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THEORETICAL OVERVIEW ON NEW ECB COMPETENCIES IN EU MONETARY LAW: THE CASE OF EURO CRISES AND THE COVID-19 PANDEMIC[a]

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Abstract

The subject of analysis in this paper is the identification and analysis of new regulatory competencies of the European Central Bank (ECB) in the field of European Union (EU) monetary law that arose in the circumstances of the Euro crisis (2012) and during the pandemic caused by COVID-19. The first part of the paper points out the traditional regulatory framework of the ECB *de lege lata*, while the following discusses the legal effects of measures applied by the ECB to address the economic consequences of these crises and maintain monetary stability and legal continuity in the application of basic principles of European monetary legislation. The subject of special attention is the monetary analysis of the ECB's program for remediation of the consequences caused by the pandemic, having in mind the fact that it is a non-standard monetary policy measure sui generis whose legal justification will surely be the subject of significant controversies in EU monetary law science and practice. Determining the optimal normative framework in monetary legislation with a clear delineation of competencies within the existing organizational structure of the ECB, according to the authors, is a *conditio sine qua non* of preserving monetary stability and the rights of monetary users.

Key words: European Central Bank, monetary law, monetary stability, PEEP.

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ТЕОРИЈСКИ ОСВРТ НА НАДЛЕЖНОСТИ ЕВРОПСКЕ ЦЕНТРАЛНЕ БАНКЕ У МОНЕТАРНОМ ПРАВУ: ПРИМЕР ЕВРОКРИЗЕ И ПАНДЕМИЈЕ КОВИД-19

Апстракт

Предмет анализе у овом раду јесте идентификовање и тумачење нових регулаторних надлежности Европске централне банке (ЕЦБ) у домену монетарног права Европске уније (ЕУ) које су настале у околностима еврокризе (2012) и током пандемије проузроковане пандемијом КОВИД-19. У првом делу рада, указује се на традиционални регулаторни оквир надлежности ЕЦБ *de lege lata*, док се у даљем тексту разматрају правна дејства мера које ЕЦБ примењује у циљу санирања економских последица поменутих криза и одржавања монетарне стабилности и правног континуитета у примени основних принципа европског монетарног законодавства. Предмет посебне пажње јесте монетарноправна анализа програма ЕЦБ за санирање последица проузрокавних пандемијом имајући у виду чињеницу да је реч о примени нестандардне мере монетарне политике *sui generis* чија ће правна оправданост сугурно бити предмет значајних полемика у науци и пракси монетарног права ЕУ. Утврђивање оптималног нормативног оквира у монетарном законодавству уз јасно разграничење надлежности унутар постојеће организационе структуре ЕЦБ, према мишљењу аутора, јесте *conditio sine qua non* очувања монетарне стабилности и права монетарних корисника.

Кључне речи: Европска централна банка, монетарно право, монетарна стабилност, ПЕЕП програм.

INTRODUCTION

In the circumstances of the global financial crisis and the pandemic caused by Covid-19, there was a qualitative evolution of the role of the ECB, which as a guardian of monetary sovereignty and financial legitimacy in the European Economic and Monetary Union (EMU) must actively participate in repairing the consequences of the crisis. At the very beginning of the Covid-19 crisis, the European Commission initiated *two* very important and practical communications dealing with the economic consequences. In the *first*, the Communication on a coordinated economic approach, it announced several liquidity measures which complementing EU Member States may take that fall outside the scope of EU state aid rules, while in the second Communication, the Commission announced the so-called "Temporary Framework for State Aid" setting out and broadening the scope of state aid measures that fall within current EU state aid rules (Boon, 2020: 28-29). In the circumstances of the pandemic, the flexibility and dynamism of soft EU law was of great importance given the rigidity (slowness) in changing the norms of hard law and the speed of adaptation to new needs. What generally characterizes the soft law of the EU in the circumstances of crisis is not the lack of reaction, but perhaps a more massive amount of measures undertaken at the community level (Oana, 2020: 669-670). As has been the case in practice in the

past, the EU's broad reliance on soft law norms points to the real and logical need to clarify it (especially the way it is adopted and applied) in order to finally avoid controversy over the lack of democratic legitimacy (especially financial output legitimacy) and often non-complementarity with the provisions of primary law, which is very pronounced in the context of EU monetary law as a *hybrid* branch of law that has the crucial characteristics of both hard and soft law.

