to develop a civic union, a society as a closed whole. Secondly, the task of the social contract is to address the issue on the division of power, endowment with power and compliance, on the one hand, and ensuring and providing guarantees of security, on the other hand.

3. to identify the type and scale of the legal personality of the EU by examining a specific regulated issue of EU authority (competences) and by identifying types of competences profing their compliance and implementation equivalence in the federal governance system;
4. to undertake a methodologically accurate comparison of the EU with equivalent subjects of international law, proving the impossibility of implementing the chlice of member states as well as the possibility of ensuring the takeover of the "best practice" from competing equivalent subjects of law for the development of the EU governance system;
5. to formulate proposals for the improvement of EU governance and limits of administrative legal relations.

1.5. Theoretical and empirical basis of the research

The research is based on the examination of research studies on international legal acts and administrative law, amplifying it by research findings from research in the theory of the state and law, constitutional, administrative and administrative procedure law as well as the analysis of the case law of international courts. The normative basis of the research is the Treaty on Establishing the EU and other effective Treaties, principles of international law, recognised by the EU, other legal acts prescribing the governance competences of the EU and member states as well as agreements establishing other European regional and political economic international organisations.

The empirical basis of the research is statistical data and case law materials revealing the existence of administrative legal relations of the EU and the dynamics of their development as well as governance competences and identified sectors laid down in EU treaties. The research has involved the use of scientific publications of the author on the research theme, her practical experience in implementing and enforcing EU legal acts, in drafting legal acts as well as the

approbated theoretical material for the Course in EU Law[4] that is included in the curricula of higher educational institutions in the Republic of Latvia.

1.6. Applied research methods

Methods applied in the Doctoral Thesis include general reserach methods as well as special legal research methods:

Methods of analysis and synthesis have been applied to examine the EU governance institute within the frame of a single legal system, to synthesize causal links and to establish problems as well as to assess data of public surveys, to examine legal acts, case law as well as other sources of law and information. Analysis and synthesis are also at the basis of conclusions and proposals formulated as a result of the research.

The method of scientific induction has been applied to formulate general conclusions from separate facts and to establish coherences. In its turn, the method of deduction has been applied for the logical systematisation and theoretical explanation of findings provided by the empirical research. The application of these methods provides an opportunity to investigate the EU in the system of a state as well as in the system of international law, taking into consideration also the attitude of the society towards certain processes underway that should be assessed in the context of international law as well as national law, in interaction with principles of international law and administrative law.

The comparative method has been applied in the comparison of governance models found in international organisations and governance systems of states, including federations, types and scope of competences, differentiating and combining issues in the competence of states and international organisations as well as identifying methodologically suitable objects for comparison.

[4]Fila, R. *Eiropas Savienības tiesības.* Tālmācības studiju kurss. SIA „Biznesa vadība koledža", 2010. 317 lpp.

The historic method has been applied to reveal the progress of the establishment of the EU governance structure and the transformation of law as well as to delineate trends in the development of EU law.

Methods of analysis of legal norms – grammatical, systemic, teleological and historic – have been applied in analysing EU legal acts and case law to determine their meaning, application peculiarities and to formulate proposals of the Doctoral Thesis.

The special legal investigation method – the sociological method – has been applied in the research and assessment of legal norms and institutions in the context of development aspects of the society, science and culture.

The guantitative processing of data has involved the use of comparable and objective data accessible on the "Eurostat" website as well as the most up-to-date sociological data processing information about public opinion analysis and surveys accessible in the "Eurobarometer" website for the Public Opinion Analysis sector of the European Commission. The author has used information on the quantitative data processing and the analysis of quality indices in developing a method for the investigation of the EU development that combines in a single system a separate analysis of specific processes that have acquired as a result of the assessment of statistical data, legal acts as well as summaries of research findings. The proposed method allows to interpret the content of the acquired data.

1.7. Approbation of research findings and publications

Research findings have been approbated during the period of 2010 to 2013 at eighteen local and international research conferences through presentations on issues included in the Doctoral Thesis. During the research specific issues discussed in the Doctoral Thesis have been published in collections of scientific articles:

R.Fila (Фила Р.В), Сравнительный анализ аннулирования законодательных актов в суде ЕС и административном суде Франции, KF zinātniskais žurnāls „Известия Российского государственного педагогического университета им.А.И.Герцена Nr.33(73), St.Pēterburga, 472-475 lpp., ISSN 1992-6464;

R.Fila, Eiropas savienības tiesībsubjektība. Daugavpils 52.starptautiskajā zinātniskās konferences rakstu krājums, Daugavpils universitāte, Saule, ISBN 978-9984-14-505-1;

R.Fila, Valsts kā drošības garants, Daugavpils universitātes Starptautiskās zinātniskās konferences „Valsts un tiesību aktuālās problēmas" zinātnisko rakstu krājums, Daugavpils universitāte, Saule, 110-115 lpp., ISBN 978-9984-14-505-1;

R.Fila, Eiropas Savienības attīstības izpētes metodoloģija, RSU zinātnisko rakstu krājums "Zinātniskie Raksti: 2011.gada sociālo zinātņu nozares pētnieciskā darba publikācijas", ISBN 978-9984-793-11-5;

R.Fila, Eiropas Savienības tiesu varas atzaru raksturojošie aspekti, RSU zinātnisko rakstu krājums "Zinātniskie Raksti: 2010.gada sociālo zinātņu nozares pētnieciskā darba publikācijas", ISBN 978-9984-788-96-8;

R.Fila, Eiropas Savienības tiesībsubjektība sociālo tiesību jomā, Sociālo tehnoloģiju augstskola Starptautiskās zinātniski praktiskās konferences „Starptautisko un nacionālo tiesību attīstība mūsu dienās" rakstu krājums, Rīga, 43-45lpp., ISBN 978-9984-748-38-2;

R.Fila (Фила Р.В), Проблемы реализации Лиссабонского договора в сфере социальных гарантий, Международное, Российское и зарубежное законодательство о труде и социальном обеспечении: современное состояние (сравнительный анализ), Maskava, 117-119.lpp., ISBN 978-5-392-02599-2;

R.Fila (Фила Р.В), Методология исследования развития Европейского Союза, Научные труды, 11 выпуск, Российская академия юридических наук, Maskava, 570-575 lpp., ISBN 978-5-392-91835-090-4 (том 1);

R.Fila, Eiropas savienības tiesībsubjektība, Daugavpils Starptautiskās zinātniskās konferences „Valsts un tiesību aktuālās problēmas" rakstu krājums, Daugavpils universitāte, ISBN 978-9984-14-543-3;

R.Fila (Фила Р.В), Социальное право Европейского Союза, XII starptautiskās zinātniskās un praktiskās konferences „Key instruments of human co-existence organization: economics and law" rakstu krājums, Londona, Odesa, 51-52lpp., ISBN 978-966-2621-09-0;

R.Fila, Eiropas Savienības tiesību attīstības teorētiskie aspekti labklājības teorijas kontekstā, Sociālo tehnoloģiju augstskolas organizētās 5 zinātniski praktiskās konferences rakstu krājums „Moderno tiesību attīstības teorētiskās un praktiskās problēmas", Rīga, 17-19lpp., ISBN 978-9984-748-39-9;

R.Fila, The european union as subjects of law**,** 3rd International Interdisciplinary Scientific Conference SOCIETY. HEALTH. WELFARE, 1st Congress of Rehabilitation Doctors of Latvia, Riga, Latvia, November 11–12, 2010 ,Rīga Stradiņš University (Ed.) 7lpp, Included: ISI, Scopus, ISBN 978-2-7598-0801-4;

R.Fila, Izstāšanās no Eiropas Savienības: perspektīvas un problēmas, Rēzeknes augstskolas II Starptautiskā jauno pētnieku un studentu zinātniski praktiskās konferences rakstu krājums „Izaicinājumu un iespēju laiks: problēmas, risinājumi, perspektīvas", BSA, EA, LMA, LF, 352-356 lpp., ISBN 978-9984-47-064-1;

