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REGULATORY COMPETENCIES OF THE INTERNATIONAL MONETARY FUND IN THE SYSTEM OF GLOBAL FINANCIAL MANAGEMENT[189]

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Abstract

The subject of the analysis in the paper is the assessment of the importance of the regulatory competencies of the International Monetary Fund (IMF) in the system of global financial management. In this context, the first part of the paper points out the organizational structure and competence of the IMF in the creation of the international monetary system, while the second part of the paper summarizes the legal framework of its jurisdiction with an emphasis on determining the terms of conditionality, (as the monetary legal category), the conditionality policy procedure implementation and the legal nature of special drawing rights. The subject of the author's special attention is the scope of work of special institutions of the IMF, which, with their activities in the circumstances of globalized economic and financial relations, as well as the consequences of the debt and now pandemic crises, have a significant impact not only on maintaining monetary stability as a public good but also on the protection of human rights to which IMF financial support programs have a significant impact. Taking into account the tendency of the expansion of the IMF's jurisdiction as the main subject of international monetary law and the trend of hybridization embodied in the increasingly frequent mix and implementation of monetary and fiscal policy goals, as well as the complexity and far-reaching influence of its monetary legislation, the author is an opinion that in today's circumstances, the IMF creates its law, which is established through the process of disintegration from international monetary law, and it should be studied as an independent branch of the legal order.

Keywords: *international monetary law, International Monetary Fund, global financial management, monetary stability, international monetary order, lex monetae.*

1. Introduction

In considering the role of the IMF in achieving monetary stability, it is important to point out that its main task is not financial stability, but the fulfillment of certain goals in the field of international monetary relations. In the circumstances when the IMF appears as the main creditor of the public loan policy, it is important to emphasize this, because the IMF represents primarily a monetary, and only then, a financial institution. To realize these goals, the IMF uses various instruments that are primarily regulatory, and with them, it can influence to a greater or lesser extent the way of implementing the monetary sovereignty of a specific member state. The purpose of all instruments and measures undertaken is reflected in the creation of the standard of "good monetary conduct", as a goal to which all member states strive.

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Certainly, by establishing membership, the states assume concrete obligations that relativize the scope and legal force of national monetary authorities, but they agree to this for the sake of obtaining certain benefits arising from the stability of the exchange rate and the liberalization of free foreign exchange payments for current international transactions. These benefits are reflected in the advantages arising from the security of international monetary cooperation and the financial support that can be expected in crisis conditions. The IMF currently gathers 190 member countries that strive to achieve deepened international monetary cooperation, determine international trade flows, and promote high employment and sustainable economic growth while reducing poverty in the world. The importance of the work of this organization is reflected in the fact that, with its decisions and other acts, it established a kind of universal legal framework for the implementation of monetary sovereignty.[190] Accordingly, we can note that membership in the IMF does not imply an automatic and forced loss of national monetary sovereignty, but rather a deliberative self-limitation to which national monetary subjects agree, where each country can freely decide on eventual exit from membership and the establishment of full sovereignty.[191] Monetary integration, in itself, does not mean the loss of monetary sovereignty, but rather its adjustment in circumstances of tight coordination of national monetary policies to achieve certain benefits. Also, practice shows that in globalized economic systems, the rule is that the smaller the state, the lower the intensity of monetary sovereignty (and, accordingly, monetary integration costs less).[192]

2. The Traditional Approach to IMF Regulatory Competencies

The International Monetary Fund was established in July 1944 at the United Nations Conference in Bretton Woods. On that occasion, 44 countries, by signing the Agreement, expressed a clear intention to establish a framework for economic cooperation that would be able to avoid repeating the consequences of market competition deviations that caused the Great World Economic Crisis (1929-1933). The basic *ratio* of the IMF's actions includes[193]: developing international monetary cooperation through a permanent institution that serves as counseling and cooperation in solving international monetary problems; facilitated expansion and equal growth of international trade exchange to contribute to the improvement and maintenance of a high rate of employment and real income, i.e. the production forces of all member countries as priority goals of long-term economic policy; stabilization of exchange rates to maintain proper arrangements of exchange rates between members, where they must undertake activities against countries if they do not comply with the correct implementation of exchange rate arrangements between members and due to unfair competition of foreign exchange regimes; assisting in establishing a multilateral payment system for current transactions between members and removing foreign exchange restrictions that slow down the growth of world trade exchange. Also, it includes providing security to members by temporarily making available to them (with appropriate insurance funds) the general funds of the Fund, thus allowing them to correct the imbalance in its balance of payments without resorting to measures and instruments harmful to the achievement and maintenance of national or international well-being and; shortening the duration and reducing the degree of imbalance in the international balance of payments of the member states.

