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INTRODUCTORY NOTE

This special issue of the scientific journal of national importance *Foreign Legal Life,* dedicated to the contemporary tendencies and features of monetary and central bank legislation, is published by the Institute of Comparative Law in Belgrade, Serbia, on the occasion of the Institute's 70th anniversary. For seven decades, the Institute has pursued distinguished academic work and pioneering research across both traditional and contemporary legal disciplines, with particular emphasis on a multidisciplinary approach and the promotion of good practices in comparative academia and jurisprudence. Over the course of its existence, the Institute of Comparative Law has grown into one of the leading research institutions in the social sciences within Serbia and the wider region, and stands today as one of the oldest institutes for comparative law research in Europe and beyond.

The emergence of new legal disciplines in practice is relatively rare. This is partly because the term *legal discipline* is often used rather loosely to describe the legislative activities of certain institutions or the normative regulation of specific social or economic phenomena. Such usage, however, does not in itself indicate the establishment of a new legal discipline, which presupposes the completion of all the necessary stages of development, together with satisfying the methodological and other conditions that a branch of the legal order must satisfy to be regarded as independent and autonomous. Monetary law is not, therefore, a "new" legal discipline in the strict sense; rather its subject matter and content have been unjustifiably marginalized within the legal curriculum or inadequately examined alongside other branches of law in the domestic academic practice**.** Today, both of the disciplines employ modern nomotechnics, sophisticated methodological tools, and a multi-jurisdictional approach to regulating challenging, dynamic, and complex socio-economic relations. This occurs in a context that neither opposes nor strictly insists on traditional – and often redundant – distinctions between hard and soft law or between procedural and substantive sources. Instead, these distinctions are integrated and elevated to the creative and constructive synergy level, with the aim of establishing well-adjusted and sustainable legal instruments for the regulation of monetary relations and monetary policy. In this sense, the systematic and analytical study of these positive legal disciplines broadens horizons and provides new perspectives for both legal theorists and

practitioners, who thereby acquire highly specialized – and critically scarce – knowledge, necessary for the optimal legal regulation of public monetary management. The normative regulation of monetary flows must be defined and guided by *sui generis* legal norms – monetary legal norms – that arise from the actions of the central bank as the supreme monetary institution. In this context, it is possible to distinguish between monetary relations in the narrow sense, which concern the legal definition of money, the procedure for its issuance, the formulation of monetary strategy, and the regulation of central bank operations, and monetary relations in the broader sense, which emerge when a monetary jurisdiction joins monetary unions, establishes membership in international monetary organizations, or participates in judicial and arbitration proceedings involving monetary disputes, in which the active and passive procedural legitimation of central banks is exercised.

The in-depth study of monetary and central bank law aims to develop and refine specific theoretical and practical knowledge and skills regarding the legal regulation of monetary relations, the structure of monetary sovereignty and its modifications in the process of monetary integration, and the emergence of decentralized financial technologies, the fundamental principles of monetary legislation at both the internal and extraterritorial levels, and the sources, hybridization tendencies, and social justification of these positive law disciplines in a comprehensive and systematic manner. The issues outlined above are becoming increasingly significant and relevant in circumstances involving financial crises, in which soft monetary legislation plays an important role in addressing legal gaps in order to preserve monetary stability as a public good, as well as citizens' right to a safe and sound currency. The advanced development of monetary legal thought – particularly within the European legal space – has led to the fragmentation of general monetary law and the emergence of special monetary legal disciplines. It has also produced a tendency toward the continuous expansion of the central bank competences. Today, central banks are expected to contribute not only to monetary and general financial policy objectives but also to environmental protection, cohesion policy, the fight against financial crime, and even the protection of human rights, given that every monetary action *de facto* affects people's daily lives and their overall quality of life.

I would like to express my sincere and deep gratitude to the authors whose contributions address, in an analytical, systematic, and well-reasoned manner, several major dilemmas and open questions in contemporary monetary and central bank legislation, offering concrete *de lege ferenda* recommendations. I also extend my special thanks to the journal's editorial board and to the Institute for Comparative Law for the honor and trust placed in me as guest editor, and for their recognition of the importance of this subject matter for legal education and research.

Respectfully,
Marko Dimitrijević

Christos V. Gortsos*

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TASKS AND POWERS OF THE EUROPEAN CENTRAL BANK (ECB): A SYSTEMATIC OVERVIEW

Summary

The aim of this article is to provide a systematic overview of the tasks and powers of the European Central Bank (ECB) within the various systems and mechanisms in which it currently participates. It is structured in five sections: Section 1 highlights the key elements of the ECB as an EU institution under the EU Treaties. Section 2 briefly presents the various systems and mechanisms in which the ECB participates in and its tasks and powers therein. This is followed by Section 3, which examines its tasks and powers within the Eurosystem, and Section 4, which considers its financial stability- and banking supervision-related tasks and powers. Section 5 concludes. The cut-off date for information included herein is 6 December 2025.

Keywords: European Central Bank (ECB), Financial Stability, Banking Supervision.

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ZADACI I OVLAŠĆENJA EVROPSKE CENTRALNE BANKE (ECB): SISTEMATSKI PREGLED

Sažetak

Ovaj članak ima za cilj da da sistematski pregled zadataka i ovlašćenja Evropske centralne banke (ECB) u okviru različitih sistema i mehanizama u kojima ECB trenutno učestvuje. Članak je podeljen na pet odeljaka: u prvom odeljku istaknuti su ključni elementi ECB kao institucije EU, u skladu sa Ugovorima o Evropskoj uniji. U drugom odeljku dat je kratak pregled različitih sistema i mehanizama u kojima ECB učestvuje, kao i njenih zadataka i ovlašćenja u okviru tih sistema. Nakon toga, u trećem odeljku ispitani su zadaci i ovlašćenja ECB u okviru Evrosistema, dok su u četvrtom odeljku razmotreni zadaci i ovlašćenja ECB koji se odnose na finansijsku stabilnost i nadzor banaka. U petom odeljku dat je zaključak. Datum preseka za informacije korišćene u članku je 6. decembar 2025.

Ključne reči: Evropska centalna banka (ECB), finansijska stabilnost, bankarski nadzor.

1. The ECB as an EU Institution

The European Central Bank (ECB) is one of the seven institutions of the European Union (EU) (Article 13(1), sub-para 2, ind. 6, Treaty on European Union – TEU), operating under the limits set out by the principle of conferral (Article 13(2), TEU).[1] The primary rules of EU law governing the ECB are set out in the Treaty on the Functioning of the European Union (TFEU) and the Statute of the European System of Central Banks (ESCB) and of the ECB (hereinafter: ESCB/ECB Statute), which is contained in the homonymous Protocol (No 4) attached to the Treaties.[2]

For the fulfilment of the tasks conferred upon it by the TFEU, the ESCB is governed by two permanent ECB decision-making bodies: the Governing Council (GC) and the Executive Board (Arts 129(1) and 282(2), TFEU; Art. 8, ESCB/ECB

[1] On this principle, see by means of mere indication: Craig & de Búrca, 2020, pp. 142-144.

[2] This Statute was adopted on the basis of (and follows very closely) the Draft Statute of the Committee of Governors of the Central Banks of the European Economic Community (EEC) of 21 November 1990. According to Article 51 TEU, the Protocols annexed to the Treaties form an integral part thereof and, consequently, their provisions fall within primary EU law.

Statute). The GC is the supreme ECB body and comprises the six members of the Executive Board and the Governors of the national central banks (NCBs) of the Member States whose currency is the euro (TFEU, Arts 283(1); ESCB/ECB Statute, Art 10.1).[3] In addition, for as long as there are Member States with a derogation, the General Council has been established as the third ECB decision-making body (TFEU, Art. 141(1); ESCB/ECB Statute, Art. 44.1).

The ECB has legal personality under primary EU law (TFEU, Art. 282(3); ESCB/ECB Statute, Art. 9.1). Its acts and/or omissions are therefore subject to review or interpretation by the Court of Justice of the EU (CJEU) in the cases and under the conditions laid down in Article 263 TFEU,[4] while the ECB may also institute proceedings in such cases and under these conditions upon a Decision of its GC. Unless jurisdiction has been conferred upon the CJEU, disputes between the ECB and its creditors or debtors are decided by the competent national courts (ESCB/ECB Statute, Arts. 35.1-2, 35.5).

The ECB is liable in accordance with the regime provided for in Art. 340 TFEU (ESCB/ECB Statute, Art. 35.3). In the case of 'non-contractual liability,' it must, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties. Furthermore, within the territories of the Member States, the ECB also enjoys such privileges and immunities as required for the performance of its tasks (TFEU, Art. 343; ESCB/ECB Statute, Art. 39), the terms of which are defined in Protocol (No 7) "on the privileges and immunities of the European Union."

2. The Various Systems and Mechanisms in Which the ECB Participates – Tasks and Powers

According to the (admittedly complex) system of rules set out in the TFEU (and the ESCB/ECB Statute), the ECB participates in various systems and mechanisms as follows.

[3] The Governors of the NCBs of the Member States with a derogation do not participate in the meetings of the GC (ESCB/ECB Statute, Arts. 42.4-42.6, with reference to Arts. 10.1 and 10.3). The Executive Board comprises six members: the President (who is concurrently the GC's President), the Vice-President and four other members (TFEU, Art. 283(2); ESCB/ECB Statute, Arts. 11.1-11.2); the President and the Vice-President are appointed *in positionem* and are not elected in these positions by the GC or the Executive Board.

[4] Pursuant to this Article, the CJEU is competent to review, *inter alia*, the legality of ECB acts, other than Recommendations and Opinions (which are soft law instruments). See on this, *ex multis*, Lenaerts, Maselis & Gutman, 2014, pp. 253-417; Craig & de Búrca, 2020, pp. 609-614; The judicial control of the ECB's legal acts is also governed by Art. 35 ESCB/ECB Statute.

First, the ECB participates, as a "hub", in the European System of Central Banks (ESCB), which also comprises, as the "spokes", the NCBs of *all* EU Member States (TFEU, Art. 282(1); ESCB/ECB Statute, Art. 1, sub-para. 1).[5] The ESCB was established on 1 June 1998, immediately following the appointment of the initial members of the ECB Executive Board. The full exercise of its duties commenced on 1 January 1999, upon the commencement of Stage Three of the Economic and Monetary Union (EMU) (Treaty Establishing the European Community – TEC, Art. 123(1), sub-para. 2, points (a) and (b)).

Second, the ECB also participates in the "Eurosystem", which comprises the ECB and the NCBs of the Member States whose currency is the euro (i.e., those of the euro area) (TFEU, Art. 282(1); ESCB/ECB Statute, Art. 1, sub-para. 1),[6] and within which the so-called "basic tasks" must be carried out in accordance with Article 127(2) TFEU.[7] In the conduct of its basic tasks within the Eurosystem, the ECB enjoys a high degree of functional, personal, financial, and operational independence, albeit subject to rules governing its accountability and transparency (TFEU, Arts. 130, 282(3), 283(2), sub-para. 3 and 284(3); ESCB/ECB Statute, Arts. 7, 11.2, 11.4, 15, 17-20, 26-27 and 28; see also: De Grauwe, 2020, pp. 164-187; Gortsos, 2020, pp. 264-274; Markakis & Fromage, 2023).

Similar provisions apply to the NCBs, the granting of this independence being a legal convergence criterion for joining the EMU) (TFEU, Art. 131; ESCB/ECB Statute, Arts. 14.1-14.2).[8]

Third, the provision of lending-of-last-resort (LLR) facilities to credit institutions established within the euro area is not a basic task of the ECB within the Eurosystem. Instead, LLR is provided by the NCBs of the Member States whose

[5] The ESCB and the ECB must perform their tasks and carry on their activities in accordance with the provisions of the Treaties and the Statute (ESCB/ECB Statute, Art. 1, sub-para. 2). On the ESCB's decentralised structure, see Smits, 1997, pp. 92-94; Zilioli & Selmayr, 2001; Louis, 2009, pp. 135-148.

[6] The TFEU Articles not applying to the Member States with a derogation are listed in Article 139(2). Furthermore, Art. 42 of the Statute refers to its provisions that do not apply to those Member States and their NCBs. On the role of NCBs in the ESCB and the Eurosystem, see Gortsos, 2020, pp. 188-194.

[7] On this aspect, see further below, under 3.1; Unlike the ECB, the ESCB and the Eurosystem do not have legal personality. These concepts are used in EU monetary law as an "overall description" of, or "common name" for, its constitutive elements (ECB and the NCBs). See, *ex multis*, Smits, 1997, pp. 92-93.

[8] In relation to this aspect, see the Judgment of the Court (Grand Chamber) of 26 February 2019 in Joint Cases C-202/18 and C-238/18, *Ilmārs Rimšēvičs and European Central Bank v Republic of Latvia* (ECLI:EU:C:2019:139). The action was based on infringement of Art. 14.2, sub-para. 2, ESCB/ECB Statute.

currency is the euro, operating outside the scope of ordinary Eurosystem monetary policy operations, within the so-called Emergency Liquidity Assistance (ELA) Mechanism. The procedural arrangements governing the provision of LLR under the ELA Mechanism are laid down in the eponymous ECB Agreement, most recently amended on 7 September 2024 (European Central Bank, 2024).[9] The role of the ECB within this mechanism is grounded in Art. 14.4 of the ESCB/ECB Statute.[10]

Fourth, the provision to the public of euro-denominated means of payments in the form of banknotes and coins is governed by Article 128 TFEU and therefore does not fall within the basic tasks of the Eurosystem. In this regard, (a) the authorisation to issue euro-denominated banknotes is an exclusive competence of the ECB, performed by the GC. Without prejudice to this exclusive right, the TFEU nonetheless establishes a system of plurality of euro-denominated banknote issuers within the euro area, and such banknotes may be issued by both the ECB and the NCBs of the Member States whose currency is the euro (TFEU, Art. 128(1); ESCB/ECB Statute, Art. 16). (b) Euro-denominated coins are issued by those Member States whose currency is the euro, subject to the requirement that the volume of the issue be approved by the ECB (TFEU, Art.128(2)).[11] At present, these banknotes and coins constitute the only means of payment that has legal-tender status pursuant to Article 128(1) TFEU (with respect to banknotes) and Articles 10-11 of Council Regulation (EC) No 974/98 of 3 May 1998 "on the introduction of the euro".[12]

Fifth, in addition to its basic tasks as a monetary authority within the Eurosystem, the ECB also performs a significant role in terms of safeguarding financial stability in accordance with Article 127(5) TFEU, notwithstanding the absence of a clearly defined mandate in this regard.[13]

Finally, by virtue of Article 127(6) TFEU, which requires the unanimous adoption of a Council Regulation[14] involving also the non-euro area Member States,[15]

[9] This Agreement will be reviewed (again) in 2027 at the latest (European Central Bank, 2024., Section 10).

[10] On this aspect, see further below, under 3.2.

[11] On Article 128 TFEU, see Gortsos, 2020, pp. 320-326.

[12] Its legal basis was Article 109l (4), third sentence TEC. This will change upon the adoption of the digital euro on the basis of the Commission's proposal for a Regulation of the European Parliament and of the Council (hereinafter "co-legislators") discussed under 5 (2) below.

[13] The absence of such a financial stability mandate in the TFEU (for the ECB in cooperation with one or more other EU institutions) is a major concern. This aspect, nevertheless, is part of a longer-term agenda since its implementation would require an amendment of the Treaties. On this aspect, see further below, under 4.1.

[14] Thus, the legislative acts, which are legally based on Art. 127(6), are adopted in accordance with the "special" legislative procedure set out in Art.289(2) TFEU.

[15] Under Art. 139(2), point (c) TFEU, Article 127(6) is not included in the provisions that do

and which, unlike Article 127(2) and (5) applies to all Member States, the Council may confer "specific tasks" upon the ECB concerning the prudential supervision of credit institutions and other financial firms, with the exception of insurance undertakings. These tasks are not carried out within the Eurosystem. This enabling provision has been activated on two occasions:

The first activation occurred in 2010, when, by virtue of Council Regulation (EU) No 1096/2010 of 17 November 2010 "conferring specific tasks upon the [ECB] concerning the functioning of the European Systemic Risk Board [ESRB[16]]", specific tasks were conferred upon the ECB in the field of macroprudential financial oversight within the framework of the European System of Financial Supervision (ESFS). This reflected the close links between monetary and macroprudential policies.[17] The ESFS, which applies to all EU Member States, comprises the ESRB, the European Banking Authority[18] (EBA), the other two European Supervisory Authorities (ESAs),[19] the Joint Committee of the ESAs for the purposes set out in Articles 54-57 of the ESAs' Regulations, and the competent or supervisory authorities of the Member States as specified in the legislative acts referred to in Article 1(2) of those Regulations (ESAs Regulations, Art, 2(2); ESRBR, Art. 1(3)).[20]

The second activation occurred in 2013, when the Single Supervisory Mechanism (SSM) was established as by virtue of Council Regulation (EU) No 1024/2013 of 15 October 2013 (SSMR), as the first pillar of the Banking Union (BU) during the euro area fiscal crisis.[21] The SSM is a "highly integrated system" comparable to the ESCB (Lehmann, 2021, pp. 77-78; Judgment of the Court of 26 February 2019 in

not apply to those Member States. It is further noted, that despite the (conceptually misleading) placement of this paragraph in Article 127, which, along with other Articles, is included in Chapter 2 of Title VIII in Part Three of the TFEU entitled "Monetary Policy", the specific banking supervisory tasks conferred on the ECB do not constitute an exclusive EU competence under the Treaties.

16 The founding legislative act of this Union body is Regulation (EU) No 1092/2010 of the co-legislators of 24 November 2010 (OJ L 331, 15. 12. 2010, ESRBR).

17 On this aspect, see further below, under 4.2.1.

18 This was established by virtue of Regulation (EU) No 1093/2010.

19 These include, in addition to the above-mentioned EBA, the European Insurance and Occupational Pensions Authority – EIOPA, established by virtue of Regulation (EU) No 1094/2010, OJ L 331, 15. 12. 2010); and the European Securities and Markets Authority – ESMA, established by virtue of Regulation (EU) 1095/2010, OJ L 331, 15. 12. 2010). All these Regulations are in force as repeatedly amended.

20 On the ESFS and its components, see, *ex multis*, Gortsos, 2020, pp. 105-140 (with extensive further references).

21 On the BU, see details in Gortsos, 2023, pp. 241-253, 269-281, 299-301 and 437-543. On the SSM and the SSMR, see further below, under 4.2.2.

Joined Cases C 202/18 and C 238/18). Under the SSMR (SSMR, Art. 20(1) and recital (55)),[22] the ECB is accountable to both the European Parliament and the Council for its implementation, and notably in a manner that is more extensive than the provisions set out in the Treaty and the ESSCB/ECB Statute.

The 'planning and execution' of the ECB supervisory tasks have been assigned to the Supervisory Board (SSMR, Art.26(1), sub-para. 1; see also recital (67));[23] an *internal body* whose operation is primarily governed by Article 26 SSMR. The Supervisory Board is not an ECB decision-making body in the manner of the GC and the Executive Board; establishing such a status would have required an amendment to Article 282(2) TFEU. The ECB Rules of Procedure[24] clarify thatthe tasks of the Supervisory Board shall be exercised without prejudice to the competences of the ECB decision-making bodies (SSMR, Article 13a).

The ECB is also *further* involved in the ESFS as it participates since 2013 as non-voting member of the Board of Supervisors of the EBA (EBAR, Art. 40(1), points (b) and (d); on this Board, see Gortsos, 2023, pp. 391-394). In addition, it is involved in the Single Resolution Mechanism (SRM), established by Regulation (EU) No 806/2014 of the co-legislators of 15 July 2014 (SRMR) as the second pillar of the BU.[25]

On the basis of the above, it is noteworthy that the basic and other tasks of the ECB under the TFEU and its specific tasks in relation to macroprudential financial oversight are carried out within "systems" (Eurosystem/ESCB and ESFS, respectively), whereas its specific banking supervisory tasks are exercised within a mechanism (the SSM).[26] Nevertheless, all these systems and mechanisms share the common characteristic, as noted above, of lacking legal personality.

[22] For an assessment of the BU's accountability system in practice, see Lamandini & Ramos Muñoz, 2022.

[23] For a detailed analysis of Article 26, see Gruber, 2022, pp. 354-381.

[24] These were adopted in accordance with the Decision 2004/257/EC of 19 February 2004 (ECB/2004/2) on the basis of Article 12.3 ESCB/ECB Statute (OJ L 80, 18.3.2004).

[25] On this aspect, see further below, under 4.3.

[26] For a comprehensive analysis of the role of the ECB within the Eurosystem, the SSM, and the other systems and mechanisms in which it participates, see, *ex multis*, Lamandini, Ramos Muñoz & Solana, 2017; Gortsos, 2020, 2023 and 2024a (all with extensive further references).

3. The Eurosystem

3.1. Objectives and Basic Tasks

The primary and secondary objectives of the Eurosystem are laid down in Articles 127(1) and 282(2), second and third sentences TFEU:[27]

The primary objective is to maintain price stability (TFEU, Art. 127(1)).[28]

The secondary objective is without prejudice to the primary objective; thereunder, the Eurosystem must support the general economic policies in the EU to contribute to the achievement of its objectives as laid down in Article 3 TEU; and act according to the principle of an open market economy with free competition, favouring an efficient allocation of resources (a "generic" statement on respect for market economics) and in compliance with the principles set out in Article 119(3) TFEU (TFEU, Art. 127(1); TFEU, Art. 127(1); TEC (105(1); Smits, 1997, pp. 184-190; Scheller, 2006, pp. 51-54; Louis, 2009, pp. 150-151; Lastra, 2015, pp. 254-255; Tuori 2020, pp. 618-621).[29]

Since 1 January 1999, four basic tasks have been assigned to the Eurosystem pursuant to Article 127(2) TFEU,[30] which constitute a *numerus clausus*:

First, the definition and implementation of the single monetary policy (TFEU, Art. 127(2), indent 1).[31] The GC is responsible for the Eurosystem's monetary policy strategy, which was originally adopted in 1998, first reviewed in 2003, revised in July 2021 and most recently overviewed in June 2025. In defining the single monetary policy, the GC must adopt the necessary Guidelines and Decisions, including those concerning intermediate monetary objectives, key interest rates, and the supply of reserves within the Eurosystem (ESCB/ECB Statute, Art. 12.1, sub-para. 1).[32]

[27] They are repeated *verbatim* in Art. 2, ESCB/ECB Statute; On the reason why certain TEC Articles are repeated verbatim in the Statute, see Smits, 1997, p. 91.

[28] It should be noted that reference to this primary objective is also made in other seven provisions of the Treaties: in Art. 3(3) TEU, as well as in Arts. 119(2)-(3), 219(1)-(2) and 282(2), TFEU; According to the case law of the General Court, Article 127 (1) TFEU is not intended to confer rights on individuals (*QI and Others v European Commission and European Central Bank*, para. 100).

[29] In relation to the ECB's mandate in the face of climate change and biodiversity loss, se Smits, 2024; On the secondary objective, in particular, see Kılıç, 2022; De Boer & Van 't Klooster, 2023.

[30] This is repeated *verbatim* in Article 3.1. ESCB/ECB Statute. On these Articles, see Smits, 1997, pp. 223-288; European Central Bank, 2011; Lastra & Louis, 2013, pp. 79-80.

[31] Article 282(1), second sentence, makes instead use of the term "conduct" of monetary policy.

[32] On the evolution of the single monetary policy and its framework, see Gortsos, 2024a (and the extensive literature cited therein, including on "green" central banking).

It is worth noting, that in its Judgment of 27 November 2012 in Case C-370/12, *Thomas Pringle v Government of Ireland and Others* (widely referred to as the "*Pringle* Case", ECLI:EU:C:2012:756), the Court (Full Court) observed that the TFEU does not contain a definition of the Eurosystem's monetary policy. Thus, based on a functional approach, the TFEU provisions related to this policy refer to its objectives – pursuant to Articles 127(1) and 282(2), namely, to maintain price stability – rather than to its instruments.

Second, the remaining three basic tasks are as follows (TFEU, Art. 127(2), indents 2-4):[33]

(a) the conduct of foreign exchange operations consistent with Article 219 TFEU, which is not applicable to the non-euro area Member States, since these do not have voting rights in the Council for the approval of the decisions referred to therein (TFEU, Art. 139(4); Protocol (No 15), paras. 4 and 6);[34]
(b) the (closely related) holding and management of euro-area Member States' official foreign reserves;[35] and
(c) the promotion of the smooth operation of payment systems (see Gortsos, 2020, pp. 302-320).

In accordance with Article 14.3 of the ESCB/ECB Statute, the NCBs are obligated to act in accordance with the ECB Guidelines and Instructions. In the performance of their tasks within the Eurosystem, they must also comply with the provisions of the ECB Guideline of 2 November 2021 "laying down the principles of the Eurosystem Ethics Framework (ECB/2021/49) (recast)."

