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POGLAVLJE 9 - FINANSIJSKE USLUGE

Šef Delegacije Evropske unije u Srbiji, NJ. E. Ambasador Sem Fabrici, nedavno je članovima Saveta stranih investitora predstavio novu Strategiju EU za Zapadni Balkan, naglasivši tom prilikom da transformacija ovog regiona, uključujući Srbiju, zahteva ključne reforme u šest oblasti: vladavina prava, bezbednost i migraciona politika, društveno-ekonomski razvoj, saobraćaj i energetika, digitalna agenda i rešavanje bilateralnih sporova u cilju dobrih susedskih odnosa. Konkretni preduslovi na putu Republike Srbije ka članstvu u Evropskoj uniji definisani su poglavljima koja predstavljaju 35 stepenika u pregovaračkom procesu, o čemu smo pisali u jednom od prethodnih brojeva časopisa Bankarstvo (br. 2/2017). Kako je tada istaknuto, Evropski parlament pohvalio je istrajno i kontinuirano angažovanje Srbije u cilju njenog uključivanja u Evropsku uniju i uputio zahtev da EU u pregovorima o članstvu otvori nova poglavlja koja su tehnički već spremna i koja ne podrazumevaju dodatne uslove. Srbija je, tako, pozvana da podnese pregovaračke pozicije za izvestan broj novih poglavlja. U međuvremenu, na nedavno održanom specijalnom brifingu za medije u organizaciji EU info centra i projekta Pravne podrške pregovorima (PLAC II), pod nazivom „Na putu ka EU, Poglavlje 9 - Finansijske usluge“, najavljeno je otvaranje ovog poglavlja u junu 2018. godine. Baveći se finansijskim uslugama, ono predstavlja izuzetno značajnu stavku za funkcionisanje tržišta EU kao jednog od temelja evropskih integracija, a reguliše ga Evropska komisija, tačnije Generalni direktorat za finansijsku stabilnost, finansijske usluge i tržište kapitala (DG FISMA).

Na pomenutom brifingu o poglavlju 9 istaknuto je da će na putu pridruživanja Evropskoj uniji Srbija morati da izmeni postojeće zakone o tržištu kapitala i investicionim fondovima, koji su trenutno samo delimično usklađeni sa evropskim propisima, kao i da donese potpuno novi zakon o alternativnim investicionim fondovima. Ovaj zakon omogućiće da i u Srbiji funkcionišu fondovi kakvi postoje u EU, definisanjem osnova za njihov rad, regulisanjem izdavanja dozvola, načina poslovanja i slično, pri čemu će se voditi računa i o specifičnostima domaćeg tržišta, kao i o poreskom efektu na učesnike. Pored toga, izmenama i dopunama Zakona o tržištu kapitala trebalo bi da se onemoguće zloupotrebe u ovoj oblasti, da se dodatno zaštite svi učesnici i postigne veća transparentnost u objavljivanju podataka. Pomenuti zakoni iz ove oblasti, neophodni radi zatvaranja poglavlja 9, trebalo bi da budu usvojeni do kraja 2021. godine, a plan Ministarstva finansija je da budu usvojeni i ranije - do kraja 2019. godine.

CHAPTER 9 - FINANCIAL SERVICES

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The Head of the European Union's Delegation to Serbia, H. E. Ambassador Sem Fabrizi, recently presented to the members of the Foreign Investors Council the new EU Strategy for the Western Balkans, stressing that the transformation of this region, including Serbia, requires key reforms in six fields: rule of law, migration policy, socio-economic development, transport and energy, digital agenda and settlement of bilateral disputes with a view to achieving good neighbourly relations. Concrete preconditions on the Republic of Serbia's path to membership in the European Union are defined in the chapters representing the 35 steps in the negotiation process, which we addressed in one of the previous issues of Bankarstvo Journal (No. 2/2017). As pointed out at that time, the European Parliament praised the persistent and continuous engagement of Serbia with a view to joining the European Union and requested the EU to open new chapters in the membership negotiations, which are already technically ready and which do not imply additional conditions. Serbia was, therefore, called to submit its negotiating positions for a number of new chapters. In the meantime, at a recently held special press briefing organised by the EU Info Centre and the Policy and Legal Advice Centre (PLAC II) titled "On the Path to the EU, Chapter 9 - Financial Services", the opening of this chapter was announced to start in June 2018. Dealing with financial services, it represents an extremely important aspect of the functioning of the EU market as one of the cornerstones of European integration, and is regulated by the European Commission, specifically the Directorate-General for Financial Stability, Financial Services and Capital Market (DG FISMA).

