

# Ocena evropskog bankarskog regulatornog okvira sa osvrtom na značaj za Republiku Srbiju

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**Rezime:** Poznato je da je kriza duga u Evropskoj uniji izazvana međuzavisnošću bankarske i državne finansijske stabilnosti, a zajedno sa nepostojanjem fiskalne unije poprimila je i egzistencijalne dimenzije samog projekta EU. U okviru finansijske fragmentacije unutar finansijskih tržišta evrozona, a sa aspekta izbijanja krize, države članice EU pribegavale su nacionalnim intervencijama, time zatvarajući i nacionalna bankarska i finansijska tržišta, što je u krajnjoj instanci rezultiralo produbljivanjem i jačim strukturnim utemeljenjem krize i njenih ekonomskih i finansijskih posledica. Bankarska unija je, u tom kontekstu, regulatorni i institucionalni odgovor EU nakon globalne finansijske krize, o kojoj su prvi predlozi našli mesto u institucionalnim polemikama već od 2012. godine. Pored ključnog momenta i motiva za osnivanje ovakvog institucionalnog regulatornog aranžmana, razlog je, štaviše, stvoriti uniju koja je povezana sa stvaranjem jedinstvenog tržišta za finansijske usluge i slobodan promet novca, svakako i sa tendencijom potpunije monetarne integracije. Međutim, postavljala su se pitanja koja su i dalje aktuelna, a to su: da li su zacrtani, a sada već instrumentalizovani i ustanovljeni okviri, mehanizmi i procedure uistinu dovoljni; da li bankarska unija EU, konceptualno osmišljena, zaista predstavlja bankarsku integraciju; da li će i dalje prisutan odnos „centralizovano-zajedničko“ i „suvereno-nacionalno“ u finansijskoj arhitekturi EU, korišćenje principa u implementaciji Bazel III sporazuma „jedna mera za sve“, zatim neobuhvatanje svih tipova banaka, sukob emisije i nadzorne uloge ECB (Evropska Centralna banka), biti strukturni konflikt u postizanju željene finansijske stabilnosti koja je i krajnji cilj. Finansijska stabilnost se, u širem kontekstu funkcionisanja EU, može tumačiti i kao faktor opstanka zajedničke valute i same Evropske unije, bez obzira na utkane suprotnosti i konstrukcioni konflikt.

U radu analiziramo funkcionalne domene regulatornog okvira nadzora banaka u EU, u vremenu petogodišnje egzistencije do današnjeg dana, kao i efekte i uticaj koji je taj okvir imao na regulatorno prilagođavanje bankarskog sektora Srbije.

**Ključne reči:** finansijske regulatorne mere EU, bankarski sektor, stabilnost.

**JEL:** G28

## Uvod u razumevanje bankarske supervizije EU

Prvom bankarskom direktivom koja je doneta još davne 1997. godine utvrđen je princip da je matična zemlja (zemlja porekla) nadležna za superviziju i kontrolu svoje banke u drugoj zemlji u kojoj posluje. Nešto više od desetak godina kasnije, doneta je druga bankarska direktiva koja se oslanjala na liberalnije uslove poslovanja banaka na globalnom nivou, koja je predviđala da banka koja ima dozvolu (licencu) za rad u bilo kojoj EU zemlji može da osnuje filijalu ili da posluje u inostranstvu, bez potrebe dobijanja bilo kakvih dozvola donetih od lokalnih regulatornih tela, centralnih banaka. U tom vremenskom periodu, taj princip se nazivao princip „jedinog pasoša“. No, i pored toga, ipak je ostavljena mogućnost da domaćin banke iz druge zemlje sprovede mere regulacije ako se ona odnosi na pitanja od „javnog interesa“ što je u suštinskom, a i formalnom smislu značilo da se kontrola vrši iz „matice“, a kompletna odgovornost je na državi domaćinu. Obzirom na to da je takvo institucionalisano rešenje bilo problematično, sama finansijska kriza nastala na globalnom planu sada već davne 2008. godine u SAD, uslovlila je da stabilnost finansijskih tržišta postane prioritet Evropske unije. Godine za vreme krize i neposredno posle njenog izbijanja i preliivanja u EU, regulatorna tela su, radi očuvanja finansijske stabilnosti, preduzimale aktivnosti na nivou unapređivanja propisa koji uređuju finansijski sektor EU i jačanja nadzora finansijskog sektora. U početnim godinama krize, države su davale ogromna sredstva kako bi spasile svoje bankarske sektore. Kreditore banaka, za razliku od poreskih obveznika, nisu morali da snose trošak ovog spasavanja (Ristić, Živković, 2018).

Vremenom, kriza je dobijala izgled začaranog kruga u kome su vlade država članica sve manje bile u stanju da pomažu svoje banke. Produbljenje problema predstavljalo je i postojanje velikih posledica koje je bankarski sektor izazvao po države članice. Stanje opšte nesigurnosti, kao i porast troškova finansiranja, upravo je bilo posledica posezanja za sredstvima bankarskih kreditora. Obzirom na bankocentričnost tržišta, monetarna unija i jedinstveno tržište su se našli pred ozbiljnim problemom (Mališ, 2014).

Sagledavajući položaj najvećih banaka („too big to fall“) u Evropi pa i šire, tokom krize, skorašnji nobelovac, Žan Tirol, ukazivao je da bi sve banke koje su imale koristi od direktne podrške države trebalo da budu suočene sa čvrstom regulativom. (Ristić, Živković, 2018). Stoga je Evropska centralna banka tada, a i danas, obavljala novu funkciju jedinog kontrolora najvećih banaka u evrozoni i preuzela je odgovornost za stabilnost u bankarskom sektoru, pa time i generalno za finansijsku stabilnost. Međutim to je predstavljalo, kao što i danas predstavlja, najveću pretnju njenoj reputaciji (Đukić, 2014).

Svaki bankarski sektor, generalno govoreći, ima specifičnu ulogu u ekonomiji jedne zemlje. U okviru dinamičnog odnosa instrumenata, institucija i samog tržišta, bankarski sektor obavlja funkcije koje su od suštinske važnosti za ekonomsku aktivnost zemlje, čime se i funkcionalno kreira kontekst za ekonomski rast i razvoj (<http://www.nbs.rs/regulative>, pristupljeno 20.04.2020). Tu se prvenstveno misli na usluge plaćanja, štednje, osiguranja, kredita, zaštite

od rizika i slično, pri čemu se problemi u obavljanju ovih funkcija negativno odražavaju na stabilnost finansijskog sistema i realnog sektora.

Ta dinamička interakcija institucija, instrumenata, korisnika usluga, tržišta i informacija kreira složen kontekst koji mora biti regulisan određenim regulativama koje će imati za primarni cilj da obezbede stabilnost sistema u dugom roku. Ako pri tome, a u duhu ovog rada, mislimo na finansijsku stabilnost, osvrnuli bismo se na tvrdnje Mirjane Jemović koja u svojoj doktorskoj disertaciji kaže: „U cilju očuvanja i jačanja finansijske stabilnosti, regulatorni okvir treba biti postavljen duž celog životnog veka finansijskih institucija. Kao takav, on ne uključuje samo ex-ante komponente, regulaciju i superviziju, čiji je cilj sprečiti propast banaka; već i ex-post komponente – funkciju poslednjeg utočišta, osiguranje depozita i politiku restrukturiranja. Iako bitne u različitim periodima poslovanja banaka, jedino sinergetskim efektom svih komponenti zajedno moguće je postići očuvanje i jačanje finansijske stabilnosti “ (Jemović, 2016, str. 107).

Ako nam je generalno to okosnica ovog rada, onda ukazujemo na to da je svetska finansijska kriza na globalnom planu pokazala da su zemlje širom sveta bile nespemne na udar krize i da nisu raspolagale odgovarajućim pravnim okvirom za rešavanje problematičnih banaka i njihovog poslovanja. Samim tim, spasavanje banaka podneli su poreski obveznici zemalja u svetu. Jedino im je na raspolaganju bila opcija biranja između sprovođenja stečajnog postupka, koji nosi visok rizik prouzrokovanja sistemskih poremećaja, i spasavanja banaka korišćenjem budžetskih ili drugih javnih sredstava (<http://www.nbs.rs/regulative>, pristupljeno 20.04.2020).