3.2. The role of the ECB in the Emergency Liquidity Assistance (ELA) Mechanism

Even though the definition and implementation of the single monetary policy is one of the basic tasks of the Eurosystem, the ECB does not act as a lender of last resort (LLR) to credit institutions established in the euro area in this context.[36] In principle, LLR is provided by the NCBs of the Member States whose currency is the euro. In this respect, the following should be noted:

[33] Article 282(1), second sentence makes instead use of the term "conduct" of monetary policy.

[34] On Article 219 TFEU, see Smits, 1997, pp. 369-409, and Wutscher, 2019, pp. 2054-2055.

[35] This is without prejudice to the holding and management by Member States' governments of foreign-exchange working balances (TFEU, Art. 127(3)); Article 127(2) does not refer to the "ownership" of official foreign reserves but rather to their "holding and management." On this issue, see the Opinion of the ECB, 2019; Opinion of the ECB, 2025).

[36] The term 'credit institution' is defined in Article 4(1), points (1)(a) and 1(b) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential

Pursuant to **Article 14.4 ESCB/ECB Statute**:

"*[NCBs] may perform functions other than those specified in this Statute unless the [GC] finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB.* [37] *Such functions shall be performed on the responsibility and liability of [NCBs] and shall not be regarded as being part of the functions of the ESCB.*"[38]

In this regard, the NCBs of the Member States whose currency is the euro may perform additional functions beyond those provided for in the ESCB/ECB Statute, such as the management of public debt (acting as "fiscal agencies"), the management of reserves of pension funds, the micro-prudential supervision of insurance undertakings, and the provision of liquidity assistance to solvent credit institutions experiencing severe liquidity difficulties, in accordance with the operational framework of the ELA Mechanism.

As noted, the procedural arrangements governing the provision of LLR under this mechanism are set out in the ECB "Agreement on emergency liquidity assistance" (as in force). Under this framework, ELA is provided under the *main* responsibility of the relevant NCB (ECB Agreement, 2024, Sec. 2.1) (and at its discretion). However, an NCB may be required to cease providing such assistance if the GC, pursuant to (the mentioned above) Article 14.4 ESCB/ECB Statute, finds that this interferes with the objectives and tasks of the Eurosystem (ECB Agreement, 2024, Sec. 5.1).[39]

requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 Text with EEA relevance.

[37] Even though Article 14.4 ESCB/ECB Statute is not included in those listed in Article 42(1) relating to their non-application to Member States with a derogation, the objectives and tasks of the ESCB (as referred to in Article 127(1)-(2) TFEU) apply only to euro-area Member States (and their central banks) by virtue of Article 139(2), point (c) TFEU. Accordingly, Article 14.4 ESCB/ECB Statute should be read as applying to the Eurosystem and not to the ESCB.

[38] On this Article, see Smits, 1997, pp. 99-101, 338-339; Due to the importance of the matter, a simple majority vote (which is the rule) is insufficient for such a decision of the GC; instead, a two-thirds majority of of the votes cast is required.

[39] This has been the case in Greece in June 2015, which had as a consequence the imposition of a "bank holiday" and of intrusive capital controls (by virtue of Article 65(1), point (b), TFEU); see on this by means of mere indication Hadjiemmanuil, 2020, pp. 1348-1354; On the ELA Mechanism and the ECB Agreement, see details in Gortsos, 2025c (and the extensive literature cited therein).

4. Financial Stability and Banking Supervision-Related Tasks

4.1. The financial stability-related task under Article 127(5) TFEU

Pursuant to Article 127(5) TFEU, the Eurosystem has been entrusted with the task of contributing to the smooth implementation of policies pursued by the national competent authorities (NCAs) relating to the prudential supervision of credit institutions and the stability of the financial system.[40] In relation to this provision, the following should be noted:

First, the task set out in Article 127(5) TFEU is neither a basic task of the Eurosystem (as per Article 127(2) TFEU) nor a specific task of the ECB (as per Article 127(6)).

Second, even though Article 127(5) has a notable shortcoming – since, literally, it refers only to the division of relevant competences between the ECB and the NCAs – it has served as the legal basis for ECB action during the (2007-2009 global financial crisis (GFC) and the subsequent euro-area fiscal and sovereign debt crisis.[41]

4.2 The Specific Supervisory Tasks of the ECB by Virtue of Article 127(6) TFEU

4.2.1 Specific Tasks Concerning the ESRB

The scale and intensity of the aforementioned global financial crisis (GFC) have, *inter alia*, highlighted the need to enhance the then-existing EU regulatory and supervisory framework for the financial system. In this respect, the High-Level Group on Financial Supervision in the EU, established by the Commission and chaired by the France's former central banker *Jacques de Larosière*, submitted its report on 25 February 2009 (the '*de Larosière* Report') (see: Ferrarini & Chiodini, 2009). This report included specific recommendations that ultimately led to the creation of the ESFS, which became operational on 1 January 2011.

As noted, the ESRB is a component of the ESFS, is based in Frankfurt, and constitutes a specific, independent Union body responsible for macroprudential

[40] Article 127(5) TFEU (repeated almost verbatim in Article 3.3 ESCB/ECB Statute) does not apply to Member States with a derogation (Art. 139(2), point (c), TFEU; ESCB/ECB Statute, Art. 42.1).

[41] On Article 127(5) TFEU, see Smits, 1997, pp. 338-355; Lastra &Louis, 2013,, p. 95; Psaroudakis, 2018, pp. 134-137,;Smoleńska & Beukers, 2022; On the GFC, see Gortsos, 2012, pp. 127-130, and on the euro area crisis, Hadjiemmanuil, 2020 (both with extensive further literature references). For a critical view of the assertion that key financial regulations (in the example of the US) only follow from crises (the "crisis-legislation hypothesis"), see Conti-Brown & Ohlrogge 2022.

oversight of the EU financial system. Unlike the ESAs, it does not have legal personality (ESRBR, Art. 1(1)-(2), and recital (15)). The ESRB is tasked with the macroprudential oversight in order to contribute to the prevention or mitigation of systemic risks to financial stability in the EU, arising from developments within the financial system and taking into account macroeconomic developments, with the aim of avoiding periods of widespread financial distress (ESRBR, Art. 3(1)).

With respect to the establishment of the ESRB, it was decided to activate, for the first time, Article 127(6) TFEU, pursuant to which the Council may confer "specific tasks" upon the ECB concerning policies relating to the prudential supervision of credit institutions and other financial firms, with the exception of insurance undertakings. In this respect, the ECB President and Vice-President are Members of the General Board of the ESRB; the ECB ensures the Secretariat, whose mission is set out in Article 4(4) ESRBR, thereby providing analytical, statistical, logistical, and administrative support to the ESRB; the ECB also provides sufficient human and financial resources to fulfil the above task of ensuring the Secretariat, whose head is appointed by the ECB, in consultation with the General Board of the ESRB (Council Regulation, 2010, Arts. 1-3).[42] Furthermore, the ESRB is currently chaired by the President of the ECB, who presides at the General Board's and Steering Committee's meetings and represents the ESRB externally (ESRBR, Art. 5(1)).[43]

4.2.2. Specific Spervisory Tasks Within the Single Supervisory Mechanism (SSM)

The Banking Union (BU) was established in 2013, amidst the euro-area fiscal and sovereign crisis. This development was dictated by the policy consideration that it was essential "*to break the vicious circle between banks and sovereigns*". The BU, and in particular its first main pillar, the SSM, is closely linked to the Economic and Monetary Union (EMU). The SSM was established by the S SSM Regulation (SSMR), which was adopted unanimously on the legal basis of Article 127(6) TFEU, and conferred specific supervisory tasks to the ECB. In accordance with the SSMR (SSMR, Art.6(1)). and unlike in the case of the Eurosystem, the SSM comprises the

[42] On these specific tasks, see details in Gortsos, 2023, pp. 232-233; In this respect, the author considers that the embedment of Article 127(6) (and (5)) in Chapter 2 of Title VIII in Part Three of the TFEU entitled "Monetary Policy" is conceptually misleading, since it is more than apparent that these paragraphs do not literally relate to monetary policy, but to financial stability and banking supervisory issues (notwithstanding the close links between these policies and the fact that they all refer to tasks assigned to the ECB, albeit in the case of Article 127(6) not within the Eurosystem).

[43] The ECB President would chair the Board for a term of five years; for the subsequent terms, the ESRB Chair would be designated in accordance with the modalities determined on the basis of the review provided for in Article 20. Nevertheless, the ECB President is still the Chair.

ECB – serving as the "hub") and responsible for its effective and consistent functioning – and the NCAs designated as such by the Member States participating in the BU in accordance with the CRR and the CRD IV (SSMR, Art. 2, point (2)) (the "spokes"), which may be, but are not necessarily, the central banks of those Member States.

The objective of the SSM is to contribute to the safety and soundness of credit institutions and to the stability of the financial system (SSMR, Art. 1, sub-para. 1; see also Ohler, 2022).[44] The SSMR introduced, for the first time in the EU banking sector, the principle of "supervisory centralisation", primarily – but not exclusively – for the Member States whose currency is the euro.[45] By virtue of this legislative act, specific tasks – a *numerus clausus,* as in the case of the Eurosystem's basic tasks under Article 127(2) TFEU, albeit in a different context – were (once again) conferred upon the ECB, this time within the SSM, concerning policies relating to the prudential supervision of specific categories of supervised entities, namely credit institutions established in a participating Member State, as well as financial holding companies and mixed financial holding companies also established in a participating Member State.[46] These specific tasks, which are (apparently) not included in the Eurosystem's basic tasks, and are carried out in a different mechanism established by EU secondary law, are set out in Article 4(1) SSMR.[47]

Pursuant to Article 6, since 4 November 2014, these specific tasks have, in principle, been carried out for the participating Member States *directly* by the ECB for significant credit institutions and by NCAs for less significant ones (within the SSM).[48] However, this distinction does not apply to the specific tasks relating to the

[44] This objective is apparently different from the primary objective of the Eurosystem, i.e., maintaining price stability.

[45] By virtue of Article 7 SSMR, a non-euro area Member State can join the SSM as from the date of entry into force of an ECB Decision on close cooperation. This was the case for Croatia and Bulgaria in October 2020; in the meantime, the former joined the euro area in 2023, and the latter will do so as of January 2026. All these Member States are defined as "participating Member States (SSMR., Art. 2, point (1)).

[46] The term supervised entity is defined in Article 2, point (20), (a)-(c) of the SSM Framework Regulation'(ECB/2014/17, OJ L 141, 14. 5. 2014, SSM-FR). It also includes (under (d)) the branches established in a participating Member State by a credit institution established in a non-participating Member State.

[47] On Article 4 SSMR, see Lackhoff & Witte, 2022.

[48] The determination of supervised entities as significant is made by the ECB in accordance with Article 6(4) SSMR and Articles 39-72 SSM-FR, which includes the case of reclassification of a less-significant supervised entity as significant; see Gortsos, 2025b, pp. 335-347; Relevant is also the Judgment of the General Court of 16 May 2017 in Case T-122/15, *Landeskreditbank Baden-Württemberg – Förderbank v European Central Bank*. On this judgment and the Judgment of the Court (First Chamber) of 8 May 2019 in Case C-450/17 P on the appeal brought

authorisation and the withdrawal of authorisations of credit institutions, as well as the assessment of acquisitions of qualifying holdings therein, which are carried out by the ECB even for less significant institutions under the so-called "common procedures" (SSMR, Arts. 4(1), points (a) and (c) and 14-15; SSM-FR, Arts. 73-88).[49]

4.3. The role of the ECB Within the Single Resolution Mechanism (SRM)

Under the SRMR, the ECB does not participate directly in the SRM. This legislative act establishes uniform rules and a uniform procedure for the resolution of the entities referred to in Article 2 that are established in the participating Member States. These rules and the procedures are to be applied by the Single Resolution Board (SRB, established under Article 42(1) SRMR), together with the Council, the Commission, and the national resolution authorities (NRAs), within the framework of the SRM (SRMR, Art. 1, sub-paras 1-2). However:

First, in the exercise of their respective responsibilities under the SRMR, the SRB, the Council, the Commission, the ECB, the NRAs, and the NCAs must, at each stage – resolution planning, early intervention, and resolution – cooperate closely and provide one another with all information necessary for the performance of their tasks (SRMR, Art. 30(2)).[50]

Furthermore, the first resolution condition consists in the determination that a credit institution is failing or likely to fail (FOLTF). In principle, this assessment is made by the ECB following consultations with the SRB (SRMR, Art. 18(1), sub-para 1, point (a) and sub-para 2).[51] An assessment on FOLTF is a 'supervisory assessment' of an individual bank, which is addressed to the SRB to enable it to conduct its own resolution assessment.[52]

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by *Landeskreditbank Baden-Württemberg Förderbank* (ECLI:EU:C:2019:372, the "*L-Bank* case"), see Gortsos, 2023, pp. 452-454 (and the extensive literature cited therein). For a regularly updated inventory of all (closed and pending) actions for annulment against ECB Supervisory Decisions and actions for failure to act against the ECB, see at the website of the European Banking Institute (EBI) Smits & Braga de Arruda, 2025, sec. 1-2. On the judicial review of decisions taken pursuant to the SSMR, see also the related contributions in Zilioli & Wojcik (eds.), 2021, as well as Tridimas, 2022, and Gortsos, 2025b, Chapters 2-3 and 5-6 (in boxes).

[49] On these Articles, see details in Gurlit, 2022.

[50] Furthermore, for the purposes of this legislative act, the ECB may invite the SRB Chair to participate as an observer in its Supervisory Board (SRMR., Article 30(4), first sentence).

[51] On the resolution conditions under the SRMR, see Gortsos, 2025b, pp. 535-541.

[52] This consideration on the nature of the FOLTF assessment was confirmed by the General Court (Eighth Chamber) in its Order of 6 May 2019 in Case T-281/18, *ABLV Bank AS vs European Central Bank (ECB)*, ECLI:EU:T:2019:296. On this case, see Gortsos, 2025b, p. 537.

5. Concluding remarks

(1) The ECB was established in 1998 and commenced operations on 1 January 1999. Since its inception, it has been at the centre of the Eurosystem. In light of significant institutional developments in 2010 and in 2013 – almost immediately after two major economic crises, notably the global financial crisis (GFC) and the euro-area fiscal and sovereign crisis global financial crisis – the role of the ECB has been substantially strengthened.

In addition to its role as a monetary authority within the Eurosystem, issuing euro-denominated banknotes and exercising the basic tasks set out in the TFEU, the ECB has been entrusted with specific tasks in relation to macroprudential financial oversight within the ESFS and banking supervision within the SSM. Accordingly, as of 4 November 2014, the scope of its tasks comprises the following:

First, its basic tasks within the Eurosystem, as set out in Article 127(2) TFEU; these do not include the provision of LLR, which is governed by the ELA Mechanism, within which the ECB exercises the powers provided for in Article 14.4 ESCB/ECB Statute.

Second, its other tasks and powers, as set out in the TFEU (e.g., Article 127(5)) and in the ESCB/ECB Statute;

Third, the specific tasks conferred upon the ECB by virtue of Article 2 of Council Regulation (EU) No 1096/2010 concerning the macroprudential oversight of the EU financial system in the context of the functioning of the ESRB within the ESFS; and

Finally, its specific banking supervisory tasks, as conferred upon it by the SSMR.

In addition, by virtue of the SRMR, the ECB is called upon to make the supervisory determination that a credit institution is failing or likely to fail (FOLTF=, i.e., that the first resolution condition is satisfied.

(2) It is finally worth noting that, once the Commission's proposal of 28 June 2023 for a Regulation of the co-legislators "on the establishment of the digital euro"[53] will have been adopted, the ECB will have the exclusive right (responsibility) to authorise the issue of the digital euro in accordance with the Treaties, and in particular with Article 128(1) TFEU; both the ECB and the NCBs of the Member

[53] This followed a targeted consultation during the period 5 April to 16 June 2022. According to the Commission's proposal, the Regulation should be adopted on the legal basis of Article 133 TFEU, pursuant to which the co-legislators, acting in accordance with the ordinary legislative procedure laid down in Article 294, and upon consultation with and without prejudice to the powers of the ECB, "*shall lay down measures necessary for the use of the euro as the single currency*". On this TFEU Article, see Wutscher, 2019, pp. 2080-2082; Palmstorfer, 2022.

States whose currency is the euro may issue it (Proposal for a Digital Euro Regulation, Art. 4(1)). In accordance with the Commission's proposal:

(a) The digital euro, a central bank digital currency (CBDC), shall be established as the digital form of the single currency and is defined as such: "*the digital form of the single currency available to natural and legal persons*" (Proposal for a Digital Euro Regulation, Arts. 3 and 2, point (2)).

(b) Like euro-denominated banknotes, it shall constitute a "direct liability" of the ECB or the NCBs towards its users (Proposal for a Digital Euro Regulation, Art. 4(2), and recital (9)).

(c) The digital euro "*shall have legal tender status*". This entails, *inter alia*, that it shall be fully fungible, as well as its "mandatory acceptance", at full face value, by payees with the power to discharge from a payment obligation, unless otherwise provided in the proposed Regulation (Proposal for a Digital Euro Regulation, Art. 7(1)-(3) and (5), and recital (55)).[54]

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[54] For details on this proposed legislative act, see Gortsos, 2025a, (and the literature cited therein).

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FROM LEGAL TENDER TO PROHIBITION: COMPETING PARADIGMS IN CENTRAL BANK DIGITAL CURRENCY LAW

Summary

Before 2025, legislative intervention regarding central bank digital currencies (CBDCs) worldwide focused predominantly on enabling their issuance through legal tender designation and accompanying regulatory frameworks. The U.S. Anti-CBDC Surveillance State Act (S. 1124) represents a fundamental paradigm shift: legislation oriented towards prohibition rather than enablement. This article examines why the sovereign would legislate against its own monetary prerogative and proposes 'legal desirability' as the necessary analytical framework. Legal desirability involves systematic evaluation across five dimensions – legal authority, technological governance, risk management, institutional design, and operational resilience – filtered through jurisdiction-specific variables including payment system context, constitutional traditions, and policy objectives. This framework explains how jurisdictions applying identical analytical criteria may rationally reach opposing conclusions. The U.S. determination that the privacy–AML/CFT trilemma is unresolvable within constitutional constraints did not lead to the rejection of digital money innovation but to an alternative framework championing regulated private stablecoins. The article identifies two competing conceptions of monetary sovereignty underlying this divergence – sovereignty as state capacity versus sovereignty as constitutional restraint – and examines implications for legal tender doctrine, central bank independence, and the emerging multi-form digital money system.

Keywords: Central Bank Digital Currency, Legal Tender, Monetary Sovereignty, Financial Privacy, Legal Desirability.

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OD ZAKONSKOG SREDSTVA PLAĆANJA DO ZABRANE: SUPROTSTAVLJENE PARADIGME U OBLASTI PRAVA DIGITALNIH VALUTA CENTRALNIH BANAKA

Sažetak

Do 2025. godine, zakonodavne intervencije u oblasti digitalnih valuta centralnih banaka (CBDC) širom sveta bile su uglavnom usmerene na omogućavanje njihove emisije dodelom statusa zakonskog sredstva plaćanja i definisanjem regulatornog okvira. Američki zakon o zabrani i kontroli digitalnih valuta centralnih banaka (Anti-CBDC Surveillance State Act, S. 1124) predstavlja temeljan zaokret te paradigme: od zakona baziranog na omogućavanju do zabrane. U ovom članku ispituje se zašto bi suverena vlast donosila zakone protiv sopstvenih monetarnih ovlašćenja i predlaže se koncept „pravne poželjnosti" kao neophodan analitički okvir. Pravna poželjnost podrazumeva sistematsku evaluaciju kroz pet dimenzija, uključujući pravnu nadležnost, tehnološko upravljanje, upravljanje rizikom, institucionalni dizajn i operativnu otpornost, koja je filtrirana kroz varijable specifične za datu jurisdikciju, uključujući kontekst platnih sistema, ustavnu tradiciju i ciljeve politike. Ovaj okvir objašnjava kako jurisdikcije koje primenjuju identične analitičke kriterijume mogu racionalno da dođu do suprotnih zaključaka. Odluka Sjedinjenih Američkih Država da se trilema privatnosti, sprečavanje pranja novca i finansiranja terorizma ne može rešiti unutar ustavnih ograničenja nije dovela do odbacivanja inovacija u domenu digitalnog novca, već do alternativnog okvira u kojem se promovišu regulisani privatni stabilni novčići (stablecoins). U članku su identifikovane dve suprotstavljene koncepcije monetarne suverenosti koje leže u osnovi ovog raskola – suverenost kao moć države u odnosu na suverenost kao ustavna ograničenja – i ispitane su implikacije u pogledu doktrine zakonskog sredstva plaćanja, nezavisnosti centralne banke i sistema višestrukih oblika digitalnog novca koji je u nastanku.

Ključne reči: digitalna valuta centralne banke (CBDC), zakonsko sredstvo plaćanja, monetarna suverenost, finansijska privatnost, pravna poželjnost

1. Introduction

Prior to 2025, legislative intervention in the field of central bank digital currencies (CBDCs) worldwide was predominantly oriented towards creating conditions for their issuance. The central legislative task consisted of granting public digital currency legal tender status, establishing issuance authority, and designing regulatory architecture for distribution and use. The Bahamian Sand Dollar Act (2020), the EU Digital Euro Regulation Proposal (COM(2023) 369), and various national frameworks shared this common assumption: that the legislator's role was to enable CBDC introduction. However, the U.S. Anti-CBDC Surveillance State Act (S. 1124, 119th Congress.Gov, 2025) and Executive Order 14178 represent a fundamentally different legislative posture – one oriented toward prohibition rather than enablement. This divergence raises a critical question for monetary and central bank law: what explains these opposing legislative approaches, and what analytical framework can account for jurisdictions reaching diametrically opposed conclusions regarding the same monetary innovation?

This divergence raises a critical question for monetary and central bank law: what explains these opposing legislative approaches, and what analytical framework can account for jurisdictions reaching diametrically opposed conclusions regarding the same monetary innovation? The competing paradigms range from embracing state-issued digital money with legal tender status to outright prohibition in favour of private sector alternatives (Avgouleas & Blair, 2024, pp. 103-112; Krause, 2025a; Palmstorfer & Erbilen, 2025, pp. 210-231). These divergent strategies reflect deep policy disagreements over financial privacy, monetary sovereignty, and the structure of the banking system (Palmstorfer & Erbilen, 2025, pp. 210-231; Li & Li, 2025, p. 179; Ozili, 2025a, pp. 201-223).

2. Legal Tender and State-Led Digital Integration

This paradigm views CBDC as an essential instrument of state monetary control, positioning it as the digital equivalent of physical cash and seeking to solidify its status through legal frameworks enforcing acceptance (Palmstorfer & Erbilen, 2025, pp. 210-231; Zatti & Barresi, 2024, pp. 345-358). Given that CBDCs are classified as digital fiat money, the issuing state has the prerogative to designate them as legal tender. This is significant because the legal definition of money is fundamentally grounded in legal tender status: it is through this designation that the state identifies a medium of exchange capable of validly and definitively extinguishing monetary obligations. Legal tender thus operates as the juridical

mechanism through which the state sanctions what constitutes money within its monetary order (Zatti, 2023, pp. 197-212).

Several characteristics underscore this paradigm. Central banks pursue CBDCs to safeguard monetary sovereignty against challenges from private cryptocurrencies, stablecoins, and foreign CBDCs (Pfister, 2023, pp. 35-66). CBDCs classified as 'digital M0' establish them as direct, risk-free central bank liabilities, enhancing stability and credibility (Palmstorfer and Erbilen, 2025, pp. 210-231; Sanz Bayón, 2025, pp. 309-347). Proponents argue that these currencies promote financial inclusion, improve payment efficiency, and provide alternatives to declining cash use (Gazi, 2023, pp. 83-107; Freiman, 2025, pp. 1-22).

The practical implementation varies considerably. China's e-CNY demonstrates how CBDCs can reinforce central authority. Draft revisions to the People's Bank of China Law envisage formal legal tender status and mandate acceptance across the public and private sectors (Li & Li, 2025). The two-tier model preserves central bank authority while delegating operational functions to commercial banks and licensed institutions. Programmable features serve state policy objectives, including transaction limits and expiry dates (Krause, 2025b).

The ECB's digital euro project illustrates tensions within this paradigm in liberal democratic contexts. While embracing state monetary sovereignty, EU policymakers face the imperative of limiting surveillance capabilities. Design features include offline functionality and possible anonymity for low-value transactions to replicate cash-like privacy (Sangwa & Mutabazi, 2025). The question of legal tender status remains contested, as mandatory acceptance obligations could exclude populations lacking technical access – revealing tension between financial inclusion objectives and enforcement mechanisms.

3. Prohibition and Reliance on Private Digital Assets

This paradigm, most explicitly seen in the U.S., legislatively rejects retail CBDC creation, driven by fears of government overreach and banking sector destabilisation (Krause, 2025a, 2025b).

The Anti-CBDC Surveillance State Act (H. R. 5403, later H. R. 1919) represents a decisive mandate permanently prohibiting the Federal Reserve from issuing a retail CBDC (Cao, 2025, pp. 1-12; Krause, 2025b).