R.Fila, Eiropas Savienības sociālās politikas īstenošanas tiesiskie aspekti, Liepājas Universitātes Dabas un sociālo zinātņu fakultātes XIV rakstu krājums „Sabiedrība un kultūra", Liepāja, 263-267lpp., ISBN 1407-6918;

R.Fila (Фила Р.В), Перспективы развития системы социального обеспечения Европейского Союза, rakstu krājums: VIII международная научно-практическая конференция «Сочетание государственного и договорного регулирования в сфере наемного труда и социального обеспечения»:

материалы конференции”/ Под общ. ред. д.ю.н., проф. К.Н. Гусова, сост. к.ю.н., доц. О.А. Шевченко., к.ю.н., преп. М.И. Акатнова – М., Проспект;

R.Fila, Subsidaritātes principa īstenošanas tiesiskie aspekti, Daugavpils Universitātes Sociālo zinātņu fakultātes starptautisko zinātnisko konferenču rakstu krājums, Daugavpils Universitāte, 6-13 lpp., Citējams: GESIS Socio Guide datu bāzē, ISBN 978-9984-14-585-3;

R.Fila (Фила Р.В), Правовые аспекты обьема полномочий Европейского Союза по вопросам пространства свободы, безопасности и правопорядка, Российское право в Интернете, No. 2012 (01), ISSN 1729-5939;

R.Fila (Фила Р.В), Институты управления Европейского союза, konferences - IV Международная научно-практическая конференция «Кутафинские чтения» МГЮА имени О.Е. Кутафина rakstu krājums, ISSN 2407-6918;

R.Fila (Фила Р.В), Правовые аспекты системы управления Европейского Союза, rakstu krājums: XIII Ежегодной международной научно-практической конференции Юридического факультета МГУ имени М.В. Ломоносова, ISSN 2492-6464;

R.Fila, Eiropas Savienībai konkurējošie starptautiskie reģionālie politiski-ekonomiskie līgumi, Sociālo Tehnoloģiju augstskolas rīkotās starptautiskās zinātniskās konferences rakstu krājums „Tiesību attīstība mūsdienu sabiedrībā”, ISBN 978-9984-748-40-5;

R.Fila, Eiropas Savienības pārvaldības institute identificēšana, Daugavpils universitātes Sociālo zinātņu fakultātes starptautisko zinātnisko konferenču rakstu krājums “Valsts un tiesību aktuālās problēmas”, Included: GESIS SocioGuide, ISBN 978-9984-14-638-6.

1.8. Structure and volume of the Doctoral Thesis

The Doctoral Thesis consists of an introduction, five chapters subdivided into several subchapters, conclusions and recommendations as well as the list of sources of literature used in the Thesis. Results of the theoretical and practical findings of the analysis are presented in 8 (eight) pictures.

Introduction discusses the topicality of the subject matter of the research, providing an explanation of the research goal, tasks, the object and subject of research as well as a substantion of the research methods applied.

Chapter 1 of the Doctoral Thesis contains a historic overview on the establishment of administrative legal relations and their consolidation in the EU governance system, the analysis of related legal acts and research sources as well as the identification of governance peculiarities of an international organisation.

Chapter 2 of the Thesis presents the analysis of the structural elements of EU administrative legal relations, i.e., the investigation of EU subjects, objects and the content of administrative legal relations, the classification of types of these administrative legal relations, the identification of their prevalence in the impact on economic processes as well as consequences.

Chapter 3 of the Thesis focuses on the analysis of the legal personality of the EU, the scope of competences prescribed by Treaties, their relevance, appropriateness of implementation prerequisites for an international organisation as a subject of law as well as the identification of problems in the jurisdiction of competences.

Chapter 4 of the Doctoral Thesis presents the analysis and the hypothetical assessment of the application of the amendments implemented by the Lisbon Treaty and identifies problems that could be related to the exercise of the legal personality and its place in the jurisdiction of the subject of federal governance as well as assesses the appropriateness of the norms and definitions as applicable to international organization.

Chapter 5 of the Doctoral Thesis presents the research undertaken to compare legal subjects within the Eurasian area that are similar to the European Union as an international organization, to identify equivalent or superior competitive international organizations in terms of the legal scope and content of norms, and proving the absence of legal subjects competitive for the EU as well as methodological errors in the earlier comparisons in respect of the object of research.

The volume of the Doctoral Thesis, the list of the sources used exclusive, is 206 (two hundred and six) pages. Findings of theoretical and practical analysis are presented in 8 (eight) figures. 18 (eighteen) conclusions have been formulated and 7 (seven) recommendations have been given at the end of the Doctoral Thesis. The list of literature includes 339 sources of literature and 338 other information resources in Latvian, Russian and English as well as normative documents and case law documents.

2. KEY RESEARCH FINDINGS

2.1. General description of the European Union as a system

In Chapter 1 the author has undertaken the investigation of the specific features in establishing competences that are required to ensure the regulation of international economic relations as one of the types of administrative procedures that can be implemented without the consent of other subjects of international public law; systemic regularities and invariants in the development of the EU as well as the possibility to identify organs of the European Union that exercise governance over issues in the jurisdiction of the European Union.

The main conclusions drawn in the present Chapter:

1. Judgements of the Euroepan Court of Justice in cases Van Gend & Loos[5] and Costa v ENEL[6] should be viewed as causes in the change of perceptions about the legal nature of the EU, as the beginning for the EU constitutionalisation process,[7] and thus the understanding about the implementation of a government model of a federal state in future.[8]
2. There is no special regulation at the EU *primary* level of international contractual relations for issues of the administrative or governance process; moreover, such terms as "administration", "administrative process" or "governance" are used.[9]
3. Irrespective of the classification of institutions of international organisations,[10] their basic task is to perform also an *internal* – administrative procedure – governance function of a certain kind at the horizontal governance level (in cooperation with other institutions of this international organisation) or at the vertical governance level (in cooperation with responsible structures of member states in this international organisation) by implementing issues of an international

[5]Judgment of the Court of 5 February, 1963. NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. Case 26-62 [Accessed in April 24, 2011]. Accessible: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962CJ0026:EN:HTML

[6]Judgment of the Court of 15 July, 1964. Flaminio Costa v ENEL. Case 6/64. [Accessed in April 24, 2011]. Accessible: http://www.cvce.eu/viewer/-/content/64bee 43f-b334-4894-8806-b7c60f645456/cb4154a0-23c6-4eb58b7e7518e8a2a995/en

[7]Stein, E. Lawyers, Judges, and the Making of a Transnational Constitution. *75 American Journal of International Law.* 1981, 1-27; Bogdandy, A., Smrkolj, M. *Regional organizations, institutions and developments*; Subject of international law, The European Community and Union Law, Nr.2, 2011.

[8]Judgment of the Court of 15 July, 1964 1. Flaminio Costa v ENEL. Case 6/64 [Accessed in April 24, 2011]. Accessible: http://www.cvce.eu/viewer/-/content/64bee 43f-b334-4894-8806-b7c60f645456/cb4154a0-23c6-4eb5-8b7e7518e8a 2a995/en

[9]Terms „*administration*" or „*authority"*, „*administrative process*", „*governance*" are not defined by the Founding Treaties; however, they have been included in other policy development documents.

[10]Колосов, Ю., Кузнецов, В. *Международное право*. М.: 2004. с 215-278.

organisation that are directly related to the competence of the "administrative institutions" of this organisation.