The Covid-19 pandemic pointed to the limitations of the health system in terms of undertaking emergency interventions and health policy measures in almost all countries. In that context, time was a particularly prominent factor in taking the necessary measures, but it should be borne in mind that this is a crisis of enormous proportions that was difficult to predict. Certain time-lags and shortcomings in the health system can also be observed in EU law, as well as the different responses of member states in the selection of measures against the pandemic, such as the implementation of open access, quarantine and the introduction of a state of emergency. Such different approaches are explained by the fact that in the past, the measures taken in circumstances of extreme state of emergency are such that they were on the verge of endangering the values of democratic societies, the rule of law and human rights (Zemskova, 2020: 1-3). In addition to the mentioned effects, the pandemic has its economic consequences on the world economy, which is difficult to estimate at the moment.

However, here we must keep in mind the fact that the ECB's competence in EU monetary law cannot be viewed as a static category because in practice it often had to be modified by current circumstances (crises) and gained new dimensions determined by secondary legislation (which are sometimes contradictory to the provisions of primary monetary law). The ECB's regulatory competencies are not definitively rounded, which is why they must be viewed realistically, outside the current legal solutions and shaped by the European monetary legislator so that there is always enough room to maneuver in order to acquire some new competencies necessary in stabilizing the monetary and financial system (Golubović, Dimitrijević, 2021). New activities aimed at combating opportunities for financial crime, preservation of the living environment, the full realization of active and passive procedural legitimacy (monetary law disputes) best confirm this because until recently the position of the ECB in this place was only secondary (indirect).

The ECB act as a politically independent institution, whose work is subject to the concept of assessing democratic accountability. In practice, the ECB's responsibility occurs when they decide on the objectives of the common monetary policy and their hierarchy, when the current monetary policy is published and when the monetary policy actions final responsibility is determined (Haan et al, 2005: 218-220). The guardian of co-

operative monetary sovereignty in such circumstances (at least in the example of EMU), becomes the European Central Bank as the supreme monetary institution with the necessary capacity to protect all legal powers arising from its structure (especially the *lex cudenate monetae*).

The influence that ECB achieves in creating the postulates and preserving the value of European monetary law, being its primary creator, but at the same time the main addressee and interpreter. The implementation of all acts coming from the domain of regulatory competence of the ECB provides strong operational and logistical support in a complex and sometimes controversial process of filling gaps in the field of primary and secondary sources of European monetary law and defines the general direction of banking operations in line with the *acquis comunautaire* (Dimitrijević, Golubović, 2017: 485-488). The ECB's place in the banking union, cooperation with the European Banking Authority, and new competencies in the field of preserving financial stability (more precisely, new functions in the field of collective guarantee for public debt) are also indirectly aimed at protecting monetary sovereignty in EMU. That confirms the tendency of its evolution into a *sui generis* model of "joint sovereignty", whose dynamic and positive components we find in the legality and legitimacy of ECB regulatory acts that enjoy judicial protection (Dimitrijević, 2017: 500).

A BRIEF OVERVIEW OF THE CONCEPT OF ECB FUNCTIONAL INDEPENDENCES

Effective European monetary law cannot be imagined without guaranteeing the independent position of the ECB, defined negatively, as an obligation of states to refrain from issuing instructions and orders and as an obligation of the ECB to directly or indirectly seek or receive orders from member states or other EU institutions (Ziloly, 2011). In this context, the premise is that in modern democratic society, the national representative body bears the ultimate responsibility for the results of the monetary policy, because it is the parliament that adopts the laws according to which the central bank organizes its work and manifests competence (Amtenbrink, Jakob De Haan, 2002: 65-75). Consequently, the parliament may derogate from the laws that determine the jurisdiction of the bank in response to certain measures taken by the bank. From the aspect of economic analysis of law, this connection corresponds to the setting of the *principal-agent problem* and the phenomenon of *information asymmetry* that occurs in the realization of delegated powers (in this case from the parliament to the central bank). However, at this point, we must agree with the views of the authors who believe that the different competencies of the ECB and the Community are not compatible for comparison, which is why there is no place to apply this setting (Ziloly, Semayr, 2000: 591).

