EUMOL Jean Monnet Chair

Gabriella Gimigliano
Jean Monnet Chair Holder in EU Money Law
Business and Law Department, University of Siena

2018 Winter School on “Money as a Means of Community Belonging”
12-14 December 2018

San Francesco Building, Room 8, Ground Floor
Piazza San Francesco, Siena

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EUMOL is a Jean Monnet Chair in EU Money Law, is a three-year university project, covering both research and teaching activities, funded by Education, Audiovisual & Culture Executive Agency of the European Commission, within the framework of Erasmus Plus Programme. This University project is hosted by the Business and Law Department of the University of Siena.
The 2018 Winter School (12 – 14 December) is organized as an interdisciplinary workshop, devoted to investigate money as a means of community belonging and a tool of community construction, where “money” covers currency, scriptural money, digital currency, complementary currencies, payment systems, while “community” refers to the State, the international community, the European Union, the Eurozone, local or cross-national communities, like Sardex or bitcoin. To which extent can money support the community construction process? Thinking of money as a means of community construction, which are the main results achieved at the European Union level? What can we learn from the past?

2018 EUMOL Winter School - Teaching Staff

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Project Overview: Gabriella Gimigliano, EUMOL Jean Monnet Chair Holder

Green Session, 9.00 - 13.00 (Lectures: 9.00 – 12.00; Roundtable: 12.00 – 13.00)
The European Union, Money and the Financial Market: 
Old and New Regulatory Challenges
Chair: Vittorio Santoro (University of Siena)

Monetary Sovereignty – An Irresistible Evolution Toward “Cooperative Sovereignty”? 
Claus Zimmerman (EU Law and International Trade, Sidley Austin LLP in Brussels)

Abstract
One of the central paradoxes laid bare by the Global Financial Crisis of 2007-2009 and the ensuing European public debt crisis is the fact that many States have been seeking to strengthen their capacity for economic self-determination by increasingly pooling their powers in some form of economic or monetary cooperation. In a nutshell, these States have given up key aspects of their “sovereignty” as traditionally understood to ensure, through what can be termed a joint exercise of sovereign powers, or a new form of “cooperative sovereignty”, that they can more effectively promote the normative goals inherently enshrined in monetary sovereignty as a dynamic concept. Few international law concepts have been subject to as little critical scrutiny over the past few decades as that of monetary sovereignty. This stands in contrast with the renewed interest that the political science, legal philosophy, and legal literatures have shown in different aspects of broader concepts of sovereignty. The concept of sovereignty can be validly approached in two ways: directly, by focusing on the supreme and irreducible authority of independent states and indirectly, by looking at the various sovereign powers that originally all derive from the same source, namely the capacity of independent statehood. When looked at through the prism of its constituent regulatory powers, which may indeed be subject to various factual and legal constraints, sovereignty is a positive concept allowing a judgment about the actual capacity of states and/or their governments to affect or determine outcomes. By contrast, when approached as the supreme and irreducible authority of independent states, the concept of sovereignty is built on constantly evolving sovereign values and is hence a normative concept with major implications on how contemporary sovereign powers in the realm of money should be exercised in order to avoid an erosion of the legitimacy of those in power.

The first part of this lecture (1) revisits the conceptual foundations of monetary sovereignty in international law, (2) assesses its conceptual evolution under the impact of contemporary constraints on its exercise, and (3) examines the main implications of our understanding of
monetary sovereignty as “cooperative sovereignty”, with its normative components providing regulatory guidance and serving as a legitimacy benchmark.

The second part of this lecture examines how the understanding of monetary sovereignty as “cooperative sovereignty” informs the analysis of contemporary regulatory challenges, and our understanding of the driving forces behind the evolution of the law, in the context of the increasing regionalization of monetary sovereignty that results from the creation of economic and monetary unions around the globe. Thus, this part (1) briefly revisits the economic rationale and key legal characteristics of the regionalization of monetary sovereignty, (2) takes stock of the adaptation of the EU’s legal framework to the increasing impact of domestic economic and fiscal policies on regional economic stability, and (3) analyses selected overarching challenges exposed by the potential sovereign default of monetary union members.