Pitanje etike takvih poduhvata je pitanje koje su postavljali i kreatori ekonomskih politika, građani i institucije i odnosilo se na to da li banke obavljaju značajne funkcije na planu ekonomije i rasta, obzirom na to da generišu profit u vreme tržišnog prosperiteta za sebe i svoje akcionare, dok se u uslovima krize i eventualno pretrpljenih gubitaka okreću finansijskoj podršci budžeta (<http://www.nbs.rs/regulative>, pristupljeno 20.04.2020).

Kako su banke inače osnovni mehanizam eksternog finansiranja kompanija u EU, bankarski sistem, koji je kvalifikovan kao bankocentričan, o čemu smo već govorili, u vremenu krize bio je krhk i neotporan na finansijske šokove, konstatovao je Sedlarević (2014).

Tome u prilog, možemo se osvrnuti na rezultate testova izdržljivosti koje je sprovedla Evropska služba za nadzor banaka (EBA) koji su pokazivali da bi trebalo da se stabilizuje finansijsko tržište evrozona koje je uzdrmano dužničkom krizom.

Ristić K. i Živković A. (2018) ukazuju da su tada testirane banke iz 21 zemlje, koje su zajedno predstavljale 65% bankarskog sektora u Evropi. Testovi su bili osmišljeni kao finansijska provera i trebalo je da utvrde da li banke imaju dovoljno kapitala da podnesu scenario teških ekonomskih uslova.

Korišćena su dva scenarija, i to jedan koji je uzimao u obzir trenutna makroekonomska predviđanja i drugi koji je pretpostavljao ekonomski šok. Krizni scenario predviđao je rast BDP-a od samo 0,5% u evrozoni i pad na evropskoj berzi od 15%, kao i krizu na tržištu nekretnina, s tim da one banke koje ne

budu imale više od 5% osnovnog kapitala u odnosu na svoja druga sredstva u „zamišljenim“ ekonomskim uslovima neće steći uslove da prođu test (Ristić, Živković, 2018). Rezultati testiranja, iako test nije bio toliko strog, pokazuju upravo ono što je rezultiralo potrebom za strožiji nadzor banaka u evrozoni, a to je velika osetljivost na šokove.

Generalno govoreći i osvrćući se na Oksfordski priručnik o bankarstvu, u prevodu i izdanju Udruženja banaka Srbije iz 2015. godine, nalazimo činjenicu koja se i godinama unazad permanentno potvrđuje, a to je da finansijski sistemi zahtevaju razvijene zakonske i informacione infrastrukture da bi dobro funkcionisali. Pravovremena raspoloživost kvalitetnih informacija podjednako je značajna, pošto pomaže da se smanje informacione asimetrije između korisnika kredita i kreditora. U tom smislu i empirijski rezultati pokazuju da je obim bankarskog kredita znatno veći u zemljama u kojima je protok informacija veći (Demirguš-Kunt, 2015).

Kako tvrdi Demirguš-Kunt (2015), od kada postoje banke, postoje i države koje ih regulišu. Iako većina ekonomista smatra da je važna uloga države u regulisanju i superviziji finansijskih sistema, stepen takvog angažovanja je pitanje o kojem se aktivno debatuje.

Jemović M. (2016, str. 107-108) tvrdi da regulatorna uloga države doprinosi nesmetanom funkcionisanju i razvoju ukupnog finansijskog tržišta i da su, u tom smislu, banke podvrgnute posebnom regulacijom koja „čuva“ solventnost, ograničava rizično poslovanje, štiti deponente i omogućava kontrolu novčanih tokova i, u tom smislu, pravičnu raspodelu finansijskih resursa.

Demirguš-Kunt (2015) tvrdi da se od supervizora očekuje da osiguraju stabilnost finansijskog sistema i da vode banke u njihovim poslovnim odlukama regulativom i supervizijom. Međutim, obzirom na generalno ograničeno znanje zvaničnika i ekspertizu za donošenje poslovnih odluka, kao i tendencije ka podleganju političkim i regulatornim zamkama, ovakav pristup ne mora da bude efektivan. Razloge slabe regulacije banaka u vremenu pre krize možemo tražiti u ovakvim stavovima.

No, bilo kako bilo, kriza je pokazala slabosti funkcionisanja nesupervizovanog bankarskog tržišta EU, pri čemu je Evropska centralna banka, u godinama koje su sledile, preduzela sledeće korake u uspostavljanju tzv. Bankarske unije i koji se mogu sistematizovati na sledeći način:

- *Doneta su nova pravila o kapitalnim zahtevima za banke, kao i za oporavak i rešavanje problema banaka;*
- *Obezbeđeni su jači prudencionalni zahtevi za banke, unapređena je zaštita deponenata i pravila upravljanja problematičnim bankama;*
- *Formiran je jedinstveni pravilnik za sve finansijske učesnike u zemljama članicama Evropske Unije.*

Dakle, krize su ukazale na nedostatak regulatornog okvira sanacije banaka na integracionim nivoima. Zato je reforma regulative u ovoj oblasti, posebno u evrozoni, imala dvostruki cilj, i to da sanira posledice krize i stvori održiv politički okvir u bankarstvu Evropske unije ili Bankarske unije, u dugom roku (Petrović, P., Ristić, K., 2018).

Pravni osnov za formiranje Bankarske unije, po Petroviću P. i Ristiću K. (2018), zasnovan je na članu 127. stav 6 Ugovora o funkcionisanju Evropske unije, po kome Savet EU može, a u skladu sa specijalnom zakonodavnom procedurom, da nakon konsultacija sa Evropskim parlamentom i Evropskom centralnom bankom, poveri posebne zadatke Evropskoj centralnoj banci koji se odnose na donošenje i sprovođenje politika vezanih za prudencijalnu kontrolu kreditnih institucija.

Uredba o jedinstvenim pravilima i jedinstvenoj proceduri oporavka i sanacije banaka konkretizovala je odredbe Direktive u primeni na države članice Jedinstvenog mehanizma supervizije, formirajući Jedinstveni mehanizam sanacije, pri čemu su države članice evrozona, ali i druge države članice Bankarske unije, prihvatile uniformna pravila i procedure sanacije banaka kao centralizovani mehanizam sanacije kojim upravlja formiran Jedinstveni sanacioni odbor. Odbor čine izabrani članovi i predstavnici nacionalnih sanacionih regulatora, a finansira se iz centralizovanog fonda za sanaciju. Takva koncepcija je utvrdila postojanje jedinstvenog mehanizma supervizije i sanacije gde su ključne uloge poverene institucijama evrozona i Evropske centralne banke (Petrović, Ristić, 2018).

Ekonomska nota evidentne potrebe za jačanjem infrastrukturnog kapaciteta Bankarske unije upućuje na zaključak da je u Evropskoj uniji neophodan dublji fokus na bankarstvo. To bi, dalje, značilo da se time omogući dalje jačanje evropske ekonomske i finansijske integracije, bez obzira na dalja preispitivanja fiskalne i političke integracije. Postavlja se pitanje o kome ćemo govoriti u narednom poglavlju, a to je domet takve regulative, jer ako nije „fino“ podešena i dobro izbalansirana, to bi moglo da znači i početak novih problema finansijskog funkcionisanja EU i preipitivanja njenog daljeg opstanka (Ristić, Živković, 2019; Živković, A. i dr., 2019).

Polemika o superviziji banaka upućuje i na debate o sistemskom riziku, koje se do danas uglavnom svode na razmatranje iznenadnih egzogenih poremećaja, pri čemu sistemski poremećaji mogu imati svoj izvor i u domaćem i u međunarodnom okruženju. Koncept stabilnosti finansijskog sistema je direktno proporcionalno povezan sa pojmom sistemskog rizika, te se, u tom smislu, sistemski rizik odnosi na verovatnoću nastanka određenih negativnih događaja na nivou čitavog finansijskog sistema. (Drvendžija, 2015) Od ključnog je značaja poentirati prethodno rečeno, jer pravi jasno razgraničenje u odnosu na mnoštvo (mikro) rizika koji mogu pogoditi određenu finansijsku instituciju. Sistemski rizik „leži“ i u činjenici da repetitivno i prociklično ponašanje finansijskih institucija može dovesti do vidljivih promena u kreditnoj aktivnosti i zaduženosti ekonomskih agenata tokom vremena, a da one budu van kontrole pojedinačnih institucija i regulatora. Prema Drvedžiji (2015), kriza, kao i period koji je prethodio, odlična je ilustracija prekomernih cikličnih fluktuacija na finansijskom tržištu.

