

NORMATIVE REGULATION OF BANKING UNION IN EUROPEAN MONETARY LAW

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Abstract

The subject of analysis in this study is the identification and analysis of the normative framework of a future banking union in the Economic Monetary Union. In this sense of the word, the research emphasis is on the issues concerning the need for establishment of a banking union, the prerequisites that must be met in both the national and the EC law, the advantages and disadvantages of using this supranational coordination mechanism of economic policy and its functions in terms of financial and economic disorders. In next paragraph, attention is paid to the new tasks of the main EU institutions in the process of implementation of the banking union, primarily European Central Bank, European Commission and European Parliament, where a general conclusion notes a need for their active role in implementing the concept of a banking union would not thus preserve legal certainty and to ensure optimal consumer protection, property, rights of depositors and conservation of overall economic stability.

Key words: banking union, financial stability, the European Central Bank, monetary law, repair mechanism.

НОРМАТИВНО РЕГУЛИСАЊЕ БАНКАРСКЕ УНИЈЕ У ЕВРОПСКОМ МОНЕТАРНОМ ПРАВУ

Апстракт

Предмет анализе у овом раду јесте идентификовање и анализа нормативног оквира будуће банкарске уније у Економској монетарној унији. У том смислу се у истраживању акценат ставља на питања која се тичу потребе за формирањем банкарске уније, предуслова који се морају испунити – како у националном тако и у комунитарном праву, предности и недостатака коришћења овог наднационалног координационог механизма економске политике и његових функција у условима финансијских и привредних поремећаја. У даљем тексту посвећује се пажња новим задацима главних институција ЕУ у поступку имплементације концепта банкарске уније, превасходно Европске централне банке, Европске комисије и Европског парламента, где се као општи закључак уочава и намеће потреба за њиховом активнијом улогом у примени концепта банкарске уније не би ли се тако сачувала правна сигурност и обезбедила оптимална заштита потрошача, имовине, права депоната и очување укупне привредне стабилности.

Кључне речи: банкарска унија, финансијска стабилност, Европска централна банка, монетарно право, санацијски механизам.

INTRODUCTION

The crises in the euro zone are not only internal problems for the monetary union because external dimension of the crisis implicates the legal obligations of the euro zone countries under the international monetary law (Feibelman, 2013, p. 102). This obligation leads to emergent closing of legal gaps in primary law and further integration within the EMU in the sense of fiscal and banking union. Banking Union is an expression of deeper financial integration that is implemented under the auspices of the European Council and includes a set of legislative mechanisms that are used for the centralization of banking policy by creating an integrated European banking system (Conclusion European Council of 28/29 June 2012, p.1-3). The formation of a banking union is not a goal *per se*, but together with the concept of fiscal union, the EU competitiveness and political union makes the conditions for the final realization of economic and monetary union. The conditions relating to the formation of a banking union are stemming from the results of economic policy coordination in the field of fiscal union. The centralization of banking supervision and control at the EU level requires limiting some dimensions of fiscal sovereignty and a certain form of political union, which would provide an answer to the problem of political structural deficit in the EU (Banking Union and a Single Banking Supervisory Mechanism, 2012, p. 10-15).

As the existing national systems of supervision and regulation of banking operations in the global economic and financial crisis proved to be ineffective, the European Commission has launched a series of initiatives aimed at forming a banking union. The purpose of these initiatives was to impose strict capital requirements to banks, more effective protection of depositors and establishing common rules for banks during the crisis period. The European Commission proposed 28 *new rules* for the responsible management of the financial sector, whose implementation could prevent the shifting burden on taxpayers because of the irresponsible behavior of banks (Banking union: restoring financial stability in the Euro zone, 2014). The initiatives have resulted in the adoption of common rules established by the European Council Directive on capital (prudential) requirements and the Directive on the plan for recovery and rescue banks in times of crisis. Significant progress in fiscal consolidation has been made by the Directive on a common deposit insurance fund, which provides legal protection to depositors (whose saving exceed 100.000 euro) in the same way and in all circumstances (Directive on Deposit Guarantee Scheme - DGS MEMO/14/29).

