
EUROPEAN CENTRAL BANK: SECURITY, SUSTAINABLE AND EFFICIENT ASPECTS1

Mykola Sidak¹, Edita Hajnišová², Michal Fabus³

^{1,3}*School of Economics and Management in Public Administration in Bratislava,*

Furdekova 16, 851 04 Bratislava, Slovak Republic

²*Comenius University in Bratislava, Faculty of Law, Šafárikovo námestie 6, 814 99 Bratislava, Slovak Republic*

E-mails: ¹mykola.sidak@vsemvs.sk, ²edita.hajnisova@flaw.uniba.sk, ³michal.fabus@vsemvs.sk

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Abstract. The sustainable, adequate, security and efficient operation of a central bank depends on many internal and external factors. New trends, challenges, and threats (which are associated with European integration, globalization, etc.) affect the sustainable, efficient, and security operations of the ECB, which can lead to economic or financial crises. Therefore, in the current situation, the concept of the Central Bank's activities, its legal status and the institution of monetary policy should change completely. The purpose of this research was as follows: 1) to determine economic and legal aspects of sustainable, efficient and safe operation of the ECB, with a reflection on innovation and analysis of modern *de lege lata* trends to ensure sustainable development of the EU, 2) to prepare conclusions and to identify positive and negative aspects that affect the activities of the Central Bank, 3) on the basis of scientific and practical *de lege lata* research and its application, to develop *de lege ferenda* to improve the activities of the European System of Central Banks, the European Central Bank, national central banks and other institutions of the European Union.

Keywords: European Central Bank; European System of Central Banks; security; sustainability; monetary policy; banking supervision; EBA; ESMA; ESFS

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1. Introduction to the problems, setting goals and objectives

Sustainable, adequate, security and efficient operations of the any bank, including Central Bank (CB) depends on many internal and external factors, such as: crises, pandemics, legal regulation, the main goal and objectives of the ECB, selection of principles, competencies, instruments and mechanisms of monetary policy, efficient work of the executive power (Sidak, 2010; Beretta, Cencini, 2020; Afanasyeva, Korovin, 2020; Konovalova, Caplinska, 2020; Huy et al., 2020; Siddique et al., 2020), etc.

The purpose of this comprehensive scientific research is to determine the *ex lege* aspects of the security and efficient operation of the European Central Bank (ECB) with a focus on innovation and analysis of current trends

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de lege lata to ensure sustainable development of the European Union, as well as to prepare *de lege ferenda* proposals to improve the security and efficient operation of the central bank.

Based on the purpose, the authors have set the following objectives: 1) to investigate the legal status of the ECB; 2) to identify the quantitative primary objective of ECB and responsibility for its failure; 3) to analyze the structure of the main pillars of the EU Banking Union, 4) to characterize the architecture of the EU Banking Union and its bodies, 5) on the basis of this analysis (scientific knowledge and *de lege lata*), to prepare proposals for conclusions and develop *de lege ferenda* to improve the regulation of EU banking systems and EU member states.

2. Analysis of studies and publications

Some aspects of the organization and functioning of the EU Banking Union were studied by Zilioli Ch., Selmayr M., Tuma Z., Babis V., Ferran E., Wymeersch E., Zavvos G., Kaltsouni S., etc.

Zilioli Ch. and Selmayr M. analyzed the activity of the Central Bank in the monetary sphere (Zilioli - Selmayr 2001; Hans-Werner Sinn, et. al. 2004). Tuma Z. studied the structure and functioning of the Banking Union from a legal point of view and analyzed the influence of EU institutions on the development of the monetary and banking union (Tuma 2005).

E. Wymeersch analyzed the Banking Union in the context of achieving the main goals of the EU and the ESCB: ensuring sustainable, inclusive, and intellectual growth (Wymeersch, 2014). S. Kaltsouni and G. Zavvos analyzed in detail the first and second pillars of the EU Banking Union, as well as the cases and consequences of the creation of the basic rules of the EU in the banking sector (Zavvos – Kaltsouni 2014; Babis 2014). E. Ferran carried out a detailed analysis of the relationship between the institutions of the Banking Union of the European Union (Ferran 2014).

However, the following has not been carried out: 1) a comparative analysis of the organizational structure of the institution of banking supervision in the EU and EU countries, and the status of institutions that implement banking supervision; 2) analysis of the efficiency of the Central Bank, if the latter implements the two most important functions in cumulation: monetary (credit and financial) policy and banking supervision.