States that are interested in joining the Fund must meet the conditions set by the Board of Governors, which are related to the registration of quotas. A quota expressed in special drawing rights is determined accordingly for each member state. The subscribed quota of each member is equal to its quota

[190] Claus D. Zimmermann, „The Concept of Monetary Sovereignty Revisited", *The European Journal of International Law* 24 (3), 2013, 798-800.
[191] Marko Dimitrijević, *Pravo Evropske centralne banke*, Niš, 2023, 41.
[192] Angyal Zoltan, *Monetary Sovereignty and the European Economic and Monetary Union*, European Integration Studies, Miskolc, Vol. 7, No. 1, 2009, 1-6.
[193] Articles of Agreement of the International Monetary Fund: adopted at the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, July 22, 1944 … amended effective January 26, 2016, by the modifications approved by the Board of Governors in Resolution No. 66-2, adopted December 15, 2010, art. 1.

and it is deposited with the Fund in its entirety at the appropriate depository.[194] The Board of Governors periodically adjusts the amount of quotas (at intervals of no more than five years), when it performs a general audit and proposes certain corrections. A member state can turn to the Board in the form of a special request for the adjustment of quotas at any point in time (apart from an unannounced general audit), which the Board carries out ex officio.

The organizational structure of the Fund consists of the Board of Governors, the Executive Board, and the General Director. The Fund can include the Council in its work if the Board of Governors decides by a majority of 85% of the total number of votes that the provisions of Annex D of the founding agreement should be applied.[195] The Board of Governors is responsible for all those jobs that are not specifically designated as the jobs of the Executive Board or the General Director. The Board of Governors consists of one governor and one deputy appointed by each member in a manner determined by national monetary regulations. The deputy is authorized to vote only in the absence of the governor whom he replaces. The Board of Governors elects one of the governors as chairman. The Board of Governors may delegate to the Executive Board the authority to perform certain functions (except for the powers expressly entrusted to the Board of Governors by the founding act). Meetings of the Board of Governors are convened whenever requested by 15 members or members holding a quarter of the total number of votes. The Board of Governors, within the limits of its authority, adopts rules and regulations that will be necessary or expedient for the management of the Fund's affairs and may form committees as auxiliary bodies (committee membership does not have to be limited to governors).

The executive board manages the affairs and consists of the executive directors and the general manager as chairman. The country with the largest quota appoints five directors, while fifteen are chosen by the other members. Elective executive directors are elected every other year. Executive directors remain in office until new officers are appointed or elected. If the position of an executive director remains vacant for more than 20 days before the end of his mandate, the members who elected him may elect another executive director for the remainder of that term. The Executive Board sits permanently at the main headquarters of the Fund and meets as many times as the Fund's affairs require. The necessary quorum for any meeting of the Executive Board is a majority of the Executive Directors holding at least half of the total number of votes. In case of suspension of the right to vote, the member does not have the right to appoint the executive director but can agree with the other members who elected the executive director that the executive director decides with the votes allocated to that member.