The Act imposes comprehensive prohibitions: the Fed cannot offer financial products directly to individuals, maintain accounts on their behalf, or issue a CBDC directly. An anti-circumvention clause prevents sidestepping through intermediaries. The Fed is restricted from programmes to test, study, develop, or implement a

CBDC unless expressly authorised by future legislation. The Federal Open Market Committee is barred from using CBDC for monetary policy,[1] preventing features such as dynamic interest rates or programmable expiry dates. The functional prohibition encompasses "any digital asset that is substantially similar under any other name or label," establishing a technology-agnostic ban.[2]

The legislation aims to secure the two-tiered banking system against disintermediation, address concerns about financial surveillance, and prevent "money programmability." A retail CBDC could afford unprecedented government control over individual finances, enabling monitoring that erodes privacy and civil liberties – concerns particularly acute in the context of authoritarian exploitation (Garita, 2025). Moreover, the concept of "programmable money" inherent in CBDCs generates concerns about an unwarranted expansion of the Fed's monetary authority into fiscal policy. The concept of programmable money raises concerns about expanding the Fed's authority into fiscal policy, potentially infringing on individual freedoms (Krause, 2025b; Ozili, 2025a, pp. 201-223; Sangwa & Mutabazi, 2025).

4. Core Legal and Policy Conflicts

The global divergence highlights three fundamental tensions, revealing irreconcilable philosophical commitments.

First, privacy versus surveillance in AML/CFT compliance. CBDC advocates seek 'tiered privacy' – anonymity for low-value payments mimicking cash – while maintaining AML/CFT compliance (Sangwa & Mutabazi, 2025; The Digital Dollar Project, 2021; Veneris, 2025). However, full privacy conflicts with regulations requiring transparent transactional data (Jiang, 2025, pp. 630-678). Opponents fear

[1] S. 1124, 2023, § 4 states: "SEC. 4. Prohibition with respect to central bank digital currency. Section 10 of the Federal Reserve Act (12 U.S.C. 241 et seq.) is amended by inserting before paragraph (12) the following: '(11) PROHIBITION WITH RESPECT TO CENTRAL BANK DIGITAL CURRENCY. – (A) IN GENERAL. – The Board of Governors of the Federal Reserve System may not test, study, develop, create, or implement a central bank digital currency, or any digital asset that is substantially similar under any other name or label. (B) MONETARY POLICY. – The Board of Governors of the Federal Reserve System and the Federal Open Market Committee may not use a central bank digital currency to implement monetary policy, or any digital asset that is substantially similar under any other name or label.'"

[2] S. 1124, 2023, §§ 2–4. Section 2 bans direct issuance to individuals; Section 3 prohibits indirect issuance "through a financial institution or other intermediary"; Section 4 (see note 1) prevents the Board of Governors from any developmental or implementation activities. The phrase "or any digital asset that is substantially similar under any other name or label" appears consistently across all three provisions, preventing circumvention through rebranding or technological variation.

that digital currencies inherently enable comprehensive tracking, creating trails that facilitate mass surveillance and override constitutional privacy protections (Skinner, 2024; Garita, 2025; Jiang, 2025, pp. 630-678; Krause, 2025a; Ozili, 2025b, pp. 59-74). Second, monetary control versus market freedom. Proponents argue that CBDCs restore monetary sovereignty and equip central banks with novel policy tools, including programmability and direct interest rate implementation (Freiman, 2025, pp. 1-22; Avgouleas & Blair, 2024, pp. 103-112). Critics view CBDCs as undermining 'popular monetary sovereignty,' transforming money from a private property right into a manipulable state policy instrument (Skinner, 2024). This perspective favours market-driven innovation through privately issued stablecoins (Jiang, 2025, pp. 630-678; Krause, 2025a).

Third, banking structure and credit intermediation. CBDC advocates suggest that bypassing or supplementing the two-tiered system could increase payment competition and reduce systemic risks (Skinner, 2024; Congress.Gov, 2025). Opponents warn that a retail CBDC would trigger destabilising deposit runs as households shift to risk-free central bank liabilities, crowding out commercial banking and undermining credit creation, which is essential to growth (Avgouleas & Blair, 2024, pp. 103-112; Tran, 2025, pp. 1-11).

These paradigmatic choices mirror prevailing social contracts and governance philosophies. Advanced democracies craft designs that limit centralised control; China accelerates the rollout, prioritising state capacity; the U.S. takes the most restrictive approach, institutionalising comprehensive prohibition (Krause, 2025a; Li & Li, 2025, p. 179; Sangwa & Mutabazi, 2025).

5. Reframing the Question: From Legal Tender Status to Legal Desirability

The enactment of legislation prohibiting a specific form of public currency raises a fundamental question: why would the sovereign legislate against its own monetary prerogative? Traditional monetary law scholarship provides no ready answer, having long assumed the legislative task consists in enabling and regulating money, not prohibiting it (Skinner, 2024). The traditional focus on legal tender status assumes that legislators will integrate digital public money into existing frameworks. Legal tender has historically ensured monetary unity and legitimised state currency (Noll, 2023, pp. 3-17). However, this focus obscures a more fundamental question: legal tender status addresses whether a CBDC can function as money, not whether it should be introduced.

This article proposes that 'legal desirability'– the systematic evaluation of whether novel monetary instruments should be introduced and under what

regulatory conditions – provides the necessary analytical lens (Zatti, forthcoming). Legal desirability transcends legal tender status to address whether the introduction serves core public policy objectives within specific constitutional and institutional contexts. Suppose such an evaluation may yield a negative determination. In that case, the U.S. Anti-CBDC Surveillance State Act represents precisely this: a legislative conclusion that a retail CBDC fails the legal desirability test despite the state's capacity to issue it. Prohibition would not be a denial of monetary sovereignty but an exercise of it – a sovereign determination that this form of public money is incompatible with constitutional values.

6. The Legal Desirability Framework

Legal desirability involves balancing potential benefits against significant risks and determining the precise legal and technical architecture necessary for implementation (Labonte & Nelson, 2022). It comprises two major components: assessing the necessity and justification for introducing the instrument, and defining the legal and regulatory framework governing its function, design, and use.

6.1. Defining Legal Desirability

The systematic evaluation begins with identifying the underlying issues a new monetary instrument seeks to address. The decision to pursue a CBDC is ultimately a policy and political matter (Bossu, Itatani & Rossi, 2020, pp. 1-51; Zatti, 2022, pp. 253-265). Central banks recognise that the absence of an explicit legal basis poses risks to their legal, financial, and reputational positions. To move beyond criticism that a CBDC is 'a solution in search of a problem,' policymakers must clearly define specific challenges or articulate unique public benefits (Labonte & Nelson, 2022; Freiman, 2025, pp. 1-22).

A thorough assessment of costs and benefits is essential: CBDC introduction should proceed only if the advantages surpass the associated costs and risks. But how is such an assessment conducted? The invocation of 'costs and benefits' risks abstraction without a structured methodology. Legal desirability provides this methodology through systematic evaluation across five interconnected dimensions, following a logical progression – from threshold questions of legal authority, through technological implications, risk trade-offs, and institutional structure, to operational feasibility verification.

The first dimension to consider is legal authority, focusing on whether there is adequate legal power for central bank issuance. It leads us to the second dimension,

which pertains to institutional design. It involves structuring mechanisms for entry, participation, and oversight, including the critical choice between account-based and token-based systems. This choice significantly influences privacy, user rights, and the application of criminal law. Within this framework, financial intermediation plays a crucial role, with considerations of commercial bank participation and the distinction between one-tier and two-tier systems, as well as safeguards such as holding limits to mitigate disintermediation risks (Rossi, 2023, pp. 67-82).

Next, we arrive at the third dimension: risk management. This dimension involves balancing competing policy objectives and addresses the acute privacy–AML/CFT trilemma. Achieving strong privacy, comprehensive compliance, and technological efficiency simultaneously appears implausible, necessitating the prioritisation of specific goals (Freiman, 2025, pp. 1-22). Policymakers must find a balance that allows for cash-like anonymity while upholding privacy, meeting regulatory requirements, and minimising surveillance risks (Jiang, 2025, pp. 630-678). The fourth dimension, technological governance, highlights that architectural choices are not normatively neutral; they can shape embedded legal relationships. The concept of programmable money, which incorporates built-in usage rules such as expiry dates or specific conditions, raises significant questions concerning government control and economic freedom (Sandner, Gross & Avdeev, 2023, pp. 141-156). It necessitates explicit consideration of the alignment between technical specifications and statutory regulations. Lastly, we must consider operational resilience, which assesses whether security, stability, and long-term viability can be ensured. It includes elements like cybersecurity, the capacity for continuous operation, crisis management protocols, and the resources available for institutional maintenance. Each of these dimensions plays a vital role in shaping the overall framework of central bank digital currencies and must be rigorously analysed to ensure effectiveness.

The legal desirability determination represents the synthesis of these five dimensions. A positive determination across all dimensions results in enabling legislation. A negative determination at any critical dimension – whether concerning legal authority, technological implications, risk acceptability, institutional feasibility, or operational capacity – may lead either to conditional preparation (pending the resolution of the problematic dimension) or to outright prohibition (where the dimension is deemed irresolvable). The U.S. legislative approach reflects a negative determination at the risk management dimension: the privacy–AML/CFT trilemma was judged unresolvable within constitutional constraints, rendering the question of operational resilience moot (Freiman, 2025, pp. 1-22).

6.2. Context-Specific Determination: Why Jurisdictions Diverge

The five dimensions provide a universal analytical structure but they do not yield universal conclusions. Legal desirability is inherently context-specific, as any evaluation depends upon jurisdiction-specific variables.

Payment system context shapes whether CBDC offers genuine added value – jurisdictions with mature fast payment systems may find the incremental benefit diminished, whereas those experiencing payment gaps may identify more substantial justifications. Financial system characteristics determine the risk profile – well-capitalised systems may tolerate disintermediation, while fragile sectors require more conservative constraints. Political economy influences the acceptability of trade-offs – jurisdictions with strong privacy traditions are likely to apply higher thresholds for surveillance-enabling architectures. Institutional capacity affects operational feasibility are likely to apply – successful implementation demands sophisticated central bank capabilities. Policy objectives extend beyond payment efficiency to financial inclusion, programmable subsidies, strategic autonomy, and monetary policy transmission – each weighted differently across jurisdictions.

These variables explain 'rational divergence': the EU moves forward with enabling legislation, the UK prepares cautiously, Australia focuses on wholesale applications, China deploys at scale, and the U.S. pursues prohibition. Each represents a rational response to its distinct context.

6.3. The Legal Desirability Determination

The determination synthesises a five-dimensional assessment that is filtered through jurisdiction-specific variables. A positive determination across all dimensions results in enabling legislation – the EU Digital Euro Proposal affirms legal authority through legal tender status, addresses technological governance through offline functionality and privacy-by-design, manages risks through holding limits and GDPR compliance, structures institutional design through mandatory Payment Services Providers participation, and ensures operational resilience through ECB oversight (Palá Laguna, 2023, pp. 297-308).

An adverse determination at any critical dimension may result in conditional preparation or outright prohibition. The U.S. approach reflects a negative determination in risk management: the privacy–AML/CFT trilemma was deemed unresolvable within constitutional constraints. It led not to rejecting digital money innovation altogether, but rather to an alternative framework championing regulated private stablecoins (The GENIUS Act), thereby avoiding the surveillance concerns associated with public digital currencies.

Legal desirability thus operates as a 'constitutional convention' for new monetary technology, resolving fundamental questions regarding authority, technology, risks, structure, and feasibility differently across jurisdictions – prior to deployment.

7. Legal Tender, Legal Desirability, and the Future of Monetary Sovereignty

The central conclusion is that legal tender status, while fundamental for CBDCs, is necessary but not sufficient to establish legal desirability. Legal tender provides the legal mechanism for discharging obligations, constitutes official state sanction, promotes acceptance and trust, and is a decisive factor in ensuring universal access. However, its mere imposition does not guarantee success, nor does it address concerns regarding fairness, technical requirements, and public acceptance.

Three insufficiencies emerge. First, technical and inclusion barriers: legal tender presupposes the technical capacity to receive payment; where this capacity is lacking, the designation becomes hollow. Second, privacy and cost concerns: legal desirability requires design choices that protect users and ensure affordability, irrespective of legal tender status – privacy must be guaranteed, basic services must be accessible free of charge, and the role of commercial banks must be clearly defined. A CBDC that enables comprehensive surveillance fails risk management, regardless of its formal standing. Third, legal and criminal status complexities: token-based CBDCs lack a clear private law status, complicating the extension of circulation-promoting privileges; criminal protection against electronic counterfeiting raises fundamental questions, given that existing laws focus on material currency.

Ultimately, currency adoption as legal tender depends on jurisdiction-specific constitutional values, legal principles, and financial policy objectives. Legal tender ensures valid debt discharge, but legal desirability also depends on technological accessibility, broad acceptance, and safeguards against surveillance and misuse.

7.1. Challenges to Traditional Monetary Legitimacy

The digital era fundamentally challenges assumptions about what legitimises public money. Historically, legitimacy rested on state regulatory power and central bank issuance authority. Three challenges destabilise these foundations.

First, monetary sovereignty faces competition from decentralised assets and private payment systems. Private digital currencies threaten monetary control, as populations may potentially shift to alternatives. Central banks view CBDCs as

necessary to safeguard sovereignty; however, retail CBDCs alter the two-tiered banking structure, raising concerns regarding disintermediation.

Second, the privacy–surveillance conundrum proves intractable. Cash guarantees a level of anonymity that digital money cannot replicate without conflicting with AML/CFT requirements. The U.S. resolves this structurally by prohibiting retail CBDCs and transferring compliance responsibilities to regulated private institutions, mandating that any acceptable digital dollar preserve the privacy protections afforded by physical currency.

Third, programmable money challenges the assumption that money should be a neutral medium of exchange. Critics express concern over digital financial repression, whereby governments could dictate spending. Programmability may blur monetary-fiscal policy boundaries. U.S. legislation specifically maintains economic freedom by ensuring money remains neutral.

7.2. Emerging Research Agenda: Constitutional Federalism and Monetary Prohibition

Prohibitionist legislation creates novel challenges. U.S. federal prohibition, combined with state-level bans – such as Florida's exclusion of CBDC from its Uniform Commercial Code definition of 'money'– gives rise to foreseeable conflicts should federal policy eventually authorise a CBDC.

The research challenge lies in the tension between states refusing to accept federally authorised currency, since it is the Constitution that grants Congress exclusive coinage power. Future litigation may involve individuals suing state entities for rejecting a federally authorised CBDC. Research must therefore develop frameworks addressing state sovereign immunity – potentially extending structural implied waivers under the Coinage Clause – to enforce federal monetary authority.[3]

7.3. Competing Conceptions of Monetary Sovereignty

Divergent approaches reflect competing conceptions of sovereignty: sovereignty as state capacity versus sovereignty as constitutional restraint.

The first conception views monetary authority as absolute power, aligns with the State Theory of Money, and finds expression through programmable money and surveillance capacity. China's e-CNY exemplifies this, emphasising traceability and programmability to achieve state objectives, including corruption control and capital enforcement.

[3] United States Constitution, Article I, Section 8, Clause 5 (the 'Coinage Clause'), which vests in Congress the power '[t]o coin Money, regulate the Value thereof, and of foreign Coin.'

The second conception sees sovereignty residing in the people, with state power limited by constitutional guarantees that protect individual rights and privacy. The American tradition exemplifies this approach, understanding money as a bundle of rights encompassing popular monetary sovereignty, property in monetary value, and monetary privacy. The Anti-CBDC Surveillance State Act mandates a permanent prohibition, reflecting the conviction that government-controlled digital currency threatens individual liberty. The legislation prevents the Federal Reserve from engaging in retail functions, safeguards private banking from disintermediation, and prohibits CBDCs for monetary policy, thereby addressing concerns over potential weaponisation.

This divide has led the U.S. to reject sovereign digital currency while embracing regulated stablecoins, prioritising the preservation of privacy and economic freedom over direct governmental control.

7.4. Tensions within U.S. Monetary Constitutionalism

The U.S. position reveals several structural conflicts. First, the separation of powers: Congress asserts its authority under Article I by prohibiting Federal Reserve CBDC activities, raising questions regarding central bank independence constraints while preventing monetary-fiscal blurring (Krause, 2025a). Second, privacy–compliance tension: the Act prioritises privacy by banning retail CBDCs, though reliance on stablecoin transfers surveillance responsibilities to private actors (U.S. House Committee on Financial Services, 2025). Third, the market–sovereignty tension: prohibition reinforces a two-tiered banking system and champions market-based solutions, but carries the risk of ceding technological leadership to jurisdictions such as China.

7.5. Conclusion by Numbers

Most jurisdictions are not following the prohibitionist model. As of early 2025, 134 jurisdictions, representing 98 per cent of global GDP, were engaged with CBDCs (Atlantic Council, 2025). To date, only the Bahamas, Jamaica, and Nigeria have launched CBDCs (Tran, 2025, pp. 1-11); China's pilot involves hundreds of millions; the European Central Bank expects to launch the digital euro in 2029, subject to EU legislative adoption in 2026 (ECB, 2025); the Bank of England continues its design phase for a digital pound, with a decision on whether to proceed expected in 2026 (BoE, 2025); and 49 jurisdictions are currently running pilot projects (Atlantic Council, 2025).

The U.S. is the only major economy to ban CBDCs, making it a global outlier. Some jurisdictions have paused projects for specific reasons – Denmark due to adequate existing solutions, Japan because of a cash preference, Brazil owning to difficulties with privacy protocols, and South Africa for lack of a compelling justification for a retail CBDC – but none have adopted a broad, philosophical prohibition.

The situation represents a fork in global policy: the majority of jurisdictions are proceeding towards centralised CBDC control, while the U.S. wagers on regulated private stablecoins. Whether prohibition risks ceding technological leadership to foreign jurisdictions remains an open question, one that will shape the future of monetary law.

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THE DAWN OF THE NEW INTERNATIONAL MONETARY ARCHITECTURE

Summary

The international monetary order has always been closely associated with the dominant economic power of the time. Leading nations have issued the global reserve currency, which has gained widespread acceptance based on expectations of its future use in international transactions. The monetary system is often perceived as the most enduring component of the economic structure, while shifts in the status of the global currency depend on changes in the economic and geopolitical power of its issuer. Today, two major forces constitute key factors that may reshape the post-World War II monetary infrastructure. The first is technological innovation, which is unlocking new possibilities in money and payment systems. The second is geopolitical tension, which is increasing the attractiveness of alternative currencies and monetary arrangements. In this context, various proposals have emerged regarding the future design of the international monetary system, ranging from return to commodity-backed currencies such as gold to the creation of digital currency networks driven by technological advancement. Each proposal has its advantages and disadvantages.

Keywords: Money, Digitalization, Gold, International Monetary System.

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POJAVA NOVE MEĐUNARODNE MONETARNE ARHITEKTURE

Sažetak

Međunarodni monetarni poredak je oduvek bio usko povezan sa dominantnom ekonomskom silom datog vremena. Vodeće nacije emitovale su globalne rezervne valute, koje su široko prihvaćene zbog očekivanja da će se koristiti za međunarodne transakcije u budućnosti. Često se smatra da je monetarni sistem najtrajnija komponenta ekonomske strukture, a da promene statusa globalne valute zavise od promena u ekonomskoj i geopolitičkoj moći emitera. Danas postoje dva ključna faktora koji bi mogli da preoblikuju monetarnu infrastrukturu posle Drugog svetskog rata. Prvi faktor su tehnološke inovacije, koje otvaraju nove mogućnosti za novčane i platne sisteme. Drugi faktor su geopolitičke tenzije, koje povećavaju atraktivnost alternativnih valuta i monetarnih aranžmana. U tom kontekstu, pojavili su se različiti predlozi u pogledu novog dizajna međunarodnog monetarnog sistema u budućnosti, od povratka na robne valute, kao što je zlato, pa do stvaranja mreža digitalnih valuta baziranih na tehnološkom napretku. Svi novi predlozi imaju svoje prednosti i mane.

Ključne reči: novac, digitalizacija, zlato, međunarodni monetarni sistem.

1. Introduction

Monetary supremacy is closely linked to the hegemony of the dominant power in a given epoch. It is not an end in itself but rather a consequence of the economic, political, military and overall dominance exerted by a country or political bloc – either globally or within a specific region or territory. Historically, each leading power has issued the dominant currency, which was widely accepted with the expectation of its continued use in future transactions. Since trust lies at the core of money, confidence in the issuing state's power is fundamentally connected to the currency's stability and desirability.

The monetary structure is one of the most sophisticated components of a country's economic system. This complexity becomes even more pronounced at the international level, where nations strive to maintain their monetary sovereignty

while simultaneously complying with international agreements and regulations. The monetary system is often regarded as the most stable element of the economic framework. However, as Dalio (Dalio, 2021) suggests, changes within the system tend to accumulate gradually until a momentum is reached, resulting in sudden and profound transformation. One may argue that the change processes are slow in terms of accumulating sufficient energy for change, whereas the changes themselves occur abruptly and with a profound impact. Usually, shifts in the international status of the dominant currency stem from changes in the economic and geopolitical power of its issuing State. The primary drivers of such changes are associated with technological developments that challenge the existing monetary arrangement, as well as with and changes or shifts in geopolitical power that make alternative currencies and monetary arrangements more attractive than the prevailing ones.

The status of a currency on the international stage is crucial for the ability of the State to exert influence. The recent trend toward the digitalization of money is viewed as a process with a great potential to disrupt the current international monetary system, affecting not only the economic sphere but also the broader geopolitical balance. For this reason, some argue that having a strategy for development of digital money is a matter of national interest (see Singh, 2022). Additionally, geopolitical turbulences and the weaponization of money and payment infrastructures represent additional factor contributing to the changes in the existing international monetary framework.

The recent developments in the realm of money clearly signal the emergence of a new international monetary order. These changes will have a significant impact on the existing legal and institutional architecture that underpins the current system. Following this brief introduction, the paper will examine the primary drivers of change, with particular emphasis on the process of digitalization and geopolitical shifts (1). Subsequently, it will outline the most significant trends and conceptual proposals shaping the future of the international monetary system (2). The conclusion follows.

2. Panta Rei – Monetary (R)evolution

The foundations of the contemporary international monetary system were laid in July 1944 at the Bretton Woods Conference, where the Allied nations deliberated on the structure of the post-war global monetary order. Delegates from 44 countries participated in the conference with the aim of creating a stable and equitable framework for international cooperation in the fields of finance and trade. The outcome was the creation of the first international monetary order codified in

a formal international agreement. Moreover, two important institutions emerged from this agreement: the International Monetary Fund, designed to oversee the exchange rate stability and provide short-term assistance, and the International Bank for Reconstruction and Development, with the objective of supporting post-was reconstruction and development. The debate at the conference centered on the two competing visions presented by two leading economists – John Maynard Keynes of the United Kingdom and Harry Dexter White of the United States. Keynes advocated for a more balanced system designed to prevent global imbalances and protect debtor nations. His proposal also included the creation of a supranational currency, the *Bancor,* managed by an International Clearing Union. White, representing the U.S. interests, rejected the idea of a supranational currency and promoted a dollar-centric monetary order, in which the U.S. dollar would serve as the *de facto* global reserve currency. The outcome of the conference reflected the geopolitical realities of the time, promoting American leadership in global finance that would shape the following decades. This leadership and the dollar's position at the international stage have long been sources of both tension and intellectual debate. On the one hand, as former French president Valéry Giscard d'Estaing famously remarked, the dollar's reserve currency status grants the United States and its economy an "exorbitant privilege," enabling it to finance persistent trade and fiscal deficits and to borrow at lower costs than other nations. However, the status of a global reserve currency also entails significant drawbacks. That was clearly explained in the late 1950s by Robert Triffin, who highlighted the inherent contradictions between United States' short-term domestic interests and the need for long-term monetary stability. This concept, known as Triffin's dilemma, emphasizes the fact that the United States must supply sufficient liquidity to the global economy – typically by running balance-of-payment deficits – which can undermine confidence in the dollar's value. Both, the "exorbitant privilege" and Triffin's dilemma reveal the fragility and imperfections of a reserve currency system built on national foundations, which is simultaneously tasked with serving global needs. In 1971, the Bretton Woods system was fundamentally transformed when the United States unilaterally suspended the dollar's convertibility into gold. The system that now exists is based on *fiat* money, whose value is directly linked to its purchasing power. While the dollar has retained its role as the global reserve currency, several process and events have the potential to challenge the current international monetary system. The two dominant transformative forces are associated with the phenomenon of digitalization (2.1) and with geopolitical shifts (2.2), both of which have the power to alter the current state of affairs.

2.1. Digitalization of Money as a Driver of Change

Money, as a medium of exchange, is an innovation in itself. Its historical evolution has been marked by numerous technological breakthroughs that have reshaped its conceptual foundations and transformed the payment execution mechanisms. Generally, such innovations originate in the private sector, driven by the pursuit of profit and operational efficiency, with public authorities subsequently legitimizing and institutionalizing these changes. Today, society as a whole is undergoing a sweeping transformation fueled by digitalization, and the realm of money and payments is no exception. In this context, *blockchain* technology emerges as a game-changer and a distinctly disruptive force, offering technological possibilities that were previously considered unimaginable.