The ECB, together with the International Monetary Fund (IMF), is the primary subject of International and European monetary law, where dilemmas regarding the (non) existence of competence to adopt certain acts, i.e. increasing monetary disputes, end in its favor, which confirms the thesis that the ECB cannot be an agent of the European Parliament in the realization of a centralized monetary policy, but on the contrary, an *actor primus* (Dimitrijević, 2019). In the case of EMU, most authors emphasize that the transfer of monetary sovereignty (from national to supranational level) was realized without the contextual transfer of legislative and regulatory powers. The controversy in this area arises from the fact that the *lex monetae* has been transferred to the level of EMU, but the supervision of payment operations remains at the level of monetary union member states (Vardi, 2011).

The institutional independence of the central bank is also guaranteed by the constitution, so the transfer of such a concept from national to supranational monetary law is quite logical. However, all constitutional texts confirm only the institutional and not the functional independence of the central bank, which emphasizes that in the future it must be explicitly determined by an act of the highest legal force (Goodhart, 2005: 206-207). The main arguments of such an understanding start from the need to reduce the influence of the political factor in meeting the public needs of citizens, but with the simultaneous contribution of the central bank to previously established goals in the field of public services (price stability). It is obvious that the number of targets for which central banks have jurisdiction are becoming sophisticated, and we cannot say that there are competitive relations between them and no place for a potential trade-off. *In our opinion*, we can speak about a complementary relationship between the majority of targets. This tendency is especially noticeable in the example of the ECB, which, like the IMF, creates its right, which is based on secondary legislation, where its competence in the field of general fiscal policy is visible. In this regard, we must keep in mind the actions of the central bank in the role of the, so-called, bank of the last resort (regardless of the legal prohibition of debt monetization), which also implies its action in the field of public debt management policy which is no longer a constitutive segment, neither monetary nor fiscal policy, but an independent and highly developed special subsystem of general economic policy.

The structure of the EU banking union contains the Single Supervisory Mechanism and Single Resolution Mechanism, but at this moment, this concept of centralized banking policy is not fulfilled. In order to finish the concept, it is necessary to avoid the shortcomings of national bank supervision and to provide solid protection of state funds from financial pressures due to the restructuring of insolvent banks and protection of banks from lending requirements for fiscal (budget) deficits (Binder,

Gorstos, 2016: 10-12). By creating the conditions for the work of the Single Supervisory Mechanism as an initial step in the denationalization of banking policy in the EU, the ECB has greatly expanded its competence in the European monetary law. The adoption of the Agreement on the Establishment of the Single Supervisory Mechanism in European Monetary Law has finally created a system of accountability in the banking sector that has real elements of political, financial, and systemic responsibility. The ECB is the *primus inter partes* in this system, and works together with representatives of the national central banks and audit bodies represented on the Governing and Advisory Boards (Ter Kuile et Al, 2015: 155). This system puts the work of the ECB under more coherent judicial control, both at national and supranational instances.

CHANGES IN THE CONCEPT OF PROHIBITION OF PUBLIC DEBT MONETIZATION

The supervisory function of the central bank would be superfluous in the world of free banking, understood as a concept in which banks are treated as classic market entities in the free market and where there are no legal and economic barriers to entering the banking services market. Namely, in such a scenario, the only limitations would be those set by the state (i.e. government and parliament) as the basic subject of economic policy in the context of the implementation of the principles of liquidity, profitability and efficiency that must otherwise be met cumulatively for their successful business (Rothbard, 2008). Nevertheless, in the current economic circumstances, the presence of the central bank in this market is a guarantee of ensuring the concept of the rule of law and fulfilling the functions of the financial market.