## Osvrt na konstitutivne aspekte bankarskog regulatornog okvira EU

Postojeći institucionalisani mehanizmi su se, u uslovima globalne finansijske krize, ali svakako i u vremenskom periodu posle, pokazali nedovoljnim

i neodgovarajućim za rešavanje problema banaka koje su se suočile sa ozbiljnim poteškoćama u svom poslovanju. Obzirom na to da nisu pružali mogućnosti za dovoljno brzu i efikasnu intervenciju, niti su u optimalnoj meri obezbeđivali uslove za održavanje kritičnih funkcija u poslovanju banke, konkretan je zaključak da nije bilo ni okvira, nacрта ili plana za očuvanje finansijske stabilnosti sistema kao celine (<http://www.nbs.rs>, pristupljeno 20.04.2020).

Zbog svega toga je i na međunarodnom nivou sazrela svest o neophodnosti postojanja jasno definisanih pravila i mehanizama po kojima će se postupati u kriznim situacijama. Na nivou Evropske unije to je, u maju 2014. godine, konačno rezultiralo donošenjem Direktive o utvrđivanju okvira za oporavak i restrukturiranje kreditnih institucija i investicionih društava (Directive 2014/59/EU on Establishing a Framework for Recovery and Resolution of Credit Institutions and Investment Firms). Ova Direktiva je u svim državama članicama Evropske unije počela da se primenjuje 1. januara 2015. godine (<http://www.nbs.rs>, pristupljeno 20.04.2020).

Međutim, poseban problem predstavljale su banke i bankarske grupe u teškoćama, koje su poslovale u više država članica evrozone, zbog fragmentiranosti regulativa u nacionalnim okvirima, što je zahtevalo koordinisanu akciju više država članica. Nepobitno, dugotrajna finansijska kriza usporila je monetarnu integraciju Evropske Unije. *“Ona je neposredno i najdublje pogodila finansijsko tržište EU, a njeno kombinovano dejstvo sa krizom javnog duga bankarski sistem evrozone, kao centralni mehanizam sprovođenja jedinstvene monetarne politike”* (Petrović, Ristić, 2018).

Glavne karakteristike koncipiranja i institucionalisanja Bankarske unije u EU jeste da se na nivou evrozone podigne regulativa koja se odnosi na nadzor nad poslovanjem banaka i to:

1. *supervizija, prudenciona kontrola,*
2. *sanacija i njeno finansiranje,*
3. *osiguranje depozita banaka,*
4. *prekidanje veze – „začaranog kruga“ – između banaka i nacionalnog javnog duga,*
5. *osnova jedinstvenog mehanizma za likvidaciju banaka.*

U konstitucionalnom smislu, a u skladu sa navedenim ciljevima Bankarske unije, samo ćemo pomenuti ključna mesta u arhitekturi Unije i to formiranje Jedinstvenog sanacionog fonda za države članice Bankarske unije. Zatim uspostavljanje Evropske šeme osiguranja depozita (European Deposit Scheme – EDIS), koja će važiti za države članice Bankarske unije, a obavezna je za države evrozone. Direktiva o oporavku i sanaciji banaka (Bank Recovery and Resolution Directive – BRRD) koja važi na celoj teritoriji Evropske unije, Uredba o jedinstvenim pravilima i jedinstvenoj proceduri oporavka i sanaciji banaka (Single Resolution Regulation – SRR), koja uključuje i jedinstven fond za sanaciju banaka (Single Resolution Fund – SRF) i predstavlja konkretizaciju navedene direktive za evrozonu i druge države članice Jedinstvenog mehanizma supervizije. (EuroCommision, 2013; 2014; 2015; Petrović, P., Ristić, K. 2018). Razlog daljeg neelaboriranja navedenih mehanizama utemeljujemo na činjenici da su bili predmet ranijih istraživanja akademske javnosti, a cilj nam je prevashodno diskutovati na temu procene i ocene efikasnosti okvira

Bankarske unije sa aspekta njene funkcionalnosti, kapaciteta i dometa, što sledi u daljem tekstu.

## Kvalitativna ocena regulatornog okvira za banke u EU

Složeni sistem koordinacije monetarne i fiskalne politike, kao i institucionalni deficit integracije, uticali su na sporost prilagođavanja bankarskog sistema okolnostima nastale krize. Regulacije na nacionalnom nivou nisu bile adekvatne kretanjima na bankarskim i finansijskim tržištima, što je još više produbilo krizu, s tim da nije zabeležen efekat „juriša na banke“ koji se obično očekuje u finansijskim krizama. Upravo je reakcija država na prve znake krize pojačavanjem „zaštitne mreže“ deponenata, dakle podizanjem granice osiguranja depozita, dovela do efekta nerasplamsavanja krize u smislu povlačenja depozita iz banaka.

Bejatović (2008, str. 891-902) ukazuje na to da je državna intervencija kroz dokapitalizaciju i spasavanje banaka imala sve odlike negativne selekcije. Suočene sa nenaplativim zajmovima i njihovim otpisom, kao i regulatornim zahtevima za visinom kapitala, banke su pribegavale rigoroznijem pristupu kreditnim zahtevima zdravih klijenata. Zbog navedenih okolnosti, međunarodna praksa se kreće u pravcu usvajanja standarda regulative za različite segmente svetskog finansijskog tržišta. Standardi regulative znače da se prihvate pravila, formulisana u okviru međunarodnih organizacija i primenjuju kao deo unutrašnjeg prava, na osnovu odluka nadležnih nacionalnih regulatornih organa.

Problem koji se javlja i u vreme konstituisanja bankarske unije, pa i danas, jeste sama valuta evro, koju određeni broj država ima mogućnost da ne prihvati. Logična celina Bankarske unije je evrozona, zbog jedinstvene valute, centralizovane monetarne politike i integrisanog bankarskog sistema. Zato je i moguće samo konstituisati nadzor nad bankama u delu supervizije poslovanja, sanacije i jedinstvenog sistema osiguranja depozita. Međutim problem se može javiti kada, na zahtev regulatornih organa, u slučaju da iz prihoda izvrše rezervacije za realne i potencijalne gubitke, i u toj meri smanje svoju kapitalnu osnovu i nemaju odgovarajući kapital za pokriće gubitaka, banke postaju nesolventne i ne mogu na duži rok očuvati stabilnost poslovanja (Petrović, Ristić, 2018, str. str 234-249).

Ekonomskoj i monetarnoj uniji potrebna je Bankarska unija kako bi se osigurala efikasna transmisija jedinstvene monetarne politike, bolja diverzifikacija rizika kroz države članice i adekvatno finansiranje privrede. Samim tim, kompletiranje i dalje jačanje Bankarske unije će ojačati finansijsku stabilnost, vraćanjem poverenja u bankarski sektor kroz kombinaciju mera koje su usmerene i na podelu i na smanjenje rizika (Šubara, Dželetović, 2017).

Kvalitativno se okvir regulative može oceniti da je uspostavljen da osigurava različita nacionalna rešenja, da se ne stvaraju linije razdora unutar Bankarske unije, odnosno da ne narušava funkcionisanje jedinstvenog tržišta. Okvirom su predviđene i zabrane trgovanja finansijskim instrumentima i robom za vlastiti račun tj. trgovanje za vlastiti račun isključivo u cilju stvaranja dobiti za

banku i utvrđena su pravila o privrednim, pravnim, upravljačkim i operativnim vezama između razdvojenih trgovinskih subjekata i ostatka bankarskih grupa (Ristić, Živković, 2019).