The General Director is the chairman of the Executive Board, but has no right to vote, except for the so-called decisive vote in case of equal division of votes. He can attend the meetings of the Board of Governors, but he does not vote at those meetings, because he is primarily the head of staff employed by the Fund and manages regular affairs under the direction of the Executive Board (ie, he is in charge of organizing, appointing and dismissing the staff of the Fund). In the performance of their functions, the Director General and the staff of the Fund are solely responsible to the Fund, and it is a strictly prescribed obligation of each member state to respect its international character and to refrain from any attempt to influence any staff member.[196]

3. About the Legal Nature of the Special Drawing Rights

Special drawing rights were established by the First Amendment of the Agreement on the IMF and under them are meant new international reserves that are used to supplement the foreign exchange reserves of the member states. Special drawing rights do not have the character of a special currency, nor a special request, but are understood as potential requests for the free use of the currencies of the member states of

[194] Articles of Agreement of the IMF, art. 3 sec. 2
[195] Articles of Agreement of the IMF, art. 12 sec. 1-3.
[196] Articles of Agreement of the IMF, art. 12 sec. 4.

the Fund. These reserves [197]were created based on a formal decree and do not represent a "price" for already made contributions in foreign exchange reserves, so they are not backed by the national currencies of the members. At the same time, special drawing rights do not represent a form of global currency reserves (rather a standard IMF accounting unit), but they can be exchanged for convertible currencies in transactions between member countries, and this procedure is regulated in detail by the Agreement. The value of special drawing rights is determined daily and is based on the so-called "value basket" of key international currencies such as the US dollar, the euro, the Japanese yen, or the British pound, with a new assessment of the value basket being carried out every five years and its complete alignment with the opportunities on the global financial market. Such periodic recalculations are necessary due to the occurrence of disturbances in all segments of the financial market.

Regarding the disposal of funds for the performance of the business, a distinction is made between the Special Drawing Rights Account and the General Account. The first account is of a strictly earmarked nature, so these funds can be used only and exclusively when they relate to special drawing rights. Financial resources for all other tasks are provided through the General Account. Otherwise, Art. 7 of the Agreement also established the IMF's ability to issue bonds and paper money, without the approval of the central banks of the member states, but the Fund did not use such an opportunity until the outbreak of the global financial crisis (when on July 1, 2009, it approved the fiscal framework for issuing bonds member states and their central banks). In this case, the Fund precisely defined that the bonds could only be sold among the members themselves, and not to private companies or individuals on the secondary financial market. Each member state must deposit a declaration committing itself to accept all the obligations implied by membership in the context of funds from the Special Drawing Rights Account but by its national monetary laws. The statement can have the function of confirming all the necessary steps that the state has taken to fulfill its obligations. On the day of depositing the statement, the country formally acquires the status of a member of the IMF, but no country can obtain the status of a member before the entry into force of the Agreement concerning access to the Special Drawing Rights Account, with the additional condition that members with at least 75% of the total number of votes deposit these statements.[198]

The Fund is authorized to make decisions on the allocation and cancellation of special drawing rights, where such decisions are determined by meeting long-term global needs.[199] In addition to this principle, the reason can also be the improvement of the purpose of the rights themselves, the prevention of economic stagnation, deflation, excessive demand, and inflation in the world. During the first decision on the allocation of special drawing rights, the global needs to fill the existing reserves and achieve a better balance in the balance of payments are taken into account, to ensure a high level of functioning of the system in future circumstances. Decisions on allocation or cancellation are made for the so-called basic consecutive periods lasting five years. The first basic period begins on the date of the first decision on the allocation of special drawing rights or on a later date specified in the decision itself. The rates at which the allocations should be made are expressed as percentages of the valid quotas according to the importance and on the day of making the specific decision on the allocation. The rates at which special drawing rights are to be canceled are expressed as percentages of the net cumulative allocations of special drawing rights on the date of the current cancellation decision.

The basic principle established by the Agreement is the principle of free movement of capital, which is confirmed by both the First and Second Amendments, although the question of the necessity of a certain degree of control of credit transfers in international frameworks by the IMF was then raised. The problem with the imposition of capital controls is reflected in inadequate and uncertain indicators of their

[197] Johnatan E. Sanford, Martin A. Weiss, „The Global Financial Crisis: Increasing IMF Resources and the Role of Congress", in: *The International Monetary Fund (IMF): Financial Crisis and Select Issues* (ed. Rachel E. Layton), Nova Science Publishers Inc, New York, 6-8.
[198] Articles of Agreement of the IMF, art. 17 sec. 1-2.
[199] Articles of Agreement of the IMF, art. 18 sec. 1.

effectiveness, especially in the circumstances of harmful capital speculation.[200] At this point, it is necessary to point out the fact that the creators of the original Agreement stipulated the text in a period when the global capital market was not developed to such an extent that the issue of controls would even arise, i.e. the period after the end of the Second World War (when the economies of many countries were completely disavowed). At the same time, the science of monetary law was still at an early stage of development and did not offer precise criteria for distinguishing between capital transfers and payments, as well as payments abroad.