The role of the European Central Bank (ECB) after the recent international financial crisis and the ongoing sovereign debt crisis in the euro area
Christos V. Gortsos (National and Kapodistrian University of Athens)

Abstract

A. The global environment
(1) All central banks, at a global basis, perform traditionally multiple functions: they create money (in the form of banknotes, their monopoly), they define and implement monetary policy (under various policy mandates and objectives) and (in cooperation with the Government) foreign-exchange policy, they hold official reserves, they act as lenders of last resort to solvent banks exposed to illiquidity, they oversee small-value and large-value payment systems and they contribute to the stability of the financial system as well as to its integrity (enforcement of AML legislation). In certain cases, they are also responsible for the micro-prudential supervision of banks and other financial firms and for the protection of consumers of financial services.

(2) One of the main outcomes of the recent (2007-2009) international financial crisis, at the global basis as well, is the assignment to central banks of a new role, namely the macro-prudential oversight of the financial system in order to address financial systemic risks. In addition, central banks tend to be more heavily involved in addressing issues relating to financial exclusion (a situation which has a negative effect on both monetary policy and financial stability) and to (the partly related) financial literacy.

It is also noted that an increasing number of sovereigns has transferred banking micro-prudential supervision from independent administrative authorities to their central banks (the case of the United Kingdom being the most prominent)
B. In particular: the (temporarily and permanently) changing role of the ECB

(1) Both the above-mentioned financial crisis and then the (in the author’s opinion) ongoing sovereign debt (or fiscal) crisis in the Euro Area have urged the European Central Bank (ECB), the monetary authority in the Euro Area, to redefine the means for achieving its primary objective, which is monetary stability in accordance with the Treaties. The outcome of this has been the resort, at least on a temporary but persisting basis) to so-called “unconventional” monetary instruments, which aim to address the (previously not eminent) problem of persisting deflation, since its traditional arsenal of monetary policy instruments did not suffice in order to meet its primary objective (a global phenomenon).

(2) In addition, the ECB has also been assigned, on a permanent basis, direct and indirect supervisory tasks with regard to credit institutions in the Euro Area with the establishment of the Single Supervisory Mechanism (SSM) in accordance with the relevant Council Regulation, while it is also involved in the process of crisis management by determining the credit institutions which are “failing or likely to fail” under the provisions of the Regulation governing the Single Resolution Mechanism (SRM).

(3) A striking point, finally, is that the ECB is not acting (before the crises and after them) as a lender of last resort for credit institutions, even for those which it is directly supervising.

The ‘lender of last resort’ function within the European Banking Union: critical issues and challenges ahead

Marco Bodellini (Queen Mary University of London)

Abstract

With some exceptions, central banks have historically performed the key function of lender of last resort (LOLR), by extending lending facilities to solvent banks facing temporary liquidity issues.

In the Euro Area, the role of central bank is exercised by the European Central Bank (ECB), that, in the newly established European Banking Union (EBU), now also performs supervisory functions within the single supervisory mechanism (SSM).

More precisely, as a legislative response to the global financial crisis (GFC) of 2007 – 2009 and the following European sovereign debt crisis of 2011-2012, it was decided to centralize at Euro Area level both the supervision and the crisis management of the most relevant banks, namely the so-called ‘significant’ banks.

Accordingly, in the new architecture, additionally to its monetary policy functions, the ECB has been given, for the first time, direct supervisory tasks with regard to the ‘significant’ banks.
established in Euro Area countries (and possibly in the future even in other European Union Member States joining the EBU). Also, in relation to such banks the ECB is meant to determine whether they are failing or likely to fail.

Nevertheless, notwithstanding the legislative choice to render the ECB (no longer only the Euro Area central bank, but also) the banking supervisor in charge for the oversight of the Euro Area most relevant banks, the function of LOLR has been kept in the national central banks’ ‘hands’.

This clearly determines an inconsistency due to the fact that the central bank that is meant to provide illiquid banks with emergency liquidity assistance (ELA) is not the same one that actually supervises them, as is the case in other jurisdictions. And to make the situation even more contradictory, the Euro Area countries’ national central banks that intend to provide ELA have to comply with a procedure at the end of which the ECB’s authorization is still required.