At the aforementioned briefing on Chapter 9, it was pointed out that, on the path of accession to the European Union, Serbia will have to amend the existing laws on the capital market and investment funds, which are currently only partially harmonised with the European regulations, as well as to pass a completely new law on alternative investment funds. This law will enable funds similar to those in the EU to operate in Serbia, by defining the basis for their operations, regulating the issuance of licenses, business methods and the like, taking into account the specifics of the domestic market, as well as the tax effect on the participants. In addition, amendments to the Capital Market Law should prevent abuse in this field, to further protect all participants and achieve greater transparency in the publication of data. The aforementioned laws in this field, necessary for the closure of Chapter 9, should be adopted by the end of 2021, although the plan of the Ministry of Finance is for them to be adopted even sooner - by the end of 2019.

Ekspert projekta PLAC II, Pjer Matek, održao je prezentaciju o direktivi EU o tržištu finansijskih instrumenata MIFID II, koja predstavlja temelj regulative EU na tržištu kapitala i koja je, kako je istakao, u velikoj meri transponovana u pravni sistem Republike Srbije kroz Zakon o tržištu kapitala. Prema njegovim rečima, MIFID II i njena prateća uredba MIFIR, koje se u EU primenjuju od 3. januara 2018. godine, imaju za cilj da poboljšaju funkcionisanje tržišta kapitala čineći ih efikasnijima, otpornijima i transparentnijima, uz paralelno uvođenje dodatnih mera za zaštitu potrošača. Ove mere obuhvataju upravljanje prodajom i definisanje ciljnog tržišta, postojanje nezavisnog investicionog savetnika, uslugu upravljanja portfolijom, mere predostrožnosti u cilju čuvanja imovine klijenata, snimanje komunikacije s klijentima, pružanje stručnih i pouzdanih informacija o finansijskim proizvodima i uslugama, adekvatno informisanje klijenata o paketima proizvoda i pratećim rizicima. Obuhvat MIFID II širi se i na strukturirane depozite, budući da se direktiva prilagođava činjenici da nestaju granice između tradicionalnih segmenata finansijskih tržišta: bankarstvo, osiguranje, tržište kapitala, te da se više neće tolerisati da proizvodi koji nose suštinski iste izloženosti i rizike za klijente budu drugačije regulisani. Matek je svoju prezentaciju završio zaključkom

da će u sklopu MIFID II tehnički najzahtevnije biti implementirati njenu prateću uredbu MIFIR, a da će na „bankocentričnom“ tržištu, kao što je finansijsko tržište Srbije, suštinski najveća promena biti upravljanje finansijskim proizvodima.

Učesnici na brifingu još su najavili da se, na osnovu pregovaračkih iskustava Hrvatske i Crne Gore u ovoj oblasti, očekuje da EU formuliše 4-5 merila za zatvaranje poglavlja 9, prvenstveno vezano za ovlašćenja finansijskih konglomerata, nastavak sprovođenja Bazela III, okvir za alternativne investicione fondove, kao i oblast osiguranja.