The Agreement itself includes all payments and transfers for current international transactions under capital transfers, but the concept of control of capital transfers is not explicitly defined. However, generally speaking, factors that reduce the amount of capital in circulation include quantitative or administrative restrictions on capital transactions, taxes and subsidies that affect profits, monetary (especially foreign exchange) policy measures, dual foreign exchange markets, official financing, or the use of reserves, fluctuating exchange rates and interventions on the foreign exchange market. Gold also makes a distinction between the concepts of control and restriction of capital flows. The legislative history of the IMF Agreement unequivocally shows that the concept of control is broader and includes restrictions. Thus, restrictions mean direct state restrictions on the use of foreign currency, while controls include state actions aimed at the availability and use of foreign currency for capital transfers. The controls themselves can be restrictive or non-restrictive, but it is difficult to differentiate them in practice, especially when the Fund considers it necessary for a member state to take certain measures to prevent inappropriate behavior of another member state regarding the use of Fund funds. The legislative history of the Agreement on the IMF is very complex, and considering that ten amendments have been adopted since the signing of the original act, the question of the relevance of provisions in earlier versions of the Agreement and Amendments has arisen. As it was considered that replacing the existing versions would be anachronistic, the solution was found in the footnotes of the articles of the earlier versions with a clear indication of whether they belong to the original agreement or some later amendment, but the problem is that the changes caused the ordinal number of most of the articles to be shifted. Of course, regular procedural changes are not possible and therefore one should be careful considering that dynamic economic relations condition changes in the application of existing solutions of the Agreement and the writing (designing) of new rules.[201]

4. Legal framework of the International Monetary Fund

The legal framework of the Fund's operations consists of the Agreement on the establishment of the IMF, which has a constitutional character and is often called the "Charter of the IMF" in the literature, and a complex range of acts from the domain of special administrative law enacted by the Fund itself, which more concisely regulate the rights and obligations established by the Agreement.[202] These provisions, which we cannot fall under the field of soft law, include the decisions of the Board of Directors, as well as the rules and regulations of the Executive Board and the General Director. It is characteristic of these secondary acts that they are not general, like the basic guidelines for economic policy coordination adopted by the EU Council, but always refer to a specific member state. Of course, there is a noticeable similarity with the special guidelines for the coordination of economic policy, which harmonize macroeconomic goals for a specific member state by taking into account its economic conditions and national circumstances. All jobs and activities undertaken by the Fund can be systematized into three groups: tasks of supervision, lending operations, and tasks of providing technical support. Supervision primarily refers to monitoring and monitoring economic and financial conditions in member states and providing specific advice in this field. Lending financial resources under certain conditions is a confirmation of the Fund's place in the global

[200] Joseph Gold, *International Capital Movements under the Law of International Monetary Fund*, IMF, Washington D. C., 1977, 1-2.

[201] Joseph Gold, *The Fund Agreement in the Courts: Volume II*, IMF, Washington D. C., 1982, 1-4.

[202] Christoph Hermann, Cornina Dornacher, *International and European Monetary Law - An Introduction*, Springer, Munich, 2017, 32.

financial architecture and the Fund's role as the main lender in international finance, while technical support jobs concern shaping and improving the quality and effectiveness of the decision-making process.[203]