Such inconsistencies are in contrast with the original rationale behind the setting up of the EBU (mainly to cut the vicious circle between sovereigns and banking systems) and might also undermine its proper and effective functioning. For these very reasons, a revision of the way in which LOLR rules are interpreted along with the realization of the EBU’s third pillar, namely the European Deposit Insurance Scheme (EDIS), seem to be key elements urgently needed in order to make the new supervisory architecture really effective.

Roundtable: Pawel Kawa and Marta Wajda-Lichy (Krakov University of Economics), Domenica Tropeano (University of Macerata)
Can the Reality of Money be doubted?
Eyja M. Brynjarsdóttir (University of Iceland)

Abstract

There are many ways to think about what money is, and I like to think about it from a metaphysical perspective. Thus, when attempting to find an answer to the question “What is money?”, my focus is not on the historical origin of money but more on questions such as “What does it take for something to qualify as money?” and “In what does monetary value consist?”. When money is considered from this point of view, it becomes clear that it is very much defined by its value and also that it is a social object or a social kind.

For various reasons, people often wonder about whether social objects should be considered real and there may be further reasons to doubt the reality of monetary value. At least it is often said that the value of money is not “real” as opposed to other kinds of value that is then considered more “real”. On the other hand, this stance may appear strange, given that people strive hard to earn money, and striving for something that is not real might seem puzzling.

In this lecture, I introduce some theories that have been held about money and monetary value. I will then connect them to a discussion of whether and in what sense the reality of money or monetary value could plausibly be doubted. Among other things, I discuss different senses of ‘real’ and argue that money is the type of social kind that is sensitive to the so-called ‘looping effect’.

The progressive relevance of commercial partnerships’ monetary capital in the Early Modern Europe
Luisa Brunori (University of Lille 2)

Abstract

The unprecedented acceleration of economic and market changes in the 16th and 17th centuries has produced a radical evolution of the nature of the commercial partnership, of which today’s commercial corporations are direct consequences. Defined as “the legal instrument of capitalist development”, the commercial partnership is therefore a key element of the transition that led to the socio-economic and legal structures of contemporary society.
The structural transformation of the trade partnership takes place between the 16th and 17th centuries, following changes (also structural) in the economy and the market become proto-global. This evolution consists in the transition from partnerships characterized by the legal significance of the subjective element of the individuality of partners (*intuitus personae*) to a capital company in which the predominant legal importance is attributed to the size of the company's assets, that is its monetary capital which has now become an independent centre for the imputation of legal effects (*intuitus pecuniae*).

This is a fundamental and very complex passage whose legal dynamics occurred across many European countries. Indeed, the transition from a partnership structured on the basis of *intuitus personae* to corporations structured on *intuitus pecuniae* occurred during a well-defined period, the 16th and 17th century, and that it reflected a converging development at European level. This evolution is familiar to economic historians, but the legal aspects of these developments still require a specific analysis; nonetheless, the study of this passage is one of the fundamental steps for understanding not only the dynamics of the evolution of the legal-economic mechanisms but also the economic-legal relations of the contemporary world where the element of *intuitus pecuniae* appears to be structural as never before.

Hence, how can we establish the metamorphosis of commercial structures characterized by the partnership’s model *intuitu personae* to a model *intuitu pecuniae*? What are the indicators of such a metamorphosis and to what extent have they contributed to the convergent development of legal instruments in Europe?

**ROUNDTABLE:** Eyja M. Brynjarsdóttir (University of Iceland); Luisa Brunori (University of Lille 2); Valentino Cattelan (The Institute of Ismaili Study, London), Iryna Sofinska (National University “Lviv Politechnic”)
THURSDAY, 13 DECEMBER

Brown Session, 9.00 – 13.00 (Lectures: 9.00 – 12.00; Roundtable: 12.00 – 13.00)

Market, Regulations and Innovations in Payments
Chair: Gabriella Gimigliano (University of Siena)

Blockchain and Payment Systems: A Tale about Re-Intermediation
Agnieszka Janczuk-Gorywoda (University of Utrecht)

Abstract

Bitcoin holders belong to a cross-national community, but, in contrast with currency- or scriptural money-based communities, they enjoy less less (or no) legal protection. This is just the beginning to go on and explain all the regulatory issues analysed in your interesting paper. What do you think?