THE INSTITUTIONAL STRUCTURE OF THE BANKING UNION

The legal basis for the creation of the banking union is article 114. & 127(6) of the EU Treaty. The structure of the banking union is based on three pillars: 1) Single Supervisory Mechanism 2) Single Resolution Mechanism and 3) Common Deposit Guarantee Fund.

1) The first pillar of the banking union (Single Supervisory Mechanism-SSM) is established by the agreement between the European Parliament and the European Council on October 2013. This mechanism operates within the European Central Bank and includes all member countries banks in the euro zone (Council Regulation No. 1024/2013 on conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions). ECB performs direct supervision of the so-called major banks, while indirect supervision is carried over to other banks across national audit agencies working under her guidance. New position of the ECB in banking union is complementary to the competencies of the *European Auditor Agency*, which was founded in 2010. Its main task concerns the creation of uniform rules for work and rehabilitation of banks accord respecting all the differences that exist in the banking industry of the Union. In that sense, it is very important to work on promoting best supervision practice within the single market and the adoption of the *European supervisory manuals* with common methodology and forms of control. A manual should regulate that all authoritative issues are within the competence of the ECB and the area of consumer protection. Although the manual is not a legally binding document, its implementation must not be subordinated to the discretion of the subjects of monetary policy.¹

The *main goal* of the SSM is to exercise increased supervision over the banking sector, while the *secondary objectives* are those of strengthening the stability of banks and financial contribution to the integration of the single market. These objectives can be achieved through the control of compliance of credit institutions with the prudential conditions, and identifying potential causes of financial instability. The European Central Bank is controlling comprehensive banks balance sheet, asset quality and testing the bank's resilience to stress in order to determine the capacity of banks to withstand potential disturbances. The EU member states which are not participating in the euro zone can participate (*on a voluntary basis*) in the work of the supervisory mechanism. The principles of banking supervision in the banking union depart from the use of best practices, compliance with decentralization and integrity, homogeneity, consistency within the single market and the principle of independence and accountability. Also, we must take into account the principle of sharing risks and proportionality and the existence of an adequate level of control activities of all credit institutions (Guide to banking supervision, 2014, p. 7-13).

¹ Its implementation must be based on a moral obligation.

2) Agreement on *Single Resolution Mechanism (SRM)* was signed in October 2014. The main objective of this act is to create conditions for an orderly bankruptcy of banks at a minimal cost to the taxpayers and the domestic economy (Regulation No. 806/2014 on establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of the Single Resolution Mechanism and the Single Resolution Fund). Similarly, as the first pillar of the banking union, the ECB will in the second pillar indirectly carry out their tasks over the largest banks, while the national authorities control the work of other banks. Scope of application of the second pillar of the banking union covers all credit institutions with a business based in the Member States. In order to mitigate the possibilities for the exercise of regulatory arbitrage between the banks that are not in the system restoration mechanism, it is necessary to make efforts in the harmonization of regulations and issuance of Single resolution board (Eijffinger, 2013, p. 53-55). Common rules for banks ensure that banks take moderate risks in business under the threat of sanctions closure. In this way we want to allow banks and their shareholders to pay the risk for impairment when taxpayers are spared. The objectives of the SRM relate to restore confidence in the banking sector, control influx of customers in the bank, reduce the negative correlation between the banks and the state of division and remove the financial services market. Certainly, measures within the SSM must be applied to all systemically important institutions (without exception) which implies that the decisions of the Single Resolution Board have *stronger legal force* than the decisions of national authorities (otherwise it would come to irresolvable conflicts of interest). This directive provides that national entities of economic policy reserve the right to make independent decisions on the implementation of actions that have the function of supporting common rules. The reason for the existence of common rules is reflected in the fact that banks in the single market are related, so in the absence of the unique mechanism (during period of crisis) countries which participate in the SRM had stronger negative systemic impact on non-member states. *Ratio legis* of the SRM is to provide a neutral approach when deciding on the rehabilitation of banks, which will have a positive impact on the reputation of the institutions of the banking union and limit the occurrence of negative spillover effects.