Najvažniji ciljevi pravnih tekovina EU u oblasti finansijskih usluga jesu obezbeđivanje finansijske stabilnosti i adekvatna zaštita potrošača, investitora i osiguranika. Pregovaračko poglavlje 9 obuhvata propise u oblasti bankarstva, osiguranja, reosiguranja, dobrovoljnih penzijskih fondova, infrastrukture finansijskog tržišta, tržišta hartija od vrednosti i investicionih usluga. Regulatorna EU u oblasti finansijskih usluga uključuje propise za izdavanje dozvola za rad, poslovanje i nadzor poslovanja finansijskih institucija i regulisanih tržišta. Takođe, uređena su i pitanja zaštite potrošača finansijskih usluga, kao i način saradnje tela zaduženih za nadzor finansijskog tržišta. Finansijske institucije mogu da posluju širom EU u skladu sa „sistemom jedinstvenog



The PLAC II project expert, Pierre Matek, held a presentation about the EU Markets in Financial Instruments Directive – MIFID II, which is the cornerstone of the EU regulations on the capital market and which was, as he underlined, largely transposed into the legal system of the Republic of Serbia through the Capital Market Law. According to him, MIFID II and its accompanying MIFIR regulation, which have been implemented in the EU as of 3 January 2018, aim to improve the functioning of the capital markets, making them more efficient, more resilient and more transparent, at the same time introducing some additional consumer protection measures. These measures include managing sales and defining the target market, having an independent investment advisor, a portfolio management service, precautionary measures for the purpose of preserving the clients' assets, recording communication with the clients, providing professional and reliable information on financial products and services, adequately informing the clients about product packages and associated risks. The scope of MIFID II is expanding to structured deposits, as the directive adapts to the fact that the borders between the traditional segments of the financial markets are disappearing: banking, insurance, the capital market, and that it will no longer be tolerated that products which essentially carry the same exposures and risks for the clients can be otherwise regulated. Matek concluded his presentation by stating that, within the MIFID II, the most technically demanding issue will be to implement the accompanying MIFIR regulation, and that at a "bank-centric" market, such as the Serbian financial market, the major change will be the management of financial products.

The briefing participants announced that, based on the negotiation experiences of Croatia and Montenegro in this field, the EU is expected to formulate 4-5 criteria for closing Chapter 9, primarily regarding the jurisdictions of financial conglomerates, the continued implementation of Basel III, the framework for alternative investment funds, as well as insurance.

The most important goals of the EU acquis regarding financial services are to ensure financial stability and adequate protection of consumers, investors and insurance holders.

Negotiation Chapter 9 includes regulations in the fields of banking, insurance, reinsurance, voluntary pension funds, financial market infrastructure, securities markets and investment services. EU regulations concerning financial services also include issuing permits for working, operating and supervising the operations of financial institutions and regulated markets. The issues of financial services consumer protection, as well as modes of cooperation among the bodies in charge of financial market supervision are also regulated. Financial institutions can operate across the EU in accordance with the "Single Passport System", enabling the financial institutions to operate in any EU Member State without requiring a special permit from the Host State, according to the "home country control principle".

When it comes to banks and financial conglomerates, the EU acquis establishes the requirements regarding the issuance of working and operating licenses for lending institutions, as well as the requirements concerning the calculation of capital adequacy, to be implemented by lending institutions and investment companies. The regulations in this sector prescribe the rules pertaining to the additional supervision of financial conglomerates, and define the rules pertaining to annual and consolidated reports of banks and other financial institutions. This also harmonises certain provisions relating to the reorganisation and liquidation of lending institutions with branches in several Member States. Special attention of the regulator is directed towards the introduction of a unique deposit insurance scheme with mandatory participation of all banks in the system and its functioning.

Regarding the financial market infrastructure, the rules are aimed at reducing and harmonising the formal requirements and procedures for the establishment and implementation of collaterals throughout the EU, as well as reducing the systemic risk associated with the insolvency of the participants in the payment systems and in the securities settlement systems. The regulatory framework of the capital market includes the rules pertaining to: investment services and securities

pasoša“ što finansijskim institucijama omogućava poslovanje u bilo kojoj državi članici EU bez traženja posebne dozvole od države domaćina, po principu „kontrola matične države“.