4. The EU governance system operates as an *entity* if four prerequisites are met simulataneously:
   4.1. *Decisions of prescribed competence* are taken by institutions that are independent of member states or inter-governmental institutions, however, the vote is not unanimous;
   4.2. Decisions of *prescribed competence* are imperative, they prevail over national legal acts of member states and their entry into force is not related to their prior ratification at the national level;
   4.3. Decisions of *prescribed competence* define rights and obligations not only for member states but likewise for their nationals and legal persons - residents;
   4.4. There is an effective system of legal proceedings and an enforcement process for the protection of deicisions taken by institutions that are independent of member states.
5. Decisions of prescribed competence cannot be constructed in a way that they do not affect issues of some other sector. This is also the way how additional issues are integrated into the governance system. In the neo-functionalist concept this process is designated by the term "spillover"[11] (or "accountability") that provides the basis for the transition of the legal personality of member states to the EU which, in actual fact, exercises within the frame of competences delegated to it, governance that is

[11]Haas, E.B. *Beyond the Nation-State*. Stanford, 1958., Крылова, И.С. *Правовые аспекты буржуазных интеграционных теорий и проблема суверенитета. Проблемы буржуазной государственности и политико-правовая идеология*: Сб. науч. трудов. М., 1990.; Лешуков, И.Е. *Политическая система ЕС и вопросы ее теоритической интерпретации. Десятилетие сотрудничества (1988 –1998): Европейский Союз и Россия в перспективе.* СПб., 1999.

equivalent to the governance of a federal state over member states as subjects of the federation.

The author holds the view that there are no grounds for denying the existence of the enforcement of administrative law, recognising that governance processes of *prescribed competence* are effected in the EU through its institutions. In this context the opinion of Professor K. Dišlers should be emphasized concerning the *administrative agreement*[12] as a subtype of the international treaty. In conceptual terms it is possible to recognise that the view – "it is not important what the subject of administrative law is under legal acts of the given country, it is not important that national norms of administrative law can be issued by legislative institutions as well as executive institutions and likewise it is not important that issues in relations of subjects that have not been regulated by norms of administrative law can be regulated through the mutual agreement of these subjects which is designated as an administrative agreement,"[13] – has found a certain manifestation of its content in the European Union, which, like any other structure, is a reality that objectively exists and manifests itself as a *subject* as well as a cooperation system of *subjects*. Furthermore, the understanding of the EU structure is and will be unambigously related to the understanding about the cooperation system of subjects.

The EU stimulates through the definition of new goals the amplification of elements in the system and and it is no longer a priority to retain such a basic system that is directed towards implementing the classical international relations. The decline in the number of member states should not be perceived as the transfer of state competences to governance of a higher order. However, the number of member states is one of the quantitative indicators of integration, i.e., the composition, in numerical terms, that agrees on the delegation of certain authority.

[12]Dišlers, K. *Ievads administratīvo tiesību zinātnē*. Rīga: LU, 1938. 94.lpp., kā arī Jakubaņecs, V. *Tiesību jēdziens, struktūra un formas*. R: P&Ko tipogrāfija, 2002. 115.lpp., Jakubaņecs, V. *Tiesību normas*. R: P&Ko tipogrāfija, 2002. 247.-249.lpp.
[13]Načisčionis, J. *Administratīvās tiesības*. Biznesa augstskola „Turība", 2009. 109.lpp.

If it is assumed hypothetically that the EU with institutions prescribed by a treaty adds the activity of each member state as a legal person in areas of *exclusive, shared and support* competence, i.e., such organs (at both levels) would require to directly divide among themselves the respective procuration by the state. It is substantiated by the fact that the right to exercise comprehensive competence in a country is divided among organs of the country in a way that the sum of competences of all organs constitutes the total, comprehensive competence of the state with limits defined by the constitution and general principles of law. It means that even in such a structural entity where the competences have been divided, their aggregate value could not change if the sequence of items is changed.

As a result of the distribution of competences between organs of the EU and organs of member states it is not possible to draw any conclusions about the *exclusive jurisdiction* of each of the three branches of state power over each organ. Derogations of a certain degree should be allowed from the *idealized exclusive jurisdiction* in establishing the system of "checks and balances".

The structuring of functions in the competence of EU organs on the similarity with the federal government system cannot be, on the whole, treated as the most suitable option even though the independence of EU organs should be viewed as a stimulating factor for expanding[14] competences of member states prescribed by founding Treaties that have been delegated to them.

There are sufficient grounds to attribute the existence of a two-tier or multi-tier governance system but not of a federal system to the current relations of the EU and at present the multi-tier governance theory is the only means to explain cooperation processes underway in the EU among subjects of law identified in the Treaty.

[14]Article 36, 38, 39, European Parlament, Finansial Perspective 2007-2013. Working dokument Nr.21 on the organisation of the Financial Perspective after 2006: timeframe, structure and flexibility [Accessed in February 24, 2012]. Accessible: http://www. europarl. europa.eu/meetdocs/2004_2009/documents/dt/548/548936/548 936 en.pdf

Subjects of the EU *internal* governance process share features that characterise their *administrative* capacity. The shared as well as specific features of such capacity are, on the whole, the competence of the subject of administrative law and methods of administrative legal regulation.[15]

2.2. Governance institute of the European Union

In Chapter 2 the author investigates the issue of governance competences not as ensuing from competences prescribed by the TFEU but as the original competence vested in the EU to ensure the internal governance of the EU and draws the conclusion that the procedure for allocating competence where competence defined as *officially* granted rights and obligations to make *independent* decisions and to issue instructions in the interests of the organisation.

In view of the fact that it is coordination that is one of the indicators of governance efficiency, it is sufficiently logical that one of the goals of the EU is the development of an effective coordination system[16] at the horizontal as well as vertical level as well as the consolidation of parts of such a governance institute in a treaty.

The assessment of the functional competence of EU organs over governance issues gives sufficient grounds to believe that the principle of the division of power does not operate in its traditional meaning in respect of legislators who do not have competent responsibility towards the body of EU nationals nor in respect of the judicial power and the executive power.

In the process of delegating authority in the EU particular attention was paid to the maximum *coverage* of areas of "*conflicting"* cooperation interests thus ensuring compliance with the principle of effective protection of EU law. In its

[15]Barnes, J. *Transforming Administrative Procedure*. Seville, Spain: Global Law Press, 2009, 429 pp.; Barnes, J. *Challenges and Reform of Administrative Law*. Seville, Spain: Global Law Press, 2006, 344 pp.
[16]Articles18, 34, 45 of the TEU, Articles 5.3, 23 of the TFEU.

turn, under the impact of the democratisation of the society in the EU, when procedural guarantees were expanded, areas of less "conflicting" interests were also included into the institute of governance, with the purpose of achieving reasonable commensurability between goals (interests), governance of the organisation and the actual executors.

To provide control in the *governance* of an internatinoal organisation, a separate subject of law *must be* constituted in the EU or any of the already existing subjects of law must be assigned the duty of controlling the balance of the governance system and of providing timely information to member states, thus exercising the authority of coordination it has been endowed with, about the necessity to take a decision to ensure effective governance when certain critical indicators have been reached.

It would be logical when EU organs are granted the *competence of government governance* as well as *competence* also in international relations, i.e., in relations with third countries and other international organisations, the EU acts in the exercise of this competence as a *single* subject of law. In the said case it is not important which of its organs has failed to perform the obligation prescribed by the international treaty; it is the consequences – failure to honour commitments that is important. If, on the basis of an authorisation of public governance an international organisation also enjoys the right to establish an organisational structure of governance *at its own discretion*, then peculiarities of the *internal* division of power cannot be the reason for failure to execute obligations (including international) in respect of subjects that have granted this competence.