The Directive establishes *common funds* to finance the rehabilitation of banks in the *Single Resolution Fund*. Funding, hypothetically, could remain at the national level only for a short period of time, as it would for longer period affect the investors' lending conditions based on the criteria of the business of the registered banks, not according to their creditworthiness. The Fund should be financed by contributions from banks at the national level, where decisions focused on the use of funds must not jeopardize the fiscal responsibility of the Member States. Affecting Funds aims to establish a uniform administrative practice in the process of the rehabilitation of banks

and overcome differences in national practices (Regulation EU No. 806/2014, art. 19).

The decisions within the SRM bring *Single Resolution Authority*. This body adopts a recovery program, if in the consultation with the ECB it finds the conditions for starting a remediation process. Decision board shall enter into force within 24 hours, unless the Commission or the Council raise objections within the same period. In order to strengthen the independence of this body in a banking union, it is envisaged that the complaints are limited solely to the existence of public interest and material changes affecting our use of the amount of the Fund. This is an urgent manner making justice specific circumstance in the monetary union when it must promptly eliminate the causes of potential banking crisis (Regulation No. 806/2014, art. 20). The Committee shall have the status of an independent authority in the EU law with a particular structure. The Board consists of the President, Vice President and four independent members chosen on the basis of professional qualifications. The Committee shall meet in executive and plenary sessions. At the executive session, the Board shall perform all the tasks related to the rehabilitation process, taking into account the fact that the nature of the information in restoration plans specific to each institution. The rule is that the first applicant for the funds is not entitled to priority in the allocation for which the Commission supervises the work of the Committee. In the circumstances where restoration program does not contain a risk or a short term and a one-time extension of loans to solvent institutions, the decision may be taken at the executive session. At the plenary sessions are also issued guidelines for non-discriminatory implementation of decisions on rehabilitation.

3) The third pillar of the banking union is shaped by the Directive on the single deposit insurance adopted on 16th April 2014. The adoption of this Directive aims to ensure the protection of depositors of the bank's bad business, as well as transfer money to credit institutions in countries with better security deposit. The existence of different rules about the amount of deposit insurance in conditions of the global financial crisis led to a *reduction of banks liquidity*, as depositors choose the highest rate of deposit insurance against optimal deposit products customized passed amount (Directive 2014/49 of the European Parliament and the Council on deposit guarantee schemes, art. 5-19). Its ratio is reflected in protecting free competition in the single market and therefore needs to define a unique amount of the deposit protection at the EU level. Practically, it is necessary to establish the same level of coverage for all depositors regardless of whether their currency is the euro or not, provided that in determining the amount of protection must take into account the interests of depositors and

financial stability.² It may be noted that this Directive is in order to protect private individuals, not the state authorities or other financial institutions. The reason for this action of the European legislator is in the fact that legal persons have privileged access to credit. However, the decree stipulates that Member States are free to decide on deposit insurance of local entity authorities up to the amount of 500.000 euro, including the loss of non-profit organizations.

THE FUNCTIONS AND TASKS OF THE COMMUNITY INSTITUTIONS IN THE BANKING UNION

The Banking Union in the EMU is not required solely for the purpose of solving the problem of insolvent banks and depositors protect, but also to strengthen the overall concept of monetary union. In a situation where there is a sufficient degree of freedom of movement of labor and product markets, coordination of economic policies within the banking union has the capacity to strengthen the function of stabilizing the financial sector, which, as a rule, absorbing at least two-thirds of all shocks in the successful transfer unions (Geeroms, Karbowink, 2013, p. 22-23). In this sense, *we agree* with the views that a lesser degree of centralization of fiscal policy is necessary for the successful operation of the SSM. Single resolution mechanism is second-best solution for coordination of fiscal policies in times of crisis for which the Member States must adopt certain legislative acts that create conditions for effective decision-making and implementation of decisions in all three pillars of the banking union.