Interestingly, the European Court of Justice (ECJ) does not have jurisdiction to evaluate the legality of IMF acts, just as the national courts of member states do not enjoy such jurisdiction. More precisely, disputes in which specialized organizations of the Fund are involved can be subject to assessment before the ECJ, unless the organization itself invokes immunity (which did not happen in the practice of the Fund's work). This immunity applies to arbitration clauses set out in certain contracts. However, it is interesting that there are deviations from such concepts, which was evident during the founding of the so-called Administrative Tribunal of the IMF, which was an independent judicial forum competent exclusively for decisions on interpersonal issues of employees. Of course, in a technical sense, the Administrative Tribunal was not a judicial instance in the true sense of the word, given that its decisions were declarative, because the very possibility of an authoritative interpretation of secondary law of the Fund was excluded by the founding act. Its actual influence was certainly far greater in practice. In cases of disagreement between the formal interpretation and the application of the law that occurred in the relations between the member states themselves and in the relations of specific members with the Fund, the decision on the correct interpretation is given by the Executive Board, whose decision can be appealed to the Board of Directors, but the second instance was rarely observed in practice.

The absence of judicial control of the Fund's work in practice enables it to act quickly, but the absence of such control certainly does not imply the absence of any evaluation of its legislative activity at the same time. Thus, the concept of self-control suffers from limitations, taking into account the constant role of the IMF in the management of financial crises and involvement in public loan policy, because then the content of the concept of the rule of law for long periods is not completely clear. In the above, we agree with the author, because the absence of judicial control of the work of such an institution in certain moments can cast a shadow on its work and credibility, on the one hand, and miss the opportunity to familiarize and approach complex monetary legal matters to citizens through detailed and clear court rulings, on the other hand. Sides. Nevertheless, the question arises as to whether judges have specialized knowledge for the meritorious resolution of disputes in which the IMF is directly or indirectly involved, which generally does not give a positive answer, especially when the resolution of disputes in European monetary law is taken into account. In such circumstances, the action of the ECJ, in our opinion, remained a (declarative) "inglorious" attempt when it comes to the Agreement on the European Stabilization Mechanism, but also effective when it comes to the OMT case. The role of the IMF in the liberalization of capital flows is confirmed by the Second Amendment, which positions its contribution to achieving the international flow of liberalization of capital flows, as the Fund has arbitrary powers to decide which capital controls are acceptable and under what conditions. The problem is that the current jurisdiction over the restrictions takes into account only the payment side, and does not take into account the underlying transactions between countries regulated by the World Trade Organization. Although the Second Amendment confirmed the right of states to self-initiatively regulate capital controls in relations with other states, the Fund can indirectly influence through its three instruments which include supervision, technical support, and conditionality policy.[204]

5. Conditionality as a monetary category in theory and practice

The precise meaning of the concept of conditionality policy is not regulated by the Agreement, but in the practice of the Fund and the World Bank, this term refers to policy directions and guidelines that the

[203] Martin A. Weiss, „The Global Financial Crisis: The Role of the International Monetary Fund", in: *The International Monetary Fund (IMF): Financial Crisis and Select Issues* (ed. Rachel E. Layton), Nova Science Publishers Inc, New York, 2016, 23-24.

[204] Cyntia Crawford, „International Jurisdiction over International Capital Flows and the Role of IMF: Plus Ça Change…", in *International Monetary Law: Issues for the New Millenium* (ed. Mario Giovanoli), Oxford University Press, New York, 2000, 78-82. See also: Marko Dimitrijević, Pravo Evrospke centralne banke, Niš, 2023, 19-20.

IMF wants countries to follow as a necessary precondition for using the Fund's resources.[205] Conditionality as a legal issue is immanent in the articles of the Agreement, where it is determined that the funds will be granted to the states under certain guarantees, with the fact that the specific content is not determined in any article of the Agreement. The IMF adopted the first guidelines on the content of this concept in 1979 by determining macroeconomic factors and performance criteria based on which it is possible to evaluate the economic adjustment program of a specific country. Of course, the Fund does not influence the way states implement the directions of those desirable policies, which leaves them with enough economic room for maneuver.