2.3. Legal personality of the European Union

Chapter 3 examines prerequisites for the implementation of the legal personality of the EU, the scope of competences prescribed by treaties, their relevance, and appropriateness of implementation prerequisites for an international

organisation as a subject of law and identifies jurisdiction problems of these competences. Taking into consideration provisions contained in Article 15 of the 1986 Vienna Convention concerning *implied jurisdiction*, the author defined *principles* for the achievement of goals and tasks that should be assessed and interpreted as the scope of the vested (added) legal personality. The following conclusions have been drawn in the present part of the Doctoral Thesis:

From the point of the theory of objectivism, *the legal personality* exists irrespective of the will of member states as the basic conditions may ensue not only from the competence (authority) prescribed for the organs of an international organisation but also from the goals defined by an international organisation that the states have supported. However, upon the recognisition of the legal personality of an international organisation, in actual fact, there would be no justification to consider it to be equal to a state with its inherent universal legal personality because the legal personality of an international organisation will have only *narrow functional* content in line with the competence that the participating countries have delegated.

If contractual obligations oblige the member states to assume certain commitments and responsibility for failure to duty execute these commitments, then it is sufficiently logical that the frame of contractual obligations prescribes also the responsibility of an international organisation towards participating countries, including conditions concerning the restriction or termination of the granted legal personality.[17] Moreover, the establishment of the scope of such obligations would explicitly indicate the scope of rights that the member states have waived and have transfered to the competence of the international organisation thus enabling the international organisation to exercise them in legal

[17]Metzger, Stanley D. *Restatement of the Foreign Relations Law of the United States: Bases and Conflicts of Jurisdiction.* 41 N.Y.U.L., Rev.7, 1966.; Малинин, С.А., Ковалёва, Т.М. Правосубъектность международных организаций. *Правоведение*. 1992, №5, с 61-62.

transactions of participating countries for the achievement of goals that they have collectively defined, including independent acquisition and exercise of the subjective rights and responsibilities.

It must be noted that, irrespective of the differentiation of authority, EU member states enjoy *legal capacity* at any time, even if there is no such *necessity*, to make reservations, to amend international agreements that they have formulated voluntarily as in contrast to the international organisation the countries enjoy the *original* competence and legal personality but not the competence and legal personality derived from the EU.

The European Court of Justice has defined repeatedly the content of the scope of the *original* legal personality of an international organisation in ensuring the internal governance processes.[18] Its decision on the interaction of international law, Community law and constitutional law of member states results in the *legal opinion* on the legal (constitutional) procedure of EU law [19] where there are no problems in the link between *international law and national legal acts* as international law *is not part* of the national system of law.

As concerns rights and international obligations ratified by a member state, EU law acts *lex posterior derogat apriori,*[20] possibly, to be more precise – *quae postea geruntur prioribus derogant*[21] – the principle of legal logic that determines

[18]I-5313 p., Judgment of 2 October 1997, Case C-259/95, Parliament vs Council (EHLASS), Report of Cases 1997 [Accessed in March 17, 2012]. Accessible: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61995CJ0259:EN: HTML

[19]Resolution on the Amsterdam Treaty (CONF 4007/97 - C4-0538/97) A4-0347/97 [Accessed in March 17, 2012]. Accessible: http://www.europarl.europa.eu/ enlargement/ positionep/resolutions/191197_en.htm#; The position of Union law in relation to the legal order as a whole [Accessed in March 17, 2012]. Accessible: http://eur-lex.europa.eu/ en/editorial/abc_c05_r1.htm

[20]*The last law revokes the preceding law.*

[21]*The last transaction revokes the preceding transaction*.

the *place* of EU law in the system of law of a member state.[22] The given principle is explicitly related to the *original competence* of the EU in implementing the internal governance process. However, the fact that the Treaty defines some area in the competence of the EU does not give grounds to assume that there are no misunderstandings or disputes concerning the limits of the said competence. The existence of a conceptual delegation only as a *legally consolidated fact* does not correspond to aims, tasks, processes defined by the TEU and the TFEU and their correlation with conditions prescribed by the given Treaty for the exercise of the delegated competence, values and principles of EU law.

The *international* (prescribed) legal personality of the EU is enjoyed provided the following prerequisites exist:

- It is prescribed by a treaty;
- It is necessary for the achievement of the identified goals;
- It is prescribed by a legally binding document of the EU;
- The existing contractual relations may influence and modify the general conditions of the EU,

thus, there are sufficient grounds to believe that the scope of the *original* legal personality of the EU *is* the attributed right of the EU (within the *original competence delegated by member states*) *to independently* enter into agreements on the implementation of a single trade policy and to participate in those international organisations that have in their competence issues of the safety of goods and services as well as other trade-promoting activities.[23]

Moreover, the review of areas of competence contentwise according to competences prescribed by the TFEU, a "merger" of competences has been

[22]Satversmes tiesas 07.07.2004. spriedums lietā Nr. 2004-01-06 „Par Latvijas Administratīvo pārkāpumu kodeksa 114.[2] panta atbilstību 1965. gada 9. aprīļa Konvencijai par starptautiskās jūras satiksmes atvieglošanu" [Accessed in May 14, 2012]. Accessible: www.satv.tiesa.gov.lv/upload/2004-01-06.rtf

[23]Articles 206., 207., 216.-219. of the TFEU.

detected. This situation can be found also in other EU documents[24] and the further elaboration of the "merger" idea gives grounds for the view that the legal personality of the EU could be unrestricted.

Only when it is *established* that the definition of the scale of the legal personality of the EU or its limits is actually *no longer possible or cannot be restricted, it can be concluded* that that the EU has *(as voluntarily transferred) the full original competence and legal personality* that is equivalent to the state as a subject of law. In this system the principle of subsidiarity can be defined as the division of *power and responsibility* between the *central government power* and *subjects of federation* and thus draw the respective conclusions about the structural form of EU governance. The defined aim for the *division of power* meets, *in conceptual terms*, conditions required for implementing the theory of general welfare when the development of countries and markets has achieved a certain level.

However, *at present no legally defined prerequisites* exist to recognise the division of *power and responsiblity* between the *central government power and* potential subjects of a *federation* to be the principle of subsidiarity. The content ambiguity of the principle of subsidiarity prescribed by the TEU does not contradict the logic of integration as earlier Treaties as well as the Lisbon Treaty are conceptually focused on establishing the *original* competence of the EU to ensure the activities and development of member states in a single market system.[25]

[24]Decision No 2235/2002/EC of the European Parliament and of the Council of 3 December 2002 adopting a Community programme to improve the operation of taxation systems in the internal market (Fiscalis programme 2003-2007), ES OV L 341, 17/12/2002, 0001–0005 pp.
[25]Dupate, K. *Eiropas Savienības tiesas prakse darba tiesībās.* Latvijas Brīvo arodbiedrību savienība, 2011. 12 lpp. [Accessed in April 22, 2012]. Accessible: http://www.lbas.lv/upload/stuff/201112/es_tiesas_prakse_darba_tiesibas .pdf

2.4. TEU and TFEU implementation and problems

Chapter IV of the Thesis examines the scope of competences prescribed by the EU Treaties, in particular concerning areas of *public* relevance in the operation of the EU – *economy, social welfare of the population and the territory,* and identifies problems in defining the legal personality of the EU, as well as assesses the possibility of a secession process for EU member states as a restriction imposed on the member state options to terminate operation; analyses failings in the current legal justification of the secession process for practical application and investigates a separate process for the potential withdrawal of a member state from the Euro zone and assesses of the equivalence of the above processes.

In view of the fact that the modern science treats social law increasingly as *public law* and the *responsibility* for its implementation must be assumed not only by the state but likewise by the *international community* at large[26] and if such responsibility had been *defined* then there would be no need, *in conceptual terms*, to analyse the issue if an international organisation can provide guarantees of *a certain* scope for by the *exercise* of social rights inhabitants of the subjects of law that participate in the said organisation.

From the philosophical view, rights and principles prescribed by the Charter of Fundamental Rights of the European Union constitutes the *highest value* as it is related to the idea of the positive obligation of citizens to provide resources for the general collective *welfare.* It means that the Charter of Fundamental Rights of the European Union[27] as an inseparable part of the Treaty on European Union and the Treaty on the Functioning of the European Union that contain rights and principles *required* for the implementation of the uniform goals set by the Treaty should be

[26]Тихомиров, Ю.А. *Юридическая коллизия*. "Манускрипт", 1994. с 14-20.
[27]EU Charter of Fundamental Rights, ES OV C83/389, 30.03.2010. [Accessed in March 11, 2011]. Accessible: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C: 2010:083: 0389:0403:lv:PDF

respected by the EU as well as its member states in respect of EU citizens and *individuals* who reside and stay in the territory of the EU and *its* member states.