3. *De lege lata* analysis of the ECB activities in the EU

The main goal of the ECB is to maintain price stability. It should be noted that the Treaty on the Functioning of the European Union did not enshrine the terminus technicus “price stability”, therefore the Council of Governors (Presidents) of the ECB consolidated the quantitative definition of the concept of “price stability”². It is defined as the annual growth of the harmonized consumer price index of the Eurosystem less than 2% in the medium term and, in this relation, introduces a new concept - the Harmonized Indices of Consumer Prices (HICP), which is the only key indicator of price stability in the Eurosystem as one of five convergence criteria. The formula for determining the price stability index for the member countries of the Eurosystem is the same for the correct and uniform price stability index identification (Sidak 2010, Čižo et. al. 2020).

The European Commission, the ECB, Eurostat, and the statistical offices of the Eurosystem members are working on drawing up the formula and its components, which are the basis for determining the level of consumer prices. The ECB’s primary goal is to maintain price stability over the medium term as monetary policy can affect price stability only with significant time lags. Monetary policy in market relations should be predictable and transparent, and in no case should it affect price stability in the short term (Zilioli - Selmayr 2001; Špaček 2018).

² The authors emphasize that the European legislator has a unique positive approach to enshrine in law the legal status of the ECB, a clear and measurable goal of its activity, as well as to the responsibility of an independent entity - the ECB.

The main tasks of the ECB are: 1) to define, implement and manage the EU monetary policy; 2) to ensure price stability within the framework of the activities of the European System of Central Banks and the Eurosystem (Regulation (EU) č. 1024/2013); 3) to support the EU economic policy; 4) to provide the necessary information (opinions, certificates, etc.) to the competent authorities of the EU or EU member states (Regulation (EU) No 806/2014); 5) to advise competent authorities when adopting regulations at the EU level or at the level of EU member states; 6) to adopt regulations; 7) to ensure the proper and uninterrupted operation of payment systems; 8) to exercise banking supervision; 9) to determine interest rates, the value of the euro and carry out foreign exchange interventions; 10) to monitor financial risks: this includes risk assessment of investment from the ECB's own funds and in the implementation of credit operations, etc. (Hans-Werner Sinn et. al. 2004, Tvaronavičienė 2019).

To achieve the goals and fulfill certain tasks, in accordance with the principle of building an open market economy with free and fair competition, the European Central Bank has the following powers (Regulation (EU) č. 1024/2013): 1) rule-making; 2) advisory; 3) implementation of monetary policy; 4) supervision of the activity of credit and financial institutions (Tuma 2005).

It should be noted that the ECB independently decides on the choice of tools, mechanisms, and methods to achieve the main goal and accomplish the objectives. When implementing monetary policy, the ECB's activities are based on the following principles: 1) efficiency, 2) responsibility, 3) transparency and openness, 4) orientation towards medium-term goals 5) continuity, and 6) independence (Sidak 2010, Balkyte et. al. 2012).

European financial legislation established the principles of a single monetary policy: 1) in order to raise the level of transparency and confidence in the ECB's policies - public availability and publicity of the objectives of the ECB and ESCB policies; 2) an opportunity for the public to assess the correctness and competence of the actions carried out by the ECB; 3) using all possible information and practice of the national central banks of the EU member states to achieve the goal of the ESCB; 4) monitoring of monetary instruments, etc. (Ferran 2014, Mamojka 2016).

We emphasize that the ECB is a part of the European system of central banks and the main entity of the banking union and the banking system of the European Union. It develops its activities in close cooperation with European and national institutions of the EU member states. Banking union is a unique union created by the EU (based on the EU Monetary Union) (Zilioli - Selmayr 2001).

4. Determination of sustainable, inclusive, and intelligent aspects of economic growth and ex lege of the main pillars of the “architecture” and functioning of the EU Banking Union

The structure of the EU economic and monetary union is based on an integrated financial structure (with the aim of creating a banking union). Currently, the 2 pillars of the created banking union³ are: a) unified supervision mechanism, and b) a unified crisis management mechanism. In the EU plans from 2012, 3 pillars were planned, the third being a European deposit insurance system (which is currently absent in the EU) (Wymeersch 2014, Kurilovka – Kordik 2017).

Ad. a) Single Supervisory Mechanism (SSM): The legal basis for the establishment of a single supervisory mechanism as one of the three main pillars of the Banking Union is Art. 114 and Paragraph 6 of Art. 127 of the Treaty on the Functioning of the European Union, which explicitly authorizes the European Central Bank to assign specific tasks related to the implementation of prudential policy. This element of the banking union was

³ Currently, we include the following legislation of the European Union in the Single Rule Book: a) the EU legislative package – CRD4; b) Directive on deposit guarantee schemes; c) Bank Recovery and Resolution Directive. The Single Rule Book regulates the creation and operation of a single internal EU market, in accordance with par. 1 Art. 114 of the Treaty on the Functioning of the European Union (which must be correlated with the principle of maximum harmonization).

introduced through two legislative acts, namely the provision delegating control to the European Central Bank by the members of the eurozone and the provision establishing the European Banking Authority (EBA) (Hans-Werner Sinn et. al. 2004, Novotný 2018).