U odlučivanju o opsegu Bankarske unije preovladao je stav da ona obuhvati obavezno države članice evrozone zbog navedenih prednosti, ali da bude otvorena i za druge države članice Evropske unije, koje izjave saglasnost za članstvo u njoj, kao i druge države po okončanju procesa pridruživanja. Supervizija banaka, makar i najobuhvatnija, ne može sprečiti da se banka, u nekom vremenskom periodu, ne nađe u teškoćama. Preuzimanje rizika i profitna motivacija, dve osnovne poluge bankarskog ulaganja, i pored modernih tehničkih sredstava, stručnih procedura i savremenih modela predviđanja i ocene, ne mogu uvek parirati tržišnim tokovima u kojima se banka nalazi (Šubara, Dželetović, 2017).

Bankarska unija se od samog početka suočava sa sumnjama, strahovima i problemima. Najveća prepreka je nekada bila, pa i u aktuelnom trenutku jeste, nedovoljna kooperativnost nacionalnih regulatornih tela, naročito kada je reč o politički osetljivim institucijama. Iako ECB ima značajne mogućnosti kontrole, ipak se suočava sa ograničenjima u praksi. S obzirom na to da je ECB, kao jedinstveni supervizor, ta koja upozorava na neophodno restrukturiranje pojedinačnih banaka, države neće želeti, niti će moći to da prenebregnu, jer na taj način gube diskreciona prava koja su do sad imale. (Mališ, 2014). Po rečima Mališa (2014) da bi se odrekle toga, zajednički fondovi moraju biti više nego primamljivi. Strah koji provejava je da su problemi bankarskog sektora znatno veći nego sposobnost zajedničkih fondova da reše probleme, te da neće biti jednostavno ubediti nacionalna vođstva da lako pristanu na takav prenos suvereniteta. A kad se to i desi, neizbežno je da će dolaziti do konflikata između ECB, koja će u svojoj novoj ulozi morati da dokaže svoj autoritet, i nacionalnih regulatora (Mališ, 2014).

Mališ (2014) ukazuje na niz problema u konceptualnom funkcionisanju Bankarske unije. Kao prvo, složen način odlučivanja i veliki broj zainteresovanih strana izaziva strah od sporosti u donošenju odluka. Drugo, učešće nacionalnih predstavnika ne otklanja u potpunosti vezu između nacionalnih regulatora i njihovih banaka. Treće, male i srednje banke ne potpadaju pod nadležnost ovog tela dok će, sa druge strane, formiranje zajedničkog fonda iziskivati period od 10 godina, a u međuvremenu će finansiranje biti omogućeno kroz nacionalne fondove i Evropskog mehanizma za stabilnost (European Stability Mechanism). Četvrto, strah od potencijalnog konflikta interesa između monetarne uloge ECB i uloge supervizora takođe postoji. Ukoliko ne bude raspolagala dovoljnim kapacitetima, kako u institucionalnom, tako i u punom finansijskom smislu, ECB može biti u situaciji da ne želi da prikazuje pravo stanje banaka koje bi inače bile predmet restrukturiranja. Peto, preterano ekspanzivna monetarna politika ECB može biti instrument da se ove banke održe u funkciji, u nedostatku odgovarajućih zajedničkih fondova za spasavanje. I šesto, najveći izazovi su svakako oni političke prirode, jer Evropska komisija želi jačanje svega što znači centralizovano odlučivanje na nivou EU, uz obavezno ograničavanje dometa nacionalnih institucija (Mališ, 2014).



Događaji svetske finansijske krize od 2007-2009. godine pokazali su da čak i dobro koncipirano osiguranje depozita neće uvek sprečiti pojavu krize i da je važno pitanje, po Kejnu (Kane, E. 2015), da se sagleda funkcionisanje šeme osiguranja depozita u vreme kada nema krize. Kejn (2015) poentira i da nefinansijske institucije mogu da budu isto toliko značajne koliko i komercijalne banke i izvori sistemskog rizika, te da mogu da traže pristup delovima sigurnosne mreže čak i u normalnim vremenima. Osiguranje depozita u svom konceptualnom smislu može izazivati i ponašanje moralnog hazarda, te i loše agencijsko ponašanje regulatora. U tom smislu se Kejn (2015) osvrće na tvrdnje Minskog iz 1977. godine i na njegove stavove da, ukoliko agencije za osiguranje ne vrednuju i ne administriraju korektno osiguranje depozita, to može uticati da se ohrabri takvo ponašanje banaka da uzimaju veći rizik i da biraju rizičnije portfolije nego što bi to inače činile u uslovima nepostojanja osiguranja.

Iako je odluka o formiranju Bankarske unije suštinska i svakako dugoročna odluka, te i u tom smislu predstavlja i okosnicu jačanja monetarne integracije uopšte, postavljamo pitanje da li je davanje ovako velikih ovlašćenja ECB, pravi način da se izgradi i dalje utemeljuje i jača sada već poljuljana konzistentnost i održivost EU integracije pogotovo kada se postavlja pitanje legitimiteta zajedničkih tela Unije, njenog vodstva, kapaciteta institucija i krize zajedničke valute.

## Približavanje bankarske regulative NBS regulativama EU

Bankarsko okruženje i arhitektura bankarske regulative u velikoj meri se razlikuju od zemlje do zemlje. Po Kejnu (2015) supervizija finansijskih institucija kombinuje kapacitet za posmatranje fluktuacija bilansnih vrednosti banaka sa kapacitetom da utiče na menadžerske akcije u bankarskom poslovanju. U zemljama sveta Kejn (2015) tvrdi da, u okviru pojedinačne zemlje postoje sukobi između regulatora i preduzeća koje oni regulišu, zatim, regulatora i političara kojima oni moraju da podnose izveštaje, te i poreskih obveznika i političara i regulatora koje oni postavljaju.

EU je školski primer Kejnovih tvrdnji, i samo za primer navodi da mnoge zemlje Evropske unije nadziru banke odvojeno od drugih finansijskih institucija, a neke od njih to i ne čine. U tome se ističu Austrija, Nemačka, Danska, Švedska, Holandija i Velika Britanija.<sup>1</sup> (Kane, 2015). Radi se dakle, o integrisanom i delimično integrisanom sistemu nadzora banaka i finansijskog tržišta uopšte.

Generalno govoreći, zdrav i stabilan finansijski sistem, i u tom smislu sektor banaka, neophodan je preduslov održivog i razvojno orijentisanog realnog sektora. Banke predstavljaju ključne institucije preko kojih se transmituje monetarna politika centralne banke.

U tom smislu, globalna finansijska kriza zahtevala je pravovremenu reakciju Narodne banke Srbije (NBS) u cilju očuvanja stabilnosti finansijskog sistema i posebno bankarskog sektora kao njegovog najznačajnijeg i najvitalnijeg segmenta. Najvažniji pokazatelj stremjenja Narodne banke Srbije i strateškog

<sup>1</sup> Odnosi se na vreme pre Bregzita.

opredeljenja Republike Srbije za evrointegracijom bilo je usvajanje pravnih tekovina EU i u tom smislu ispunjenje pristupnih i kriterijuma konvergencije. Republika Srbija je 9. oktobra 2008. godine usvojila Nacionalni program integracije Republike Srbije u EU za period 2008-2012, čime je pokazala spremnost da svoje regulatorne okvire vezane za finansijski sektor uskladi sa pravnim tekovinama i tendencijama EU (Jemović, Krstić, 2015).

U daljem tekstu ćemo se osvrnuti na pravno i zakonodavno usklađivanje NBS sa finansijskom regulativnom u EU i generički pobrojati skorašnje i aktuelne aktivnosti NBS. Naime, uporedo sa regulatornim inicijativama na polju očuvanja finansijske stabilnosti u zemljama EU, NBS je veliku pažnju posvetila usklađivanju svoje politike finansijske stabilnosti sa politikom finansijske stabilnosti ESCB. S tim u vezi, a radi očuvanja i jačanja stabilnosti finansijskog sistema i unapređenja funkcije supervizije banaka, Narodna banka Srbije je radila i kontinuirano radi na unapređenju regulatornog okvira i supervizorskih aktivnosti. Ističe se proces supervizorske procene koji objedinjuje rezultate svih sprovedenih supervizorskih aktivnosti usmerenih na pojedinačnu banku. Za ovaj proces je karakteristično utvrđivanje jedinstvene ocene za banku, po potrebi i preduzimanje supervizorskih mera od strane Narodne banke Srbije. Zatim, princip dijaloga sa bankama u slučaju da se utvde određene nepravilnosti u poslovanju, podelu banaka po grupama, praćenje osnovnih pokazatelja rizika, analizu i preispitivanje poslovnog modela, adekvatnost korporativnog upravljanja, procenu adekvatnosti kapitala i likvidnosti (<http://www.nbs.rs>, pristupljeno 20.04.2020).