The global financial crisis revealed the high degree of correlation of bank financing and public debt crisis. The decentralized supervision of bank operations by the national agencies had to be replaced by centralizing supervision. In financial theory, it is referred the *three forms* of centralization of banking supervision:

1. *The model of cooperation and coordination of between states authorities;*
2. *Model of consolidated (lead) supervisor;*
3. *The model of supranational leaders* (Ferrarini, Charel, 2013, p. 20-22).

These models differ both in terms of political and legislative feasibility, and in terms of their efficiency. The model of cooperation does not require substantial changes in the allocation of tasks and responsibilities of the subject of economic policy, which is in fact the scope of the model loaded diverse interests of national authorities. Model of lead supervisor is

² In the interests of legal certainty it is provided that the state required by the higher amount of the deposit protection scheme before the entry into force of the Regulation, have until 31th October 2018. gradually adapt to the height of insurance.

difficult to accept in practice, because it requires that the main supervisor is delegated to other supervisors group of related banks. The above-mentioned shortcomings of national supervision can be replaced by the model of supranational audit institutions, which includes certain modifications of *acquis communautaire* and territorial application of restrictive monetary and financial legislation.

The coordination of economic policy in terms of the banking crisis gained the new dimension to the education of the European System of Financial Supervisors as follows: European Systemic Risk Board at the European Central Bank, European Banking Authority, European Insurance and Occupational Pensions Authority and European Securities and Markets Authority. The formation of this centralized system at the level of the EU created the initial conditions for improving the effective cooperation between the competent bodies of supranational supervision (this does not mean that they are exempt from national agencies carrying out daily monitoring in accordance with the principle of subsidiarity and proportionality). European Securities and Markets Authority monitor all financial operations that could potentially threaten the stability of the financial markets, while European Banking Authority and the European Insurance and Occupational Pensions Authority monitor bank recapitalization and test the ability of banks to adapt to the conditions of the so-called “*crisis stress tests*” (Vukadin, Labus, 2012, p. 345-346). Implementation of future pillars of the banking union is particularly significant administrative work of European Banking Authority (EBA), where for the first time performed the harmonization of common rules for the operation of banks and technical standards for their effective application. Although the work of EBA been significant progress in terms of uniform application of law (as for economic policy coordination is very important), the different treatment of national bodies coordinating the implementation of the rules was affected by the lack of visible results. European banks' management in the field of coordination to perform its role of data collection in relation to the stress tests in order to plan and develop uniform procedures, technical standards and strengthening of the entire banking system of the Union. In the case of disputes in the field of cooperation, coordination or joint decision-making of different national bodies in the field of banking policy, the EBA performs the function of a *mediator*. If the parties do not act according to instructions, the EBA may impose decisions directly applied. These decisions may be appealed to the second instance court, except on the occasion of its decisions may initiate proceedings before the Court of First Instance or the European Court of Justice (Ferrarini et Al., 2013).

Directive on recovery and rehabilitation of banks and investment funds is determined by relevant procedures and programs in recovery and rehabilitation. By adopting a resolutely abolished the practice of funding operating losses of banks and other institutions through state funds. In this

respect, it clearly stipulates that the obligation of financing the foreign creditors and shareholders (Directive 2014/59 on establishing a framework for the recovery and resolution of credit institutions and investment firms). The directive pays special attention to the fight against moral hazard, where each institution with “bad business” should allow time to market provided that it does not cause systemic disorder. The goals of banks rehabilitation must be directed to the protection of property and rights of depositors and public funds (when direct financial assistance may only be used in exceptional circumstances). Subjects of economic policy are required to start a rehabilitation procedure to consider the conditions for the implementation of rehabilitation proceedings in the ordinary course of bankruptcy proceedings due to insolvency. In the process of rehabilitation, care should be taken not to exercise excessive interference in client property. The Directive established mechanism of *ex post comparison* of ways of dealing with customers and the ways that could be applied in the normal course of insolvency proceedings. If it is determined that the receivable was paid a lesser amount than he would receive in a regular procedure, clients are entitled to the payment of the owed difference. The Member States have liberty in defining terms and method of payment.