To ensure the exercise of the EU social rights the existence of *single* economy can be viewed as one of the most relevant factors. Thus, in theory it is *possible* for Eurozone countries within the EU to *reach an agreement* as well as *to determine the content and scope* of social rights on the basis of provisions contained in Article 5.3 of the Treaty on European Union that provides that changes in the scope of competences are *possible* if "*by reason of scale or effects*" objectives "*can be better achieved at European Union level*".

Separate issues of social rights should be *united, they cannot be in conflict* and they should considered in conjunction with issues of the Single market that are directed towards achieving the economic objectives of the EU. Thus, there are *no grounds* to consider the issue of the "*exclusiveness"* of competence to populistic or erronaous as from the point of the *theory of social rights* the above arguments will be indisputable.

Areas of EU activities within the frame of the *possible* equal (non-competing) social insurance system that would *promote* mobility of persons, are not related to any radical decision-making about funding social systems of all member states from the budget of the international organisation.

As concerns the differentiation of competences answers should be found in EU legal acts to such questions that ensue from *social rights* that according to findings of the theory of functionalism[28] *do not correspond* to interests of EU member states as *guarantors of social rights* however, they are *necessary* for EU integration, the development of the single market and respective achievement of the identified objectives:

[28]Штомпка, П. *Роберт Мертон: динамический функционализм. Современная американская социология*. М., 1994. с 78-93.

Conditions for *the range of persons* who have the right to receive social services because pre-conditions may arise for the discrimination of specific groups persons when the state determines the range of social service beneficiaries independently;

Territorial jurisdiction of specific social services par noteiktu sociālo pakalpojumu *teritoriālo piekritību*, as within a country access to social services may be established as falling under different administrative divisions;

Conditions for the social insurance of a *EU citizen* as the state cannot oblige its citizens who stay in another country to make prescribed national insurance contribution payments in the country of domicile as well;

Conditions on the decision-making competence in respect of the *provision* of social services because legal acts prescribing the right for a *certain* range of persons in *certain* circumstances to exercise rights of *certain* content are adopted at the national level solely;

Conditions for choosing the model for implementing social rights[29] by a member state as the right to choose the specific social model is sufficiently weak;

Conditions concerning the provider of a specific type of social services as in conceptual terms it would be necessary to ensure that every EU citizen receives services from a specific service provider and the member states do not enjoy the independent right to establish various service providers in a differentiated manner.[30]

The above questions prove also the findings expressed in *Robert King Merton's* theory of functionalism about the existence of functions and dysfunctions

[29]Deilija, M. *Sociālo tiesību pieejamība Eiropā***.** Belfāsta, Strasbūrā: Karaliskā universitāte, May 28-30, 1.-2. pp.

[30]Veil Mechthild. Reform in der Sackgasse, Blaetter der Wohlfartspflege 7+8/99 – Erwerbsarbeit., 158-160pp., form Минаева, М.В. *Применение функционального подхода при рассмотрении места социальной политики или социального государства в Европейском союзе*. Сборник научных статей студентов ФСН ННГУ [Accessed in June 16, 2012]. Accessible: http://www.unn.ru/fsn/k2/students/ hopes/12.htm

of the *structure*,[31] which can be linked also to a certain type of *pierēķina* veidu, t.i., those processes *functionally* belong to EU (*specific*) member states become *dysfunctional*. It substantiates the conclusion that uniform social guarantees *should be provided* at least in respect of EU citizens in the EU space.

Credibility of implementation of the EU legal personality in the area of social rights and the *forecast of its welfare development* depends on the extent to which in the context of the development rights, taking into consideration also certain social political and economic factors, an assessment has been made of matters of *attributed – original* competences that are to be implemented by an international organisation as non-negotiable. They should be, *as a maximum*, focused on the *actual* understanding of social economic relations,[32] that according to the welfare theory are focused on the examination of the welfare level of *each individual* and its dependence from various economic methods that influence individual welfare as well as the attitude of the individual (its changes) that result from such activities.

It proves the *existence of a fundamental problem* – the EU concept for developing "welfare governance" includes conditions that permit the interference of the member states in the social and economic policy to ensure *overall* employment, high incomes, price stabilisation as well as social assistance programmes for the *underprivileged strata of the population*. In the given case it *is*

[31]Robert King Merton (04.07.1910-23.02.2003) is one of the most distinguished sociologists of the 20th century in the world and the author of the following books: „Social Theory and Social Structure" (1949), „The Sociology of Science" (1973), „Sociological Ambivalence" (1976), „On the Shoulders of Giants: A Tristram Shandy Postscript" (1985), „The Travels and Adventures of Serendipity: A Study in Sociological Semantics and the Sociology of Science" (2004).

[32]Buchanan, P.J. *The Political Economy of the Welfare State.* Stockholm: Industrial Institute for Economic and Social Research, 1988., 9 pp. ISBN: 9172042966, Vairāk: Buchanan, P.J. *The Death of the West: How Dying Populations and Immigrant Invasions Imperil Our Country and Civilization.* NY: St.Martin's Press, 2002, ISBN-10: 0312302592.

not possible to discuss in a narrowed manner any separate issue ensuing from social rights.

As concerns the Eurozone countries it would not be appropriate to determine shared competence in social policy matters. If criteria have been set and compliance with the said criteria is the assessment, from the legal point of view. of the ability to enter the single market where reforms of the monetary system have approximated conditions for *fair competition*, then, in actual fact, the Eurozone must be assessed as a legal platform for the full-fledged exercise of social rights by a EU citizen.

If the *functional necessity* to coordinate the social policy area of EU member states is implemented, this situation can be viewed as the implementation of *competence not defined* by the EU Treaty. *It would only prove* that the EU has the original competence to implement governance equivalent to the state as a subject of law, in actual fact, equivalent to a federal government. Moreover, the above discussion would give rise to a logical conclusion about the implementation of certain processes related to findings of the natural theory that allow viewing the existing EU contractual obligations as a social contract.

In contrast to *references* included in the EU Treaties concerning the internal or internal *boundaries* of the internal market or the *economic* area the universal norms of international law do not contain *legal criteria* describing the *area or its boundaries* that ensure peace and security. For this purpose international law develops the *image* of the ideological, political and economic world "desired" within the limits of fragmentation. It means that the EU *internal* market is the desired image of the *economic* area and it bears no relation to the territory *belonging* to the state as a subject of law.

The security aspect can also be viewed within the frame of the theory of *implied competence* as a set of *additional* prerequisites *required* for the commonly *defined* cooperation. In this case the field of *internal* competences will be related to

the *implementation of governance* in the processes of the internal market focused on reducing the poverty level and inequality, ensuring good governance, respect for human rights etc.[33] The assessment of provisions contained in EU Treaties for *external* cooperation allows concluding that contentwise their purpose is to ensure the stability of *internal* governance and related processes.

The reform effected by the Treaty of Lisbon that is aimed at developing a single area of freedom, security and justice, is also related to a change in the conceptual perception about the EU space and its *boundaries.* It also influences the balance that exists among separate (*internal and external)* legal institutes of EU *governance.*

The TFEU is a legally appropriately applied term that designates the secession right of member states[34] from an international organisation.[35] However, the principle of cooperation prescribed by Article 2 of the UN Charter as well as objectives defined by the TEU and the TFEU that are aimed at cooperation of states as united, solidary, tolerant and fair partners[36] are not compatible with the idea of terminating participation in general.