Posebne aktivnosti NBS usmerene su svojevremeno i na donošenje zakonskih izmena u vezi sa restrukturiranjem banaka. Cilj je bio da se upotreba budžetskih i drugih javnih sredstava u cilju očuvanja finansijske stabilnosti svede na najmanju moguću meru. Ovo se prvenstveno odnosi na regulatorne tendencije otelotvorene u konceptu Bankarske unije EU.

Dakle, potencijalne gubitke zbog propasti banke snosiće najpre akcionari i poverioci banke, uz poštovanje propisanih ograničenja i zaštitnih mehanizama, čime će akcionari i poverioci banke morati biti svesni rizika od gubitaka koje će pretrpeti u slučaju propasti banke, te i taj rizik moraju adekvatno da proceniju i vrednuju. NBS u postupku restrukturiranja može birati instrumente ili kombinaciju instrumenata kojim bi na najbolji način mogli da se ostvare ciljevi restrukturiranja. Očekuje se da će se time znatno doprineti tržišnoj disciplini (<http://www.nbs.rs>, pristupljeno 20.04.2020).

Preventivno delovanje i adekvatna priprema banaka, NBS i drugih nadležnih institucija, što je takođe karakteristika usaglašavanja finansijske regulative Republike Srbije sa tekovinama EU, odnosi se na propisanu obavezu za banke da izrade planove oporavka koji će se primenjivati u slučaju pogoršanja njenog finansijskog stanja a radi ponovnog uspostavljanja njenog daljeg održivog poslovanja i odgovarajućeg finansijskog položaja (<http://www.nbs.rs>, pristupljeno 20.04.2020).

Bitno je istaći da je NBS potpisala i multilateralni sporazum o saradnji sa Evropskim telom za bankarstvo (European Banking Authority – EBA) i nadzornim organima zemalja jugoistočne Evrope. Ovim sporazumom se uspostavlja okvir za saradnju i razmenu informacija u oblasti kontrole poslovanja banaka.

Prethodno izloženi argumenti na polju prilagođavanja institucionalnih kapaciteta i zakonodavnog okvira NBS ukazuju na visok stepen kompatibilnosti naše centralne banke sa standardima i principima ESCB, što predstavlja dobar preduslov za brže pristupanje EU, a potom i EMU (Jemović, Kristić, 2015).

Pored svega navedenog, Srbija nije članica EU, pa ne može biti članica SSM-a i to je stavlja u dvostruko neugodan položaj „*niti su lokalne banke u vlasništvu međunarodnih banaka sa sedištem u EU predmet nadzora ECB, niti su to banke u domaćem ili vlasništvu banaka sa sedištem van EU*“ (Drvendžija, 2015).

## Zaključak

Rad zaključujemo konstatacijom, a na osnovu svega navedenog, da zajednički bankarski sistem u EU treba da podrazumeva nešto više od nadzora banaka. Jedino tako bi bilo omogućeno finansijsko ocelovljenje EU. Dakle zajednički okvir za osiguranje depozita bio bi uslov koji dalje treba da osigura jednake procedure oko toga šta se radi sa bankama koje ne ispunjavaju svoje obaveze. U odsustvu ove vrste zajedništva u EU može se desiti da se novac odliva iz bankarskih sistema „slabih“ zemalja u banke koje posluju u „jakim“ zemljama. To direktno, dodatno i proporcionalno slabi one koji su već slabi. Zato je potrebno da regulatorni sistem prevashodno bude okrenut podsticanju ekspanzije u zemljama u kojima je potrebno podstaći ekonomiju i ograničavati kreditiranje u pregrejanim ekonomijama. To, pak, znači da je nužno proširiti okvir ovlašćenja i paletu instrumenata jer u protivnom bez takve fleksibilnosti i prilagođavanja može se desiti da ceo sistem deluje destabilizirajuće i da sam podstiče dodatno slabljenje već „slabih“ ekonomija. Međutim dokazivanje uspešnosti i efikasnosti konstituisane finansijske arhitekture o kojoj smo govorili u ovom radu, traži vreme i identifikovanje „najbolje prakse“, do tada rigidnost u primeni propisa može nanositi velike posledice po kreditiranje, nenaplativost kredita, afirmaciju krhkosti bankarskih sistema i samim tim i održivost već oslabljene, politički konfliktne, konstukcije EU.

Kada govorimo o mestu Srbije u ovoj arhitekturi i vrlo osetljivim međunarodnim ekonomskim odnosima, možemo očekivati negativno odražavanje na privlačenje perspektivnih investitora u naš bankarski sektor. S tim da postojeće bankarske grupe koje su pod nadzorom ECB mogu biti motivisane i strategijski usmerene da umanje svoju izloženost prema tržištima kakvo je srpsko i koje možemo kvalifikovati kao malo. U tom smislu izuzetno je važno da se nadzor u Srbiji obavlja operativno prema istim kriterijumima kao u EU, postupno i dosledno prema trenutnim administrativnim, institucionalnim i regulatornim kapacitetima kao i sa strogim fokusom na razvoj kompetencija finansijskih eksperata zaposlenih u institucijama čija je nadležnost kontrola finansijskog tržišta i bankarskog sektora.

Međutim, ne možemo se oteti utisku da će se razvoj regulative u bankarskom sektoru Republike Srbije prilagođavati u fazama koje će biti karakteristične po rigidnom konstrukcijskom odnosu „suvereno – nacionalno“ na nivou EU.

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# Assessment of the European Banking Regulatory Framework in Light of its Significance for the Republic of Serbia

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**Summary:** The debt crisis in the European Union is known to be caused by the interdependence of banking and state financial stability, and, together with the non-existence of the fiscal union, it has taken on the existential dimensions of the EU project itself. Under the guise of financial fragmentation within the financial markets of the Eurozone, and from the aspect of the outbreak of the crisis, EU member states resorted to national interventions, thus closing national banking and financial markets, which ultimately resulted in deepened and stronger structural foundation of the crisis and its economic and financial consequences. In that context, the Banking Union is the regulatory and institutional response of the EU after the global financial crisis, about which the first proposals have found a place in institutional controversies since 2012. In addition to the key moment and motive for establishing such an institutional regulatory arrangement, the reason for its creation is more to create a union that is connected with the creation of a single market for financial services and free money circulation, and certainly with the tendency of fuller monetary integration. However, certain questions which arose remained relevant to date: whether these established and instrumentalized frameworks, mechanisms and procedures are in fact sufficient; whether the EU banking union, conceptually designed, really represents banking integration; and whether the “centralized-common” and “sovereign-national” relationships continued in the EU financial architecture, the use of the principle “one measure for all” in the implementation of the Basel III, non-inclusion of all types of banks, and the conflict of emission and supervisory roles of the Central Bank, be a structural conflict in achieving the desired financial stability, which is the ultimate goal. In the broader context of the functioning of the EU, financial stability can also be interpreted as a factor in the survival of the common currency and the European Union itself, regardless of the intertwined contradictions and construction conflict.

In this paper, we analyze the functional scope of the regulatory framework for banking supervision in the EU during the five-year existence to date, and finally the effects and impact that this framework has had on the regulatory adjustment of the Serbian banking sector.