The evidence of an active role of the Community institutions in shaping the new coordination mechanisms is the activity of the European Parliament to operationalize the concept of a banking union. During 2014, the European Parliament adopted the *special legislative acts in the monetary law* of the EU to integrate the principles of prudential capital requirements for all credit institutions in accordance with the application of internationally accepted principles. These legislative measures are particularly elaborate ways to strengthen the capital of banks (all levels of liquidity), as well as the incentives for lending through the development of small and medium-sized enterprises. Parliament also has the *right to control* all pillars of the banking union. Thus, for the first time, introduces the control of operation of the European Central Bank in the segment concerning the exercise of the audit function and control the work of a single restoration committee which was established by a special agreement between the European Parliament and the European Central Bank.

The successful concept of economic policy coordination in the banking union must be based on an integrative approach which includes the sphere of monetary policy and macroprudential revision and unique program to exit the crisis. The consequences of the global economic and financial crises have highlighted that the traditional notion that the primary objective of the ECB (in means of monetary stability) requires review, as the supreme monetary institution occupies a central place in achieving financial stability. The objectives of monetary policy are focused on price stability, while the objectives micro prudential revision focused on consumer protection (El-Agraa, 2011). On conditions of the crisis, the banks have a key

role in maintaining the stability of the system. No matter whether the monetary policy objectives focused on retail consumer prices, and the objectives of financial stability at the price of the property, it is logical that the ECB in determining the interest rate has to take into account the financial conditions (regardless of whether we admit it or not fiscal responsibility). In the realization of the objectives of micro and macro prudential policy it is necessary to make certain trade-off(s). No matter what micro prudential security contributes to the reputation of the system, in moments of crisis, priority must be given to overall security versus individual security (Schoenmaker, 2013, p. 2-4). When a banking union is flourish to the full extent it will contribute to the relocation flows credit risk of weak banks in the balance of government bonds. However, a big challenge for policymakers will be to establish procedures for the proper treatment of venture capital and the provision of liquidity risk government bonds (Acharya, 2013, p. 48).

The central place in the future banking union belongs to the European Central Bank, which must have more control to solve the problem of coordination. In this sense, it must be the “*bank of last resort*” (which makes monetization of public debt), even if this increases the risk of the occurrence of moral hazard. However, the ECB has the authority to decide on the bankruptcy of insolvent bank or has information to make such decisions. On the other hand, the ECB may be subject to significant waste when performing this function, as this cost may be unsustainable. A large number of countries resist the inclusion of the national central bank in the system of a single deposit, which Wyplosz indicates that a partial banking union is nothing better than the absence of such a mechanism. If the government makes a decision on the restructuring of the public debt, it can cause high costs in the banks' assets, due to the fact that banks hold a large amount of bond debt. The ECB in such circumstances must provide liquidity for all banks, because if they took care only of the solvency of major banks it would lead to the collapse of the whole banking sector (Wyplosz, 2012, p.19-22). It is important that the ECB strategy become less unclear and adoptable to dynamic financial innovation (Issing, Gaspar, Angeloni, Tristani, 2004, p. 108).

The realization of the concept of a banking union requires a longer period of time, because it is necessary to make a clear demarcation of functions of supervision of the ECB in the function of preserving monetary stability, define clear tasks of European and national supervisors and resolve the issue of financing rehabilitation funds. On that road, it is good that the ECB independence provisions are strictly formulated and written in stone, stopping megaphone diplomacy (Smits, 2010, p. 1626). An additional problem is the fact that the European Stability Mechanism operates *ex post* and includes preventive measures, while the fiscal consolidation (established by fiscal agreement) makes it unfeasible in many countries. For this reason, we can hear ideas about the constitution of the *European Debt Agency*, which

would be applied in cases when public debt exceeds 60% of gross domestic product (GDP). The agreement about this agency would establish a temporary *joint responsibility*, that would last until the moment when purchase surplus exceeded financial convergence criteria for recovery of fiscal responsibility States under the overall guidance and coordination of the reformed Fiscal Stability Pact. The advantage of having this special coordination mechanisms would be in its *transparency*, which implies a clear indication of the risk between creditors, suspended allocation of aid and full democratic legitimacy (Buch, Weigert, 2012, p. 29-32).