As a result, there has been a surge of various types of private money based on this new technology. While their role as medium of exchange remains limited, their market valuation continues to grow steadily. Cryptocurrencies such as Bitcoin, Ethereum, Ripple, and others are increasingly attracting investors worldwide. Furthermore, stablecoins – digital currency backed by fiat money issued by a state, most often the U.S. dollar – are emerging as attractive payment instruments. This wave of innovation and the growing prevalence of privately issued digital money have prompted central banks to respond proactively by exploring public alternatives for digital payments.

All these innovations and the surge of private money for payments have prompted central banks to be proactive and to provide solutions for digital payments using public money issued by the state. Central bank digital currencies (CBDCs) are being studied by many central banks worldwide, while several major central banks, such as the People's Bank of China and the European Central Bank (see Zafiroski & Kjoseva, 2025, pp. 97-111), are at very advanced stages in preparing for the introduction of a digital form of central bank money. Even though the launch and the mass adoption of CBDCs appear distant for many of the world's leading central banks, their potential to disrupt the current monetary infrastructure is substantial. This potential largely depends on theirs design and key features.

There are no physical boundaries for digital payments, which challenges the concept of monetary sovereignty of individual countries. On the one hand, CBDCs offer a unique opportunity for the issuing country to preserve and strengthen its monetary sovereignty. On the other hand, digital sovereign money issued by the world's leading economies poses a threat for smaller economies with limited capacity to launch their own digital currencies. The risk of digital dollarization could undermine the effectiveness of their monetary policy and, in practice, effectively erode their monetary sovereignty.

2.2. Geopolitical Shifts as a Catalyst for Change

The international monetary order is part of a broader set of rules recognized in international arena for the regulation of relations between the states. Historically, as previously explained, such rules tend to be shaped by the victors following major wars, conflicts, or crises. However, as Ray Dalio (Dalio, 2021) suggests, nothing is permanent, meaning that geopolitical alignments and the balance of power are constantly evolving across countries and regions. Today, we are witnessing an era of exceptional political and economic tensions between various countries and military-economic blocs. For instance, the tariff war initiated by the U.S. administration to recalibrate trade imbalances is in full swing. These measures are of concern not only to the United States' principal adversaries, such as China and India, but also to some of its closest allies, including the United Kingdom, the European Union, and Japan. New lines of alliances are being drawn daily, although the emerging geopolitical map remains uncertain. This indicates that the new order has yet to take shape, and the tensions are likely to persist. In these unfolding economic confrontations, money is increasingly used as an instrument to pursue political, economic, and even military objectives. The strategic use of money as a tool of influence, or its "weaponization," is more evident now than ever before (see Lastra, 2024, pp. 102-122).

In the aftermath of the onset of the conflict in Ukraine, we witnessed unprecedentedly severe sanctions imposed on Russia, including the freezing of the Central Bank of Russia's foreign currency reserves. Additionally, Russian banks and individuals were excluded from using the SWIFT financial messaging system. The implementation of these measures was made possible because Western banks are dominant shareholders in SWIFT, because the CHIPS as the clearinghouse is supervised by the U.S. government, and because the U.S. dollar remains the dominant international currency for payments and investments. In contrast to previous sanctions regimes, these measures challenge the long-standing principle of central bank immunity. The freezing of the central bank's assets and exclusion from SWIFT has been described as the "bazooka" among financial sanctions, with the potential to undermine the status and reduce the attractiveness of the global currency of the state issuer implementing such severe sanctions.

The introduction of sanctions unsurprisingly prompted a search for alternatives to the Wester-dominated financial infrastructure. Such solutions are intended to enable Russia and other potentially affected countries to maintain international trade and to continue business activities. Consequently, new mechanisms have emerged, including systems for transmitting cross-border payment instructions, alternative transaction currencies, and different clearing arrangements. Logically,

China – with its internationally active banks, large economy, and robust trade with the rest of the world – was well positioned to propose viable solutions and strategic alternatives (see Eichengreen, 2022).

The use of money and payment infrastructure as a "financial weapon" is compelling affected countries to develop parallel systems. This shift could jeopardize the normal functioning of the current system, and may lead to the emergence of a new, fragmented, multipolar monetary and payment system. Accordingly, Russia has continued to develop its own alternative to the SWIFT messaging system, known as SPFS (Financial Messaging System of the Bank of Russia), while China continues to expand its Cross-Border Interbank Payment System (CIPS). These developments have the potential to challenge the leading status of the U.S. dollar as the primary reserve currency and dominant payment instrument. Nevertheless, reports suggest that, in the short run, the sanctions have had a consolidating effect on the global status of the dollar, although the long-term outlook appears to be different (Xu, 2024, pp. 581-587).

The use of money and the financial infrastructure as a tool for achieving various political and economic objective is not uncommon, particularly in recent times and especially against a major G20 member. All these measures are likely to have profound effects. As Fabio Panetta notes, weaponizing a currency inevitably reduces its attractiveness and encourages the emergence of alternatives (Panetta, 2024, pp. 1-13). This includes the creation of financial infrastructure that lies beyond the reach of sanctions. The ongoing geopolitical conflict is far from resolved. No permanent trade agreements exist between the world's major economies, while tariffs and contra-tariffs are continually introduced and postponed. Furthermore, the situation regarding sanctions could escalate if the Russian assets are permanently confiscated. Without entering into the debate on the justification of these measures, it can be argued that they will have profound implications on the trust and credibility of the current Western-centered financial system, and may open the door to further fragmentation and conflict.

3. New Monetary System Proposals

It is evident that the international monetary system established seventy years ago is undergoing a transformation, although the contours of its future structure remain uncertain. The extent of this change will largely depend on the resolution of the current geopolitical tensions. The level of fragmentation or the degree of cooperation and integration will be shaped by the depth of division or the extent of cooperation among countries and military-economic blocs. Nevertheless, certain

emerging trends and reform proposals provide insight into the possible direction of evolution – or even revolution – within the international monetary architecture. One notable consequence of recent geopolitical turbulences, particularly in the context of the military conflicts in Ukraine and the Middle East, is the renewed prominence of gold, especially among central banks. Gold investments provide portfolio diversification and mitigate excessive reliance on any single fiat currency, thereby reducing the risk of volatility and potential sanctions. As a non-sovereign asset immune to default, gold remains a safe, liquid asset and a reliable hedge against inflation. Consequently, many central banks have begun to increase their gold holdings as a multifaceted response to various challenges. As a result, the share of gold in total international reserves has risen sharply from historical lows of 10 % in the early 2000s to over 20% in 2025. Notably, gold has surpassed the euro to become the second-largest reserve asset at market prices (Brüggen *et al*., 2025). Advanced economies, including the United States, Germany, France, and Italy, remain the largest holders of gold and rarely acquire additional quantities without first completing previous selling programs, whereas the emerging economies such as Russia, China, India, and Türkiye, are actively purchasing gold, thereby driving global demand (Arslanalp, Eichengreen & Simpson-Bell, 2023, p. 10). A particularly striking example is Poland, whose assertive strategy for gold purchases has resulted in share of gold reserves exceeding 22% in 2025. At the first glance, the surge in the attractiveness of gold appears closely linked to the broader trend of de-dollarization, wherein countries reduce the share of U.S. dollars in their foreign exchange reserves while increasing gold holdings. However, recent research (Weiss, 2025) indicates that although 62 countries have increased their gold reserves relative to 2008 levels, the majority did so without actively reducing the dollar holdings. Nevertheless, three countries – China, Russia and Türkiye – stand out as exceptions. These three countries account for more than 60% of the gold reserve accumulation since the global financial crisis of 2008, and they have actively diversified away from the U.S. dollar for most of their gold purchases.

One of the most compelling proposals for the future post-Bretton Woods international monetary order is the concept of a "synthetic hegemonic currency" (SHC), introduced by the former Governor of the Bank of England, Mark Carney (Carney, 2019). In his 2019 speech at Jackson Hole, Carney proposed this innovation as a response to the emerging multipolar global order and the transformative potential and opportunities arising from new technologies. The SHC is envisioned as a new global reserve asset and medium of exchange, underpinned by a basket of digital central bank currencies or, potentially, new IMF-issued digital assets. The concept closely echoes John Maynard Keynes' 1944 Bretton Woods proposal for *Bancor* as a supranational digital accounting unit, intended to be managed by an

International Clearing Union. This mechanism aimed to facilitate a more balanced adjustment between surplus and deficit countries, while discouraging persistent imbalances and the risk of currency wars. Carney's proposal envisions the SHC as a public-sector governed instrument, potentially administrated by the IMF or a consortium of central banks, to ensure legitimacy, accountability, and alignment with global public policy objectives. The introduction of CBDCs has made it technically feasible to design a decentralized and programmable SHC that would function efficiently in global digital payments and financial settlements. Structurally, the SHC would be anchored to a basket of major national currencies, such as the dollar, euro, renminbi, yen and pound. Beyond serving as a reserve asset, the SHC would also act as an invoicing currency for cross-border trade and a settlement asset for international financial flows. The introduction of the SHC promises several key advantages, including enhanced stability of the international monetary system and a reduced risk arising from the diversification of currency and country risks. Additionally, the SHS could facilitate faster and more cost-efficient cross-border transactions. However, the proposal is not without limitations. It entails a significant reliance on technology and faces considerable political resistance, particularly from the major global players such as the United States, making its adoption unlikely in the near term.

The role of the United States in shaping the future international monetary architecture is of paramount importance. Although the global use of the U.S. dollar as a reserve currency and in international trade has somewhat declined, it remains the dominant global currency. Consequently, the stance of the U.S. administration must be carefully considered. The United States is committed to maintaining the existing monetary infrastructure, with the dollar at its core, and is actively pursuing reforms and measures aimed at revitalizing the Bretton Woods institutions to restore balance within the global financial system. In this context, the IMF plays a crucial role. It was established originally to promote global cooperation and financial stability, facilitate the balanced growth of international trade, encourage economic growth and discourage destabilizing monetary practices. The IMF is urged to refocus on its foundational mission rather than pursuing secondary agendas, such as climate change, gender issues, and social concerns (Bessent, 2025). Furthermore, the United States firmly opposes the introduction of central bank digital currency. Reflecting this position, the President of the United States signed an executive order prohibiting the establishment, issuance, circulation, and use of a CBDC within the jurisdiction of the United States. This action is intended to safeguard the stability of the financial and monetary system, protect individual privacy, and preserve the sovereignty of the United States (The White House, 2025). Rather than promoting a digital form of the sovereign money, the United States is focused on the

promotion of stablecoins backed by sovereign money. This will preserve the status of the dollar while promoting the digitalization of money and payments. In other words, the policy seeks to preserve the status quo while harnessing the benefits of the new technologies through innovations in the private sector.

The erosion of trust in fiat money, driven by factors such as prolonged inflation, the loss of purchasing power due to aggressive monetary policies, and geopolitical tensions that have divided nations and economic blocs, has revived interest in earlier concepts of money and monetary systems. Among these is Zoltan Pozsar's (Pozsar, 2022) proposal for a commodity-based monetary system, where commodities such as gold and oil would hold a central, structural role. His proposal for a "Bretton Woods III" envisions the forthcoming monetary era as one marked not by the legal promises of monetary authorities and governments, but by the physical realities of resource control. This commodity-backed monetary system is particularly appealing for countries and regions rich in natural resources but lacking stable monetary systems and economic development. This situation is exemplified by African nations, where the concept of resource-based money warrants serious consideration (see Nenovsky & Bondi, 2024, pp. 1-17).

4. Conclusion

Today's international monetary system, established in the aftermath of the Second World War, has long exhibited structural shortcomings. The two key issues – the "exorbitant privilege" and Triffin's dilemma – have exposed the fragility and inherent imperfections of a reserve currency regime grounded in national foundations. These imperfections culminated in a pivotal moment when the United States unilaterally suspended the convertibility of the dollar into gold, creating the present system based on fiat money, whose value is derived solely from its purchasing power. While the dollar remains the dominant international currency, several emerging trends and events are challenging the existing international monetary system. One major driver of change is technological innovation. Money itself is a product of continuous technological evolution, often originating in the private sector, with monetary authorities or the State subsequently legitimizing and institutionalizing these advancements. In this context, *blockchain* technology is a game-changer, offering technological possibilities that were previously unimaginable. The rise of privately used digital money has prompted central banks to respond proactively by exploring public alternatives for digital payments. Central bank digital currencies (CBDCs) are now under active research by numerous monetary authorities, with several major central banks in advanced stages of developing digital forms of sovereign money. A second catalyst for

change is the geopolitical shifts. We are currently witnessing heightened political and economic tensions among states and blocs, where money and payment systems are increasingly used as instruments of political, economic, and even military strategy. Although the U.S. dollar continues to dominate, the "weaponization" of money has spurred efforts to seek alternatives to the Western-dominated financial infrastructure. A notable consequence of these geopolitical tensions and conflicts is the renewed interest in gold, particularly among central banks. In response to these multifaceted pressures, several proposals have emerged for a new international monetary order. One such proposal is the concept of a "synthetic hegemonic currency," introduced by the former Governor of the Bank of England, Mark Carney. The idea envisions a supranational network of digital currencies designed to reflect the realities of a multipolar global economy and to harness the transformative potential of new technologies. In contrast, the U.S. administration, as the issuer of the world's leading currency, is promoting the development of stablecoins backed by sovereign money, with the objective of preserving the dollar's primacy while embracing the digitalization of money and payments. Another influential proposal comes from Zoltan Poszar, who advocates a commodity-based monetary system in which assets such as gold and oil would play a central role.

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REBRANDING THE CAPITAL MARKETS UNION – TOWARDS AN INTEGRATED FINANCIAL ECOSYSTEM

Summary

This paper examines the current state and future prospects of the EU's Capital Markets Union within the context of ongoing economic challenges, including climate change, technological transformation, and geopolitical shifts. Despite significant regulatory reforms aimed at enhancing financial stability and promoting innovation, EU capital markets remain fragmented and comparatively underdeveloped relative to its global peers, particularly the United States. The paper highlights the necessity of mobilising approximately €10 trillion in retail savings currently held in low-yield bank deposits to foster economic growth, especially for SMEs and innovative start-ups. It emphasises the importance of establishing a Savings and Investments Union, promoting cross-border investment, and improving financial literacy among EU citizens. The Competitiveness Compass initiative has been introduced as a strategic framework to integrate capital markets, reduce reliance on bank financing, and facilitate private investment in strategic sectors. Ultimately, the success of these ambitious initiatives depends on the political will of Member States and the harmonisation of regulatory frameworks to foster a more risk-tolerant investment culture.

Keywords: Capital Markets Union, Financial Integration, Competitiveness Compass, Regulatory Framework, European Economic Policy.

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REBRENDIRANJE UNIJE TRŽIŠTA KAPITALA – KA INTEGRISANOM FINANSIJSKOM EKOSISTEMU

Sažetak

U ovom radu analizirana je trenutna situacija i buduće perspektive Unije tržišta kapitala EU u širem kontekstu novih ekonomskih izazova, uključujući klimatske promene, tehnološke transformacije i geopolitička pomeranja. Uprkos značajnim regulatornim reformama za jačanje finansijske stabilnosti i podsticanje inovacija, tržišta kapitala u EU i dalje su previše fragmentisana i nedovoljno razvijena u poređenju sa globalnim partnerima EU i posebno Sjedinjenim Američkim Državama. U radu je naglašena hitna potreba da se mobiliše oko 10 triliona evra štednih uloga građana koji su trenutno u niskoprinosnim depozitima u bankama s ciljem da se podstakne ekonomski rast i to posebno rast MSP i inovativnih startap kompanija. Istaknut je i ključni značaj uspostavljanja Unije štednje i ulaganja, promovisanja prekograničnih ulaganja i poboljšanja finansijske pismenosti građana EU. Inicijativa Kompas konkurentnosti predstavljena je kao strateški okvir za integraciju tržišta kapitala, smanjenje zavisnosti od finansiranja od strane banaka i promovisanje privatnih ulaganja u strateške sektore. Na kraju krajeva, uspeh ovih ambicioznih inicijativa zavisiće od političke volje država članica i harmonizacije regulatornih okvira s ciljem stvaranja kulture ulaganja koja će biti više tolerantna prema riziku.

Ključne reči: Unija tržišta kapitala, finansijska integracija, Kompas konkurentnosti, regulatorni okvir, evropska ekonomska politika.

1. Introduction

Efficient capital markets are essential for economic vitality and possess transformative potential for both the market and society. By facilitating the mobilisation of household and institutional savings into a diverse range of enterprises and productive activities, capital markets support long-term growth and resilience, reducing reliance on debt financing and spreading risk across a broad investor base. The efficient allocation of capital enhances investments in innovation, increasing employment and raising productivity over time. Beyond economic efficiency, well-functioning capital markets contribute to social welfare by supporting pension funds and retirement security, therefore promoting inclusive growth.

All of the above aligns with the EU's orientation toward an open and social market economy, particularly by liberating capital and navigating investments towards areas the EU has identified as strategic: the green and digital transitions, and defence (European Commission, 2025, p. 1-3). The EU has a long-standing policy ambition to achieve more integrated financial markets. Developing integrated capital markets alongside a dominant banking system broadens sources of funding and achieves scale, thereby providing business, particularly SMEs and start-ups, with better access to financing, which is essential for growth and innovation. Integrated and deeper EU capital markets constitute crucial infrastructure for attaining an investment environment that enables firms to innovate, grow and compete internationally, while offering retail and other investors broader and diversified investment opportunities with the potential for higher returns.

Although the EU has introduced numerous policy and regulatory measures over the past three decades to enhance and integrate its Member States' capital markets, the reality is that they remain fragmented, complex, and underdeveloped, particularly when benchmarked against other global peers in terms of size, depth, scale, and liquidity. European financial markets remain predominantly bank-based, a model that is well suited to well-established firms, yet simultaneously a structural vulnerability, as it constrains the catalysis of innovation, while alternative financing options remain less developed and less accessible. Such a regime is not suitable for innovative start-ups, fast-growing companies, and SMEs, which require investment capital to scale up, i.e., there is a need for appropriate financial infrastructure, including well-developed venture capital and private equity systems to support expansion at critical stages of firms' growth and lifecycle (European Commission, 2025a; 2025b; ESMA 2025; 2025a; IMF 2023).

ESMA's Position Paper on European capital markets warns that, by the end of 2023, the EU27 accounted for only 11% of global equity market capitalisation, in stark contrast to 45% in the United States – a share that has declined over the previous fifteen years for the EU while increasing for the U.S. Similar patterns are evident in public listings, where EU IPOs by value comprised 15% of global activity between 2015 and 2020, less than half the U.S. share of 32%. The EU's capital market landscape remains both fragmented and complex: 27 distinct Central Securities Depositories (CSDs) and 14 Central Counterparties (CCPs) are authorised within the Union, compared with a single CSD and eight CCPs in the United States. Although national stock exchanges have been consolidated under EU-wide groups, there has been no effective unification of cross-border order books, resulting in persistent liquidity fragmentation and higher transaction costs (ESMA, 2024, p. 4; IMF, 2023).

The asset management sector exhibits a similar fragmentation: as of the third quarter of 2023, there were 31,004 authorised UCITS funds in the EU, compared with 11,996 mutual funds and exchange-traded funds (ETFs) in the United States

– a disparity that constrains scalability, given that the average U.S. mutual fund held approximately €2.7 billion in net assets in 2021, versus approximately €400 million for an average UCITS fund. Household financial asset allocations further illustrate this divergence: between 2015 and 2021, EU27 households held on average 32% of their financial assets in currency and deposits, compared with 13% in the U.S. According to IMF data, Euro area non-financial firms relied on market financing for only 30% of their funding in 2017, versus nearly 70% for U.S. firms, and IPO volumes in the EU have generally remained flat over the past fifteen years, reaching their lowest level since 2009 in 2023; concurrently, the number of delistings from EU markets has risen. As an illustration of sectoral shifts, EU-focused equity exposure within UCITS declined from 51% of total UCITS equity assets in 2015 to 35% in 2022, while the share of U.S. equities increased from 27% to 42%, highlighting the concentration of capital in a global market where capital tends to flow toward locations offering the most efficient returns for investors (ESMA 2024, p. 4-10; IMF 2023).

ESMA also cautions against inconsistent rule application, gold-plating, insufficient harmonisation in key areas, and divergent national supervisory practices (ESMA, 2025; Arnold, 2025). For example, since its establishment in 2011, ESMA's remit has expanded from six to thirty legal acts. While rapid rulemaking initially addressed pre-crisis vulnerabilities and evolving market conditions, ESMA has now taken the position of reassessing the regulatory landscape, focusing on the overall regulatory burden and its simplification (ESMA, 2024, p. 10).

The aim of this paper is to critically assess the current state of European capital markets and to propose actionable strategies for enhancing their integration and efficiency. By examining the systemic challenges that hinder investment and innovation, the paper seeks to contribute to the discourse surrounding the EU's economic resilience and competitiveness. The methodology employed includes a comprehensive literature review of relevant reports, regulatory reforms, and strategic initiatives, alongside an analysis of empirical data reflecting the disparities between the EU and its global counterparts.

The paper is organised into several key sections that systematically address the multifaceted issues surrounding European capital markets. Following the introduction, the paper provides a detailed literature review on transformative regulatory reforms and their implications for financial stability and innovation. Subsequent sections examine recent action plans and reports that exemplify the EU's strategic objectives, including the Competitiveness Compass and the Savings and Investments Union. The analysis culminates in a critical examination of the challenges and opportunities essential for rebranding the Capital Markets Union, ultimately offering concluding remarks that emphasise the necessity for cohesive action among EU Member States to achieve a more integrated capital market framework.

2. Transformative Reforms in EU Financial Regulation and Supervision: A Literature Review

Financial regulation has been a long-term, evolving process shaped around two critical targets: enhancing financial stability and boosting financial innovation (Armour *et al*., 2016; Moloney, 2010, pp. 437-461). Depending on the business cycle, endorsing stability and innovation can go hand in hand, but it may also represent an oxymoron, i.e., a dichotomy in the political discourse during periods of financial instability and crisis. In the first quarter of the 21st century, the EU financial regulation and supervision has undergone three transformative reform waves.

The first EU financial market reform wave was centred around promoting competition and enhancing competitiveness through implementation of the Financial Services Action Plan between 1999 and 2005 (European Commission, 1999; Ferran, 2004; Moloney, 2008; Lannoo & Levin, 2004). Generally, EU financial integration policy distinguishes four types of activities supporting financial integration: first, regulatory processes; second, enabling collective actions; third, raising awareness of the importance of European financial integration; and fourth, through its institutions (e.g., the ECB), which also actively promote financial integration (European Central Bank, 2009, p. 69). Nevertheless, as Ferran points out, "*regulation, in its narrow rule-making sense, is a favoured EU policy tool*" (Ferran, 2004, p. 9). Although initiatives aimed at economic, monetary, and capital markets integration date back to the late 1960s (e.g., Segré Report, 1966; Werner Report, 1970; Delors Report, 1989), it was not until the late 1990s that momentum for policy change accelerated significantly. At that point, the regulatory shift intersected the Lisbon Strategy, the Economic and Monetary Union (EMU), and the introduction of the single currency through the implementation of the Financial Services Action Plan, supported by a new legislative methodology – the Lamfalussy process – which fast-forwarded EU regulatory harmonisation through comitology procedures and multilevel network arrangements (Posner, 2012, pp. 43-60).

The second EU financial regulatory and supervisory reform wave places financial stability at its core. The global financial crisis of 2007-08 was a harsh reminder that financial globalisation combined with deregulation is a double-edged sword: interconnectedness among financial institutions transmitted risks across borders, producing detrimental spill-over effects for the economy. According to Reinhart and Rogoff (2009, p. 466), severe financial crises typically exhibit three main features: asset markets collapse deeply and persistently (housing prices decline by an average of 35% over six years, equity prices fall by an average of 55% over three and a half years); banking crises trigger substantial declines in output and employment (unemployment increases on average by 7% over four years, while

output falls on average by 9%); and real government debt tends to explode, with an average increase of 86%.

Although most EU Member States' financial institutions were not infected by the U.S. toxic assets plague, the global interbank credit crisis triggered a rapid shift toward risk-averse behaviour among investors and forecasted a sharp economic downturn, which temporarily revealed a sovereign-bank nexus in selected EU Member States, namely Portugal, Italy, Ireland, Greece, and Spain. The financial instabilities of the derogatorily labelled "PIIGS" countries, which had accumulated during the economic upturn of the early 2000s amid favourable borrowing conditions associated with euro-area membership, culminated in the full-scale European debt crisis of 2010-11. The crisis led to a prolonged economic recovery for euro-area countries, manifesting in slower GDP growth due to high unemployment and elevated debt levels. The fragilities of the European financial system reflected in the profound interdependence of European financial institutions, which boomeranged from EU "debtor" back to EU "creditor" Member States (Howarth & Quaglia, 2016, pp. 22-23, 46). Moreover, it emphasised the vulnerabilities of the Eurozone, i.e., the long-term destabilising political compromise of "asymmetric EMU," as Lamfalussy described the functioning of the EMU as a combination of monetary competencies transferred without adequate economic policies coordination (Lastra & Louis, 2013, p. 4).