**Key terms:** EU financial regulatory measures, banking, stability.

**JEL:** G28

## Introduction to Understanding the European Banking Authority

The first banking directive, which was passed back in 1997, established the principle that the home country (country of origin) is responsible for the supervision and control of its bank in a country where it operates. Just over ten years later, another banking directive was passed, which relied on more liberal conditions for banks to operate globally, which provided that a bank licensed to operate in any EU country could establish a branch or operate abroad, without the need to obtain any permits issued by local regulatory bodies, central banks. At that time, this principle was called the “single passport” principle. Nevertheless, there was still a possibility for the host bank from another country to implement regulatory measures in case of “public interest”, which in its essential and formal sense meant that the control was performed by the “parent bank” and the complete responsibility lay with the host state. Given that such an institutionalized solution was problematic, the financial crisis itself, which broke out in the United States, back in 2008, and spread on a global level, has conditioned the stability of financial markets to become a priority of the European Union. In the years during the crisis and immediately after its outbreak and spillover into the EU, regulators have taken action to preserve financial stability at the level of improving regulations governing the EU financial sector and strengthening financial sector supervision. In the early years of the crisis, states provided huge funds to save their banking sectors. Bank lenders, unlike taxpayers, did not have to bear the cost of this bailout (Ristić, Živković, 2018).

Over time, the crisis became a semblance of a vicious circle in which member state governments were less and less able to help their banks. The deepening of the problem was also due to the existence of great consequences that the banking sector caused for the member states. The state of general uncertainty and, assuredly, the increase in financing costs, was precisely the consequence of reaching for the funds of bank creditors. Given the bank-centric nature of the market, the monetary union and the single market have faced a serious problem (Mališ, 2014).

Considering the position of the largest banks („too big to fail”) in Europe and beyond, during the crisis, the recent Nobel laureate Jean Tirole pointed out that all banks that have benefited from direct state support should be faced with strict regulations (Ristić, Živković, 2018). Therefore, the European Central Bank has since performed the new function of the sole controller of the largest banks in the Eurozone and is responsible for the stability in the banking sector and thus for financial stability in general. However, that posed and still poses the greatest threat to its reputation (Đukić, 2014).

Each banking sector, generally speaking, has a specific role in a country’s economy. Within the dynamic interaction between instruments, institutions and the market itself, the banking sector performs functions that are essential for the economic activity of the country, thus functionally creating a context for economic growth and development. (<http://www.nbs.rs/regulation>, accessed 20.04.2020). This primarily refers to the services of payment, savings, insurance, loans, risk protection, etc., where the problems in performing

these functions have a negative impact on the stability of the financial system and the real sector.

This dynamic interaction of institutions, instruments, service users, markets and information creates a complex context that must be regulated by certain regulations that will have the primary goal of ensuring the stability of the system in the long run. If we mean financial stability in the context of this paper, we would refer to the claims of Mirjana Jemović, who says in her PhD thesis: "In order to preserve and strengthen financial stability, the regulatory framework should be set throughout the life of financial institutions. As such, it does not only include ex-ante components, regulation and supervision, aimed at preventing bank failures; but also ex-post components - the last resort function, deposit insurance and restructuring policy. Although important in different periods of banks' operations, only the synergetic effect of all components together can achieve the preservation and strengthening of financial stability" (Jemović, 2016, p. 107).

If this is the general backbone of this paper, then we point out that the global financial crisis at the global level has shown that countries around the world were unprepared for the crisis and did not have an appropriate legal framework for resolving problematic banks and their operations. Therefore, the rescue of banks was borne by the taxpayers of the countries worldwide. The only option available was to choose between conducting bankruptcy proceedings that carry a high risk of causing systemic disruptions and rescuing banks using budget or other public funds (<http://www.nbs.rs/regulation>, accessed 20.04.2020).

The issue of the ethics of such ventures is a question posed by economic policy makers, citizens and institutions and related to whether banks perform important functions, in terms of economy and growth, given that they generate profits in times of market prosperity for themselves and their shareholders, while in conditions of crisis and possible losses, they turn to the financial support of the budget (<http://www.nbs.rs/regulation>, accessed 20.04.2020).

As banks are the basic mechanism of external financing of companies in the EU, the banking system, qualified as bank-centric, which we have already talked about, was fragile and not resistant to financial shocks during the crisis, stated Sedlarević (2014).

In support of this, we can refer to the results of endurance tests conducted by the European Banking Authority (EBA), which showed that the financial market of the Eurozone, which was shaken by the debt crisis, should be stabilized.

Ristić K. and Živković A. (2018) indicate that banks from 21 countries were tested at the time, which together represented 65% of the banking sector in Europe. The tests were designed as a financial check and were to determine whether the banks had enough capital to withstand the scenario of difficult economic conditions.

Two scenarios were used, one that took into account current macroeconomic forecasts and the other that assumed an economic shock. The crisis scenario predicted a GDP growth of only 0.5% in the Eurozone and a decline in the European stock market of 15%, as well as a crisis in the real estate market, with

those banks that do not exceed 5% of share capital compared to their other assets in “hypothetical” economic conditions, will not qualify to pass the test. (Ristić, Živković, 2018). The results of the testing, although the test itself was not overly strict, show exactly what later resulted in the need for stricter supervision of banks in the Eurozone, and that is a high sensitivity to shocks.

Generally speaking and referring to the Oxford Handbook on Banking, translated and published by the Association of Serbian Banks in 2015, we find a fact that has been recurrently confirmed for years - that financial systems require well-developed legal and information infrastructure to function well. The timely availability of quality information is equally important, as it helps to reduce information asymmetries between loan users and lenders. In this sense, the empirical results show that the volume of bank loans is significantly higher in countries where the flow of information is higher. (Demirgus-Kunt, 2015).

According to Demirgus-Kunt (2015), since the establishment of the banks, there have also been states that regulate them. Although most economists believe that the role of the state is important in regulating and supervising financial systems, the degree of such engagement is an issue that is being actively debated.

Jemović M. (2016, pp. 107-108) claims that the regulatory role of the state contributes to the smooth functioning and development of the overall financial market and in that sense banks are subject to special regulation that “preserves” solvency, limits entering into risky transactions, protects depositors and enables control of money flows and a fair distribution of financial resources.

Demirgus-Kunt (2015) argues that supervisors are expected to ensure the stability of the financial system and to guide banks in their business decisions, through regulation and supervision. However, given the generally limited knowledge of officials, the expertise needed to make business decisions and their tendency to succumb to political and regulatory pitfalls, such an approach may not be effective. The reasons for the weak regulation of banks in the pre-crisis period can be found in such attitudes.

However, the crisis showed the weaknesses in the functioning of the unsupervised banking market of the EU, and in the following years, the European Central Bank took the next steps in establishing the so-called Banking Union, which can be systematized as follows:

- *New rules have been adopted on capital requirements for banks, as well as for the recovery and resolution of bank problems.*
- *Stronger prudential requirements for banks, improved protection of depositors and rules for managing problematic banks have been provided,*
- *A single rulebook has been formed for all financial participants in the member states of the European Union.*

Thus, the crises have indicated a lack of a regulatory framework for bank resolution at integration levels. That is why the reform of regulations in this area, especially in the Eurozone, had a double goal, and that was to repair the consequences of the crisis and create a sustainable political framework



in the banking of the European Union or the Banking Union, in the long run (Petrović, P., Ristić, K., 2018).

According to Petrović P. and Ristić K. (2018) the legal basis for the formation of the Banking Union stems from the Article 127 paragraph 6 of the Treaty on the Functioning of the European Union, according to which the EU Council may, in accordance with a special legislative procedure, after consultations with the European Parliament and the European Central Bank, entrust specific tasks to the European Central Bank, relating to the adoption and implementation of policies related to the prudential control of credit institutions.

The Regulation on Uniform Rules and Uniform Procedure for Bank Recovery and Resolution specified the provisions of the Directive applicable to the Member States of the Single Supervision Mechanism, establishing the Single Resolution Mechanism whereby Eurozone Member States and other Banking Union Member States adopted uniform rules and procedures for bank resolution, as a centralized remediation mechanism managed by the formed Single Resolution Board. The Board consists of elected members and representatives of national resolution regulators, and which is funded by a centralized resolution fund. Such a conception has established the existence of a single supervision and resolution mechanism where key roles are entrusted to the institutions of the Eurozone and the European Central Bank (Petrovic, Ristic, 2018).