Ad. b) Single Resolution Mechanism (SRM). The purpose of the Single Resolution Mechanism (which was introduced into European law by Regulation No. 806/2014) is to prevent threats to the stability of the financial system that may arise as a result of improper provision of financial services, and for the protection of deposits. A very important part of this pillar is the mechanism itself and the tools with which these situations should be resolved, as well as the creation of a general fund for resolving crisis situations, which will be financed through mandatory contributions from the banking sector. Its volume should be at least 1% of the amount of covered deposits of all credit institutions in all member states of the banking union (Zavvos – Kaltsouni, 2014; Babis 2014).

5. Single Supervisory Mechanism (SSM): Prospects for the development of a sui generis institution of banking supervision in the EU

There are currently about 6,000 banks in the euro area. As all the important supervisory powers set out in Article 4 of Regulation No. 1022/2013, Regulation No. 1024/2013, Regulation No. 575/2013, Regulation No. 806/2014 are transferred to the European Central Bank and ultimately held accountable, the criterion was introduced to provide for direct supervision only of systemically important banks, and not of those that do not have a significant impact on the financial position of the euro area and can be better controlled at the national level (Ferran 2014). Currently, banks are supervised by the ECB: a) credit institutions that have been identified as significant (the ECB directly controls 115 large banks from member countries, which own almost 82% of all banking assets in the euro area); b) other credit institutions, at the choice of the ECB; as the European Central Bank is responsible for supervising banks throughout the euro area and for banks in other member states participating in a single mechanism (Wymeersch, 2014).

Given that the European Central Bank bears the main responsibility for monetary policy, it was necessary, from our point of view, that the organization and management of the Single Mechanism should be completely separated from other activities (implementation of monetary policy, currency issuance, regulation, etc.), so that it could efficiently exercise the powers given to it by the member states. For this purpose, an internal body - the Supervisory Board was created, which exercises all supervisory and, in part, regulatory powers that have been transferred to the European Central Bank (Siller, Cibak 2014).

In the context of the organization and efficient functioning of EU banking supervision, it should be further emphasized that each member state has its own banking supervision system. Each of these systems (models) has its own structure, uses certain methods and characteristic principles, adopting the processes of harmonization of European integration.

Analyzing the models (systems) of regulation and supervision of the EU countries, it can be argued that the central banks of France, Germany, Austria, Belgium, Denmark, Finland, Sweden, Poland, Hungary, etc. are not banking supervisors (they interact only with national supervisory authorities).

Several European countries (Italy, Greece, Portugal, Slovak Republic, Czech Republic, and others) have chosen a model in which the central bank exercises banking supervision.

In conclusion, it should be noted that cooperation between the independent and autonomous institutions (ECB, NCBs, EBA, ESMA, EIOPA, and the European independent supervisory authority) will provide an opportunity to build an efficient “system of checks and balances” in the banking and financial markets to ensure sustainable growth of the EU (Sidak 2010).

6. Economic and legal aspects of security operation of the ECB (and national central banks)

The aspects of security and efficient activity of the ECB (and national central banks) include (Ferran 2014, Tvaronavičiene 2019): 1) collegial decision-making by the Governing Council of the Eurosystem countries on the implementation of monetary policy (Srebalová et. al. 2020; Vozáryová 2013); 2) collegial decision-making by the Governing Council of the ECB on the supervision of credit institutions within the EU banking union; 3) proper, efficient and continuous operation of the TARGET2 ECB payment system (in accordance with the SEPA program); 4) compliance with liquidity requirements, the requirements of local engagement (Dulaková Jakúbeková 2010), the requirements and prohibitions of qualified participation, the requirements for equity capital, the international accounting standards; 5) proper hedging analysis; 6) ensuring a market approach to the amount of expenditures of credit and financial institutions (Dulaková Jakúbeková 2012); 7) truthful and objective financial information from credit and financial institutions for the proper inspection of financial markets; 8) efficient operation of the ECB reserves of national central banks (Šabíková et.al. 2018); 9) activities to support participants in the EU financial market in their efforts to identify risks and reduce their impact on climate change; 10) abolition of the monetary limit of liability of national central banks (set up to 2 million euros) for breach of cashless payments; 11) strictly adhere to the principles of independence of the central bank from the executive branch of power (Sidak 2010) carrying out a synergistic analysis of monetary policy, macroprudential policy and banking supervision; 13) increasing the interaction of monetary institutions with fiscal institutions, etc. (Siller, Cibák 2016).