In order to preserve both financial and political stability at the European level, the EU opted for bail-out programmes for the troubled Member States. Operationally, the financial reforms generated far-reaching institutional transformations of the regulatory and supervisory framework, focusing primarily on financial stability, i.e., consumer protection and the transfer of risk sharing/bail-outs from taxpayers to the private sector. The comprehensive reform package, known as the European Banking Union (EBU), centralised regulatory, supervisory, and resolution mechanisms at the EU level, inaugurating three new European supervisory authorities and granting additional powers to the European Central Bank, legally established under the newly adopted Single Rulebook (Chiti & Santoro, 2019; Allen, Carletti & Gulati, 2018). Additionally, the European Stability Mechanism (ESM), with a lending capacity of €500 billion, serves as a backstop in the event of financial crises for any euro-area Member State (European Stability Mechanism, 2025; Aerts & Bizarro, 2020). However, the crucial pillar of the EBU – the European Deposit Insurance Scheme (EDIS) – remains incomplete after a decade of political disagreement among wealthier Member States regarding risk-sharing (Veron, 2024, pp. 52-56; Brescia Morra, 2019, pp. 398-401).

The third – and to some extent parallel – regulatory wave focused on promoting innovation. This approach, referred to as regulatory innovation, was centred on developing a flexible regulatory infrastructure to support technological

innovations in financial services, specifically Fintech (Financial Stability Board, 2019, p. 2). Fintech encompasses immense disruptive potential, leveraging new technologies such as artificial intelligence and blockchain to create novel platforms and connect more efficiently the supply and demand sides of the financial spectrum (McKinsey & Company, 2018; World Economic Forum & Deloitte, 2017).

The regulatory challenge spans both new market participants and incumbent industries, with the objective of promoting competition while protecting consumers and safeguarding a level playing field amid new and disruptive business realities, often raising the question of what type of regulation is fit for purpose (Omarova, 2020, pp. 75-124; Amstad, 2019, pp. 1-21; Ehrentraud, Ocampo, Vega, 2020; Restoy, 2021). The United Kingdom has been a global pioneer in financial regulatory innovation. Since 2014, the British Financial Conduct Authority (FCA) has introduced innovation facilitators as novel governance models to promote a more flexible and business friendly regulatory approach to technological innovations in financial services. Two such models include innovation hubs, which serve as a one-stop shop for timely information exchange between regulators and innovative firms, and regulatory sandboxes, a more complex testing model for promising financial products and services (Cambridge Centre for Alternative Finance, 2018). The EU has implemented a series of policies and strategies to promote digital finance transformation, with the regulatory agenda focused on establishing a harmonised set of rules that provide legal certainty for investors, while ensuring consumer protection across the financial ecosystem, including the Fintech Action Plan, the Digital Finance Strategy, and the European Blockchain Regulatory Sandbox for Distributed Ledger Technologies, among others (European Commission, 2023; 2020; 2018).

3. Reports and Action Plans

The second quarter of the 21st century introduced new challenges: climate change, rapid technological shifts, and evolving geopolitical dynamics. A series of reports and action plans followed. In September 2023, European Commission President von der Leyen announced in her State of the European Union speech that she had requested former Italian Prime Minister and former President of the ECB, Mario Draghi, to draft a report on the future of European competitiveness (European Commission, 2023a, p. 8).

On 20 February 2024, 73 business leaders from 17 sectors submitted the Antwerp Declaration for a European Industrial Deal to Commission President Ursula von der Leyen and Belgian Prime Minister Alexander De Croo. As of now, more than 1,300 organisations across 25 sectors have expressed their support for this

initiative (European Chemical Industry Council, 2025). The Antwerp Declaration advocates for a comprehensive European Industrial Deal aimed at enhancing the competitiveness of European industry while supporting the transition towards climate neutrality by 2050. It calls for targeted governmental action to create a conducive regulatory environment, ensure energy affordability, and strengthen investment in clean technologies, thereby supporting the retention and creation of quality jobs within Europe (European Chemical Industry Council, 2024).

Parallel to this, Enrico Letta (2024) led a large-scale study involving key private and public sector stakeholders at regional, national, and EU levels, together with relevant non-EU partners. Commissioned by the Belgian EU Presidency and supported by the highest-level EU political institutions, the project produced a report focused on upgrading the European Single Market for the new global demographic and economic landscape, with the aim of preserving European social inclusion while enhancing the EU's security. The report emphasises the integration of the financial, energy, and electronic communications sectors as horizontal enablers of the green and digital transitions, and warns that Europe must move beyond protected national champions and the privileged position of national-level policy.

In May 2024, ESMA published a Position Paper on building more effective and attractive capital markets in the EU. It presented 20 recommendations across three key areas: first, broadening investment opportunities for EU citizens; second, boosting the financing of European companies; and finally, modernising EU's regulatory framework, improving supervisory consistency, and enhancing global competitiveness (ESMA, 2024). The Position Paper outlines ESMA's ambition to assume direct supervision at the EU level of systemically important cross-border infrastructure players (ESMA, 2024, p. 17).

Both the ECB Governing Council and the Eurogroup endorsed plans for advancing the Capital Markets Union (CMU), signalling their political support by emphasising its importance for the resilience of the economic and monetary union, as well as for strengthening the European Banking Union (EBU) through mobilising private investment for the green and digital transitions, fostering innovative firms through better access to risk capital and enhanced risk-sharing, reinforcing the international role of the euro, and expanding cross-border funding; thereby boosting productivity and resilience in line with EU's doctrine of open strategic autonomy (European Central Bank, 2024; Council of the EU, 2024).

The Draghi Report (2024) identifies a critical need for Europe to enhance its competitiveness in response to various challenges, including slowing productivity growth, high energy costs, and geopolitical vulnerabilities. It emphasises three principal areas for action: first, closing the innovation gap with the United States and China by fostering breakthrough innovation and improving the commercialisation

pipeline; second, implementing a joint decarbonisation and competitiveness plan aimed at reducing energy prices while capturing industrial opportunities through clean technology; and third, increasing security by reducing dependencies and strengthening the EU's foreign economic policy. To achieve these objectives, Draghi recommends reforming the EU's approach to industrial policy, enhancing coordination among Member States, simplifying regulations, and mobilising substantial public and private investment, estimated at €750 to €800 billion annually, to support necessary technological and infrastructural transitions.

At the EU summit in November 2024, based on the Draghi Report and inclusive discussion, EU leaders adopted the Budapest Declaration, which sets out the New European Competitiveness Deal, particularly emphasising the need for innovation, investment, and strategic security. The Deal outlines a comprehensive strategy that encompasses the deepening of the Single Market, industrial renewal, and the mobilisation of public and private financing, while calling for urgent and collective efforts from EU institutions and Member States to achieve these ambitious objectives. At the summit, President von der Leyen also proposed a common 28th regulatory regime, a single rulebook for innovative start-ups in the EU, with the goal of reducing regulatory barriers to innovation (Council of the EU, 2024a). Finally, in January 2025, all of the above reports and activities set in motion the European Commission's major initiative – the EU Competitiveness Compass – establishing a strategic framework to enhance EU's economic competitiveness and innovation capacity (European Commission, 2025).

4. Capital Markets Union within the Competitiveness Compass Framework

The Competitiveness Compass strategic initiative reaffirmed the three core objectives outlined in the Draghi Report and identified five horizontal enablers for achieving those objectives, namely: (i) cutting red tape and enhancing speed and flexibility through regulatory simplification, (ii) unlocking the scale of the Single Market by removing barriers, (iii) financing growth through a Savings and Investments Union and a reoriented EU budget, (iv) promoting skills development and quality jobs while ensuring social fairness, and (v) strengthening EU-national policy coordination (European Commission, 2025, p. 3).

The Competitiveness Compass identifies several critical areas of development of capital markets within the European Union. A central objective is the establishment of a Savings and Investments Union, designated to mobilise private investment and channel household savings efficiently into productive economic sectors. Eurostat estimates that approximately €10 trillion of EU retail savings are

currently held in banks as low-yield deposits (European Commission, 2025c, p. 2). This is partly due to the fragmented nature of the European retail investment system, which is often perceived as overly complex, opaque, and costly for the average citizen. The monitoring of financial literacy in the EU shows that only 18% of EU citizens are highly financially literate, 64% moderately literate, and 18% exhibit low financial literacy, with considerable variations across Member States (Eurobarometer, 2023). Additionally, ECB analysis suggests that EU households could potentially redirect up to €8 trillion from deposits into long-term, market-based investments – equivalent to approximately €350 billion annually (European Central Bank, 2024a).

The Compass underscores the necessity of integrating and deepening capital markets to reduce reliance on traditional bank financing, thereby fostering a more robust environment for venture capital and equity investments. The strategic framework promotes low-cost saving and investment products at the EU level – such as the Savings and Investment Account (SIA) – while encouraging retail investors to engage with these opportunities. Furthermore, the initiative advocates for the reform and harmonisation of insolvency frameworks and the removal of barriers to cross-border investment, which are critical steps towards creating a more cohesive and responsive financial landscape (European Commission, 2025, pp. 20-22).

Furthermore, the Compass emphasises the importance of leveraging the European Investment Bank (EIB) Group and other financial institutions to bridge the existing investment gap, particularly in strategic sectors such as innovation, clean technologies, and digital infrastructure. By utilising de-risking financial instruments and budgetary guarantees, the EU seeks to mobilise private sector resources and facilitate higher-risk investments, thereby strengthening the overall resilience and dynamism of capital markets. The proposed Competitiveness Fund would also play a crucial role in addressing the fragmentation of funding across multiple programmes, ensuring a more integrated approach to financing that is consistent with the EU's broader competitiveness objectives. Collectively, these measures aim to create a more liquid, efficient, and innovation-driven capital market ecosystem, which is essential for sustaining long-term economic growth and stability (European Commission, 2025, pp. 23-24).

5. The Competitiveness of European Capital Markets: Rebranding the Capital Markets Union

The initial reality check for the ambitious action plans outlined above concerns the budget, i.e., the financing sources and mechanisms. According to ECB estimates, the investments required to support the green and digital transitions,

and defence, amount to an additional €5.4 trillion over the period 2025-2031, of which 25% needs to be funded through public sources (Bouabdallah *et al.*, 2024, p. 1). These figures underscore the necessity of achieving a careful balance between national and EU-level initiatives and coordinated policy actions, alongside fiscal rules that encourage investments while remaining mindful of high-debt Member States with substantial deficits (e.g., Greece, Portugal, Ireland, Cyprus).

Additionally, a substantial share will need to be provided by the private sector and households, making the Capital Markets Union a critical logistical platform for mobilising these resources. However, channelling savings into investments, i.e., facilitating retail investment, remains a highly challenging objective. Despite decades of EU policy aimed at integrating European capital markets, savings within Europe continue to be inadequately mobilised, accumulating in low-yielding deposits and, in part, being incentivised by comparatively generous national public pension systems (IMF, 2023).

Furthermore, when they exist, savings remain largely confined within national borders rather than flowing across Europe, and, ultimately, after allocation, funds often fail to reach innovative firms due to an underdeveloped venture capital ecosystem (European Central Bank, 2024a). Currently, the EU underinvests in venture capital, raising only 5% of global venture capital funds, compared with 52% in the United States, 40% in China, and 3% in the United Kingdom (European Investment Bank, 2024, p. 22). Achieving change is likely to be challenging, as the European investment risk appetite remains both culturally embedded and institutionally reinforced. Shifting this mindset – from risk-averse, domestically constrained funding to cross-border, equity-based funding – will require enhanced financial literacy, institutional reform, and credible pan-European success stories to offset a long-standing aversion to investment risk that cannot be reversed by policy statements alone.

Additionally, EU financial institutions play a comparatively modest role in supporting innovative firms. For instance, EU pension funds allocate merely 0.02% of their total assets to venture capital, compared to approximately 2% in the United States, while EU banks lend over €600 billion to real estate firms and less than €100 billion to technology companies – despite comparable contributions to value added from these sectors (European Central Bank, 2024a). The underlying constraint appears to be an underdeveloped securitisation market, with EU annual securitisation issuance amounting to 0.3% of GDP in 2022, far below the 4% observed in the United States (Tamma, 2025). In a way, limited securitisation activity hampers the mobilisation of long-term savings into innovative enterprises, reducing leverage for high-growth sectors and reinforcing sectoral funding imbalances across the EU. Moreover, a more developed securitisation and capital-market framework

could improve risk-sharing, diversify funding sources for technology-driven firms, and enhance cross-border investment flows within the European Union. However, the post-global financial crisis regulation, which has been shaped by the Eurozone sovereign-debt crisis and has maintained stringent regulatory and supervisory practices across the EU since 2009, continues to define the prevailing orientation of EU implementation policy, which remains primarily centred on stabilisation.

Furthermore, the ECB's president, Lagarde, warned, "In 2023 there were 295 trading venues in the EU, as well as 14 central counterparties (CCPs) and 32 central securities depositories (CSDs). In the United States, there are only two securities clearing houses and one CSD" (European Central Bank, 2024a, p. 3). Conversely, it should not be overlooked that the EU's regulatory framework – most notably the MiFID directive, enacted nearly two decades ago – introduced greater competition in the provision of services to investors, trading venues, and derivative clearing. This regulatory liberalisation has also contributed to fragmentation within the European capital market.

ESMA's public signalling of resistance from national authorities and their "gold-plated" rule-making practices underscores a significant obstacle to the Capital Markets Union. As Verena Ross notes, reducing reporting burdens is "difficult" precisely because regulators adhere to nationally bespoke regimes and are reluctant to fund a harmonised system, indicating that fiscal constraints and sovereignty concerns shape compliance incentives more than technocratic efficiency considerations. The ambition of a single access point and a unified data infrastructure depends on coherent, centrally funded participation from Member States. In the absence of such buy-in, ESMA's governance model remains dependent on 27 distinct authorities (Arnold, 2025). Consequently, ESMA's operational potential is constrained by political economy frictions at the national level, which may translate into slower adoption of cross-border financial innovations and a delayed implementation of an integrated European capital market.

The Financial Times has reported recurrent resistance among several Member States to a greater harmonisation of financial market regulation across various domains, such as the European common deposit scheme (Germany), central supervision at EU level (Ireland, Luxembourg, Cyprus), and harmonisation of insolvency law (Tamma, 2025a; Arnold, 2025). France, supported by Italy, Spain, Poland and Netherlands, has emerged as a strong proponent of a more comprehensive Capital Markets Union (Asagri & Müller, 2025; Asgari, 2024). In April 2024, this initiative faced opposition from smaller Member States, which expressed concern, among other issues, about the potential erosion of national corporate tax regimes that underpin their competitive positions. "Austria, Bulgaria, Cyprus, the Czech Republic, Ireland, Croatia, the Baltic countries, Malta, Romania, and Slovenia also joined the rebellion and argued that central supervision would create additional costs for

their national financial industry, giving larger markets a competitive advantage" (Tamma, Foy & Hancock, 2024, p. 3). However, by second half of 2025, as a result of extensive political persuasion, the policy agenda appears to have veered decisively in favour of a stronger CMU, reflecting a shift in political feasibility and strategic priorities within the EU's financial-integration project (Chassany & Tamma, 2025).

The European Commission has undertaken a set of strategies and action plans, articulated under the Competitiveness Compass, aimed to accelerating the Capital Markets Union. By late 2025, the Commission is expected to publish legislative proposals extending ESMA's supervisory remit to encompass large trading infrastructures, cryptocurrency exchanges, and big cross-border asset managers. The guiding rationale has traditionally framed regulation as a corrective mechanism for excessive risk-taking; however, as observed by the Commissioner Albuquerque, the contemporary landscape exhibits the opposite challenge: risk-taking is not excessive but rather insufficient (Tamma, 2025a). This raises a central governance question concerning the optimal calibration of risk tolerance within the CMU framework. While technical solutions are well understood and political consent appears forthcoming, critical questions persist regarding whether such measures will be sufficient to shift Europe's entrenched aversion to investment risk. In sum, the forthcoming proposals must be assessed not only for their legal and operational feasibility but also for their potential to realign normative attitudes toward risk within European capital markets, thereby facilitating a more robust and resilient Capital Markets Union.

6. Concluding Remarks

The European Union faces a critical juncture in its pursuit of a robust and integrated capital markets framework, a development essential for addressing contemporary economic challenges, including climate change, technological transformation, and geopolitical shifts. The Capital Markets Union represents a strategic effort to mobilise private investments and facilitate a more diverse range of funding sources, particularly for SMEs and innovative start-ups, which are vital for economic growth and resilience. Despite the EU's ambitious regulatory reforms aimed at enhancing financial stability and fostering innovation, significant fragmentation and underdevelopment persist within its capital markets. The data presented in this paper highlights stark disparities between the EU and its global peers, particularly the United States, in terms of market capitalisation, public listings, and investment allocations. These findings underscore the urgency for the EU to reassess its financial landscape, and move beyond a predominantly bank-based system towards a more dynamic and integrated capital market structure.

The strategic imperative to mobilise approximately €10 trillion of retail savings currently stagnating in low-yield bank deposits underscores the necessity for a paradigm shift in the EU's financial architecture. The proposed Savings and Investments Union seeks to effectively channel these funds into productive economic sectors, thereby fostering an environment conducive to innovation and sustainable growth. However, the challenge lies in overcoming the entrenched barriers that have historically impeded the flow of capital across borders and into high-growth sectors, particularly venture capital. The current landscape, characterised by a fragmented investment system and a cultural aversion to risk, necessitates a concerted effort to enhance financial literacy among EU citizens and cultivate a more risk-tolerant investment mindset. Moreover, the reform of regulatory frameworks to promote low-cost saving and investment products, such as the Savings and Investment Account, is essential for encouraging retail investors' participation in capital markets. The emphasis on harmonising insolvency laws and dismantling barriers to cross-border investment is equally crucial for creating a seamless and integrated financial ecosystem. Such integration is imperative not only for amplifying market liquidity but also for enhancing the resilience of the EU's economy in the face of systemic shocks.

In conclusion, the rebranding and revitalisation of the Capital Markets Union (CMU), as outlined within the Competitiveness Compass, mark a strategic shift towards enhancing the EU's economic competitiveness and fostering innovation. While the proposed strategies are ambitious, their success will ultimately depend on the political will of Member States, the harmonisation of regulatory frameworks, and the cultivation of a balanced investment risk culture. As the EU navigates these complex challenges, the commitment to a cohesive and integrated capital market will be instrumental in unlocking the full potential of the European economy on the global stage.

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BANK RESOLUTION UNDER STATE AID CONTROL: LEGAL AND POLICY IMPLICATIONS OF EXPORTING THE EU FRAMEWORK TO CANDIDATE COUNTRIES

Summary

This article examines how EU State aid conditionality shapes the application of resolution tools foreseen in the Bank Recovery and Resolution Directive (BRRD) and explores its implications for accession countries in the context of approximating State aid control and transposing the BRRD. To elucidate the interconnection and mutual conditionality between the bank recovery and resolution regime and State aid control as a form of competition protection, the paper first clarifies the taxonomy of instruments introduced by the BRRD. It outlines their operation within the EU's soft law on State aid to banks, highlighting both the strengths and deficiencies. These inconsistencies between the two regimes pose particular challenges for EU candidate countries, especially in defining pre-accession conditionalities. The challenges extend beyond the formal transposition of provisions to issues of implementation and effective enforcement. Serbia and Montenegro are examined as case studies: Serbia illustrates partial alignment with the *acquis*, whereas Montenegro's approach relies on a general legislative reference to EU law and defers the application of State aid rules in the resolution framework until accession to the EU.

Keywords: Bank Resolution, State Aid, Harmonisation of Laws, Candidate Countries, Pre-accession Conditionalities.

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SANACIJA BANAKA POD KONTROLOM DRŽAVNE POMOĆI: PRAVNE I POLITIČKE IMPLIKACIJE USKLAĐIVANJA SA EU OKVIROM U ZEMLJAMA KANDIDATIMA ZA PRIJEM

Sažetak

U ovom članku ispitaćemo na koji način uslovljenost državne pomoći u okviru prava Evropske unije oblikuje primenu instrumenata za sanaciju banaka predviđenih Direktivom o oporavku i sanaciji banaka (BRRD) i analizira njene implikacije za zemlje kandidate u procesu usklađivanja kontrole državne pomoći i transponovanja odredbi BRRD-a. Radi objašnjenja povezanosti i međusobne uslovljenosti režima oporavka i sanacije banaka i kontrole državne pomoći kao oblika zaštite konkurencije, u radu se najpre razjašnjava taksonomija instrumenata predviđenih u BRRD i prikazuje njihovo funkcionisanje u okviru mekog prava EU u oblasti državne pomoći bankama, uz isticanje njihovih prednosti i nedostataka. Nedoslednosti između ta dva režima stvaraju posebne izazove za zemlje kandidate, naročito u definisanju obaveza u pretpristupnom periodu. Problemi se ne odnose samo na formalno usklađivanje sa odredbama propisa, već i na njihovu implementaciju i efektivno sprovođenje. Srbija i Crna Gora odabrane su kao studije slučaja: Srbija kao primer delimičnog usklađivanja sa pravnim tekovinama EU, a Crna Gora zbog pristupa koji se zasniva na opštem zakonodavnom upućivanju na pravo EU i odloženoj primeni pravila o državnoj pomoći u okviru režima sanacije sve do pristupanja EU.

Ključne reči: sanacija banaka, državna pomoć, usklađivanje prava, zemlje kandidati, pretpristupne obaveze.

1. Introduction

The European Union's response to the global financial crisis of 2008-2013 transformed the legal architecture for banking crisis management. Successive State aid communications (2008-2013) issued by the European Commission authorised public support for banks under Article 107(3)(b) TFEU ('serious disturbance'), while progressively tightening conditions relating to viability, restructuring, and burden-sharing (Collinet, 2014, pp. 137-142; Kokkoris, 2013, pp. 387-394). Subsequently, the Union adopted the Bank Recovery and Resolution Directive (BRRD)[1]

[1] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014

and established the Single Resolution Mechanism (SRM)[2] to replace ad hoc rescues with a harmonised, rules-based framework centred on bail-in and the preservation of critical functions (World Bank Group, 2017, 16-49; Nicolaides, 2016, pp. 222-240). This produced a lasting 'dual discipline': prudential resolution under the BRRD/SRMR and competition control under State aid rules. The resulting interaction is conceptually complementary but institutionally complex. It has remained at the core of reform debates under the Crisis Management and Deposit Insurance review (CMDI), a decade later, culminating in a political agreement by the European Parliament and the Council on the Commission's proposal to review the bank crisis management and deposit insurance framework.[3]

This paper draws on academic literature and institutional evaluations to argue that the persistence of State aid control is normatively justified but requires stronger coordination with resolution practice (Laprévote, Gray & de Cecco, 2017, pp- 538-574; Kokkoris, 2013, pp. 387-394; Smolenska, 2017, pp. 168-175; Lastra, Russo & Bodellini, 2019; Schillig, 2025, pp. 221-240). The Paper shows how State aid control shapes the application of BRRD tools and how this is translated into policy issues arising from the export of this dual regime to Serbia and Montenegro as candidate countries. Following the Introduction, the second chapter briefly presents the development of the EU framework on State Aid to Banks (Communications), on the one hand, and the BRRD framework and crisis resolution mechanisms, on the other. Before turning to the interplay and recurring tensions between the State aid regime and the resolution mechanism, the third chapter provides a typology of public support to banks under the BRRD and State aid control. The purpose of the analysis of the main issues in the interplay between State Aid rules and BRRD, as the subject matter of Chapter 4, is to indicate how State aid conditionality affects the application of resolution tools. These uncertainties and tensions also represent challenges in transposing the bank

establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council Text with EEA relevance OJ L 173, 12.6.2014, pp. 190–348 (BRRD).

[2] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 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

OJ L 225, 30.7.2014, pp. 1–90.

[3] Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on the review of the crisis management and deposit insurance framework contributing to completing the Banking Union, COM/2023/225 final.

resolution regime in candidate countries. The dilemmas in determining the scope of pre-accession conditionality and policy choices are considered in Chapter 5. The Conclusion recommends clearer sequencing and decision-making standards within the EU: as the dual conditionality between the BRRD and State aid control remains unresolved even within the EU, this asymmetry creates risks of incomplete policy transfer in candidate countries.

2. A Short Overview of the EU Framework on Bank Resolution and State Aid

The Bank Recovery and Resolution Directive (hereinafter: the BRRD) replaced discretionary national interventions with rules-based crisis management. It provides a common legal framework for resolving failing banks, aiming to safeguard financial stability, protect depositors, and minimise taxpayer costs. The Directive introduces four primary tools: (i) sale of business; (ii) bridge institution; (iii) asset separation; and (iv) bail-in. The resolution trigger requires a determination that an institution is failing or likely to fail (FOLTF), that no private alternative would prevent failure, and that resolution is in the public interest – principally to maintain critical functions and avoid severe systemic disruption. The Directive also provides Government Financial Stabilisation Tools (GFSTs) in exceptional circumstances as a backstop within resolution and a junction between fiscal intervention and bail-in discipline (Gortsos, 2016). Within the Banking Union, the Single Resolution Mechanism (SRM) centralises resolution planning and execution. Outside the Banking Union, national resolution authorities coordinate via resolution colleges. Nevertheless, the ability to deploy public backstops (such as liquidity in resolution or guarantees) continues to depend on Member State arrangements, creating variability even within a harmonised framework (Schillig, 2018).