Over time, the concept has evolved quite a bit, and in modern conditions, its goal is to build responsible states that are committed to transparency, the fight against corruption, the administration of justice, and the strengthening of administrative capacities. In the middle of the second half of the nineties, new elements were incorporated into the concept of conditionality policy based on the Declaration of the Internal Committee of the IMF, which now include promoting good governance in all its aspects, ensuring respect for the concept of the rule of law, increasing efficiency and responsibility in the public sector. It is noticeable that over the years the concept has changed from passive to more active, lively, and purposeful. Accordingly, Gianviti believes that the concept of conditionality is multi-layered and must be viewed on three separate levels.[206] The first is determined by the founding act and policies developed by the IMF itself, while the second is observed in the various credit arrangements concluded by the Fund and the criteria that countries must meet beforehand (especially efficiency criteria and assessment of achieving the desired fiscal and monetary targets). The third level relies on the recommendations of the Director General and his staff. From the above, the author concludes that four forms of conditionality can be distinguished in the international monetary law implemented by the IMF: performance criterion, self-evaluation criterion, previous actions, and rappers. This important institute of international monetary law has a far wider function than it appears at first glance. Its ratio is not only the provision of financial support but is also reflected in the fact that it represents one of the instruments for spreading good practice, a substitute for collateral measures required by banks in commercial lending, a signal of the credibility of a certain market and an instrument for combating moral hazard.[207]

In 2002, after many years of work, the IMF adopted the Guidelines of the Executive Board on the way to implement the conditionality policy in practice, which eliminated the legal gaps that until then made it difficult to apply this monetary institution in practice.[208] States that participate in the financial support program, along with the request for assistance, are required to submit a reform plan that is an integral part of the letter of intent or memorandum on economic and financial policy, which is usually part of the so-called technical memorandum of understanding. The contract on credit arrangement, which is concluded after the fulfillment of all mentioned conditions, formally and legally represents the Fund's decision to provide financing to a specific member under precisely defined conditions. These conditions are derived from the national reform program, which means that the program determines the draft conditions for borrowing financial resources, and the loan arrangement agreement determines the legal basis for monitoring the implementation of macroeconomic targets. The consistency of members in fulfilling their obligations is determined based on the application of efficiency criteria as a basic criterion for receiving and maintaining financial assistance. Every 6 months from the date of conclusion of the contract, the Fund carries out an audit to possibly modify some elements. On this occasion, it relies on the analysis of indicative targets that represent variables that should not be equated with efficiency criteria due to essential uncertainty

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[205] Andre Newburg, „The Changing Roles of the Bretton Woods Institution: Evolving the Concept of Conditionality", in *International Monetary Law: Issues for the New Millenium*, (ed. Mario Giovanoli), Oxford University Press, New York, 2000, 87.

[206] Francois Ginaviti, „Evolving Role and Challenges for International Monetary Fund", *The International Lawyer*, Vol. 25, No. 4 (2000), 1371-1403.

[207] Rosa M. Lastra, *International Monetary and Financial Law*, Oxford University Press, 2015, 473.

[208] IMF, *Guidelines on Condtitinality, Prepared by the Legal and Policy Development and Review Departments (In Consultation with Other Departments)*, September 25, 2002.

as a feature of economic cycles, nor are they quantitative indicators introduced for easier evaluation of achieved results. Structural rappers have a similar function, which represents an essential basis for success and the justification of enjoying financial assistance.

6. Special institutions of the International Monetary Fund

In practice, we can distinguish between general and special institutions depending on whether they occur within the tranche policy or outside it. The entire assets and liabilities of the Fund (except for assets managed based on Article 5 of the Agreement) are kept in a general account. Assets and assets held in one account cannot be used to pay or settle debts, obligations, or losses of the Fund that occurred in the performance of operations and transactions of another account. The exception is the costs of performing the operations of the Special Drawing Rights Account, which the Fund pays from the General Account, which is periodically granted compensation in special drawing rights from fees according to Art. 20(4) of the Agreement based on a reasonable estimate of those costs.

The policy of tranches as the primary solution for financing members is the basis of special drawing rights. As these rights do not establish a credit relationship in the technical sense, they are usually seen as a form of purchasing the Fund's desired currency with the national currency of the countries seeking financial support.[209] For the purchase of currency, a fee is paid, which in practice is very similar to the interest rate for international loans. The maximum amount of currency depends on the number of quotas. The basic principle is that the Fund holds 75% of quotas in the national currency, and 25% in the form of special drawing rights. Typically, a member state can purchase foreign currency while the IMF holds more than 200% of quotas in the member state's currency. The obligation to purchase always implies the obligation to buy back one's currency after a certain period.