CONCLUSION

Realization of the concept of a banking union is not possible without qualitative changes in the application of a fiscal union. The efficient functioning of the SSM requires a certain degree of centralization in the management of fiscal policy, which does not currently exist in the Union. The condition of centralization of fiscal policy is not achievable without a political union, which would eliminate the structural democratic deficit in the Community institutions as the main determinants of delaying effective coordination.³ Effective coordination of economic policy in terms of the banking union is conditioned by the previous solution of conflict between the principles of efficiency and equity rights. Namely, if there is no possibility that the bank's operations go back under the wing of rules, the SSB makes a decision on the closure of the bank. If there is the slightest possibility that the bank will fix their business without the intervention of the Community bodies, the decision of the SSM may represent a form of confiscation of banks property. This problem is especially noticeable when the market is dysfunctional and when the market value of the property is considerably below the present discounted value.

REFERENCES

- Acharya, V.V. (2012). Banking Union in Europe and Other Reforms. In: Banking Union for Europe: Risks and Challenges (ed. T. Beck), Centre for economic policy research, A VoxEU.org Book, 2012.
- Buch, C.M, Weigert, B. (2012). *Legacy problems in transition to a banking union*. In: *Banking Union for Europe: Risks and Challenges* (ed. T. Beck), Centre for economic policy research, A VoxEU.org Book.
- Council Regulation (EU) No. 1024/2013 on conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, Official Journal of European Union, L 287/63.
- Directive 2014/49/EU of the European Parliament and the Council of 16 April on deposit guarantee schemes, Official Journal of European Union, L 173/149.

³ Banking Union and a Single Banking Supervisory Mechanism-Monetary Dialogue, 2013.

- Directive 2014/59/EU of the European Parliament and of the 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, Official Journal of European Union, L 173/190.
- El-Agraa, M.A. (2011). *The European Union: Economics and Policies*, Ninth edition, Cambridge: Cambridge University Press.
- Eijfinger, S. (2013). *Single Resolution Mechanism*. European Parliament, Directorate-General for Internal Policies, Policy Department A: Economic and Scientific Policy, 2013.
- Ferrarini, G., Charel, L. (2013). *Common Banking Supervision in the Euro zone: Strengths and Weaknesses*. Law Working Paper No. 223/13, ECGI Working Paper Series in Law, 20-22.
- European Council, European Council Conclusion of 28/29 June 2012, EUCO 76/12.
- European Commission, *Banking union: restoring financial stability in the Eurozone*, MEMO/14/294, Brussels, 15 April 2014.
- European Parliament, Directorate General for International Policies, Policy Department A Economic and Scientific Policy, *Banking Union and a Single Banking Supervisory Mechanism*, Monetary Dialogue, October 2012.
- Feibelman, A. (2012). Europe and Future of International Monetary Law, *Transnational Law and Contemporary Problems*, vol. (22), 101–137.
- Geeroms, H., Karbowink, P. (2013). *A Monetary Union Requires Banking Union*. Bruges European Economic Policy Briefings, No. 33, College of Europe, Brugge, Natolin.
- Guide to banking supervision, European central Bank, Euro-system, September, 2014.
- Issing, O., Gaspar V., Angeloni, I., Tristani O. (2004). *Monetary Policy in Euro Area*, Cambridge: Cambridge University Press.
- Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 on establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, Official Journal of European Union, L 225/1.
- Regulation (EU) No. 806/2014 of the European Parliament and of the Council of 15 July 2014 on establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No. 1093/2010.
- Regulation (EU) No. 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No. 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013, Official Journal of European Union, L 287/5.
- Schoenmaker, D. (2013). An Integrated Financial Framework for the Banking Union: Dont Forget Macro-Prudential Supervision, European Commission, European Economy, Economic papers No. 495.
- Smits, R. (2005). The European Central Banks Independent and its relations with economic policy makers, *Fordham International Law Journal*, Vol.31, 1614–1636.
- Вукадин, Е., Лабус, М. (2012). *Економска политика за правнике* [Economic Policy for Lawyers]. Правни факултет Универзитета у Београду.
- Wyplosz, C. (2012). *Banking Union as a Crisis-Management Tool*. In: *Banking Union for Europe: Risks and Challenges* (ed. Thorsten Beck), Centre for economic policy research, A VoxEU.org Book.