Hypothetically the procedure of secession from the EU without incurring any *signficant* impact on the social and legal processes underway in the country, can be effected by a EU member state that complies at least with three criteria:

1.the member state has an independent monetary system;

[33]Chapter V of the TFEU, Chapter V of the TEU.

[34]Although in the English language the term „exist" has at least four designations, in acts of international law a distinction is made of the term „*withdrawal*" that would apply to the exit of subjects of international law from an international organisation and the term „*secesion*" that is viewed in the context of the right of countries and peoples to self-determination.

[35]Gordon, D. *Is Secession a Right?* December 7, 2012 [Accessed in January 3, 2013]. Accessible: http://lewrockwell.com/gordon/gordon108.html

[36]Withdrawal and expulsion from the EU and EMU: some reflections by Phoebus Athanassiou. *Legal working paper series*. 2009, December, Nr.10 [Accessed in March 8, 2013]. Accessible: http://www.ecb.int/pub/pdf/scplps/ ecblwp10.pdf

2. the member state has a developed internal market economy and self-supply;
3. there is no external debt or it does not exceed 50% of the GDP of the respective country.[37]

At present the secession procedure for the *respective legal framework* has not been defined with sufficient clarity and this situation may become increasingly *more* unfavourable only for the international organisation but not for a separate subject of law (or subjects of law) desiring to leave the said *organisation.*

Secession from the European Monetary Union is conceptually incompatible with provisions laid down in the TEU and the TFEU that stipulate the introduction of the Euro, the substitution and *irrevocability* of its exchange rate that has been recognized by the European Central Bank as well.[38]

There are no grounds for applying the Vienna Convention on the Law on Treaties as one of the alternatives to the *secession process* from the Eurozone *and* as ensuing from a violation of commitments of an international treaty. Firstly, taking into consideration earlier *reservations* enacted by member states concerning the introduction of the Euro, and, secondly, accepting as a fact that the Euro governance is *an EU internal governance process* that has evolved as a result of integration, and if its norms are violated:

- there would be *prescribed* separate *legal risk management* provisions in place justified by economic calculations *in favour* of the EU possibilities to ensure *the right* of the EU to suspend, restrict or annul the right of the

[37]It must be emphasized that the United Kingdom would best satisfy these criteria if only it reduced its current foreign degt by at least 20% of the current indicators. More: Fridrihsone, M. Informācija par Apvienotās Karalistes ārējo parādu: Lielbritānijas valsts parāds samazinājies. August 19, 2011. *Dienas Bizness* [Accessed in December 20, 2012]. Accessible: http://www.db.lv/citas-zinas/lielbritanijas-valsts-parads-samazinajies-243258

[38]ECB Opinion CON/2003/20 of 19 September 2003 at the request of the Council of the European Union on the draft Treaty establishing a Constitution for Europe. OJ C229, 25.9.2003. 7 pp. [Accessed in March 8, 2013]. Accessible: http://www.ecb.int/ecb/legal/pdf/c_22920030925en00070011.pdf

member states to operations in the single currency rather than the right of a member state to unilateraly *terminate the use* of the single currency;

- options would be provided for the EU to impose *local international* sanctions or *administrative sanctions of* legal nature on the *respective subject of law*.

Thus, there are sufficient grounds to second the opinion of the French professor *Jacques Sapir* that ",it is in the Eurozone that features of *latent federalism* can be perceived",[39] as it is the strengthening of the Eurozone that is most of all related to restrictions imposed on national souvereignity. Although in conceptual terms, compliance with the *principle of territorial indivisibility* is not binding for the Eurozone, the geopolitical and economic impact of the Eurozone more than the EU itself depends on the number of subjects of law in the EU and control over the amount of Euros in circulation.

The fact that in separate cases the system does not have secession conditions or they have not been precisely defined, does not constitute grounds to consider the system as closed for alternative solutions.

If the aim of the Treaty of Lisbon was to prevent the dual internal and external policy implementation model and to formulate a structured policy then the scale of the legal personality of the EU must be *unambigously* related to the ability of the EU to enhance its *impact* within the frame of the existing contractual relations, establishing *general principles* for implementing priorities, such as the upgrading of the labour market, the reform of the social insurance system (reconsideration of immigration issues etc.) as well as provisions for their

[39]Tanzi, V. The future of fiscal federalism. *European Journal of Political Economy*. 2008, september, volume 24, issue 3, 705–712 pp.; Brehnon, N.J., Cardot, P., Collignon, S., Le Cacheux, J., Werpachowska, M., Zsolt de Sousa, H. *What Kind of European Budget for 2013?* Paris: Institut français des relationsinternationales, 2005. 49-52pp., 102-114 pp. [Accessed in March 18, 2012]. Accessible: http://www.ifri.org/files/TetR_budget_ europeen_GB.pdf

implementation. In the context of the economic development level and the social policy their impact on combatting crime in each separate member country should be discussed systemically, by establishing a single area of freedom, security and justice by defining *the distribution of resources* but not by defining the allocation of competences. Moreover, for a person who has acquired the status of a EU citizen as well as certain rights and responsibilities in the system of EU law, these acquited rights should be retained (guaranteed) when the person moves outside this s*ystem of* law into an area influenced by another system of law. In actual fact, this theory is one of the most ancient describing the *extrateritorial* impact of *internal* law.

If *internal* and *external* competences rather than *restrictions* for the exercise of their original *external* and *internal* legal personality in the EU are defined then it will be possible to identify the existence of federal governance.

Thus, in theory only when objectives defined in the TEU and the TFEU are *achieved* another *new* integration stage can be set, for example, by which member states *recognize* that the *achievement of objectives* on the basis of the existing Treaty has resulted in the emergence of a new state.

2.5.Comparative methods and results

The last Chapter focuses on the discussion of the issue that is related to restrictions that exist for the options of EU member states for cooperation in equivalent social political organisations and identifies basic problems in comparisons with the EU.

Accepting as a fact that the development of international relations has promoted the establishment of regional political and economic organisations not only in Europe but elsewhere in the world,[40] it is concluded that *simultaneous*

[40]Information about international and regional political and economic organisations [Accessed in March 9, 2013]. Accessible: http://eeas.europa.eu/ organisations/index_ lv.htm

comparable features be detected in the League of Arab States, the Organisation of Islamic Cooperation (OIC), the Organization of the Petroleum Exporting Countries (OPEC), the Commonwealth of Independent States (CIS), the Union of can South American Nations,[41] Shanghai Cooperation Organisation (SCO)[42] etc. However, those competing international treaties that could be interesting for specific countries in respect of the EU, taking into consideration the geopolitical locations of these (potential) applicant countries in the Eurasian continent could be comparable.

The most relevant problem of the comparison is related to the fact that no comparable economic and, more essentially, social political statistics is available about international organisations or about separate participant countries, thus, with the simplification of the available data conclusions that might be drawn will be generalized and thus sufficiently erraneous.

Two countries – Turkey and Ukraine – can be identified after the examination of issues of regional jurisdiction and economic impact that may

[41]Information about the League of Arab States or the Arab League [Accessed in March 9, 2013]. Accessible: http://i-cias.com/e.o/arab_league.htm; Information on the Organisation of Islamic Cooperation [Accessed in March 9, 2013]. Accessible: http://www.oic-oci.org/home.asp; Information about the Organisation of Oil Exporting Countries [Accessed in March 9, 2013]. Accessible: http://www.opec.org/opec_web/en/data_graphs/40.htm; Information on the Union of South American Nations [Accessed in March 9, 2013]. Accessible: http://www.britannica.com/EBchecked/topic/1496583/UNASUR; Information about the Eurasion Union [Accessed in March 9, 2013]. Accessible: http://www.tsouz.ru/eek/Pages/ default.aspx

[42]Prajakti, K., Saxena, S.S. Shanghai Cooperation Organisation and Prospects of Development in Eurasia Region. *Turkish Policy Quarterly*. 2007, vol 6, no.2, 95-98 pp. ISSN 1303-5754; Aghaie, H. *The Case Study of Shanghai Cooperation Organization: Challenges and theoretical perspectives*. Linkoping University, Department of Management and Engineering, November 22., 2012 [Accessed in March 12, 2013]. Accessible: http://www.academia.edu/2327832/The_Case_Study_of_Shanghai_Cooperation_Organization_Challenges_and_theoretical_perspectives; Chung, C. China and the Institutionalization of the Shanghai Cooperation Organization. *Problems of Post-Communism*. 2006, vol.53, no.5, 3-5 pp. ISSN: 1075-8216.

consider the option of participation in the SCO or/and the Eurasian Economic Community (EurAsEC) as a competing option to cooperation with the EU.