In addition to the policy of tranches, the IMF has developed a network of special institutions that differ from each other according to the cause and nature of the specific balance of payments problems that need to be solved.[210] At the same time, in IMF law, it is possible to distinguish between special institutions inside and outside the Fund's General Account. Institutions within the General Account can be financed through central bank loans. The existence of specialized financing institutions also facilitates the solution of specific problems in the balance of payments. The Compensatory Financing Facility and the Buffer Stock Financing Stability stand out here, which are very effective in solving problems caused by the drop in the price of raw materials or the financing of existing commodity reserves. The Extended Financing Facility and the Enlarged Access Facility help countries with relatively serious balance of payments difficulties. In addition to the aforementioned, the Temporary Financial Institution organized in the form of an facility for systemic transformation, was also important and enabled Eastern European countries to access IMF funds, was of great importance.

The policy of special drawing rights is significantly different from the policy of special financial institutions because special drawing rights under specialized financial institutions can be withdrawn for more than 200% of members' quotas (and the period of use of financial resources is, as a rule, significantly longer). The conditioning policy of special institutions can also differ from one another. Sometimes, only formal cooperation with the Fund is a sufficient condition for its realization, i.e. creating a conviction with the Fund that the state is doing everything in its power to correct the problems in the balance of payments. However, with the above-mentioned Facility for Extended Financing and Facility for Extended Access, the interested member state must first submit a detailed statement on its economic policy, after which the Fund decides on the eventual approval of funds. In this case, the IMF must be convinced that the tranche policy is not the optimal solution before allowing concrete financing.

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[209] IMF, „Guidelines for Borrowing by the Fund, December 7589-83/181", in *Selected Decisions of International Monetary Fund*, Washington D. C., 1991, 340-342.

[210] Eric Denters, *Law, and Practice of IMF Conditionality*, Kluwer Law International Publishing, London & New York, 1996, 44-45.

Institutions that operate outside the general account differ from each other according to the financing conditions and the interest groups that appear as beneficiaries of those financial resources. In this segment, the work of the Structural Adjustment Facility, which was founded in 1986, and the Enhanced Structural Adjustment Facility are particularly highlighted. The principle of conditionality is also applied as a precondition for financing from these specialized institutions, and the proportions of approved loans are determined from the total amount of the Fund in the range of 12%. Given that these institutions are outside the General Account, the IMF establishes and maintains special payment accounts for them along with confidential accounts. It is interesting to point out that at one time the Fund considered the need to create special institutions with a lower degree of conditionality, to avoid the use of funds by members who have serious problems with public debt, which led to the need for the so-called two-level conditionality.[211] Summarizing the role of the IMF in the international financial and monetary architecture, it can be seen that the international financial and monetary system lacks centralized automatic regulators (imperative legal norms) because the procedure for approving and concluding agreements on financial support is carried out under the auspices of soft law and decision of international financial and monetary institutions according to the voting system of the member states.[212] In this process, member states use various legal, contractual, and political channels to ensure the protection of their economic, social, and cultural rights, which is especially evident when these states act on the side of the lender and thus subtly create contractual clauses that enable the integration of the expectations and interests of the borrower into the national programs and policies of debtors.[213]

7. Conclusion

We believe that this identification of the main members with the Fund as the most important subject of international monetary law is inadmissible and potentially dangerous in terms of jeopardizing the achievements and values in the field of legal regulation of international monetary relations. Precisely for this reason, it is necessary to intensify efforts to search for optimal legal solutions in terms of the composition, competencies of the Fund's bodies, and the implementation of the conditionality policy in practice to preserve the logic and function of those components of monetary sovereignty, which must remain at the national level as a confirmation of the national identity of each state union in conditions of globalized economic flows.

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[212] Diane A. Desierto, *Public Policy in International Economic Law*, The ICESCR in Trade, Finance and Investment, Oxford University Press, New York, 2015, 303-305.
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