Bitcoin – the first virtual currency based on blockchain technology – was born out of an anarcho-libertarian dream to create a monetary system that – by relying on ‘trustless trust’ – would be completely independent of the state and established financial institutions. Today, there is no doubt that blockchain technology will transform payments, financial industry and many other areas. However, this chapter argues that in regard to payments, this transformation will be far from the libertarian ideal. Rather, blockchain will either enable the rise of new powerful intermediaries or it will be embraced by established payment services providers who will use blockchain to modernise their services. As a result, decentralised virtual currencies, like Bitcoin, will remain on the periphery of the mainstream payments landscape.

Blockchain has focused too narrowly on providing a technological solution to the issue of scarcity and solving the double-spending problem. Yet, problems involved in monetary and payment systems are broader. In particular, payment systems provide for a broad range of mechanisms supporting circulation of money which, for the scale and complexity of a modern economy must be backed by the state. Furthermore, being based in states and national communities, traditional payment systems provide for legal protection of money holders not available to a similar extent within a cross-national community. Money is a hybrid public-private institution and it seems naïve to think that technology alone could render the role of state institutions in monetary and payment systems obsolete.

Innovation in the EU retail payments’ market: the new regulatory landscape
Costanza Iacomini, Market and Payment System Oversight Department, Banca d’Italia
The electronic retail payments market is characterized by rapid technological evolution which has brought to the development of new payment services and to new ways in which traditional payment services are offered. To take into account these changes, the European legislator has decided to bring into the scope of regulation new payment services and their providers and to require higher security standards for electronic payments through the adoption of the new Payment Services Directive (PSD2) and the development, by the European Banking Authority, of technical standards and guidelines. I will go through the main changes undergoing the EU regulatory framework, focusing on the new payment services (payment initiation and account information services) and on the enhanced security requirements (strong customer authentication and standards for secure communication) and on how these changes are likely to affect providers in the internal market.

**ROUNDTABLE:** Agnieszka Janczuk-Gorywoda (University of Utrecht); Costanza Iacomini (Bank of Italy); Elisabetta Cervone (The World Bank), Andrea Borroni (Campania University “Luigi Vanvitelli”), Marco Seghesio (University of Milano), Fabio Zambardino (Campania University “Luigi Vanvitelli”)

**Blue Session, 14.00 - 17.00 (Lectures: 14.00 – 16.00, Roundtable: 16.00 – 17.00)**  
**Public and Private Issues of Money and Monetary Obligations**  
**Chair:** Massimo D’Auria (University of Siena)

**Monetary Stability: A Fundamental ‘Pillar’ for the International Economic Order**  
**Giulio Peroni (University of Milano)**

**Abstract**

Monetary stability, aided and abetted, above all by the as yet unresolved economic crisis, has been the backbone and still represents one of the main objectives underlying the action of the economic and monetary policy of both the individual States, with their respective central banks, as well as of the most important international and supranational economic authorities. Amongst the latter those, which stand out are the International Monetary Fund and the European Union. Indeed, it is not easy to give a perfect definition of monetary stability because there are no precise quantitative criteria and parameters suitable for measuring it. This is unlike what happens for so-called price stability, that, in truth, is an element that constitutes monetary stability, for which there is harmony among the central banks that the optimal inflation rate level is 2%. However, it is also because monetary stability comes in different forms like: systemic stability (in other words, the so-called contagion effect between the different economies must be avoided in the event of economic shocks) external stability (promoting the equilibrium of the balance of payments avoiding in particular competitive revaluation and devaluation of currencies and other forms of
monetary dumping) and internal stability (controlling the level of public debt trend and the deficit and their impact on banking and credit national systems).

The complexity of the economic category mentioned poses inevitable problems. Indeed, the absence of a common definition and of suitable criteria and parameters to measure it affords political decision-makers (domestic and international) wide-ranging discretion with respect to the monetary and fiscal policy measures to adopt in order to cope with the economic and financial shocks of a significant strength, like the current crisis.

The widespread use of economic remedies based above all on models of austerity has led to a significant reduction of economic and social human rights. We all know what happened in Greece, above-all, but also in other areas of Europe where we have witnessed a significant reduction of social protection, in order to achieve monetary and financial stability. The latter being a necessary condition to access the international capital and foreign investments market, as well as any loans issued by the International Monetary Fund.