U oblasti banaka i finansijskih konglomerata, pravne tekovine EU utvrđuju zahteve u pogledu izdavanja odobrenja za rad, poslovanja i kontrole poslovanja kreditnih institucija, kao i zahteva koji se odnose na izračunavanje adekvatnosti kapitala, a primenjuju se na kreditne institucije i na investiciona društva. Regulatorna u ovom sektoru propisuje pravila koja se odnose na dodatni nadzor finansijskih konglomerata, određuje pravila koja se odnose na godišnje i konsolidovane izveštaje banaka i drugih finansijskih institucija. Time se, takođe, usklađuju određene odredbe koje se odnose na reorganizaciju i likvidaciju kreditnih institucija sa filijalama u više država članica. Posebna pažnja regulatora usmerena je na uvođenje jedinstvene šeme za osiguranje depozita sa obaveznim učešćem svih banaka u sistemu i njegovom funkcionisanju.

Kada je reč o infrastrukturi finansijskih tržišta, pravila imaju za cilj smanjenje i usklađivanje formalnih zahteva i postupaka za formiranje i sprovođenje kolaterala u celoj EU, kao i smanjenje sistemskog rizika koji je povezan sa insolventnošću učesnika u platnim sistemima i u sistemima poravnjenja hartija od vrednosti. Regulatorni okvir tržišta kapitala obuhvata pravila koja se odnose na: investicione usluge i tržište hartija od vrednosti, osnivanje, poslovanje i nadzor poslovanja investicionih fondova i uređenih tržišta, kompenzacione šeme za investitore, objavljivanje prospekata, zabrane zloupotrebe tržišta, itd. Pravila o prospektima imaju za cilj jačanje zaštite investitora bez obzira gde se izdaju u EU, jer moraju pružati jasne i potpune informacije koje su im potrebne za donošenje investicionih odluka.

Zatvaranje poglavlja 9, odnosno usklađivanje zakonodavstva sa pravnim tekovinama EU u ovoj oblasti Republici Srbiji donelo bi: stabilan i integrisan finansijski sistem, raznovrsniju ponudu usluga na tržištu, kao i veću sigurnost korisnika finansijskih usluga. Istovremeno, bio bi poboljšani položaj učesnika na finansijskom tržištu, kao i korisnika finansijskih usluga, jer bi se uređenjem pitanja obavljanja delatnosti

u ovoj oblasti omogućila raznovrsnija ponuda usluga na tržištu. S tim u vezi, poseban segment čini zaštita i edukacija potrošača, koja se ogleda kroz njihovo informisanje o uslugama koje pružaju finansijske institucije, što, između ostalog, uključuje usluge u oblasti osiguranja, kreditiranja ili platnog prometa.

Treba napomenuti da je Vlada Republike Srbije 31. januara 2018. godine usvojila Program ekonomskih reformi za period 2018-2020. godine, kao najvažniji strateški dokument u ekonomskom dijalogu sa Evropskom komisijom i državama članicama Evropske unije. Program ekonomskih reformi završen je u predviđenom roku i dostavljen Evropskoj komisiji, a sa predstavnicima EU biće razmotren u maju 2018. godine u okviru ekonomskog dijaloga

Tok pregovora u poglavlju

- Eksplanatorni skrining za poglavlje 9 održan je 21-22. januara 2015. godine.
- Bilateralni skrining za poglavlje 9 održan je 17. marta 2015. godine.
- Izveštaj o skriningu, u kome nisu data merila za otvaranje poglavlja, dobijen je 1. aprila 2016. godine.
- Otvaranje poglavlja 9 najavljeno je za jun 2018. godine.



Pregovaračka grupa

U okviru pregovaračke grupe za finansijske usluge, predsednik i sekretar pregovaračke grupe imenuju se iz reda predstavnika Narodne banke Srbije, a zamenik predsednika i zamenik sekretara imenuju se iz reda predstavnika Ministarstva finansija. Članovi Pregovaračke grupe su predstavnici: Narodne banke Srbije, Ministarstva finansija, Ministarstva privrede, Ministarstva za rad, zapošljavanje, boračka i socijalna pitanja, Komisije za hartije od vrednosti, Agencije za osiguranje depozita, Agencije za privredne registre, Republičkog sekretarijata za zakonodavstvo i Ministarstva za evropske integracije.

market, the establishment, functioning and supervision of investment funds and regulated markets, compensation schemes for investors, publication of prospectuses, prohibition of market abuse, etc. The rules concerning prospectuses are aimed at strengthening investor protection regardless of where they are issued in the EU, as they must provide clear and complete information the investors need in order to make investment decisions.