To summarise, the BRRD lays down the substantive rules for recovery and resolution in the EU, including the resolution tools and the conditions under which they may be applied in the event of bank failure. The SRM, established by the SRM Regulation, provides the institutional and procedural framework within the Banking Union, centralising resolution decision-making for significant institutions through the Single Resolution Board and the Single Resolution Fund.

While the BRRD defines the "rules of the game" (tools and substantive criteria), the SRM determines "who decides and how" in the Member States participating in the Banking Union.

In parallel, State aid control under Articles 107-109 TFEU governs selective advantages financed through State resources. During the crisis, the Commission

articulated a corpus of 'Banking Communications.'[4] These communications progressively codified the conditions for compatibility, including necessity/proportionality, burden-sharing by shareholders and junior creditors, and credible restructuring to restore long-term viability (Collinet 2014, pp. 137-142; Galand, Dutillieux & Vallyon, 2017, pp. 83-102). The extensive accession process completed in the mid-2000s demonstrated that the obligations of candidate countries for EU admission extend beyond the formal transposition of EU legal acts to include the monitoring of implementation, particularly the practice of the Court of Justice of the European Union (Venice Commission, 2010; Kühn, 2005, pp. 563-582). For example, the Court of Justice clarified key boundary issues in the provision of financial aid to banks. In *Kotnik*, it held that the Commission's communications are not binding on Member States as such, yet they guide compatibility assessments and create a legitimate expectation of equal treatment.[5] In *Tercas*, the Court refined the circumstances under which interventions by deposit guarantee schemes constitute State resources (or are attributable to the State).[6] In *Braesch* (BMPS), the General Court confirmed that Commission approval of aid does not transform

[4] Communication from the Commission – The application of State aid rules to measures taken in relation to financial institutions in the context of the current global financial crisis (2008/C 270); Communication from the Commission – The recapitalisation of financial institutions in the current financial crisis: limitation of aid to the minimum necessary and safeguards against undue distortions of competition (2009/C 10/2) (Recapitalisation Communication); Communication from the Commission on the treatment of impaired assets in the Community banking sector (2009/C 72/1) (Impaired Assets Communication); Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (2009/C 195/9) (Restructuring Communication); Communication from the Commission on the application, from 1 January 2011, of State aid rules to support measures in favour of banks in the context of the financial crisis (2010/C 329/7) (First Prolongation Communication); Communication from the Commission on the application, from 1 January 2012, of State aid rules to support measures in favour of banks in the context of the financial crisis (2011/C 356/7) (Second Prolongation Communication); and Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (2013/C 216/1) (2013 Banking Communication).

[5] In *Kotnik*, the Court of Justice upheld the lawfulness of Slovenia's bail-in measures required by the Commission during bank restructuring. (C-526/14 *Tadej Kotnik and Others v Državni zbor Republike Slovenije*, ECLI:EU:C:2016:570).

[6] The *Tercas* judgment clarified that financial interventions by a deposit guarantee scheme do not constitute State aid where the scheme is privately financed, acts autonomously, and its decisions cannot be attributed to the State, thereby narrowing the circumstances in which such support is treated as involving State resources. (*Italian Republic and Others v European Commission* [Banca Tercas], Joined Cases T-98/16, T-196/16 and T-198/16, ECLI:EU:T:2019:167). See also: Case C-425/19 P, *European Commission v Italian Republic, Banca Popolare di Bari Società Cooperativa per Azioni, Fondo interbancario di tutela dei depositi, Banca d'Italia*, ECLI:EU:C:2021:154.

national burden-sharing into a Union act; Member States remain accountable for their measures.[7] These cases highlight the distinction between national acts implementing aid and the Commission's compatibility assessment – a distinction that candidate countries must internalise through legal approximation.

The net result of the two regimes is dual control: the BRRD addresses prudential failure and the continuity of critical functions, while State aid control constrains fiscal support that may distort competition. Scholars and policymakers recognise their complementarity, but also note the costs of overlap, particularly the timing frictions between urgent resolution actions and ex ante aid clearance. For example, Nicolaides (2016, pp. 222-240) observed that the EU's resolution framework did not eliminate fiscal interventions; rather, it subjected them to stricter oversight. The European Court of Auditors (2020) confirmed that tensions between State aid law and resolution practice persist. The Commission's continued reliance on the 2013 Banking Communication, despite profound market changes, demonstrates regulatory inertia. The challenge is even greater for candidate countries, such as Serbia and Montenegro, which must transpose the EU framework without its fiscal backstops or institutional depth.

Clarity regarding support 'within' versus 'outside' resolution, and concerning the solvency status of beneficiaries, is indispensable to avoid inadvertent triggering of resolution or the provision of unlawful aid. From the practical perspective of harmonising laws across candidate countries and ensuring effective enforcement, it is essential to explore the instruments available for providing public funds to banks. Accordingly, the central part of this paper is the taxonomy of measures and the evaluation of the mutual relationship between the instruments provided for by the BRRD, on the one hand, and the EU's soft law, on the other hand, in the domain of financial assistance to banks from public sources.

3. The Taxonomy of Public Support to Solvent and Insolvent Banks in the EU

3.1. Introduction to the Instruments of Public Aid to Banks

Several types of public aid are available to banks in the EU. However, the duality of instruments foreseen by the BRRD and the EC Communications contributes to their complexity. The EC Communications on State aid to banks do

[7] The *Braesch* judgment confirmed that privately funded bank resolution or restructuring measures may still constitute State aid where the State exercises decisive influence or control over the decision-making process, thereby broadening the criteria for attributing ostensibly private interventions to the State. (Case C-284/21 P *European Commission v Anthony Braesch and Others*, ECLI:EU:C:2023:58).

not fully align with the BRRD taxonomy. The EC soft law distinguishes between liquidity, restructuring, and liquidation aid, while both regimes correspond to the general classification of public funds use under resolution and out-of-resolution frameworks, which is particularly important from the perspective of accession countries. Both the BRRD and Banking Communications differentiate between two broad categories of instruments: a) instruments of public intervention, including financial stabilisation tools, and use of resolution and deposit guarantee funds; and b) instruments for precautionary support, such as public guarantees and the injection of own funds.

To better understand the scope of EU soft law on State aid to banks and its interplay with the BRRD, the following explanation, drawing on Ghibellini (2021, p. 41-50), clarifies the primary forms of public assistance to banks.

1) Guarantees on deposits, bonds, or the entirety of a bank's liabilities – Designed to improve access to financing and to revive wholesale market liquidity, this category of instruments may take the form of ad hoc measures or operate within an approved scheme. Under such a scheme, eligible banks may agree with the State to have their newly issued debt instruments – specific bonds or loans – guaranteed by the State, subject to an appropriate remuneration fee. The Commission considers State guarantees compatible with State aid rules where the State remuneration is properly reflected in the asset purchase price. Moreover, beneficiaries of such aid are subject to behavioural commitments designed to prevent distortions of competition.

2) Recapitalisations – The purpose of recapitalisations is to strengthen the capital base of financial institutions. A capital injection into a failing bank may be carried out either ad hoc or as part of a scheme. A distinction should be made between precautionary recapitalisations (outside the resolution process), which are usually linked to a capital shortfall that does not breach the prescribed capital limits, and recapitalisations of failing banks. Acknowledging the irreversible nature of capital injections, the Commission requires that recapitalisation schemes include clear ex ante behavioural safeguards, to be monitored and enforced by Member States in order to prevent distortions of competition. The main challenge associated with such schemes lies in determining the appropriate remuneration rate for the State providing the aid (Ghibellini, 2021, pp. 43-45). The Recapitalisation Communication introduced two key elements to be considered in determining the remuneration rate for capital injections: proximity to market prices and incentives to redeem the State as soon as possible.

3) "Bad bank" solutions – This term commonly refers to loss absorption for institutions in distress when so-called "bad banks" are created. Bad banks may be privately held by a bank in difficulty, the banking sector at large, or by the State,

usually through the deposit guarantee fund. Even when the State is the owner, they are separate legal entities whose purpose is to relieve financial institutions of their impaired assets, strengthen their balance sheets, restore access to liquidity, and reduce leverage. However, from a competition policy perspective, bad banks pose fundamental challenges, particularly regarding the book value of transferred assets (Ghibellini, 2021, p. 46). The Impaired Assets Communication introduced rules on ex ante transparency and disclosure, as well as methodologies for valuing impaired assets and determining the State remuneration for the aid provided. The European Commission, *inter alia*, assesses the adequacy of burden sharing for the costs related to asset transfers and generally considers such transfers compatible where the State remuneration is embedded in the asset purchase price. Where the transfer price exceeds the market value, the impaired asset measure is considered to constitute State aid, but it may be declared compatible if the transfer price does not exceed the actual (real) value.

4) Nationalisations – Nationalisations occur when the State takes over all, or a significant part, of a bank's assets in difficulty. In most cases, such programmes aim to restore the bank's health and, where possible, return it to the private sector at a later stage. Nationalisation, in itself, does not constitute State aid, as the TFEU is neutral regarding the form of ownership. However, capital injected into the shares of a failing bank may constitute State aid (Athanasaki, 2017, p. 623). Although EC Communications do not explicitly use the term 'Government Stabilisation Tools,' precautionary and rescue recapitalisations should be distinguished, the latter often corresponding to the BRRD construct 'Government Stabilisation Tools.' The key issues in this context are burden sharing and State remuneration.

Given the varied taxonomies of public intervention, this paper examines public support within and outside the BRRD resolution procedure, with a view to clarifying the potential scope of State aid authorities' competences.

3.2. An Overview of the BRRD Rools

As noted above, the BRRD establishes four primary resolution tools: the sale of business, bridge institution, asset separation, and bail-in mechanisms. Each serves distinct policy objectives while collectively ensuring the continuity of critical functions and the preservation of financial stability with minimal recourse to taxpayers. The guiding principles of the BRRD, particularly the no-creditor-worse-off rule and the internalisation of losses, reflect a shift from discretionary bailouts to ex ante burden-sharing within the private sector (Directive 2014/59/EU, Arts. 37-58). The sale-of-business and bridge-bank tools aim to maintain operations by transferring viable parts of a failing bank to another entity, typically accompanied by temporary

guarantees or liquidity assistance to ensure stability. Asset separation allows for the isolation of non-performing or illiquid assets in a separate vehicle, while the bail-in tool converts or writes down capital instruments and eligible liabilities to recapitalise the institution internally. Although expectations for this instrument were initially high, doubts soon emerged regarding the punitive nature of creditor bail-in regimes (Tröger, 2018, pp. 35-72). Despite the strong emphasis on bail-in, political-economy considerations have rendered the full application of loss-sharing rare in systemic cases (Dewatripont, 2014, pp. 37-43). The World Bank Guidebook (World Bank Group, 2017, pp. 111-120) similarly underscores that liquidity in resolution – through temporary financing or public guarantees – remains indispensable for maintaining market confidence even under a bail-in regime.

In addition to defining the main tools, a further division can be made according to the sources of bank resolution financing (Hadjiemmanuil, 2016, pp. 177-207). The BRRD also provides for the use of Government Financial Stabilisation Tools (GFSTs) in exceptional circumstances, which include temporary public ownership and public equity support measures (BRRD, Art. 56 – Government Financial Stabilisation Tools).

As Gortsos argues, this "poisonous mix" of bail-in discipline and residual fiscal intervention was designed as a narrow safeguard. Yet, it inevitably blurs the line between resolution and traditional public recapitalisation (Gortsos 2016). These government tools can be deployed only when the systemic stability of the financial system is at stake and when the use of the SRF or other resolution financing arrangements is insufficient. This framework illustrates the delicate balance between prudential resolution objectives and fiscal constraints, and it is precisely here that the interface with State aid control becomes decisive.

3.3. Public Support Within and Outside the BRRD Resolution Framework

A fundamental analytical distinction in the post-crisis architecture concerns the nature of public support – whether it is provided within resolution, in accordance with the BRRD's procedural safeguards, or outside resolution to solvent institutions. The within-resolution category encompasses State-financed interventions under the aegis of resolution authorities, such as contributions from the Single Resolution Fund (SRF) or national resolution funds, temporary liquidity facilities, and guarantees. The same applies to the use of deposit guarantee schemes (DGS) to facilitate transfers (BRRD, Arts. 44–58; DGSD 2014/49/EU – as applicable to DGS contributions). Such interventions remain subject to State aid rules whenever they involve State resources or confer selective advantages (Hancher, Ottervanger & Slot, 2016, p. 521).

Conversely, outside-resolution measures typically address solvent institutions experiencing temporary capital or liquidity stress. They include guarantees, liquidity lines, or precautionary recapitalisations that do not trigger resolution because the bank is not "failing or likely to fail." Of particular importance is the Emergency Liquidity Assistance (ELA) framework, which falls within the remit of the central bank. In contrast, the prohibition of monetary financing means that solvency support is a government responsibility (Opinion of the ECB of 3 February 2017 on liquidity support measures, a precautionary recapitalisation and other urgent provisions for the banking sector, CON/2017/01, fn 40). Both the BRRD and Banking Communications therefore recognise specific rules for ELA (Laprévote & Coupé, 2017, p. 118). In practice, banking crises often occupy a grey area between liquidity and solvency (Fernandez, Pardo & Martin, 2015, p. 1).

Ghibellini provides a detailed analysis of this grey zone, emphasising that the classification of such support determines whether the State aid notification requirement applies and which burden-sharing obligations arise (Ghibellini, 2021, pp. 35-75). Smolenska identifies five main types of public interventions that may constitute State aid when granted selectively: recapitalisations, impaired-asset schemes, guarantees, liquidity support, and interventions by resolution or guarantee funds (Smolenska, 2017, pp. 168-175). By contrast, she notes that Emergency Liquidity Assistance (ELA) provided by central banks and depositor pay-outs through DGS do not constitute State aid unless, in the case of ELA, they are State-guaranteed, or, in the case of DGS, they are used for restructuring rather than depositor reimbursement (Smolenska, 2017, p. 172). This distinction between monetary policy instruments and fiscal interventions reflects the functional boundary between prudential and competition disciplines. The operational complexity of determining whether a given measure constitutes aid, and thus requires prior Commission approval, has become one of the central challenges of the EU crisis-management regime. The European Court of Auditors, in its 2020 Special Report on State Aid Control of Financial Institutions, underlined the lack of clarity in defining public resources and attributability in hybrid interventions combining national and supranational funding (European Court of Auditors, 2020). This issue has direct implications for the speed and predictability of resolution actions.

3.4. Solvent and Insolvent Banks: Precautionary Recapitalisation

Article 32(4)(d)(iii) BRRD explicitly provides for precautionary recapitalisation – a public capital injection into a solvent institution to remedy a capital shortfall identified under stress-testing scenarios. Such recapitalisation is permissible only if it does not offset losses already incurred or likely to be incurred, and if it is

temporary and proportionate to the identified capital needs. It therefore sits outside the resolution framework, functioning as a preventive measure to preserve financial stability without triggering the "failing or likely-to-fail" condition.

If a Member State undertakes a public recapitalisation scheme that does not involve burden sharing with private investors, the European Commission is likely to declare such public aid incompatible with EU competition law. Therefore, precautionary recapitalisations presuppose prior "burden sharing" under State aid rules. Furthermore, the State aid framework requires that a restructuring plan for the bank be submitted to and approved by the Commission before the precautionary recapitalisation measure can be implemented. The supervisory authority or the resolution authority is responsible for determining whether a bank is failing or likely to fail, and for ensuring that precautionary recapitalisation benefits a solvent bank. Within the Single Resolution Mechanism (SRM), the supervisor, in consultation with the Single Resolution Board (SRB), determines whether a bank is failing or likely to fail. The Commission must then verify whether the aid can be granted outside resolution and assess its compliance with the conditions set out in Article 32(4)(d)(iii) BRRD. If private capital or loss absorption cannot be secured, the bank will be considered likely to fail and may be placed under resolution.

If the conditions for a precautionary recapitalisation are not fulfilled, the granting of State aid would require compliance with both the BRRD conditions for extraordinary public financial support within resolution and the requirements of the State aid framework. This implies that the BRRD introduces, in addition to the traditional State aid criteria, an additional prerequisite –namely, the prior bail-in of at least eight per cent of total liabilities. This 8% bail-in threshold, set out in Article 44(5) BRRD, is distinct from the Minimum Requirement for Own Funds and Eligible Liabilities (MREL) under Article 45 BRRD,[8] which constitutes an ex ante requirement ensuring that institutions maintain sufficient liabilities capable of absorbing losses. While conceptually related, the two operate at different stages: MREL aims to guarantee the availability of "bail-inable" instruments ahead of failure, whereas the 8% threshold functions as an ex post condition for accessing public funds in resolution.

The legal and policy implications of precautionary recapitalisation have been the subject of sustained academic debate (Olivares-Caminal & Russo, 2017; Bodellini, 2017, pp. 144-164). Ghibellini interprets this provision as a compromise between financial stability considerations and State aid discipline, allowing limited public intervention where private markets are unable to provide capital swiftly (Ghibellini, 2021, pp. 213-245). However, she also stresses that, once losses are

[8] See also Guidelines on the types of tests, reviews or exercises that may lead to support measures under Article 32(4)(d)(iii) of the Bank Recovery and Resolution Directive, EBA/GL/2014/09.

realised or solvency is impaired, such measures cease to qualify as precautionary and must be treated as resolution. The case of Monte dei Paschi di Siena exemplifies the tensions surrounding this mechanism. The bank, though formally solvent, received extraordinary public financial support after stress-test results revealed capital vulnerabilities. The Commission approved the measure as compatible aid under Article 107(3)(b) TFEU, subject to extensive burden-sharing and restructuring obligations (European Commission, 2017).

Yet the case illustrates the fragility of the solvent/insolvent distinction in practice and the potential for divergent assessments between the Commission and resolution authorities. Smolenska's conceptual framework usefully describes this continuum by differentiating between State support within resolution, precautionary recapitalisation, and ordinary public aid (Smolenska, 2017, p. 174). Building on her model, the following taxonomy distinguishing interventions according to: (i) legal basis (BRRD or TFEU), (ii) beneficiary condition (solvent or insolvent), (iii) procedural oversight (resolution authority or Commission), and (iv) fiscal impact (temporary or structural). This analytical table clarifies the overlapping yet distinct competences that characterise the EU's dual banking crisis-management regime.

Table 1 – Taxonomy of State support measures

Category	Legal Basis	Beneficiary Status	Supervisory Authority	Fiscal Nature	Example
Resolution support	BRRD Arts. 37–58	Insolvent/ FOLTF	SRB or NRA	Temporary, backstop	SRF contribution to bridge bank
Extraordinary Public Financial Support (EPFS)	BRRD Art. 56	Insolvent, systemic	NRA + Commission (Aid control)	Structural	Temporary public ownership
Precautionary recapitalisation	BRRD Art. 32(4)(d)(iii)	Solvent	MoF + Commission	Temporary	Monte dei Paschi Case (2017)
Liquidity guarantees	TFEU Art. 107(3)(b)	Solvent	Commission	Temporary	Guarantee scheme during liquidity stress
Deposit Guarantee Support	DGSD + BRRD	Insolvent or transfer	NRA + DGS	Limited, contingent	DGS transfer financing
Monetary ELA	Central bank competence	Solvent	Central bank	Liquidity – neutral	Non-aid instrument

3.5. Extraordinary Public Financial Support

3.5.1. Extraordinary Public Financial Support Under the BRRD

In exceptional circumstances of systemic crisis, once all resolution tools have been exhausted to safeguard financial stability, the resolution authority may resort to public financing. Such intervention is permissible when a bank within the EU is deemed failing or likely to fail, no private-sector solution exists, and a public interest in preserving financial stability can be demonstrated. Generally, the need for extraordinary public financial support indicates that the institution fulfils the failing or likely-to-fail condition under Article 32(4)(d) BRRD, and – where the remaining prerequisites are satisfied – should therefore be subject to resolution. This represents a public support outside resolution and may be implemented through the following instruments: 1) extraordinary public recapitalisation; or 2) a) a State guarantee of newly issued liabilities, or 2) b) a State guarantee to back up Emergency Liquidity Assistance (ELA). These are exceptional circumstances in which public financial support may be provided to an otherwise solvent bank without triggering resolution, the conditions for which are stipulated in Article 32(4)d(iii) BRRD. Public support under resolution – Government Stabilisation Tools (Articles 56–58 BRRD) – does not apply to solvent banks; instead, it is reserved for banks that are failing or likely to fail (FOLTF). The ability of a Member State to utilise this option depends on how the BRRD has been transposed into its national legal order, as well as on any domestic limitations governing the use of public funds. It is worth noting that the Single Resolution Board (SRB), as an EU agency, cannot interfere with the sovereignty of Member States when the national government decides to support a bank through Government Financial Stabilisation Tools (Eurostat, 2016, p. 17). The only authority that could challenge the use of such national financial aid is the European Commission, if the use of these tools contravenes the State aid rules.

Resolution authorities may resort to Government Stabilisation Tools when seeking funding from alternative financing sources, in addition to the resolution and deposit insurance funds. The conditions specified in Articles 56–58 BRRD must be satisfied: there should be a contribution from private sources – including shareholders, holders of other ownership instruments, holders of relevant capital instruments, and other bail-inable liabilities – towards loss absorption and recapitalisation, amounting to no less than eight per cent of total liabilities, including own funds of the institution under resolution at the time of the resolution action, in accordance with the valuation requirements stipulated in Article 36 BRRD. Once this condition is met, the use of Government Stabilisation Tools remains conditional on prior and final approval under the EU State aid framework.

Under Article 107(3)(b) of the TFEU, Government Stabilisation Tools are designed to assist systemic financial institutions in cases of severe economic disturbance. The 2008 Banking Communication (no longer in force) underlined that: "*The Commission reaffirms that, in line with the case law and its decision-making practice, Article 87(3)(b) [nota bene – now Article 107] of the Treaty necessitates a restrictive interpretation of what can be considered a severe disturbance of a Member State's economy.*" Subsequent EC Communications, which remain in force, contain numerous provisions supporting the restrictive interpretation of what can be considered a severe disturbance of a Member State's economy. The Communications emphasise that such support is appropriate: "*only in genuinely exceptional circumstances where the entire functioning of financial markets is jeopardised,*" "*where there is a serious disturbance,*" "*crisis-related support measures,*" and "*only as long as the crisis situation persists, creating genuinely exceptional circumstances where financial stability at large is at risk.*"

As the BRRD also refers to the need to avoid a serious disturbance in the economy (see, for instance, Article 32(4)(d)), it is useful to note that Article 107(3)(b) TFEU provides a more permanent legal basis for assessing the compatibility of State aid measures in the banking sector. Under this provision, aid may be considered compatible not only when a serious disturbance has occurred, but also where such a disturbance would arise in the absence of intervention. It means that aid may be compatible not merely with remedying an existing serious disturbance, but with preventing a potential future disturbance, thereby contributing to the preservation of financial stability (Olivares-Caminal & Russo, 2017, p. 11).

3.5.2. Extraordinary Public Financial Support Under the Serbian Law on Banks: Alignment with the BRRD Framework?

Provisions of Serbian Law on Banks[9] (Article 128ž (1)) incorporate the three main conditions for taking resolution action under BRRD: 1) the bank is failing or likely to fail (FOLTF); 2) no alternative private-sector measures exist to prevent the bank from failing; 3) the resolution is in the public interest. The Law and Banks (Article 128ž (2)) is also harmonised with the BRRD's four legal conditions that an institution must meet to be deemed FOLTF (BRRD Article 32(4)): a) the bank infringes the requirements for continuing authorisation in a manner that would justify the withdrawal of such authorisation; b) the bank's liabilities exceed its assets ("balance sheet" insolvency); c) the bank cannot pay its due debts ("cash flow" or illiquidity insolvency); d) extraordinary public financial support is required.

However, the fourth condition, "the extraordinary public financial support," is subject to the three explicitly listed exceptions in Article 32(4)(d) BRRD (similarly,

[9] *Official Gazette*, Nos. 107/2005, 91/2010, 14/2015, and 19/2025.

Article 128ž, para. 2.4 – (1)(2) and (3) of the Law on Banks). It requires that extraordinary public financial support to solvent institutions be provided "*in order to remedy a serious disturbance in the economy of a Member State and preserve financial stability... of a precautionary and temporary nature... proportionate to remedy the consequences of the serious disturbance, and shall not be used to offset losses that the institution has incurred or is likely to incur in the near future*."