Over the last few years, monetary stability has, therefore, taken on the nature of a genuine global public good. In other words, it has become an essential condition to: 1- exclude the spread of economic crises; 2- to ensure social cohesion within the various domestic communities; 3- to prevent possible disputes between States, even in the form of possible war conflicts.

By stressing how monetary stability is the main point on the current political, social, economic and legal agendas both domestically and in terms of international economic relations between States, with this contribution, we intend to highlight the numerosity and the variety of the various legal theories and legal positions used to reconstruct the concept of monetary stability. This, then inevitably affects the way that the political decision-makers operate to achieve it.

In describing these ways, we also intend to highlight how monetary stability has become a genuine global public good, although achieving it poses delicate problems of coordination with the protection of the economic and social rights of the individuals. These rights, which have been significantly restricted in these years of crisis, can also be considered, in their individualistic dimension, to come within the category of global public goods, opening in this way a deep debate about the balance of the interest represented by these two different forms of fundamental global public goods.

The nominalistic principle as the lien between public and private dimension of money
Noah Vardi (University of Roma Tre)

Abstract
The nominalistic principle is usually associated with one of the basic tenets of monetary obligations, and as such is sometimes qualified as an imperative principle, or even a norm of “public order”. Nominalism can also be construed from a different, additional, perspective: it can be seen as the translation into norm of the principle of trust which is at the basis of the acceptance and circulation of money. It expresses the tie between “money” and “private law”: when a privately originated obligation between a creditor and a debtor is for a sum of money, the nominalistic principle is imposed onto the debt and the public trust in the discharging force and value of the currency is attracted into the obligation. Once this trust wavers or is lost, private autonomy begins developing techniques to circumvent the effects of the nominalistic principle; however, because of its relevance for the public order, derogations through private contracting may be problematic.

“Equal for equal, hand to hand”: comparing Islamic and Western Money

Valentino Cattelan (The Institute of Ismaili Studies, London)

“Equal for equal, hand to hand” is a well-known hadith regarding money transactions. The Islamic law of money, prohibiting any quantitative inequality, as well as uncertainty, in commercial transactions, raises fundamental issues for all the components of the contemporary financial system stemming from conventional capitalism, from the banking sector to the insurance segment, and payment standards.

Considering this, the chapter aims at investigating the “identity” of the “Islamic money”, moving from its legal and socio-economic nature to the challenges related to the accommodation of Islamic finance in the contemporary financial system.

In this direction, open issues related to the plural dimensions of contemporary capitalism will also be taken into consideration, dealing with aspects of credit history, comparative law-, and socio-economics (with regard to the categories of “community” – Gemeinschaft – and “society” – Gesellschaft) from an interdisciplinary perspective. Final considerations will also comment on the dynamics of convergence between Islamic and conventional finance within the sharing economy.

ROUNDTABLE: Giulio Peroni (University of Milano), Noah Vardi (University of Roma Tre), Valentino Cattelan (The Institute of Ismaili Studies)
**Friday, 14 December**

Yellow Session, 9.00 - 13.00 (Lectures: 9.00 – 12.00; Roundtable: 12.00 – 13.00)

*Money and Data: collecting, protecting and exchanging personal data*

Chair: Giuseppe Colangelo (University of Basilicata)

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**The payment process and the conversione rate: following the Internet user**

Quirino Picone (Suor Orsola Benincasa, Napoli)

**Abstract**

The lecture is focused on the analysis of the phases of the payment, considering the differences between platforms like e-commerce, market places and apps. Simplicity is the objective for each digital manager and the involvement of a community member will be a better way out for the consumer and to increase the business.

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**Personal data processed for mobile and online payments: Priceless protection?**

Gloria González Fuster, (Vrijie Universiteit Brussel)

**Abstract**

The regulation of the processing of personal data connected to mobile and online payments is at the crossroads of different, and somehow contrasting, data policies of the European Union (EU). As illustrated by the uneasy intersections between the General Data Protection Regulation (GDPR) and the Payment Services Directive (PSD2), regulating the limits and conditions of personal data processing pursues multiple objectives reflecting the many interests at stake in the area, and more generally in the regulation of digital payments. This lecture will, first, explore such complex intersections, giving particular attention to the notion(s) of ‘consent’ and to the actors responsible for compliance. Second, it will consider the significance of personal data protection in electronic cash transfer programmes in the area of humanitarian aid, to provide another perspective on human rights and (Big) data implications of these developments. Finally, it will question the future challenges and perspectives for privacy and the protection of personal data in this field.