НОРМАТИВНО РЕГУЛИСАЊЕ БАНКАРСКЕ УНИЈЕ У ЕВРОПСКОМ МОНЕТАРНОМ ПРАВУ

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Резиме

Банкарска унија представља израз продубљене финансијске интеграције који се реализује под окриљем Европског савета и обухвата скуп законодавних механизма којима се врши централизација банкарске политике стварањем интегрисаног европског банкарског система. Формирање банкарске уније не представља циљ *per se*, већ заједно са концептом фискалне уније, уније конкурентности и политичке уније чини услове коначне реализације економске и монетарне уније. Услови који се односе на формирање банкарске уније произлазе из резултата координације економске политике на терену фискалне уније. Наиме, централизација надзора и контроле банака на нивоу ЕУ захтева ограничавање неких димензија фискалног суверенитета и одређени вид политичке уније, која би у крајњој линији могла да представља одговор на проблем постојања структурног политичког дефицита у ЕУ. Како су се постојећи национални системи надзора и регулације рада банака у условима глобалне економске и финансијске кризе показали неефикасним, Европска комисија покренула је низ иницијатива усмерених на формирање банкарске уније. Смисао ових иницијатива био је у наметању строгих капиталних захтева банкама, ефикаснијој заштити депонената и утврђивању јединствених правила за рад банака током кризних периода. Структура банкарске уније заснива се на три стуба: Јединственом надзорном механизму (Single Supervisory Mechanism), Јединственом санацијском механизму (Single Resolution Mechanism) и тзв. повезаним механизмима финансирања који обухватају: Јединствени фонд за гарантовање депозита (Common Deposit Guarantee Fund), Систем осигурања новчаних депозита (Single Occurrence Deposit) и заједнички заштитни механизам.

Банкарска унија у ЕМУ није потребна искључиво у циљу решавања проблема инсолвентних банака и заштите депонената, већ и ради јачања целокупног концепта монетарне уније. У ситуацији када не постоји довољан степен слободе кретања рада и производа, координација економске политике у оквиру банкарске уније поседује капацитет да ојача стабилизациону функцију финансијског сектора.

Успешан концепт координације економске политике у банкарској унији мора почивати на интегративном приступу који обухвата сферу монетарне политике, макропруденцијалне и микропруденцијалне супервизије и јединственог програма за излазак из кризе. Последице глобалне економске и финансијске кризе указале су на то да традиционално схватање о томе да је основни циљ ЕЦБ монетарна стабилност захтева преиспитивање, јер врховна монетарна институција заузима централно место и у постизању финансијске стабилности. Циљеви монетарне политике усмерени су на стабилност цена, док су циљеви микропруденцијалне супервизије усмерени на заштиту потрошача, као што су и циљеви макропруденцијалне политике усмерени на очување финансијске стабилности ЕУ. Реализација концепта банкарске уније захтева дужи временски период, јер је потребно извршити јасно разграничење супервизијске функције ЕЦБ од функције очувања монетарне стабилности, недвосмислено дефинисати задатке европских и националних супервизора и решити питање финансирања фондова санације, што имплицира и одређене модификације – како примарног тако и секундарног права ЕУ.