The European Central Bank nowadays has the function of a "last resort bank".[1] This function implies that the central bank approves loans to all institutions with liquidity problems (Dimitrijević, Golubović, 2020). In practice, the central bank can charge certain penalties through the request to make a certain type of pledge from commercial banks and discretionary assessment of loans (non) approval (Steinbach, 2016: 364). The

[1] In order to consistently eliminate and control the negative effects of debt crises, that was necessary.

legal basis of this new function of the ECB is Article 127 (5) of the Treaty on the Functioning of the EU, which determines the conditionality of monetary policy and financial stability within the EU, as well as Art. 14 of the Statute of the ESCB which initially had more of a safeguard clause to ensure the position of the national central banks of the countries participating in the ESCB in case of liquidity problems because due to the limitation of monetary sovereignty it must be resolved by the ECB.

Considering that such conduct is contrary to Art. 127 of the Treaty, i.e. the prohibition of collective guarantee for financially troubled member states, in practice, can come from a serious misunderstanding. In this regard, the question arises whether the measures of financial support are in the sphere of monetary policy or state aid policy, i.e. the policy of financial supervision for which the ECB has no competence because it remains at the national level (Dimitrijević, Golubović, 2021). Today, however, it is clear that the ECB must have all the necessary information on the state of the financial system of a particular country and in this regard, it must perform the aforementioned function of the bank of last resort. Although *we agree* with the views that the ECB must also possess the mentioned competencies, it is necessary that a restrictive approach is applied in the implementation of these new competencies and that this function remains only secondary. The consequences of an extensive approach could potentially affect the collapse of international monetary stability and spill its consequences on the global monetary order, threatening to destroy its achievements, which reflect the axiology of the international monetary law.

When it comes to the ECB's participation in monetary disputes, we must note that the structural and functional dualism of the ECB, as well as its organizational complexity within the communicated structure, also impose a prior determination of the ECB's constitutional position. The European Court of Justice, by directly applying the provisions of the Lisbon Treaty, has unequivocally established the independence of the ECB in a dispute with the OLAF. Namely, the court explained its verdict by interpreting Article 108 of the EU Treaty, which represents a kind of "barrier" of the ECB from various political influences, so that it could effectively perform the tasks entrusted to it by

the Treaty and the Statute of the ESCB. In this case, the Court of Justice finally determined the content of the legal standard "EU financial interests," clearly emphasizing that they (according to Article 280 of the EU Treaty) do not refer to only expenditures and revenues of the single EU budget, but also expenditures and revenues of other community institution (agency and office). As the ECB falls under the institutional structure of the ESCB, i.e. the EU, which means that the ECB also has its revenues and expenditures.

The European Court of Auditors may control the accounting records of the ECB, but with the approval of the EU Council and per Art. 28-30 of the Treaty which limits this control to an examination of the operational efficiency of work. At this point, we must mention that monetary disputes represent a special category of disputes in which the actions of the central bank are decided, more precisely, the administrative law nature of the acts of the supreme independent monetary institution is decided (Hoffman, 2015: 2-5). The fact is that in contemporary monetary law, central banks resemble independent agencies that enjoy a significant place in the country's constitutional order and whose decisions have important implications for the budget and public finances, and whose competencies are elaborated by special laws and bylaws. Until the outbreak of the debt crisis, the ECB's procedural legitimacy was more sporadic and limited to the consequences of inadequate macroeconomic dialogue with other community institutions, primarily with the European Commission. With the adoption of new institutional mechanisms, there is a significant redefinition of the basic principles of European monetary law (primarily in the domestic *lex monetae* in monetary transactions, extraterritorial application of monetary sovereignty, and non-compliance with the provisions on collective responsibility for public debt, i.e. a different view of the *lex contractus*, which caused far-reaching monetary disputes. By analyzing these cases from case law, we can see the best confirmation of the institutional, functional, and financial independence of the EU's supreme monetary institution, and from the outcome of disputes identify its undisputed authority in shaping and derogating monetary law where monetary stability appears as a *conditio sine qua non of* economic stability of the euro zone. We

can notice that in monetary disputes, the requirement to assess constitutionality and legality suffers from certain restrictions, which was confirmed by the European Court of Justice in its decision in the case of the legal harmonization of ECB measures on the purchase of bonds on the secondary market. It is clear from the decision of the Court that the conduct of monetary policy requires the possession of expertise and expertise, which in European monetary law only the ECB has and accordingly enjoys discretionary powers for its implementation.