The closure of Chapter 9, that is, harmonisation of the relevant legislation with the EU *acquis* in this field would grant the Republic of Serbia: a stable and integrated financial system, a diversified range of services on the market, and greater security for financial service users. At the same time, position of

participants in the financial market would be improved, as well as the position of the users of financial services, since, by regulating the issue of conducting activities in this field, it would be possible to provide a more diversified offer of services on the market. In this regard, a special segment is the protection and education of users, which is reflected in informing them about the services provided by the financial institutions, including, among other things, the services in the field of insurance, lending or payment transactions.

It should be noted that as of 31 January 2018, the Government of the Republic of Serbia adopted the Economic Reform Program for the period 2018-2020 as the most important strategic document in the economic dialogue with the European Commission and the Member States of the European Union. The Economic Reform Program was finalised and submitted to the European Commission, and will be discussed with the representatives of the EU in May 2018, as part of the economic dialogue with the EU Member States at the Economic and Financial Affairs Council meeting (ECOFIN Council) in Brussels, where new recommendations to the participants in the process (Western Balkans and Turkey) will be adopted. Furthermore, in February 2018 the Ministry of European Integration of the Republic of Serbia adopted the third revision of the National Program for the EU *Acquis* Adoption, the second chapter of which discusses the economic criteria for EU membership. Particularly relevant for Chapter 9, within the segment entitled "The Existence of a Functioning Market Economy", is the consideration of the financial sector development, with a special focus on capital markets.

The Association of Serbian Banks, through its representative, participates in the activities of the working groups of the National Convention on the EU, whose work is coordinated by the European Movement in Serbia in direct cooperation with the Government of the Republic of Serbia and the Parliament of the Republic of Serbia. Working groups define the specific topics of each session, propose experts, guest lecturers and participants in agreement with the members, the Office for European Integration, the Negotiating Team and other

The Course of Negotiations in the Chapter

- Explanatory screening for Chapter 9 was held on 21-22 January 2015.
- Bilateral screening for Chapter 9 was held on 17 March 2015.
- The screening report, which did not provide the criteria for opening the chapter, was received on 1 April 2016.
- The opening of Chapter 9 was announced for June 2018.



Negotiating Group

Within the Negotiating Group for Financial Services, the President and Secretary of the Negotiating Group shall be chosen among the representatives of the National Bank of Serbia, and the Deputy Chairman and Deputy Secretary shall be chosen among the representatives of the Ministry of Finance. The members of the Negotiating Group are representatives of the National Bank of Serbia, the Ministry of Finance, the Ministry of Economy, the Ministry of Labour, Employment, Social and Veteran Affairs, the Securities Commission, the Deposit Insurance Agency, the Business Registers Agency, the Republic Secretariat for Legislation and the Ministry of European Integration.

sa državama članicama EU na sastanku Saveta za ekonomska i finansijska pitanja (EKOFIN Savet) u Briselu, na kome će biti usvojene nove preporuke učesnicima u procesu (Zapadni Balkan i Turska). Osim toga, Ministarstvo za evropske integracije Republike Srbije usvojilo je u februaru 2018. godine treću reviziju Nacionalnog programa za usvajanje pravnih tekovina Evropske unije, u kome se u drugom poglavlju razmatraju ekonomski kriterijumi za članstvo u EU. Posebno relevantno za poglavlje 9, u okviru segmenta naslovljenog „Postojanje funkcionalne tržišne ekonomije“, jeste razmatranje razvoja finansijskog sektora, a naročito tržišta kapitala.