Table 2 – Public support for solvent and FOLTF banks

PHASE: WITHIN OR OUTSIDE RESOLUTION	FORM	SOLVENT/ FOLTF
Public support outside resolution Art. 32(4)d BRRD	State Guarantee of newly issued liabilities State Guarantee to back Emergency Liquidity Assistance	Solvent
Art. 128ž para. 2.4 – (1)(2) and (3) Law on Banks	Extraordinary Public Recapitalisation	
Public support under resolution (Arts. 56–58 BRRD) Not transposed in the Law on Banks	Government Stabilisation Tools: - Public equity support tool - Temporary public ownership tool	Failing or Likely to Fail Bank

The wording of *Article 128f of the Law on Banks* appears to refer exclusively to banks that are not solvent, i.e., those falling into the category of "Failing or Likely to Fail," for the following reasons. First, paragraphs 1 and 2 of this Article both refer to restructuring financing. Second, the wording of paragraph 3 pertains to funds to be used in the resolution process: "*If assets from funds specified in paragraphs 1 and 2 of this Article are insufficient to fund bank resolution… to achieve the resolution objectives to the greatest possible extent by applying other resolution tools, and particularly to preserve financial stability – the National Bank of Serbia shall submit to the ministry in charge of finance the application for a positive opinion on ensuring financial support funds from paragraph 1 hereof…*". Finally, paragraph 8 of the same Article provides: "*If the Government does not adopt the proposal from paragraph 5 hereof, the National Bank of Serbia shall adopt the decision on revoking the bank's licence, unless the bank's licence was revoked in the course of determining the conditions to initiate the resolution procedure*."

Additionally, Article 128ć, paragraph 5, of the Law on Banks explicitly refers to "*the extraordinary support granted in the course of resolution procedure*." Consequently, the wording of Article 128f cannot be interpreted as applying to State guarantees of newly issued liabilities, State guarantees backing Emergency Liquidity

Assistance, or extraordinary public recapitalisation (.Art. 32(4)d BRRD and Art. 128ž para. 2.4 – (1), (2) and (3)). Instead, it appears to address public support within resolution, corresponding to the two 'Government Stabilisation Tools.' However, Articles 56-58 BRRD have not been transposed in the applicable Law on Banks, which, *inter alia*, does not contain a formal definition of the term "extraordinary public financial support."[10] It is worth noting that the implementation of government financial stabilisation tools remains a matter of national discretion – it is for the Member State to decide whether to use these tools, and the resolution authority cannot compel their use (IMF, 2017, p. 44). Any other approach would constitute a direct infringement of the Member State's budgetary sovereignty.

4. The Interplay and Tensions Between the BRRD and the EU State Aid Regime as an Aggravating Factor for Candidate Countries

The coexistence of the BRRD and EU State aid control produces a durable dualism in crisis management: prudential objectives centred on the continuity of critical functions and systemic stability, on the one hand, and competition policy aimed at preventing selective advantages financed from State resources, on the other. Nicolaides (2016, pp. 222-240) argues that this dualism is deliberate rather than accidental, constituting a check-and-balance arrangement in which distinct legal tests are applied to the same intervention. The Single Resolution Board (SRB) and national resolution authorities determine whether a credit institution (FOLTF) has failed and whether public interest requires resolution. Simultaneously, the Commission, applying Article 107(3)(b) TFEU, assesses whether a measure constitutes State aid and, if so, whether it is compatible with the internal market.

The conceptual complementarity is evident, yet practical frictions remain persistent. Three recurrent divergences structure the interface (Nicolaides, 2022, pp. 79-90). *First*, authorities may disagree on the existence and scope of State aid. The classification of State resources and imputability has been particularly controversial in cases involving deposit guarantee schemes (DGS) or resolution funds. In *Tercas*, the Union courts refined the circumstances under which DGS interventions are attributable to the State, compelling a narrower reading than the Commission's earlier practice. *Second*, authorities may diverge on the concepts of public

[10] According to Article 2 BRRD "Definitions" under point (28) "'*extraordinary public financial support' means State aid within the meaning of Article 107(1) TFEU, or any other public financial support at supranational level, which, if provided for at national level, would constitute State aid, that is provided in order to preserve or restore the viability, liquidity or solvency* of *an institution or entity referred to in point (b), (c) or (d) of Article 1(1) or of a group of which such an institution or entity forms part*."

interest versus serious disturbance. The SRB's public-interest test is tailored to the continuity of critical functions, whereas the Commission's serious-disturbance test focuses on macroeconomic stability and competition effects (Lastra, Russo & Bodellini, 2019, pp. 15–18). These lenses do not always converge, which can lead to the approval of liquidation aid outside a BRRD resolution, as in the cases of Veneto Banca and Banca Popolare di Vicenza,[11] where the SRB did not find that resolution was in the public interest (Asimakopoulos, 2018, pp. 156-162). Since national insolvency laws within the EU are not harmonised, this may result in differential treatment of creditors in liquidation versus resolution.[12] *Third*, authorities may differ in how they treat solvent institutions. Precautionary recapitalisation under Article 32(4)(d)(iii) BRRD falls outside resolution, yet it is almost always classified as State aid, subjecting it to Commission control and creating potential timing conflicts.

The temporal dimension accentuates these divergences. Resolution actions demand immediate execution, whereas State aid clearance, even when expedited in crises, still requires a coherent notification and assessment record. The European Court of Auditors (2020) found that the 2013 Banking Communication, conceived before the BRRD's application, was not fully aligned with the Banking Union context and urged a fitness check. Stakeholder submissions in the Commission's 2022 targeted consultation reinforce this picture. The European Savings and Retail Banking Group called for more precise guidance on the use of DGS and on the interaction between liquidation, transfer tools, and aid control (ESBG, 2022). At the same time, the Netherlands advocated streamlined procedures and clarified responsibilities between national authorities, the SRB, and DG Competition (Government of the Netherlands, 2022). Goodhart and Avgouleas (2015, pp. 3-29) memorably describe the outcome as a "double lock": sound in principle, but prone to delay when the windows for decisive action are narrow. Ghibellini (2021, pp. 247-254) and Smolenska (2017, pp. 173–175) note that the current framework blurs the line between resolution funding and State aid, particularly when public funds under State control, such as the SRF, require the Commission's clearance. These tensions suggest that, despite a decade of integration, Europe's crisis management remains bifurcated.

Doctrinally, courts have delineated the boundary between EU and national responsibilities. *Kotnik* confirms that the Commission's communications guide compatibility but do not bind Member States as such; yet once a selective advantage arises from State resources, notification is mandatory, and failure to notify triggers

[11] Single Resolution Board, 'The SRB will not take resolution action in relation to Banca Popolare di Vicenza and Veneto Banca,' 23 June 2017.

[12] For this reason, the International Monetary Fund recommended that the SRB be assigned the powers to administer bank liquidation as a separate tool. IMF. 2018. Euro Area Policies, Financial System Stability Assessment, IMF Country Report No. 18/226, p. 7.

illegality and recovery. *Braesch (BMPS)* clarifies that the Commission's approval of aid does not transform national burden-sharing into an EU measure, a crucial reminder that legal accountability for investor losses lies with domestic authorities. These rulings underscore that dual control is not a hierarchy but a coordination problem: distinct legal regimes applied in parallel to the same episodes of financial distress. Recent scholarship suggests that, even under CMDI reforms, State aid is likely to remain the operative channel for small and medium-sized banks; the task is to make that channel faster and more coherent (Schillig, 2025, pp. 221-240). In conclusion, it appears that, in circumstances of last resort, both the State aid framework and the resolution regime place greater emphasis on safeguarding financial stability than on strictly limiting the use of public resources (Olivares-Caminal & Russo, 2017, p. 15; Lastra, Russo & Bodellini, 2019, pp. 13–14). This is justified by the assumption that, without public funds, the bank's financial position could quickly deteriorate, leading to financial instability (Bodellini, 2017, p. 155).

The resilience of the EU model lies in this dual discipline, while its exportability depends on whether states without EU-level backstops can sustain the same coordination burden. The following chapter considers these legal and policy challenges in candidate countries, with specific reference to Serbia's framework for extraordinary public financial support and its interaction with emerging resolution practice.

5. Exporting the EU Framework to Accession Countries: Legal and Policy Challenges with Special Reference to Serbian and Montenegrin Legislative Frameworks

The above analysis and taxonomy of State aid to banks are intended to assist in understanding and clarifying the obligations of candidate countries. Candidate countries seeking alignment with the *EU acquis* must transpose both the BRRD and the State aid control regimes. The dual-control model is challenging to export. In Member States, the Single Resolution Board (SRB) and the Commission operate in tandem, supported by the Single Resolution Fund and EU budgetary capacity. Candidate countries lack such instruments and must therefore ensure legal clarity to avoid conflicts between prudential supervision and competition enforcement. The experience of the EU's own Banking Union suggests that regulatory coordination, rather than mere transposition, is decisive. Case law, such as *Braesch*, confirms that national authorities retain primary responsibility for notification and implementation. Not only legislation, but also case-law principles (e.g., notification discipline, attribution of measures, private-investor test) must be internalised domestically.

Nicolaides (2016, pp. 222-240) warned early that State aid rules would continue to prevail over resolution tools in the absence of fiscal coordination. As Schillig (2025, pp. 221-240) argues, even within the CMDI reform agenda, State aid remains the primary avenue for resolving small and medium-sized banks. This implies that the tensions observed within the EU are likely to arise in accession countries unless a coherent mechanism for fiscal support and competition control is established. For accession countries, replicating this model without a central budgetary backstop risks perpetuating moral hazard rather than resolving it. Consequently, candidate countries face several structural asymmetries: no fiscal backstop, limited resources for the resolution fund, and weaker administrative capacity. Setting these policy challenges aside – which further complicate the implementation of the legal regime of state aid to banks – the discussion below focuses on the difficulties of transposing this regime in accession countries, specifically Serbia and Montenegro.

In accordance with Article 73 of the Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Serbia,[13] and correspondingly Article 73 of the Stabilisation and Association Agreement between the European Communities and their Member States and the Republic of Montenegro,[14] alignment with the *EU acquis* in the area of competition law is foreseen, and includes State aid. Both Serbia and Montenegro are required to establish an operationally independent authority entrusted with powers related to State aid that distorts, or threatens to distort, competition by favouring certain undertakings or products between the EU and Serbia, and the EU and Montenegro, respectively. Such authorities must be equipped with the powers to authorise State aid schemes and individual grants, as well as to order the recovery of unlawful State aid.

Although the SAAs concluded with both countries are clear, several questions arise. From a technical perspective, the first question is whether the EC Communications on State aid to banks in difficulty, as soft law,[15] must be transposed into a national act (bylaw) or, as is already the case in Montenegro's banking resolution framework, whether the legislation on resolution of credit institutions should simply provide a reference to the applicable European legal framework.[16] To the best of the author's knowl-

[13] Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part OJ L 278, 18 October 2013, pp. 16-473.

[14] Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Montenegro, of the other part OJ L 108, 29 October 2010, pp. 3-355.

[15] Under the presumption that national authorities responsible for State aid control are expected to apply the regime established by the EC Communications on State aid to banks prior to EU accession.

[16] Article 13(3) of the Law on Resolution of Credit Institutions of the Republic of Montenegro

edge, no accession country fully transposed all relevant banking communications into national legislation prior to joining the EU. In implementing the BRRD recovery tools, Member States' legislation generally refers to the European legal framework on State aid control to banks. Similarly, the Law on Resolution of Credit Institutions of the Republic of Montenegro in a chapter dedicated to "Principles of Recovery," prescribes that: "When applying rescue and recovery instruments and exercising powers, if necessary, the procedure should be conducted in accordance with the regulations of the European Union governing State aid." (Art. 13(3)). Given that Montenegro has successfully achieved harmonisation in this area during accession negotiations, could the same approach suffice for amending the Serbian Law on Banks?

From an institutional perspective, if both competent bodies – the Serbian Commission for State Aid Control and the Montenegrin Agency for Protection of Competition – are expected to implement the EU State aid *acquis* related to aid to banks in the same manner as the European Commission applies it under the TFEU, both SAA imply that "any State aid which distorts or threatens to distort competition by favouring certain undertakings or certain products" is incompatible "insofar as it may affect trade between the Community…" (Art. 73, para. 1 and para. 1. iii). Given the small size of both the Serbian and Montenegrin markets, the question arises whether aid granted to banks in these countries could meaningfully affect trade with the EU.

Furthermore, let us suppose that national authorities responsible for state aid control are expected to apply the regime established by the EC Communications on State aid to banks prior to EU accession. In that case, it is worth noting that the Communications would apply in the event of a severe economic disturbance, when the functioning of financial markets would be jeopardised. This raises the question of whether exceptional public financial support should be limited solely to insolvent banks, and whether recourse to funds should be limited to the initiation of the resolution procedure ("Government Stabilisation Tools") rather than being available beforehand (i.e., in recovery activities outside the resolution framework). The Serbian Law on Banks recognises the jurisdiction of the Commission for State Aid Control only in cases of major economic disruptions and financial crises.

The adoption of specific legal acts, notably the BRRD and its implementing legislation, has posed several challenges in implementing the State aid framework

(*Official Gazette*, Nos. 72/209, 82/2020, 8/2021, 113/2024) is insightful as it shows that provisions of the EC Communications do not have to be transposed into national legislation but referred to, and the application of the European legal framework on State aid to banks can be postponed until EU accession. The Law makes a generic reference to all applicable EC Communications by referring to the duty to consider "the applicable legislation of the EU on State aid" and specifies, in its final provisions, that it is applicable "upon the Republic of Montenegro's accession to the EU."

discussed in this paper. Taking into account that the European Commission has announced the modernisation of the framework on State Aid to banks, transposing the provisions of the Communications into national legislation carried the risk of creating confusion with the implementation of the BRRD requirements in Serbia and Montenegro.

The above analysis of Article 128f of the Serbian Law on Banks indicates that its application is confined to situations involving severe economic disturbances, in which the National Bank of Serbia (NBS) may seek the Government's intervention and access to additional funds that could constitute State aid. By contrast, the use of resources from the deposit insurance scheme and the resolution fund is explicitly excluded from the scope of State aid (Article 128f(7)). Consequently, the competence of the Serbian State aid authority would arise only in cases where extraordinary financial support is requested from the Government in the form of additional aid. Furthermore, Serbian legislation does not define "extraordinary public financial support," and it remains unclear whether it encompasses more than the Government Stabilisation Tools specified in Articles 56–58 BRRD.

The previous analysis indicates that the State aid implications of bank support funded by public funds in Serbia are limited to "the extraordinary support granted in the course of resolution procedure," which raises the question of how to transpose the EU soft law in the area of State aid control. Since the Montenegrin State aid framework has been assessed as compatible under the Negotiation Chapter 8 – Protection of competition, this demonstrates that referencing the EU legal framework is possible. However, it remains unclear whether these provisions will be applied at all prior to EU accession, and whether the national authority responsible for State aid control is competent.

Since the European Commission has explicit competence in the field of State aid to banks, Member States do not assume responsibility for the soft law instruments (State Aid Banking Communications). None of the accession countries had previously chosen to fully transpose the Communications, to the best of the author's knowledge. The above questions, and the fact that the adoption of specific legal acts – notably the BRRD and its implementing legislation – posed various challenges in implementing the framework on State aid, must be considered. Taking into account that the European Commission has announced the modernisation of the framework on State aid to banks, transposing the provisions of the Communications carries the risk of creating confusion with the implementation of the BRRD requirements in candidate countries. The transposition of the directive also raises questions about the capacity of national State aid control authorities in the complex area of finance.

5. Conclusion

The coexistence of the BRRD and State aid control constitutes both a safeguard and a structural constraint in EU crisis management. The coexistence of the two regimes embodies both the strength and the complexity of the EU's approach to financial stability. It ensures discipline through competition law while allowing flexibility through prudential resolution tools. While it promotes fiscal discipline and market integrity, it also fragments decision-making, as overlapping procedures and institutional frictions can slow the process. The persistence of parallel procedures and the continued relevance of State aid approvals suggest that the EU has not achieved full integration between prudential and competition frameworks. The ongoing CMDI reform offers an opportunity to streamline this interaction by aligning the definitions of 'public interest' and 'serious disturbance.'

The Commission's ongoing evaluation and the CMDI reform highlight the need for recalibration: aligning definitions, procedures, and intervention thresholds. As the dual conditionality between BRRD and State aid control remains unresolved even within the EU, this asymmetry creates risks of incomplete policy transfer in candidate countries. The key lesson for candidate countries is that legal approximation alone is insufficient; the key requirement is to strengthen the institutional capacity and mandates of State aid authorities. Institutional coordination, credible backstops, and procedural clarity are prerequisites for a sustainable transposition of EU crisis-management norms. Without these, exporting the dual BRRD–State aid model risks importing its inconsistencies rather than its safeguards.

For candidate countries, the challenge lies not in legal imitation but in institutional adaptation. Without an EU-level fiscal backstop or a central resolution fund, reproducing the BRRD–State aid duality may create legal uncertainty rather than stability. The future of crisis management in Europe, both within and beyond the Union, depends on resolving this interplay rather than perpetuating parallelism. For candidate countries, this intersection necessitates a dual institutional structure – coordination between the competition authority and the resolution authority – to emulate the EU model effectively.

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THEORETICAL ASPECTS OF THE ARTIFICIAL INTELLIGENCE USE IN SHAPING DIGITAL PUBLIC MONEY LEGISLATION***

Summary

The subject of analysis in this paper is the identification of the role of potential artificial intelligence systems in the normative regulation of digital money issuance by central banks. In this context, the first part of the paper highlights the impact of digital technologies on the legal acquis of the public monetary order and examines the challenges associated with preserving the structure and throb of monetary sovereignty amid the ongoing technological revolution. The second part of the paper emphasizes the importance of timely identification of the potential benefits and costs associated with artificial intelligence. Particular attention is devoted to examining and understanding the impact of artificial intelligence on the rights of monetary users to a reliable, stable, and secure currency, as well as on the right to monetary stability, conceived as a global public good. In the authors' view, these issues require a form of "monetary legal holism" in order to establish a sustainable legal bridge between traditional central banking legislation and the challenges posed by artificial intelligence as a new technical tool in shaping monetary norms for the digital market.

Keywords: Artificial Intelligence (AI), Central Bank Digital Currency (CBDC), Monetary Law, Monetary Stability.

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TEORIJSKI ASPEKTI UPOTREBE VEŠTAČKE INTELIGENCIJE U OBLIKOVANJU LEGISLATIVE DIGITALNOG JAVNOG NOVCA

Sažetak

Predmet analize u radu je identifikovanje potencijalne uloge upotrebe sistema veštačke inteligencije u procesu normativnog regulisanja izdavanja digitalnog novca od strane centralnih banaka. U tom kontekstu, u prvom delu rada ukazuje se na uticaj koje digitalne tehnologije imaju na pravne tekovine savremenog monetarnog ambijenta i izazove očuvanja strukture, kao i samog "bila" monetarnog suvereniteta u okolnostima tehnološke revolucije, dok se u drugom delu akcenat stavlja na značaj blagovremenog identifikovanja matriksa koristi i troškova koje bi upotreba veštačke inteligencije imala na očuvanje monetarne i finansijske stabilnosti kao bazičnog mandata centralnih banaka. Predmet posebne pažnje autora je razmatranje i razumevanje uticaja upotrebe veštačke inteligencije na prava monetarnih korisnika na čvrstu, stabilnu i sigurnu valutu, kao i prava na monetarnu stabilnost sagledanu kao globalno javno dobro koje uslovljava njihov životni standard, što prema mišljenju autora, zahteva svojevrsni monetarnopravni holistički pristup u cilju uspostavljanja kredibilnog i održivog pravnog mosta između tradicionalne legislative centralnih banaka i izazova koje implicira veštačka inteligencija kao novi tehnički alat u kreiranju monetarnih normi za digitalno tržište.

Ključne reči: digitalna valuta centralnih banaka, monetarno pravo, monetarna stabilnost, veštačka inteligencija.

1. Introduction

In the context of the technological revolution, central bank legislation has reached a critical turning point due to the rapid development and increasingly widespread use of decentralized financial technologies. These technologies have introduced a revolutionary approach to the legal definition of the money issuer, challenging the traditional position of the central bank – while setting aside the question whether these "new issuers" generate merely fiduciary money or money in the legal sense. The influence of these developments has not yet been sufficiently examined. At the same time, however, central banks are confronted with an additional and arguably more complex challenge: the use of artificial intelligence

systems in the process of money creation. Although at first glance this may suggest that the impact and possible applications of artificial intelligence are limited solely to digital sovereign money, in fact, artificial intelligence systems can also serve as instruments of monetary policy within conventional and already established monetary transmission channels. This includes the performance of all other tasks and functions encompassed by the central bank's primary and secondary mandates, aimed at ensuring monetary stability, prudential oversight, and financial supervision. Moreover, artificial intelligence may serve as a sophisticated tool for increasing the level of transparency in the public monetary management operations. Thus, the research and consideration of the potential impact of current – and especially of the further – development in artificial intelligence have become inseparable from contemporary monetary nomotechnics. Although this field has already adapted to the conditions of the electronic revolution in banking and finance, it has done so in a relatively quiet and organic manner, as the consequences of the electronic revolution were largely predictable – even in an era lacking sophisticated supervisory and control systems to ensure the protection of privacy and sensitive financial data. By contrast, the same degree of legal certainty appears far less evident in the context of the emerging influence and use of artificial intelligence, where the scope and implications of its application remain somewhat uncertain, at least for the time being. Although, we concur with the view that any analysis of the impact of digital financial innovations should be approached from a perspective that emphasizes their fundamental impact, rather than merely their disruptive effects (Blair, Gortsos & Zilioli, 2023, p. 510) – while, of course, acknowledging the latter – the impact of artificial intelligence may prove genuinely transformative. For this reason, it warrants particular attention from monetary law theorists.

When examining the relationship between central bank digital currencies (CBDCs) and artificial intelligence (AI), it is essential to recognize that the former constitutes a monetary legal innovation, whereas the latter represents a technological innovation belonging to the domain of technical sciences (Ozili, 2024, p. 118). The two, therefore, do not share a common object or *causa* within the framework of monetary-legal relations aimed at ensuring monetary stability at the global level. In assessing AI's potential contribution to this objective, it is important to emphasize that the concept of artificial intelligence encompasses two mutually interconnected processes: *machine learning* and *deep learning*. The former is based on the use of computer algorithms for data scanning and processing, while the latter relies on statistical methods for prediction or as a potential auxiliary tool in decision-making (Soori, Arezzo & Destres, 2023, pp. 54-55). A clear definition of these processes, both in terms of content and meaning, is a prerequisite for the effective application of AI in public monetary management. In the context of dynamic socio-economic

and political factors, such application must preclude arbitrariness in decision-making. The central bank, as the holder of monetary sovereignty, must ensure that every decision – particularly those involving the use of AI – is grounded in indisputable facts. Any deviation from this principle could introduce risks that might result in negative externalities that are difficult to control.

Although it is not currently possible to precisely identify all the cost and benefits of using AI in the CBDC issuing process, *we contend* that there is a genuine and logical need to at least initiate a theorethical review of its potential effects – both advantages and disadvantages. Such a systematization represents a valuable foundational hypothesis, one that will likely be confirmed or refined over time. This process is crucial, as it will generate factual material for the future determination of the legal treatment of AI within the monetary and central bank legislation. It is important to remember that, in addition to an adequate regulatory infrastructure and technological environment, an equally important factor in the issuance and acceptance of CBDCs is the mutual exchange of information, coupled with planned educational initiatives aimed at enhancing financial and digital literacy among citizens. In many countries, however, there are no satisfactory standards in place, as disinformation propagated through social media and limited economic rationality may undermine the legislative intent in this area (Gortsos, 2025, p. 67). By using dogmatic, axiological, and comparative legal methods, the authors aim to identify all the potential repercussions of integrating AI into the process of issuing sovereign digital currencies.

2. CBDCs and AI: Establishing a Legal Bridge

It appears that all technological achievements undergo a process of market valorization, serving ultimately to satisfy more effectively diverse market preferences. The application of information and digital technologies in the financial services market, together with the process of mass electronic data collection and storage, has influenced the emergence of the decentralized financial technologies (fintech). These innovations have changed the way financial market participants provide their services and have simultaneously led to the emergence of new types of services. Moreover, they have increased the number of market intermediaries – a trend most clearly observable in the rise of *crowdfunding*, wherein online platforms enable the secure financing of specific projects through collecting smaller contributions from a large number of participants, and in *crowdlending*, where specialized online platforms provide safe, legal, and reliable mechanisms for capital lending (Arner *et al*., 2020, pp. 73-76).

In addition, the development of digital innovations exhibits complex features that give rise to new regulatory challenges related to investor and consumer protection, financial stability preservation, and market integrity maintenance, while simultaneously encouraging the continued advanced innovation (Babović, 2023, p. 462; Jovanić, 2020, p. 16). The increasingly intensive adoption of these technologies has also generated two significant trends. The first concerns the accelerated pace of change in the financial market, driven by the commodification of technologies – understood as a process of creating new goods and services through the use of technologies. The second trend relates to the growing number and diversity of new entrants into the financial sector, including telecommunications and software companies. The ongoing and continuous digital transformation within fintech is in turn opening doors for the expansion of fintech solutions and the development of innovative models that promote financial inclusion by transcending the traditional objectives and aspirations of the financial sector (Bajakić & Branica, 2025, p. 15).