It was not possible in theoretical or practical terms to establish *simultaneously* the presence of *all such legally defined* criteria in the comparable systems:

- similarity of the structure and the scope of competence in the model of international cooperation;
- the existence of legal substantiation (set of provisions) to ensure possibilities of equivalent integration;
- the legal basis required for transnational decision-making as a prerequisite for the transofmration of an internatinoal organisation into a subject of international integration.[43]

Thus, the assessment of indicators of objects, there are metodologically correct grounds to recognize that in actual fact, the EU that enjoyes a particular legal personality, *does not have* comparable or competing subjects of international law in the Eurasian continent. However, it does not mean that EU member states or other countries in the Eurasian space to have options of an international economic *cooperation model.* There are at least two models that have been developed as systemically different in respect of decision-making as well as compliance over the enforcement of decisions etc.

The most typical, *methodologically inappropriate* comparison that has evolved historically, is the comparison and contraposition of the EU as a subject of law to two political super powers – the USSR and the USA – in comparing the living standards as well as other geopolitical indicators (territorial resources, the demographic, economic, defence and political potential, legislative performance

[43]Энтин, Л.М. Лиссабонский договор и реформа Европейского союза. *Журнал российского права.* М.: 2010, № 3, с 66 - 67. ISSN: 1605-6590.

indicators etc.).[44] It is possible that it has been at the basis of views as well as the development of the governance system of the international organisation itself along similarities with the federal government system.

CONCLUSIONS

Upon achieving the goal and tasks set in the Doctoral Thesis, the research study has allowed drawing the following conclusions:

1. According to features of states that ensue from the Montevideo Convention on the Rights and Duties of States of December 26 1933,[45] there are sufficient grounds to believe that the development of a state is related to the transfer of governance functions and delegation of the political power over the population in a specific territory to a specific social stratum or a civic body. Thus, the concept of citizenship established by the EU must be related to *territorial* rather than *spatial* affiliation and the constitutional procedure established in the territory of the EU is at the basis of the exercise of EU citizen's rights.
2. The economic development of the EU is assessed in the territorial meaning as a *function* necessary for the welfare of the individual as the welfare of the society is assessed subjectively depending on the life style and the value scale of the individual in a specific territory.
3. Competences prescribed by the TEU and the TFEU cannot be constructed in a way that does not affect issues of some other sector or area, thus new additional issues are integrated as functionally necessary in the governance system.

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[44]Rifkin, J. *The European Dream. Utne Reader*. September/october 2004. ISSN: 8750-0256 [Accessed in April 4, 2013]. Accessible: http://www. utne.com/2004-09-01/the-european-dream.aspx; Quiggin, J. *EU-US convergence?* August 21, 2010 [Accessed in April 4, 2013]. Accessible: http://crookedtimber. org/2010/08/21/eu-us-convergence; Лебедева, Т.П. *Геополитика.* М.: МГУ, 2007. с 53-62. ISBN: 5883870457.

[45]Montevideo Convention on the Rights and Duties of States. published December 26, 1933. Council and Foreign Relations [Accessed in May 3, 2013]. Accessible: http://www. cfr.org/sovereignty/montevideo-convention-rights-duties-states/p15897

4. If the EU is a space with a specific constitutional procedure then the enforcement of this procedure is related to the enforcement of state – imposed specific administrative procedures among participants of the given process. The administrative procedure exists in the EU with all elements characterising internal governance that are required:
    a. for the execution of the internal governance tasks of the organisation;
    b. representation among institutions, agencies and undertakings;
    c. governance over citizens, non-governmental organisations and authorities and manifests as:
        - the right to issue legal acts,
        - to enforce legal acts;
        - organisational operational coordination among executive institutions and agencies,
        - support to technological activities.
5. If a union of initially sovereign subjects of international law which has been established on the basis of common social, economic, political or other *state* interests and aims, a short-term or longer-term governance mechanism may become a confederation, then the application of the above statement to the EU allows concluding that practically no missing elements can be detected in respect of common features and the description that has been given to confederative foundations as the (individual and collective) capacity of subjects of the EU governance process is characterized by their shared interest in implementing certain tasks within the frame of a single, *relatively closed* system in organising its *public* governance. If the basic criterion for distinguishing a federation and a confederation is the definition of confederation *as a union of internationally legal sovereign countries,* and, in actual fact, it is quite complicated to distinguish the nature of such subjects of law in practice as the view prevails that the existing confederations are very

similar to federations as concerns their governance system or even should be treated as such, it can be maintained that the operation of the EU is substantiated by objectives characteristic for a federation.

6. The TFEU does not define the secession procedure for the exit from the Eurozone which has features of the latent federalism while the procedure prescribed by Article 50 of the TFEU is defined as declarative, giving rise to the possibility of interpreting the said Article as restrictive for member states in the exercise of their souvereign rights.
7. The Charter of Fundamenta Rights of the European Union includes general basic provisions required for the *internal* governance system of the EU in developing a single social security system that is an area of guarantees characteristic for a state.
8. Norms for the exercise of the EU external competence compete with the original legal personality that states are endowed with. Such a situation points to the existence of the competing competence typical for a federation and subjects of a federation.
9. The existence of a transnational competence is at the basis of the effectiveness of the legal personality of the EU. As a result of implemented accountability member states derive their own original competences in the EU which results in the emergence of the original competence that the EU has in ensuring the internal governance. Pārnacionālas kompetences esamība pamato ES tiesībsubjektivitātes efektivitāti. Moreover, the transnational governance mechanism is the same for economic as well as political integration and its functional environment is practically not subject to differentiation.
10. The legal personality of the EU that has been derived from the original legal personality of member states is characterised by functionality that determines peculiarities and scope of the exercise of the legal personality. If an international treaty does not include directly defined provisions on the scope of

the legal personality there are no grounds for denying that the internatinoal treaty contains norms that would deny the legal personality of an international organisation.

11. If as a result of the common political will of member states the EU must be defined as a single administrative area to ensure a certain constitutional procedure as a mandatory prerequisite for the enforcement of sucha procedure – the international treaty must define the respective processes as well as all participants of these processes, including individuals and organisations and their legal capacity, as only through compliance with adminstrative legal provisions defined by the international treaty, they may become full-fledged subjects of administrative legal relations within the administrative relations and legal relations of an international organisation.
12. Notwithstanding the attempts during the EU history of development to establish a single EU governance system, *until now it has not yet been achieved*. There are sufficient grounds to state that the current EU relations do not have a two-tier governance system but a multi-tier governance system where, according to the existing scientific theories, a single centre of power cannot be actually identified.
13. Forms of transnational economic regulation can be viewed as most effective, however, provided the common mechanisms prescribed and approved by the international treaty are commesurate and the *objectively required* duty of member states to consent to the restriction of souvereignty is *related* to the right that can be *actually exercised* (not *declarative*) to *control* activities of transnational organisations in the field of *restricted souveriegnity*.
14. A methodological error has been made for a long time in the comparison of EU performance indicators when these indicators have been compared with countries, including countries with a federal governance system. Such a methodological error has a historic explanation that ensues from the basic

directions of the EU establishment process – one of them was related to the idea of establishing a European state – a sovereign federal statehood, the establishment of federal law and organs of the federal system, the identification of the competence of the federation and its subjects.