7. The analysis of *de lege lata* of the European Financial Supervision System (ESFS) institutes' work

The European Financial Supervision System (ESFS) was introduced in 2010. It consists of: a) European Systemic Risk Board (ESRB); b) 3 European Supervisory Authorities (ESA), namely: 1) European Banking Authority (EBA), 2) European Securities and Markets Authority (ESMA), 3) European Insurance and Occupational Pensions Authority (EIOPA).

The main objective of the European Financial Supervision System is to ensure consistent and adequate financial supervision in the EU. The European Financial Supervision System includes:

1) *macroprudential* supervision controls the financial system. Its main purpose is to prevent risks to the financial system. The European Systemic Risk Board (ESRB) is responsible for macroprudential supervision of the financial system in the EU. The ESRB is an independent institution (from the ECB), but the ECB President is also the chairman of ESRB. The ESRB brings together representatives of national central banks of EU countries and the chairmen of three European supervisory authorities. The main tasks of the ESRB are: collecting and analyzing relevant information to identify systemic risks, issuing warnings if systemic risks are considered significant, issuing recommendations for actions in response to identified risks, monitoring the implementation of warnings and recommendations, cooperating and coordinating with ESAs and international forums (Sidak 2010).

2) *microprudential* supervision means the ESA supervision of individual credit and financial institutions. Each of the 3 European supervisory authorities (EBA, ESMA, EIOPA) is an independent European institution (legal entity). The ESA also ensures the harmonization of financial supervision in the EU by developing a single set of rules that establish prudential standards for individual institutions. As part of their mandate, they also assess risks and weaknesses in the financial sector (Babis 2014, Uramová et. al. 2016).

8. Recent Developments in the EU Supervision Institute

On March 21, 2019, the European Parliament and member states agreed on the main elements European supervision reform in the areas of EU financial markets. The agreement, which is an important step towards a fully functioning capital-markets union, strengthens the role and competence of European supervisors, including the European Banking Authority, by strengthening its role in the fight against money laundering. On 18 December

2019, the European Parliament and Council adopted Regulation (EU) 2019/2175 which addresses the authority, management, and financing of the ESAs. On that day, the legislature also improved the institutions SolvencyII, MiFIDII and the fight against money laundering with Directive (EU) 2019/2177 (which extends the powers of EIOPA, EBA and ESMA).

9. Conclusions

Based on the *de lege lata* analysis and the results of scientific research of the EU banking union, in order to optimize the organization and activities of the EU banking union to ensure sustainable, intelligent and inclusive development with reflection on current challenges and threats, we can draw the following conclusions: The EU banking union has a significant flaw in the organization of the system (which can lead to far-reaching economic consequences) - the ECB performs two functions important for the financial system: 1) the creation and implementation of the EU monetary policy and 2) banking supervision of banks (credit institutions) in the euro area. This approach to the "architecture" of the banking union does not correlate with the basic principles of economic theory and practice of organizing banking systems in a number of developed countries, which, in our opinion, is counterproductive in the context of achieving the main goal of the European System of Central Banks - ensuring price stability (consumer prices). Based on the results of the scientific analysis, we propose to introduce *de lege ferenda* - to change the system of organizing banking supervision in the EU and create a sui generis independent public institution in the EU, which will provide supervision of large credit and financial institutions in the EU.

We also propose to make additions and changes to *de lege lata* in the EU and its members (developed *de lege ferenda*): 1) implement the principles of monetary policy in national legislation, according to the ECB's experience: a) efficiency; b) responsibility; c) transparency and openness; d) orientation towards medium-term goals; e) continuity; f) independence; 2) restrictions on the rights and freedoms of financial market entities should be implemented in accordance with the EU principles: proportionality, reasonable expectations, legal certainty and healthy economic competition.

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prof. **Mykola SIDAK**, DrSc. is a professor at the School of Economics and Management in Public Administration in Bratislava (Slovak Republic). Scientific field: Public Administration, Administrative Law, Financial Law and EU Law.

ORCID ID: orcid.org/0000-0001-7173-3197

JUDr. **Edita HAJNISOVA**, PhD, is an assistant professor at the Department of Commercial and Economic Law, Faculty of Law, Comenius University in Bratislava (Slovak Republic). Research focused on investment protection and commercial law.

ORCID ID: orcid.org/0000-0002-4895-8037

Ing. **Michal FABUS** PhD. in International Economics Relations, obtained at University of Economics in Bratislava, Vicerector for Foreign Affairs, Head of Department of Economics and Finance, School of Economics and Management in Public Administration in Bratislava (VSEMvs), Slovakia.

ORCID ID: orcid.org/0000-0002-3792-179X