ECB ACTION IN THE CIRCUMSTANCES OF THE COVID-19 PANDEMIC: PEEP BOND PROGRAM

The main actors of the EU economic policy, in order to take measures to mitigate the decline in economic activity, have taken a number of measures that include the implementation of the *general escape clause* from the Stability and Growth Pact, and the very important ECB *Pandemic Emergency Purchase Program* (PEPP) which derives its legacy from the operable *Asset Purchase Program* - APP (Ibid). In connection with the above, the activation of the European Stabilization Mechanism is of great importance, demonstrating, in practice, that despite its specific legal nature (which was also the subject of a monetary dispute before the ECJ), its existence is very justified. Although the circumstances that led to the adoption of the ESM are diametrically different than those of the pandemic circumstances, its existence has been shown to be very useful in combating negative economic flows in the current circumstances as well. Simultaneously with the mentioned measures, new measures were introduced within the *Coronavirus Response Investment Initiative* (CRII) and the *Coronavirus Response Investment Initiative Plus* (CRII +).

At the beginning of the implementation of the measure and instrument of the ECB's monetary policy for combating the consequences of Covid-19, there were fears of a significant increase in inflation, as well as the question of their effect on the realization of the basic goals of the ECB. The issue of the legal justification of the PEEP program has further gained in relevance and significance on 5 May 2020 when the German Constitutional Court (GCC) decided on the ECB's 2015 Public Sector Purchase Program. Even the ECB is not under its jurisdiction and it is difficult to predict how the legal situation will evolve, some authors point out that from an economic perspective, if the ECB were to abide by the more stringent rules dictated by the GCC, it would make it harder for the ECB to fulfill its primary mandate and secondary objectives (Claeys,

2020). In the contemporary monetary law literature, it is emphasized that the judgment of the German Constitutional Court that challenged the legality of the ECB's QE is based on the legal principle of proportionality, which in economic terms implies the detailed evaluation of the monetary policy redistributive effects (Masciandaro, 2020: 1-4). With this verdict, the judges pointed out the problem of redistributive effects of the common monetary policy pursued by the ECB, as well as the dilemma related to the accounting of the side effects on fiscal, banking and other components of the general EU economic policy (Ibid). The high degree of functional connection of all segments of economic policy, and especially the problem of monetary-fiscal policy mix and fine tuning, strongly determine the real effects of measures taken in practice given the fact that complementary and independent economic policy goals are very rare and that in practice the realization of one goal always, to certain extent, affects the insufficient degree of realization of the second goal.

In the circumstances caused by the Covid-19 pandemic, the tendency to place European and international monetary law on a humane approach took on a new dimension as best shown by the measures taken by the International Monetary Fund and the European Central Bank to mitigate the social and economic costs of the pandemic. In this context, the European Central Bank, as the main subject of European monetary law, has taken several important steps that speak in favor of the tendency of the constant evolution of its functions and tasks that adapt to the new social and economic circumstances.

Namely, on March 18, 2020, the ECB announced the Pandemic Emergency Purchase Program (PEPP) with the budget of 750 billion euros, intended to remedy the consequences caused by the pandemic (ECB, 2020). The PEPP represents *sui generis* temporary asset purchase program of private and public sector securities.[2] When it comes to the timing and implementation of the program, The Governing Council will terminate net asset purchases under it once it judges that the COVID-19 crisis phase is over, but in any case not before the end of March 2022. The maturing principal payments from securities purchased under the PEPP will be reinvested until at least the end of 2023. In any case, the future roll-off of the PEPP portfolio will be managed to avoid interference with the appropriate monetary stance (Ibid).