15. The doctrine of international law does not have a uniform opinion concerning the legal personality of international organisations although there is a sufficient number of international organisations that could be described in a dual way, on the one hand, as the result of cooperation coordinated by states within the frame of an international organisation, on the other hand as activities of states withina federation. If the state is considered to be the main element in the political system of international cooepration, linked to the natinoal system of law contentwise, then the EU will be continue to be defined as a unique system of transnational law from the point of international law, indicating the politisation of law within the frame of the specific political system and it will not be viewed as interaction of subjects of law in the single administrative area of the EU.
16. The TEU and the TFEU have not completely defined all EU competences and the description of these competence has not been defined in line with the functional necessity to implement internal governance processes and to coordinate external cooperation. However, the legal personality of the UE is limited by the competence that has been derived by the member states for the enforcement by the EU of the external and *internal* governance process. Thus, obligations and principles ensuring from other international law can be attributed to the legael personality of member states, its *exercise* and *enforcement*.
17. Having recognised, that, in actual fact, the EU with its inherent particular legal personality *does not have* a comparable similar competing subject of international law in the Eurasian continent, it does not mean that EU member states or other countries in the Eurasian area do not have any other choice of a

model for international economic *cooperation*. In actual fact, it depends on the extent to which a state tolerates a transnational regulation mechanism in the context of implementing *general* welfare.

18. Tasks set by the Treaty of Lisbon have been defined with the aim of addressing problems identified in the earlier cooperation process. However, the definition of objectives and tasks in the treaty does not give rise to all legal prerequisites for the archievement, to delegate the governance competence for all issues to the EU institutions (organs), in particular, if the implementation of these tasks is contrary to interests of a certain *body* of member states but not the *majority* of member states.

As a result of the above findings it is possible to conclude that the Treaty of Lisbon is an *international treaty* where *features characteristic for federal government, multi-tier governance and international cooperation* can be simultaneously detected in mutual interaction in the processes of establishing and exercising competences of an international organisation – the EU and a result of the given interaction the presence of *competing competences* can be potentially identified in several governance levels.

In actual fact, the above conclusion points out that the hypothesis identified at the beginning of the research about the Treaty of Lisbon as a social contract that transforms the EU into a subject of law that is equivalent to a state with governance similar to state with a federal government with its characteristic governance mechanisms and functions, was not validated.

However, in the course of validating the research hypothesis the author developed seven *solutions* that allow specifying the scope of the legal personality of the EU without *creating* the possibility to compare the proposed governance model with a similar federal government model as well as allows eliminating possibilities of implementing competing competences in specific cases. Undoubtedly, the above solutions are mostly related to amendments to the TEU

and the TFEU as well as potentially these solutions could be taken into consideration in drafting a new EU Treaty. The Treaty must establish that:

1. The EU is a *multi-tier* governance system where institutions (organs) of the EU exercise *internal* and *external* competence in line with the specific nature of the activity of these organs. °
2. Competence is the authorisation of public governance of member states for EU institutions (organs) for the coordination of certain governance and related areas, formulation of tasks for subjects of governance and control over the execution of tasks.

2.1. Issues of EU internal competence are related to the free movement of persons, goods, services and capital, public safety and security in the internal territory that is constituted by territories of member states.

2.2. Issues of EU external competence are related to the flow of EU citizens, goods manufactured in the EU, services provided in the EU and capital present in the EU, security and defence in third countries and international organisations on the scale prescribed by the Treaty and in compliance with principles laid down in the UN Charter and the ECHR.

2.3. Decision-making on issues of EU external competence by EU institutions is limited by obligations that member states have assumed at the level of national competence and related to the extraterritorial impact of the rights of member states.

2.4. According to the assessment by the European Council of the execution of tasks in the areas of internal and external competences and issues for decision-making, the Parliament, the Council and the Commission agree on tasks to be undertaken during the subsequent period and submit proposals about additional authorisation by member states required for the execution of the said tasks.

3. Issues not regulated by administrative law within the frame of the territorial jurisdiction of member states can be integrated as decision-making of specific *internal* competence by EU institutions (organs).
4. The European Council submits an assessment on *yearly basis* to the European Parliament, the Council and the Commission about the execution of tasks as well as issues in the areas of internal and external competences for decision-making concerning a more effective governance model for the subsequent period.
5. In the event of the failure of EU institutions (organs) to execute the assigned tasks and/or inappropriate enforcement of competences if it is indicated in the assessment by the European Court of Auditors or the European Council of the execution of tasks in areas of internal and external competences and issues for decision-making, the European Court of Auditors or the European Council has the right to advise the competent institution (organ) to perform an audit to establish causes and consequences of failure to execute the tasks and/or inappropriate enforcement or to entrust the Court to undertake the assessment and to determine sanctions.
6. Any member state may secede from the EU if following a written notification about secession submitted to the European Council it has committed itself and has fulfilled within two years' time all financial obligations prescribed by its membership in the EU.
    6.1. The member state indicates in a written notification the plan for the progress of secession and fulfilment of financial obligations as well as the planned future model of relations with the EU.
    6.2. The European Council sends the written notification of the member state within a month's time to the Parliament, the Council and the Commission for assessment and drafting of the secession agreement or an agreement on future relations with the EU.

6.2.1. The Parliament, the Council and the Commission establish a Negotiation Group not later than in a month's time after the delivery of the notification which:

6.2.1.1. calculates the volume of financial obligations within three months from the moment of its establishment and coordinates the plan for the progress of secession and fulfilment of financial obligations with the said member state;

6.2.1.2. Coordinates and signs the secession agreement or the agreement on future relations with the EU together with the member state within six months' time from the moment of its establishment.

6.2.2. Competences of the Negotiation Group are defined in the decision on its establishment.

6.3. Absence of a secession agreement or an agreement on the future relations with the EU is an obstacle preventing a member state from leaving the EU if it has fulfilled all the financial obligations that have been harmonized with the plan for the progress of secession and fulfilment of financial obligations.

6.4. If the member state fails to comply with deadlines established by the Negotiation Group for the coordination of documents or refuses to sign the coordinated documents within one year's time after the submission of the written notification to the European Council then there are grounds to assume that the member state has withdrawn its application and the European Council informs the member state about it in writing.

6.5. If the member state insists on its secession notification after the receipt of the information from the European Council, the secession procedure is resumed and deadlines for the execution of obligations are applied that are set as if the member state has submitted its notification for the first time.

7. The European Central Bank takes the decision about the withdrawal of the member state from the Eurozone if it finds that the Eurozone member state has repeatedly in the course of one fiscal year after the notification of the European Central Bank and the Commission to satisfy the prescribed requirements and execute obligations for the stability of the Euro.
   7.1. The European Commission conducts negotiations with the member state within a month's time after the delivery of a repeated notification by the European Central Bank to reach an agreement with the member state about a specific date for the termination of the use of the Euro.
   7.2. The member state ensures the transition to the national currency according to the exchange rate established by the European Central Bank on the day following the date for the termination of the use of the Euro.
   7.3. The use of the Euro in the member state is permissible within a period of six months from the date for the termination of the use of the Euro only for transactions and purchases for amounts that are not in excess of _____ (for example, *the amount is established according to fluctuations in stability indicators during a budget year etc.*).
   7.4. The European Central Bank controls and recalculates the exchange rate of the Euro against the national currency according to the member state's inflation indicators.
   7.5. The decision on the termination of the use of the Euro is a matter of the internal competence of the EU. The member state may appeal the decision in the European Court of Justice. The enforcement of the decision is not suspended during the submission of the member state's application.
   7.6. If according to the ruling of the European Court of Justice it is found that the decision on the termination of the use of the Euro is unjustified, the EU compensates the losses incurred to the member state that are related to

the termination of the use of the Euro and the introduction of a new national currency.

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