The economic note of the evident need to strengthen the infrastructure capacity of the Banking Union points to the conclusion that a deeper focus on banking is necessary in the European Union. This would mean the enabling of further strengthening of European economic and financial integration, regardless of further re-examinations of fiscal and political integration. The question which we will talk about in the next chapter is that of the scope of such regulations, because if it is not „finely tuned” and well balanced, it could mean the beginning of new problems of financial functioning of the EU and questioning its further survival (Ristić, Živković, 2019; Živković, A. et al., 2019).

The controversy over banking supervision also points to debates about systemic risk, which to date have largely been reduced to the consideration of sudden exogenous disturbances, with systemic disturbances having their source in both the domestic and international environments. The concept of stability of the financial system is directly proportionally related to the concept of systemic risk, and in that sense, systemic risk refers to the probability of occurrence of certain negative events at the level of the entire financial system (Drvendžija, 2015). It is crucial to point out the above because it makes a clear distinction in relation to the multitude of (micro) risks that can affect a particular financial institution. The systemic risk „lies” in the fact that repetitive and pro-cyclical behavior of financial institutions can lead to visible changes in the lending activity and indebtedness of economic agents over time, and that they are beyond the control of individual institutions and regulators. According to Drvendžija (2015), the crisis, as well as the period that preceded it, is an excellent illustration of excessive cyclical fluctuations in the financial market.

## Overview of Constitutional Aspects of EU Banking Regulations

In the conditions of the global financial crisis, but certainly in the period afterwards, the existing institutional mechanisms proved to be insufficient and inadequate for solving the problems of banks that faced serious difficulties in their operations. Given that they did not provide opportunities for sufficiently fast and efficient intervention, nor did they optimally provide conditions for maintaining critical functions in the bank's operations, the conclusion is that there was no framework, draft or plan, whatsoever, to preserve the financial stability of the system as a whole ([http:// www.nbs.rs](http://www.nbs.rs), accessed 20.04.2020).

Due to all that, the awareness of the necessity of the existence of clearly defined rules and mechanisms according to which we will act in crisis situations has matured at the international level. At the level of the European Union, in May 2014, this finally resulted in the adoption of the Directive on Establishing a Framework for Recovery and Resolution of Credit Institutions and Investment Firms (Directive 2014/59/EU). This Directive entered into force in all Member States of the European Union on 1 January 2015 (<http://www.nbs.rs>, accessed 20.04.2020).

However, a particular problem was posed by banks and banking groups facing difficulties, which were operating in several Eurozone Member States, due to the fragmentation of regulations within national frameworks, which required coordinated action by several Member States. Undoubtedly, the protracted financial crisis has slowed the monetary integration of the European Union. "It has directly and deeply affected the EU financial market, and its combined effect with the public debt crisis affected the banking system of the Eurozone, as the central mechanism for implementing the single monetary policy" (Petrović, Ristić, 2018).

The main characteristics of the conception and institutionalization of the Banking Union in the EU are that at the level of the Eurozone, regulations related to the supervision of banks' operations are raised, as follows:

1. *Supervision, prudential control;*
2. *Resolution and its financing;*
3. *Bank deposit insurance;*
4. *Breaking the link - a „vicious circle” - between banks and national public debt;*
5. *Basis of a single mechanism for liquidation of banks.*

In the constitutional sense, and in accordance with the stated goals of the Banking Union, we will only mention the key places in the architecture of the Union: formation of the Single Resolution Fund for the member states of the Banking Union, establishment of the European Deposit Insurance Scheme (EDIS), which will be valid for the member states of the Banking Union, and is mandatory for the Eurozone countries, the Bank Recovery and Resolution Directive (BRRD), which is valid throughout the European Union, the Single Resolution Regulation (SRR), which includes a single bank resolution fund (Single Resolution Fund - SRF) and represents the implementation of the said directive for the Eurozone and other member states of the Single Supervision

Mechanism (EuroCommision, 2013; 2014; 2015; Petrović, P., Ristić, K. 2018). The reason for further non-elaboration of these mechanisms is based on the fact that they were the subjects of previous research by the academic public, and our goal is primarily to discuss the assessment and evaluation of the effectiveness of the framework of the Banking Union from the aspect of its functionality, capacity and scope, which follows below.

## Qualitative Assessment of the EU Banking Regulatory Framework

The complex system of coordination of monetary and fiscal policy, as well as the institutional deficit of integration, influenced the slow adjustment of the banking system to the circumstances of the crisis. Regulations at the national level were not adequate to the developments in the banking and financial markets, which further deepened the crisis, with no effect of the “bank raid” that is usually manifested in financial crises. It was the reaction of the states to the first signs of the crisis by strengthening the „safety net” of depositors, i.e. by raising the deposit insurance limit that led to the effect of not igniting the crisis in terms of withdrawing deposits from banks.

Bejatović (2008, pp. 891-902) points out that state intervention through recapitalization and bank rescue had all the characteristics of negative selection. Faced with non-performing loans and their write-offs, as well as regulatory requirements for the amount of capital, banks resorted to a more rigorous approach to the credit requirements of healthy clients. Due to these circumstances, international practice is moving in the direction of adopting regulatory standards for various segments of the global financial market. Regulatory standards mean accepting rules, formulated within international organizations and applied as part of domestic law, based on decisions of the competent national regulatory authorities.

The problem that had appeared at the time of the constitution of the banking union, and is still relevant today, is the euro itself, which a certain number of countries have the option not to accept. The logical whole of the Banking Union is the Eurozone, due to the single currency, centralized monetary policy and integrated banking system. That is why it is only possible to constitute supervision over banks in the field of business supervision, resolution and a single deposit insurance system. However, the problem may arise when, at the request of regulatory authorities, in case they make provisions from revenues for incurred and expected losses, and to that extent reduce their capital base and do not have adequate capital to cover losses, banks become insolvent and cannot maintain business stability in the long run (Petrović, Ristić, 2018, pp. 234-249).

The Economic and Monetary Union needs a Banking Union to ensure the efficient transmission of a single monetary policy, better risk diversification across Member States and adequate financing of the economy. Thus, completing and further strengthening the Banking Union will strengthen financial stability by restoring confidence in the banking sector, through a combination of measures aimed at both sharing and reducing risk (Šubara, Dželetović, 2017).

In qualitative terms, the regulatory framework can be assessed as having been established to ensure different national solutions, not to create lines of disagreement within the banking union, i.e. not to disrupt the functioning of the single market. The framework also envisages bans on trading in financial instruments and goods for one's own benefit, i.e. for the purpose of generating profit for the bank and therefore rules were established on economic, legal, management and operational relations between the separated trade entities and the rest of the banking groups (Ristić, Živković, 2019).

In deciding on the scope of the Banking Union, the prevailing view is that it must include Eurozone member states due to the stated advantages, but also be open to other EU member states, which agree to join it, as well as other states after the accession process. Supervision of banks, even the most comprehensive, cannot prevent the bank from finding itself in difficulties for a certain period of time. Risk taking and profit motivation, the two basic levers of bank investment, and in addition to modern technical means, professional procedures and modern models of forecasting and evaluation, cannot always match the market flows in which the bank is located (Šubara, Dželetović, 2017).

From the very beginning, the Banking Union has been facing doubts, fears and problems. The biggest obstacle in the past, and in the current moment as well, is the insufficient cooperation of national regulatory bodies, especially when it comes to politically sensitive institutions. Although the ECB has significant control capabilities, it still faces limitations in practice. Given that the ECB, as the sole supervisor, warns of the necessary restructuring of individual banks, states will not want and will not be able to ignore this, because in that way they lose the discretionary rights they had had so far. (Mališ, 2014). According to Mališ (2014), in order to give that up, mutual funds must be more than tempting. The fear is that the problems of the banking sector are much bigger than the ability of mutual funds to solve problems, and that it will not be easy to convince national leaders to easily agree to such a transfer of sovereignty. And when that happens, it is inevitable that there will be a conflict between the ECB, which will have to prove its authority in its new role, and national regulators (Mališ, 2014).