A significant issue related to the implementation of the program is its monetary analysis and compliance with the norms of primary legislation. Given the nature of the monetary disputes before the European Court of Justice and the process of the constant evolution of the ECB's jurisdiction, the interest of the scientific and general public is not so surpris-

[2] Later, the Governing Council decided to increase the initial funds.

ing. However, unlike the previous programs of the ECB, when the question of harmonization of its decisions with the norms of the founding treaties was raised as something that at first glance seemed to be an unfulfilled condition, in the case of PEEP it acts quite differently.

When the European Court of Justice evaluates the measures of the ECB's monetary policy, it does so based on three criteria, namely: 1) compliance with ECB mandates; 2) principle of proportionate to the certain objectives and; 3) compatibility with the prohibition of monetary financing (Grund, 2020: 2). PEEP is a kind of way for the ECB to ensure the smooth functioning of the market and the preservation of price and general financial stability in the circumstances caused by the pandemic. With its adoption, the ECB has not exceeded the limits of its powers because the program *per se* represents a barrier against jeopardizing the implementation of a single monetary strategy and the goals of centralized emotional policy. We think that the already well-known asymmetry between decentralized economic policy and centralized emotional politics is relaxed in this way, especially in circumstances that require the protection of public health as the most important public good.

When considering the conditions of proportionality, it is useful to note here that the European Court of Justice in the case of *OMT case*[3] took the position that the program is justified as it cumulatively meets two conditions regarding suitability and necessity to preserve price stability (Grund, 2020: 3-4). In this dispute, in the analysis of suitability, the Court has explicitly taken the view that a program is eligible if it is not calculated with an error of assessment and not misguided from the economic standpoint. The condition of necessity is also fulfilled in the realization of the objectives if the ECB does not go beyond what is necessary. Also, the program is in line with the provisions of primary monetary legislation that prohibit monetary financing, does not represent the equivalent of buying bonds on the primary market, and does not preclude opportunities for harmonized management of national budget policies (Ibid). Although the causes of the global financial crisis and the crisis caused by Covid-19 are significantly different, the literature states that the European Court of Justice can play a significant role in forming a future health union (which is clearly needed) as it played a significant role in establishing a banking union (Bartlett, 2020: 781).

PEEP is a very important response of EU monetary legislation and policy to the consequences of the catastrophic pandemic, and as such is a crucial instrument for preserving monetary transmission mechanisms in circumstances that could not have been foreseen, even with the utmost

[3] In this monetary dispute, ECJ undoubtedly confirmed the functional independence of ECB.

care. The question of the legal nature of the program is a question that accompanies the logistics of monetary disputes in general and concerns the identification of time circumstances in which the court supports decisions made by non-majoritarian institutions (such as central banks) or government (Saurugger, Terpan, 2020: 1161). At this point, we must point to the fact that recently there have been diametrically and fundamentally different understandings of the European Court of Justice and the German Constitutional Court precisely in the field of justification of monetary policy measures initiated by the ECB. In this regard, it is useful to point out certain economic coincidences in the causes and consequences of the crisis caused by the Covid 19 pandemic and the debt crisis, although the consequences of the first are primarily sanitary and as such incomparable with the second crisis.

The ECB has further strengthened and reaffirmed its new competence regarding the performance of the bank of last resort by adopting the PEEP, which only shows that such a function is much needed and justified in extreme social and economic circumstances. Interestingly, in some monetary disputes, the treatment of national courts was different from that of the ECJ, which indicates the sensitivity of governments to certain monetary policy measures, although it is completely centralized in the naive EMU. *We believe* that this confirms the fact of the existence and vitality of national monetary sovereignty which did not vanish (as some authors claim) with the creation of the monetary union or at least did not completely threaten because some of its components still exists at the national level. Each of the major monetary disputes of the last decade through *Gauweiler*, *Weiss*, and *Accorinti* has attracted much public attention as a significant institutional issue, which in the case of PEEP programs is currently left aside and will require subsequent analysis in circumstances that are not extraordinary (Ibid).