Udruženje banaka Srbije, preko svog predstavnika, učestvuje u aktivnostima radnih grupa Nacionalnog konventa o EU čiji rad koordinira Evropski pokret u Srbiji u direktnoj saradnji sa Vladom Republike Srbije i Skupštinom Republike Srbije. Radna grupa definiše posebne teme svakog zasedanja, predlaže eksperte, gostujuće predavače i sagovornike u dogovoru sa članovima, Kancelarijom za evropske integracije, Pregovaračkim timom i drugim relevantnim institucijama. Zaključci i preporuke radne grupe formulisani su tako da predstavljaju kvalitetan i smislen doprinos, prilog organizacija civilnog društva izradi pregovaračkih pozicija tokom pregovora, odnosno predlog korektivnih mera tokom sprovođenja preuzetih obaveza i uspostavljanja novih standarda. UBS je član tri radne grupe Nacionalnog konventa o EU kojima je pokriveno više poglavlja koja se odnose na finansijski sektor u pregovaračkom procesu sa EU: Radne grupe za politiku konkurencije (poglavlje 8), Radne grupe za

Poglavlje 9 kod suseda

Za Crnu Goru poglavlje 9 zvanično je otvoreno 22. juna 2015. godine, a ove godine očekuje se potpuna usaglašenost usvajanjem Zakona o investicionim fondovima i Zakona o alternativnim investicionim fondovima.

Hrvatska je pregovore na temu poglavlja 9 kompletirala u periodu od 2007. do 2009. godine.

monetarnu i ekonomsku politiku i carinsku uniju (poglavlja 17 i 29) i Radne grupe za pravo poslovnog nastanjivanja i slobodu pružanja usluga, slobodno kretanje kapitala i finansijske usluge (poglavlja 3, 4 i 9). Radna grupa NKEU za poglavlja 3, 4 i 9 osnovana je u junu 2015. godine i njene aktivnosti koordinira Centar za evropske politike (CEP). Doprinos Udruženja banaka Srbije u pogledu ispunjavanja preostalih uslova za zatvaranje poglavlja 9 ogleda se i u članstvu njegovog predstavnika u Radnoj grupi Ministarstva finansija za izradu Zakona o investicionim fondovima i Zakona o alternativnim investicionim fondovima, a nesporno je da će UBS i u predstojećem periodu, zahvaljujući između ostalog i svojoj intenzivnoj međunarodnoj saradnji, nastaviti da pruža kvalitetan doprinos naporima Republike Srbije na putu evropskih integracija.

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Chapter 9 in the Neighbouring Countries

For Montenegro, Chapter 9 officially opened on 22 June 2015, and this year full harmonisation is expected after the adoption of the Law on Investment Funds and the Law on Alternative Investment Funds.

Croatia completed the negotiations concerning Chapter 9 in the period from 2007 to 2009.

relevant institutions. The conclusions and recommendations of the working groups have been formulated so that they represent a quality and meaningful contribution, a contribution of civil society organisations to developing negotiating positions during the negotiations, i.e. a proposal of corrective measures during the implementation of assumed obligations and the establishment of new standards. The ASB is a member of the three working groups of the National Convention on the EU, covering several chapters related to the financial sector in the EU negotiating process: Working Group

on Competition Policy (Chapter 8), Working Group on Monetary and Economic Policy and Customs Union (Chapters 17 and 29) and the Working Group on the Right of Establishment and Freedom to Provide Services, Free Movement of Capital and Financial Services (Chapters 3, 4 and 9). The NCEU working group for Chapters 3, 4 and 9 was established in June 2015 and its activities are coordinated by the Centre for European Policy (CEP). The contribution of the Association of Serbian Banks in meeting the remaining conditions for closing Chapter 9 is also reflected in the membership of its representative in the Working Group of the Ministry of Finance for Drafting the Law on Investment Funds and the Law on Alternative Investment Funds, and undoubtedly the ASB will, in the forthcoming period, through its intensive international cooperation, continue to provide a quality contribution to the efforts of the Republic of Serbia on the path of European integration.

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