Mališ (2014) points to a number of problems in the conceptual functioning of the Banking Union. First, the complex way of decision-making and the large number of stakeholders raises fears of slowness in decision-making. Second, the participation of national representatives does not completely remove the link between national regulators and their banks. Third, small and medium-sized banks do not fall under the jurisdiction of this body, while on the other hand, the formation of a mutual fund will require a period of 10 years, while in the meantime funding will be provided through national funds and the European Stability Mechanism. Fourth, there is a fear of a potential conflict of interest between the monetary role of the ECB and the role of the supervisor. If it does not have sufficient capacity, both institutionally and in full financial terms, the ECB may be reluctant to show the true state of banks that would otherwise be subject to restructuring. Fifth, the ECB's overly expansive monetary policy can be an instrument to keep these banks in place, in the absence of adequate mutual funds. And sixth, the biggest challenges are cer-

tainly those of a political nature, because the European Commission wants to strengthen everything that means centralized decision-making at the EU level, with the obligatory limitation of the reach of national institutions (Mališ, 2014).

Events of the global financial crisis from 2007-2009 showed that well-conceived deposit insurance will not always prevent the occurrence of a crisis, and it is an important issue according to Kane E. (2015) to consider the functioning of the deposit insurance scheme in times when there is no crisis. Kane E. (2015) also points out that non-financial institutions can be just as important as commercial banks and sources of systemic risk and that they can seek access to parts of the security network even in normal times. Deposit insurance in its conceptual sense can cause both the behavior of moral hazard and the bad agency behavior of the regulator. In this regard, Kane E. (2015) refers to the claims of Minsk from 1977 and his views that if insurance agencies do not evaluate and administer correct deposit insurance, it can influence and encourage such behavior of banks to take higher risk and choose riskier portfolios than they would otherwise do in the absence of insurance.

Although the decision to form the Banking Union is an essential and certainly a long-term decision, and in that sense it is the backbone of strengthening monetary integration in general, we ask whether giving such vast powers to the ECB will be the right way to build and further consolidate and strengthen the already shaky consistency and sustainability of EU integration, especially when it comes to the legitimacy of the Union's joint bodies, its leadership, the capacity of institutions and the crisis of the common currency.

## **NBS Banking Regulations Approaching EU Regulations**

The banking environment and the architecture of banking regulation vary greatly from country to country. According to Kane E. (2015), the supervision of financial institutions combines the capacity to observe fluctuations in the balance sheet values of banks with the capacity to influence managerial actions in banking operations. Kane (2015) claims that within every country there are conflicts between regulators and the companies they regulate, between regulators and politicians to whom they have to report, and between taxpayers and politicians and regulators that they appoint.

The EU is a textbook example of Kane's claims, and only as an example does he state that many European Union countries supervise banks separately from other financial institutions, and some of them do not. Austria, Germany, Denmark, Sweden, the Netherlands and the United Kingdom<sup>1</sup> stand out. (Kane, 2015). It is therefore an integrated and partially integrated system of banking and financial market supervision in general.

Generally speaking, a healthy and stable financial system, and the banking sector in general, is a necessary precondition for a sustainable and development-oriented real sector. Banks are the key institutions through which the monetary policy of the central bank is transmitted.

<sup>1</sup> Refers to the pre-Brexit period.

In that sense, the global financial crisis required a timely reaction of the National Bank of Serbia (NBS) in order to preserve the stability of the financial system, and especially the banking sector as its most important and vital segment. The most important indicator of the aspirations of the National Bank of Serbia and the strategic commitment of the Republic of Serbia to European integration was the adoption of the *acquis communautaire* and, in that sense, the fulfilment of accession and convergence criteria. On 9 October 2008, the Republic of Serbia adopted the National Program for the Integration of the Republic of Serbia into the EU for the period 2008-2012, which showed its readiness to harmonize its regulatory frameworks related to the financial sector with the *acquis communautaire* (Jemović, Krstić, 2015).

In the following pages, we will have a look at the legal and legislative harmonization of the NBS with the financial regulatory in the EU and generically list the recent and current activities of the NBS. Namely, along with regulatory initiatives in the field of preserving financial stability in EU countries, the NBS paid great attention to harmonizing its financial stability policy with the ESCB's financial stability policy. In this regard, in order to preserve and strengthen the stability of the financial system and improve the function of banking supervision, the National Bank of Serbia has been working continuously to improve the regulatory framework and supervisory activities. The process of supervisory assessment is emphasized, which combines the results of all conducted supervisory activities aimed at an individual bank. This process is characterized by the establishment of a single assessment for the bank, and, if necessary, the undertaking of supervisory measures by the National Bank of Serbia. Also, the principle of dialogue with banks in case certain irregularities in operations are identified, division of banks into groups, monitoring of basic risk indicators, analysis and review of business model, adequacy of corporate governance, assessment of capital adequacy and liquidity (<http://www.nbs.rs>, accessed 20.04.2020).

Special activities of the NBS are aimed at the adoption of legal changes regarding the restructuring of banks. The aim was to minimize the use of budget and other public funds in order to preserve financial stability. This primarily refers to the regulatory tendencies embodied in the concept of the EU Banking Union.

Therefore, potential losses due to the bank's failure will be borne first by the bank's shareholders and creditors, in compliance with the prescribed restrictions and protection mechanisms, so that the bank's shareholders and creditors will have to be aware of the risk of losses they will suffer in the event of bank failure. In the restructuring process, the NBS may choose instruments or a combination of instruments that could best achieve the objectives of the restructuring. It is expected that this will significantly contribute to market discipline (<http://www.nbs.rs>, accessed 20.04.2020).

The preventive action and adequate preparation of banks, the NBS and other competent institutions, which is also a characteristic of harmonization of financial regulations of the Republic of Serbia with the EU *acquis*, refers to the prescribed obligation for banks to develop recovery plans to be applied in case of deterioration of its financial condition, and with the aim of further

improving sustainable business and an appropriate financial position (<http://www.nbs.rs>, accessed 20.04.2020).

It is important to point out that the NBS has also signed a multilateral agreement on cooperation with the European Banking Authority (EBA) and the supervisory authorities of the countries of Southeast Europe. This agreement establishes a framework for cooperation and exchange of information in the field of banking supervision.

The previously presented arguments in the field of adjusting the institutional capacities and the legislative framework of the NBS indicate a high degree of compatibility of our central bank with the standards and principles of the ESCB, which is a good precondition for faster accession to the EU and then the EMU (Jemović, Kristić, 2015).

In addition to all the above, Serbia is not a member of the EU, so it cannot be a member of the SSM and this puts it in an additionally awkward position: "Neither the local banks owned by international banks based in the EU, nor the domestic banks owned by the banks based outside the EU are subject to ECB supervision" (Drvendžija, 2015).

## Conclusion

Based on all of the above, we can infer that a common banking system in the EU should imply something more than banking supervision. This is the only way to enable the financial survival of the EU. Thus, a common deposit insurance framework would be a condition that should further ensure equal procedures for what is done with banks that do not meet their obligations. In the absence of this type of community in the EU, money can flow from the banking systems of „weak” countries to banks operating in „strong” countries. This directly and proportionally further weakens those who are already weak. Therefore, it is necessary that the regulatory system is primarily aimed at encouraging expansion in countries where it is necessary to stimulate the economy and limit lending in overheated economies. This, in turn, means that it is necessary to expand the scope of authority and the range of instruments, because, otherwise, without such flexibility and adjustment the whole system can prove to be destabilizing and encourage further weakening of already „weak” economies. However, proving the success and efficiency of the constituted financial architecture discussed in this paper requires time and the identification of „best practices”, until then, the rigid implementation of legislature can produce huge consequences on lending, the NPL ratio, affirmation of banking systems fragility and sustainability of the already weakened, politically conflicted construction of EU.

When we talk about Serbia's place in this architecture and its very sensitive international economic relations, we can expect a negative impact on attracting promising investors to our banking sector. However, the existing banking groups that are supervised by the ECB can be motivated and strategically oriented to reduce their exposure to markets such as Serbia, which we can qualify as small. In this sense, it is extremely important that supervision in

Serbia is performed operationally according to the same criteria as in the EU, gradually and consistently according to current administrative, institutional and regulatory capacities, as well as with a strict focus on developing competencies of financial experts employed in financial market control institutions and the banking sector.

However, we cannot escape the impression that the development of regulations in the banking sector of the Republic of Serbia will be adjusted in phases that will be characterized by a rigid, constructivist, „sovereign - national” relationship at the EU level.



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