It is very important to point out the fact that the ECB reacted very quickly in the circumstances caused by the pandemic at the very beginning. In the circumstances of the pandemic, the General Court and the Court of Justice considered several cases in which the ECB was involved, but most of these monetary disputes concerned prudential supervision of credit institutions and did not concern bond-buying programs. On the other hand, the German Constitutional Court in Covid-19 circumstances also revised its position towards the judgments of the ECJ in the sphere of monetary policy as a firm opponent. This judgment had no direct connection with the PEEP, but a German court strongly opposed the creation of Eurobonds, which was realized *de jure* if not *de facto* (Ibid, 1166). The problem that is increasingly seen in monetary disputes is that the ECB's measures in crises enjoy the support of the ECJ, but not the support of the Constitutional Courts of the most influential member states, which to

some extent relativizes the meaning of monetary solutions adopted in extraordinary circumstances.

In the context of the pandemic, the concept of economic governance in the European Monetary Union had to be redefined once again, to ensure the institutional basis of the crisis. What characterizes the concept of economic management is continuity and change (Lardi, Tsarouhas, 2020: 1051). During the initial phases of the crisis, the main actors of the EU economic policy used the experience gained during the control and rehabilitation of the consequences of the debt crisis by acting similarly as during the creation of the European Stabilization Mechanism, but it soon became insufficient. In July, the Council adopted a new set of instruments aimed at repairing the economy in the wake of the pandemic. Although it is too early to draw more concrete conclusions on the impact of the pandemic on the effectiveness of institutional regulation of macroeconomic governance in the EU, it is clear that the effects of the crisis will be asymmetric in terms of their impact on economic development. The problem of moral hazard and information asymmetry is an accompanying element of almost every significant economic disturbance.

The main instruments undertaken by the main EU actors in the context of the crisis concern the establishment of *special budget funds* with strictly earmarked funds, the *suspension of fiscal rules* concerning the quantitative limitation of the budget deficit and public debt deficit while strengthening the role of the European Central Bank as the supreme monetary institution. Deviation under the strict norms of monetary law defined by the founding acts is, as in the case of the debt crisis, justified by the intensity and consequences of circumstances that could not have been foreseen when the protection of public health becomes a priority. This temporary relativization of this traditional monetary legal solutions is timely, legal and legitimate because legal rigidity and continuity must not be to the detriment of citizens whose lives are endangered. Also, the deviation from the mentioned fiscal rules does not mean propagating fiscal indiscipline, because the ECB's very active role in the crisis, which in the last few years has taken into account general financial stability, and not only price stability, must be emphasized. EU monetary law once again confirms its vitality, practicality, and care for personal and general social well-being, which is one of its axiological determinants, even with these extreme circumstances. Its meaning is not only the primary protection of money, but the full implementation of all functions of money created by people according to the postulates of the social theory of money and as such should serve them, not only in the traditional sense to meet market preferences, but also public health. Sovereignty must be guaranteed and secured in full abundance at all times.

The PEPP can be seen as a proportionate monetary policy instrument established in response to the specific and extraordinary pandemic,

which is necessary for implementing the centralized monetary policy following the government lockdown measures with economic consequences (Lastra, Kern, 2020: 18-19). In addition, the European Central Bank, also announced that *two* its lending programs would be utilized to combat the economic fall. *For one*, (beginning in June 2020 and until June 2021), the ECB will lend to euro area banks at rates as low as minus 1% through its previously available targeted long-term refinancing operations (so-called TLTROs). *Then*, the ECB announced a series of non-targeted pandemic emergency longer-term refinancing operations (so-called PELTROs) for banks that would become available in May until 2021 (Ibid, 20). The point is that these new programs will probably awaken, to an extent, legal and policy criticism because price stability is being used as an excuse to obscure the fact that the ECB is "simply providing subsidies and credit support in a way that an EU fiscal authority" (Ibid). Nevertheless, in times of crisis, the implementation of such programs seems to be more than urgent.