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**Free Flow of Data in the Single Market**

Maria Teresa Maggiolino (Bocconi University)

**Abstract**

The development of data economy lies at the heart of the most recent EU policy. In particular, EU institutions are working to grant firms the greatest data availability possible. During the lecture,
first we will analyze the regulatory and private tools meant to support data flow and data sharing. Second, we will consider the pros and cons not only of this policy, but also of the legal rules that could be used to realize it.

ROUNDTABLE: **Quirino Picone** (Suor Orsola Benincasa, Napoli), **Gloria Gonzalez Fuster**, (Vrije Universiteit Brussel), **Maria Teresa Maggiolino** (Bocconi University)

Grey Session, 14.00 - 17.00 (Lectures: 14.00 – 16.00, Roundtable: 16.00 – 17.00)

**Complementary Currencies and the Sardex case**

Chair: Camilla Crea (“Sannio” University of Benevento)

**LED and Complementary Currency Systems**

**Georgina Gomez** (Erasmus University Rotterdam)

Abstract

1) Definitions of CCS in terms of creating local exchange circuits;

2) General information on CCS: advantages, risks, what they do and not do, some of its history;

3) How communities incorporate in the CCS design their own specificities in terms of goals, priorities, and so on;

4) Many examples, current and past, from several continents;

5) A zoom in on the largest CCS: Argentina and Kenya.

**Monetary Systems and the plurality of money: analyzing the contemporary – dynamics of alternative currencies**

**Jérôme Blanc** (Sciences Po Lyon)

Abstract

Alternative currencies have spread over the world since the years 1980s. They are the place for experimenting innovative community and territorial projects under the form of money. After having shown the historical dynamics of these currencies, this presentation intends to discuss their nature of complementary schemes to national currencies. To do so, it will first show that economics generally thinks the plurality of moneys under the viewpoint of competition, with either the horizon of a continued competition between currencies, or the horizon of the return to the unity of money. It will then analyze the various ways currencies may be linked and provide a more complex view of their relations than the simple opposition between complementarity and competition. It will eventually show how the plurality of currencies may evolve, between their integration into the institutional monetary system, their continued complementarity within specific niches or their continuous competition.
Collaborative Interdisciplinary Research & Development at Sardex
Paolo Dini (LSE – Sardex – UH) - Laura Sartori (University of Bologna)

Abstract

Sardex is a complementary currency structured as an electronic, business-to-business (B2B) mutual credit system. Founded in 2009 in Sardinia, it has grown to 4000 SME users all over the island and 40m in transaction volume in 2017 in less than 9 years. In addition, it is being taken up by 11 other Italian regions and receives frequent requests for collaboration from all over the world. Its success is partly a consequence of its local scale and scope, but an in-depth understanding of this phenomenon requires a broad-ranging interdisciplinary perspective that involves most of the social sciences and the latest cloud-based and blockchain technologies. This 40-minute talk is structured in three parts. In the first part P Dini will describe his work as a Sardex R&D consultant, touching on the various theoretical and applied disciplines he encounters every day. The second part, presented by L Sartori, will focus on the sociological research she has performed with P Dini on the Sardex circuit, pointing to different useful frameworks in the study of money. Laura will analyse Sardex as a Zelizer circuit and will discuss the role of trust in the growth and stability of the Sardex community. In the third and final part, Paolo will provide a unifying interdisciplinary framework as an example of his longer-term responsibility to help situate Sardex conceptually within the Euro economy and monetary system, with a specific emphasis on its institutional character and its scalability.

ROUNDTABLE: Georgina Gomez (Erasmus University Rotterdam); Jérôme Blanc (Sciences Po Lyon); Paolo Dini (LSE – Sardex – UH); Laura Sartori (University of Bologna); Gian Luca Greco (University of Milano) and Dino Donato Abate (Atrigna & Partners)