CONCLUSION

EU monetary law, as a particularly important branch of law for the functioning of the single market, is in the process of constant evolution, which is reflected in the amendment of existing monetary norms, principles and values aimed at implementing a single monetary strategy while preserving the reputation of national monetary jurisdictions. In the conditions of Eurocrises and the Covid-19 pandemic, monetary legal norms are being implemented following a more "humane approach" because monetary stability is an example of public good which can be guaranteed if there is no possibility to gran public health as primordial public good. The European Central Bank is the main subject in this process, but, at the same time, an unavoidable interpreter and arbiter in resolving potential doubts related to the optimal application of the supranational *lex monetae*. Its classical functions established by the provisions of sound monetary legislation (founding acts of the EU) have been upgraded over time with some new competencies that represent the response of modern monetary law to the challenges that have arisen not just in the field of monetary and banking finance, but also in the field of general health and environmental problems where its tasks are secondary.

New monetary legal solutions are often defined by secondary legislation (soft law). Regardless of the formal, and sometimes essential (we would add ideological) inconsistency of the content of these new legal sources (agreements) with primary sources, we think that only in their synergy can they provide an optimal normative framework of ECB regulatory competencies capable of withstanding economic shocks embodied in the consequences of pandemics and financial crises. Of course, in the

future, the European legislator should avoid negative repercussions of the ECB's dualism of power established by primary and secondary monetary legislation, as this produces unnecessary sensationalist effects and undermines the level of macroeconomic dialogue between the ECB and other institutions such as the European Parliament, Commission, Council and the European Court of Justice and the European Court of Auditors. The new regulatory competencies of the European Central Bank are the best proof of the irreplaceable contribution of this institution in the realization of the tasks of supranational banking policy, both in conditions of regular economic flows and conditions of crises.

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ТЕОРИЈСКИ ОСВРТ НА НОВЕ РЕГУЛАТОРНЕ НАДЛЕЖНОСТИ ЕВРОПСКЕ ЦЕНТРАЛНЕ БАНКЕ У МОНЕТАРНОМ ПРАВУ: ПРИМЕР ЕВРОКРИЗЕ И ПАНДЕМИЈЕ КОВИД-19

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Резиме

Регулаторне надлежности Европске централне банке се у монетарном праву Европске уније утврђују одредбама, како примарног (чврстог), тако и одредбама секундарног (меког) монетарног законодавства. У почетним годинама формирања Европске економске и монетарне уније (ЕМУ), примарна монетарна легислатива имала је доминантан утицај, и у пракси се показала као прилично добро реглементирана, док је у каснијим годинама, нарочито током околности проузрокованих глобалном финансијском и економском кризом, секундарна монетарна легислатива остварила значајан практични допринос у попуњавању празнина у примарном монетарном законодавству.

Правни акти и мере које је Европска централна банка предузела ради одржавања монетарне стабилности и заштите права монетарних корисника у околностима финансијске кризе су, у извесном смислу, прекинуле дотадашњи монетарноправни континуитет у ЕУ, али само привремено, зарад очувања тековина ЕМУ, што се најбоље може видети на примерима усвајања Европског стабилизационог механизма и мера које је ЕЦБ иницирала за куповину обвезница на секундарном финансијском тржишту (а које су биле и предмет одлучивања пред Европским судом правде). Тенденција ширења секундарне монетарне легислатиове је снажно настављена и у околностима проузрокованих програмом ЕЦБ за санирање последица проузрокавних пандемијом Ковид-19, који је усвојен у циљу санирања последица кризе. Монетарноправна анализа програма, за разлику од ранијих нестандардних мера ЕЦБ, задовољава услове које се тичу поштовања принципа пропорционалности и допуштености, као и додатне услове који се тичу нужности, ефективности и нормативне и економске ефикасности. Усвајање овог програма истовремено потврђује тезу о тенденцији постављања монетраних норми на начин који је више „хуман“, где се заштита људских права све више разматра у литератури и науци савременог монетарног права као нераскидиви сегмент очувања монетарне стабилности која, per se, не значи много уколико није немењена општем благостању друштвене заједнице.