Interestingly, several studies suggest that central banks should adopt a synergistic approach linking the exploration of CBDC design with the pursuit of sustainable development goals, opting to develop only those CBDC models that promote the implementation of such objectives (Ozili, 2024a, p. 195). At present, central bank digital money is issued as sovereign currency in twelve jurisdictions, among which the Chinese digital yuan and the Indian digital rupee are recognized as particularly progressive solutions. In addition, the European Central Bank (ECB), after ten years of research, has entered the final phase of developing an appropriate technical platform for implementation. The crucial issue in the process of CBDC issuance, however, concerns the existence of a clear legal mandate – one that, despite logical and axiological justification, is not explicitly provided for in traditional central banking legislation. This issue refers to the legal organization of tender, which may be structured in repressive, privileged, optional, or indicative forms (Handayani & Yuliana, 2022, p. 519).

The differences between the above forms are reflected primarily in the freedom of choice afforded to users of CBDCs. In the case of a repressive model, financial users who refuse to use CBDCs may be subject to legal sanctions. In contrast, under the privileged model, no legal sanction are imposed, but moral sanctions may apply, owning to the strength of prevailing moral authority. Under the optional model, contract parties – particularly in the field of international economic contracts – retain the freedom to decide whether to use a specific digital currency. Finally, under the indicative model, financial users receive guidelines regarding particular CBDC types. The international implications of introducing public digital money must also be taken into account, as they will likely significantly influence both the dynamics and structure of existing international payment systems and the

creation of new ones. That underscores the need for a high degree of coordination within the international monetary system (Zatti & Baressi, 2024, p. 127).

In analyzing the relationship between CBDCs and AI, *we believe* it is important not to overlook the fact that private digital currencies were created in response to the needs of financial users, who sought to satisfy their preferences in the digital market while minimizing not only financial costs, but also time and psychological burdens. AI, by contrast, followed a distinctly different development path. It was not created to meet the demands of monetary users, nor is its primary domain the world of monetary finance; rather, its development has been driven by large technological companies whose principal objectives are to automate work, increase productivity, and maximize profits. Within this context, *we can identify* both similarities and differences between AI and the technique involved in designing private and public digital money. Thus, the connection between AI and cryptocurrencies lies in the aspiration of a business entity – weather natural or legal, acting as the issuer – to generate profit. By contrast, CBDCs are fundamentally concerned with protecting the rights of current users, maintaining monetary and overall stability, and upholding the principle of retention, whereby each user can anticipate the consequences of their decisions and confidently rely on legal protection, including recourse to competent courts if necessary. In this sense, this issue reflects a tension between the pursuit of economic profit and the fulfillment of citizens' general needs in a free and equitable manner. While this framing may appear somewhat simplified, it captures a universal truth regarding the flow of money that warrants no further questioning.

Artificial intelligence (AI), in its broadest sense, is a machine-based system that varies according to its degree of autonomy and adaptability. Such systems are designed, for both implicit and explicit objectives, to generate outputs from entered inputs in the form of recommendations, predictions, interpretations, or even decisions, which may have tangible impacts in the real or virtual world (OECD, 2024, pp. 1-7). In practice, the initial Al model taxonomy includes generative models, such as large language models, and generative pre-trained transformers. Generative Al is capable of producing outputs such as images, sounds, or code, whereas natural language models, as the term implies, are designed for language recognition and the interpretation of specific context. Such capabilities can be particularly valuable when analyzing the potential transposition of legal institutions from one legal system and tradition into another, as understanding the linguistic context enables a deeper comprehension of the historical and other factors that influenced the emergence or application of a given monetary institution. Hypothetically, AI can be highly useful in the comparative legal analysis of monetary legislation. In particular, generative transformer models – another variant of language models – perform morphological and syntactic analyses, which can subsequently be employed

for axiological analysis. We contend that all these three language model variants constitute a new and valuable tool for linguistic interpretation of monetary norms. While they do not replace the human interpreter, they have the potential to "expand and illuminate" new dimensions of analysis in a more time-efficient manner. In this framework, the outputs generated by AI should be regarded not as the final outputs, but as the "quasi outputs," which the interpreter – central bank – transforms into formal outputs, including final legal solutions. Potential implementation challenges could be overcome through cooperation between central banks and technology companies, particularly with the aim of improving the efficiency of payment systems (Heidari & Barzegari Khanagha, 2024, p. 52).

Undoubtedly, the central bank must maintain its role as the guardian of monetary sovereignty; however, it should do so in a manner that does not undermine technological progress but rather supports, encourages, rewards, and empowers it. In the context of AI application – perhaps even more so than during the emergence of electronic and digital money – the central bank must safeguard its prerogatives in defining the legal nature of money in its monetary jurisdiction. This jurisdiction remains its exclusive right, though not necessarily a sole one, exercised in partnership with the private sector.

This does not imply that monetary sovereignty has been "eroded"; rather, the present moment represents another distinct test through which the central bank can not only reaffirm its relevance within the legal order, but also potentially restore its reputation amid increasingly pronounced negative populism and re-establish all the dimensions of its credibility. This credibility is multifaceted and multidimensional, encompassing effective communication with citizens whose lives are, to varying degrees, affected by the central bank's decisions. To facilitate such communication between central banks and other stakeholders, it is also necessary to reform the central bank's internal organizational structure.

This paradox – whereby the central bank now assumes the role of "defender of humanity against machines," after decades of its activities having been commonly perceived as vague, abstract and detached from the everyday problems and aspirations of ordinary people – is neither unusual nor, *in our view*, a surprising circumstance. Rather, it constitutes persistent and unshakable evidence of the continuous evolution of the "consciousness" of the supreme monetary legislator and of its responsibility for both individual and collective well-being.

3. Potential Benefits and Costs of Using AI in CBDC – Normative Framework

In the context of the symbiosis between legal norms and software solutions – towards a unique process of algorithmization of law, understood as the sophisticated translation of legal norms into a new legal language format (Cvetković, 2023, p. 315) – the use of different AI models can produce different legal repercussion. A potential welfare gains from using AI in the CBDC issuance process are grounded in the achievement of a higher degree of interoperability, as diverse systems, techniques, or organizations are currently focused on the monetary, government, and IT sectors. Interoperability, understood as the ability of heterogeneous systems to operate together effectively, requires that these systems function as seamlessly as possible. That can be achieved through prior information exchange with users, without requiring additional operations (or requests) to understand the link between the two systems – a level of integration that has not yet been fully realized in the digitalization of central bank legal norms (Heckel & Waldenberger, 2022, pp. 107-115). Similarly, given the significance of media sentiment towards CBDCs – since the information disseminated through media can influence public acceptance or rejection of a CBDC (Ozili & Nanez, 2023, p. 134) – the central bank's media approach to AI is equally crucial in shaping the citizens' perceptions.

In the final stage of CBDC creation, artificial intelligence systems can contribute to the automation of decision-making processes related to the distribution of digital public money to banks as financial intermediaries and to end users, who may thereby gain faster access, depending on the legislator's intention to issue either a wholesale or retail form of CBDC (Dimitrijević, 2024, p. 136). Conversely, within this digital monetary transmission chain, numerous actions could hypothetically be performed by AI to reduce costs and prevent repeating the same mistakes. A significant advantage of AI implementation could be realized in the exercise of the central bank's supervisory function, as such processes would enable the detection of potentially illegal or illegitimate activities and associated risks (Ozili, 2024, pp. 121-122). That assessment could be conducted in real time, thereby allowing legislators to address the time-lag problem in monetary policy, i.e., the delay between the identification of a concrete issue and its recognition and subsequent legal intervention by the central bank.

A more immediate application of AI can be anticipated in enhancing the quality of services provided to end users, which may be achieved practically through the development and deployment of dedicated AI chatbots, robo-advisors, and virtual advisors. Such advisory tools can be particularly valuable in facilitating the conversion between different types of CBDCs, which should, to the greatest extent possible, be standardized, even though complete uniformity cannot be achieved

due to existing differences among monetary jurisdictions. Consequently, these chatbots would likely have a primarily local or national character; however, in the future, their application could extend to more complex international payment systems currently being developed by the Bank for International Settlements (BIS) in connection with the mBridge project, which is based on the use of multiple CBDCs.

In addition, AI can be used in monitoring illicit cross-border financial activities, which may constitute a significant component in the fight against financial crime. Certain studies emphasize the advantages of using AI to promote diversity, equality, and inclusion, where it can serve as an anti-discrimination measure by enabling access for all consumers, regardless of their age, race, migration status, credit history, income, or employment status. Here again, a paradox emerges – a robot assisting the monetary management in becoming more human (Ozili, 2024, pp. 121-122). As a precondition for realizing all these benefits, it is essential to examine public reactions to CBDCs, where AI could relatively quickly collect and analyze data related to attitudes expressed on social media. Although this may appear somewhat questionable – given that such data is often processed without the user's full awareness or consent – AI could, in this context, assess the respondents' "sentiments" toward CBDCs. Such analysis could contribute to the development of strategies aimed at fostering more positive and affirmative public perceptions of CBDCs.

The *risks* potentially associated with the use of digital technologies in central banking remain in the early stages of investigation. Broadly speaking, these risks can be categorized as strategic, operational and other risks, including reputational, environmental, ethical, and social risks, as well as risks posed to third parties and those generated by specific AI models in practice (BIS, 2025, pp. 8-11). Strategic risks arise from the lack of a clear strategy designed to protect a specific entity – in this case, the central bank – from potentially negative public perceptions regarding its adoption of such technologies. This illustrates the direct interrelation between strategic and reputational risks, the latter encompassing negative media coverage or propaganda related to the use of AI. Operational risks are multifaceted and concern primarily legal uncertainty and the absence of a clear definition of artificial intelligence within intellectual property and copyright law, or rather, ownership of products derived from its use. In this regard, another significant issue that arises is the (in)sufficiently trained personnel for the use of AI, which may exacerbate the existing dilemmas and ambiguities surrounding its application – issues that call for prior regulatory clarification, though such regulation may not be yet feasible.

The issue of data storage and processing becomes even more sensitive and complex when AI models are developed by third parties acting as providers. Hypothetically, this role may involve several interconnected entities that must first regulate their legal status – specifically, their duties and rights – through a written and strictly

binding contract with the central bank. The legal basis for such contractual arrangements must, however, be established in primary or secondary monetary legislation.

It is also important to note that AI models may sometime detects non-existent patterns – here referred to as a "monetary mirage." In the context of monitoring monetary trends and regularities, particularly with respect to inflationary flows, such false patterns must be avoided as they directly influence the content and legitimacy of the monetary strategy and a range of subordinate legal instruments within the domain of soft monetary legislation. Soft law has repeatedly proven essential in addressing gaps in primary monetary legislation in recent economic history, including during the debt and global financial crises, the pandemic, and ongoing complex social conflicts worldwide. Its application must remain flexible, while primarily being credible and legitimate. For this reason, *we contend* that the term "secondary" is epistemologically inappropriate, and it may be more accurate to refer to such instruments as fundamental or organic. In this framework, primary laws would fall into the first group, while all other instruments issued by the central bank would fall into the group of organic instruments. This distinction reflects the blurring and eventual merging of the formal and the material boundaries, resulting in a synergistic legal source that underscores the hybrid character of monetary legal norms.

At this point, *we consider* it appropriate to view AI as a potential instrument of monetary legislation, one that could facilitate the coexistence of digital public money with traditional forms of money, supporting innovation and efficiency without necessarily undermining the foundations of established financial and monetary stability. AI, *in our view*, could serve a valuable tool for monitoring and eliminating legal and regulatory risks, which can be categorized as high, medium, and low (Belikoff, 2025, pp. 15-16). High risks pertain to threats to the attained level of financial stability and issues related to the collection of sensitive financial data (i.e., financial privacy), whereas medium risks concern the very taxonomy of CBDCs, as each form of sovereign public money has own set of advantages and disadvantages. CBDCs inherently alter the sociocultural dimensions of privacy and surveillance; however, the impact of these changes depends on how such values are perceived by the sacred bearers of executive power in different states, as well as by the citizens themselves. A significant factor influencing the (non-)acceptance of innovations is the structure of state political organization and the dominant political ideology at a given historical moment. Low risks pertain to the challenge of financial inclusion, i.e., providing access to new financial products at low or acceptable costs, delivered in a responsible and socially acceptable manner (World Bank, 2022).

Artificial intelligence (AI) systems can also play an important role in researching how the monetary users feel about the decision-making process behind (non-) acceptance of CBDCs. For example, some recent studies suggests that AI could

be used to create a simulated environment to identify factors that influence such decisions. In one study, the authors collected 663 synthetic responses generated by ChatGPT 4.0. to analyze patterns in public expectations regarding CBDCs. Thise data was subsequently analyzed using classical statistical methods and multinomial logistic regression techniques to estimate the probabilities of acceptance, rejection, or delay (i.e., observing the field and monitoring events) before making a decision to adopt CBDCs (Náñez Alonso *et al*., 2025, pp. 264-265). The model showed that the acceptance of CBDCs depends on factors such as the level of financial literacy – which is not easily attained due to the complexity of monetary legal processes and the practical impossibility of achieving full transparency in accordance with *lex certa* – the sources of information, and the degree of trust in financial technologies. It should be noted, however, that the results of AI-based analyses of citizens' reactions and expectations assume these factors to be exogenous, i.e., constant over time. In reality, periods of monetary uncertainty and doubt are often followed by periods of monetary progress and stability, as observed historically with the introduction of the first payment cards, and prior to that, banknotes.

From a normative and technical perspective, the risks associated with the use of AI in central banking can be mitigated by developing a concise strategy that clearly defines the specific AI model to be used and enables the identification, evaluation, adjustment, and leverage of monetary management in a manner acceptable to both the monetary authority and the financial services users. In this context, certain statutory and organizational changes within the central bank will be necessary to enable the creation of specialized interdisciplinary departments or committees tasked with coordinating this process. Such a committee could initially focus on the early identification and subsequent formulation of legal principles governing the use of AI in central banking. These principles would provide a foundation for mapping all relevant elements of the process, including stakeholders, potential users, providers, third parties, and other participants. This body would initially serve also as a supervisory authority for the implementation process, tasked with evaluating the compliance of AI-driven monetary operations in a consistent manner. The need for such oversight is a logical consequence of the broader trend toward work digitization, as both a normative and practical response to the development of global information technologies. This transformation has introduced new methods of organizing and performing work tasks across a range of occupations, as well as the emergence of previously unknown professions (Reljanović & Misailović, 2021, p. 408).

In future amendments to central bank legislation and in the final formulation of CBDC issuance, this new "AI committee" could play a pivotal role in shaping changes to the central bank's operations. It would facilitate the timely alignment of

monetary norms with the advantages of the digital society and economy, in a more secure, predictable manner, minimizing uncertainties for financial users. Accordingly, if applied wisely and credibly, AI in central banking law has the potential to introduce new dimensions in the context of improving monetary policy measures, providing support for their implementation, and bringing a qualitative shift at the integrative level, i.e., strengthening central banking as a cohesive system, rather than merely improving isolated components. Therefore, the use of AI can truly enable a guided convergence of the principles of efficiency, inclusiveness, and resilience in a unique manner (Krause, 2025, p. 1). In promoting any financial innovation, *we argue* that its optimal legal framework should be founded on sustained and deepened cooperation between monetary institutions, academic researchers, universities, and technology experts, in order to create a framework that is conducive to the achievement of sustainable development objectives.

The challenges confronting the central bank operations in the circumstances of digital transformation require the adoption of new instruments to protect its mandate in an environment that remains only partially defined. Consequently, this early phase of construction does not yet permit the establishment of stable and comprehensive legal regulations. Nonetheless, this does not imply that the legal principles governing the future treatment of AI in monetary and central banking legislation are not already discernible.

At this point, it is important to note that, in a comparative context, the ECB, the FED, and the Bank of England either use or are considering using AI in specific segments of their operations. The launch of a CBDC appears particularly significant in the EU, as the money digitalization and CBDC creation process provides a new opportunity for economic growth, if possible negative effect are carefully and deliberately managed (Zafiroski & Kjoseva, 2025, pp. 90-91). The ECB uses AI in areas related to the collection and processing of large datasets – tasks that would otherwise require considerably more time from statisticians – for understanding price fluctuations, forecasting inflationary flows, and supporting financial supervision. Meanwhile, the FED has shown extensive practice of issuing various recommendations and regulations from 2011 and is considering and developing the use of AI to automate decision-making (Martin, 2024, pp. 55-56). A similar practice is also followed by the Bank of England, which has been exploring from 2022 how AI can enhance personalized financial services for end users while simultaneously strengthening business supervision. A key challenge associated with AI in central banking is that the rapid development of technologies within the financial services sector may create new opportunities for cyberattacks that were previously nonexistent or infeasible. Consequently, any decision regarding the further use of AI must be approached with heightened vigilance (Vučinić & Luburić, 2024, p. 35).

Considering that the digital yen represents the first fully defined sovereign public monetary unit, the use and experimentation with AI in this segment is not surprising. It is emphasized that AI can positively influence the monetary users' willingness to accept CBDCs, while simultaneously providing significant insights into interest rate fluctuations, asset allocation, and liquidity. Thus, in turn, enhances the agility of monetary policy, enabling it to respond more effectively in times of crisis (Liu *et al*., 2025, p.14).

4. Conclusion

We argue that it is crucial for central banks to inform the public in advance about any negligence in and specific purposes of AI application in the issuance of sovereign money. Such transparency could foster public support and mitigate negative reactions stemming from "fear of shadow AI" or concerns about unauthorized data collection. Furthermore, AI can enable the dissemination of information and coordination among research centers regarding results achieved in the field of CBDCs. Another aspect related to monetary users' privacy, which is often overlooked, is that the loss of privacy in the digital world is pervasive and nearly ubiquitous. Nevertheless, in the context of public digital money, users' concerns about privacy may be disproportionately directed toward central banks.

At present, it appears that users' frustrations regarding privacy issues associated with cryptocurrencies – as private digital money issued without central bank involvement – are being undeservedly directed toward CBDCs, as sovereign digital money. In this context, central banks are effectively attempting to compensate for the shortcomings of private digital currencies. Consequently, the work of central banks in times of technological revolutions often functions as a "punching wall," absorbing the public's dissatisfaction and concerns regarding the use of technology in general, and not solely in the process of money creation. Citizens' distrust of AI frequently arises from the fear of job displacement, a concern that is understandable and requires central banks to make additional efforts to communicate the purposes of using AI within monetary finance.

In *our view*, AI can serve as a valuable tool for finalizing the CBDC project, provided that its application does not undermine the results achieved thus far, which remain relatively fragile and are increasingly burdened by negative populism. Within contemporary monetary legislation, AI is definitely not a new subject (monetary agent) capable of creating, implementing, or altering legal monetary relations; rather, it functions as a technical tool for implementing new digital monetary solutions that aim to enhance both individual and social well-being.

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Očekuje se da autori u radu, kako bi ostvarili naučni doprinos, pođu od rezultata već sprovedenih istraživanja na datu temu, konsultujući relevantnu domaću naučnu i stručnu literaturu na sistematičan način, moguće korišćenjem digitalnih repozitorijuma domaćih naučnoistraživačkih organizacija i drugih zbirki naučnih i stručnih publikacija u otvorenom pristupu.

Sve aktivnosti vezane za uređivanje časopisa (od prijema rukopisa do objavljivanja elektronskog izdanja časopisa) obavljaju se posredstvom elektronskog sistema za uređivanje časopisa koji omogućava pripremu i objavljivanje časopisa u elektronskom obliku (*Open Journal Systems* – OJS). U slučaju da autor nema nalog, potrebno je da se registruje preko linka: *https://www.stranipravnizivot.rs/index.php/SPZ/login*. Detaljno uputstvo za registraciju autora i prijavu rukopisa može se preuzeti sa sajta časopisa *Strani pravni život* (www.stranipravnizivot.rs). Navedene aktivnosti se obavljaju unutar samog sistema, pod nadzorom glavnog i odgovornog urednika i tehničkog urednika, a ključna obaveštenja koja su namenjena autorima, recenzentima ili drugim korisnicima automatski se prosleđuju elektronskom poštom. Zahvaljujući onlajn sistemu uređivanja časopisa obezbeđeno je čuvanje svih verzija objavljenih radova i odbijenih radova u elektronskoj bazi podataka. Autori, takođe, mogu da se upoznaju u svakom trenutku sa tokom i ishodom postupka recenziranja.

NAPOMENE VAŽNE ZA PRIPREMU RUKOPISA

Način oblikovanja naučnih članaka i ostalih priloga koji se dostavljaju redakciji *Stranog pravnog života* uređen je ovim uputstvom. Molimo autore da svoje priloge prilagode tematici časopisa i predviđenom načinu oblikovanja rukopisa, kako prilozi ne bi bili eliminisani nakon početne provere, budući da uredništvo primenjuje kriterijume iz važećeg podzakonskog akta o uređivanju naučnih časopisa.

Naučni i stručni članci mogu biti napisani na srpskom ili engleskom jeziku. Oni moraju sadržati podatke o autoru, naslov, sažetak, ključne reči i spisak referenci (literaturu i pravne izvore, po potrebi i spisak citiranih sudskih i drugih odluka). Uz priloge koji se objavljuju na srpskom jeziku, dostavlja se prevod naslova rada, rezimea i ključnih reči na engleskom jeziku. Prilozi koji se dostavljaju na engleskom jeziku sadrže prevod naslova, sažetka i ključnih reči na srpski jezik.

Autorski članci po pravilu ne prelaze obim od jednog autorskog tabaka (28.800 znakova sa razmacima), font Times New Roman, veličina 12pt, prored 1,5, leva margina 3,5 cm, a desna 3 cm. Izuzetno, prihvatiće se duži rukopis i to obima do 1,5 tabaka, ako to zahteva tema rada, po prethodnom dogovoru autora sa glavnim i odgovornim urednikom. U ostalim situacijama, rad većeg obima biće vraćen autoru radi skraćivanja. U obim se ne računaju tekstovi navedeni u beleškama na dnu strane (dodatni podaci o autoru, organizaciji u kojoj je zaposlen, druge napomene), naslov članka, sažetak (do 800 karaktera sa razmacima), ključne reči (do 5 pojmova ili sintagmi), spisak literature, pravnih izvora i sudskih odluka. Naučni članci se klasifikuju u: originalne (u kojima se iznose prethodno neobjavljeni rezultati sopstvenih istraživanja zasnovanih na primeni naučnih metoda) i pregledne (koji sadrže originalan, detaljan i kritički prikaz istraživačkog problema ili područja u kojem je autor ostvario određeni doprinos, prikazan u vidu autocitata). Za razliku od naučnih radova, u stručnom radu autor na osnovu izvršenog istraživanja zasnovanog na prikupljanju postojećih teorijskih saznanja i raspoloživih činjenica ukazuje na iskustva značajna za unapređenje prakse u određenoj oblasti, preporučuje promene u načinu primene propisa i slično.

U časopisu je moguće objaviti i **naučnu kritiku ili polemiku**, koja predstavlja raspravu, zasnovanu na naučnoj argumentaciji, na određenu naučnu temu. Obim naučnog rada ove vrste može da iznosi do 10.000 znakova sa razmacima. Osim podataka o autoru i naslova članka, naučna kritika mora da sadrži apstrakt (do 400 znakova sa razmacima), ključne reči (do 5 pojmova ili sintagmi) i spisak bibliografskih izvora. Svi navedeni podaci ne uračunavaju se u obim rada.

Ostali prilozi. Komentari sudskih odluka mogu da imaju najviše do 15.000 znakova. Izlaganja sa naučnih i stručnih skupova, prikazi knjiga i slično po pravilu ne smeju biti obima većeg od 7.000 znakova. Ne sadrže apstrakt i rezime.

Osnovno oblikovanje teksta

Svi prilozi moraju biti sačinjeni u Microsoft Word-u, u formatu A4, latiničkim pismom, fontom Times New Roman, veličine 12 pt sa proredom 1,5; sa automatskim uvlačenjem pasusa za 9 mm, bez umetanja tabulatora i bez deljenja reči na slogove (hifenacije). Posle svakog znaka interpunkcije staviti samo jedan razmak. Za posebna slova iz srpskog i stranog latiničkog pisma koriste se raspoloživi simboli – dijakritički znaci. Ćirilički znaci iz stranog pisma i iz drugih pisama (kineskog, japanskog, arapskog itd.) transliterišu se i transkribuju prema tablici dostupnoj na: *https://www.loc.gov/catdir/cpso/roman.html*. Imena i prezimena stranih autora navode se u originalu, osim kada se moraju transkribovati na latinicu (na primer imena iz ruskog jezika). Kada se autor poziva na radove objavljene u *Stranom pravnom životu*, koristi isključivo naziv časopisa na srpskom jeziku. Reference na srpskom jeziku koje se citiraju u radu pisanom na engleskom jeziku se ne prevode.

Prevod stručnih pojmova iz strane literature, kada je to moguće, treba da bude zamenjen odgovarajućim nazivom u srpskom jeziku. Prevod latinskih pravnih izraza ili izreka nije potreban. Strani pojmovi pišu se kurzivom. Druge strane reči ili sintagme koje označavaju specifične izraze ili institute u stranom pravu, koje se ne mogu sa preciznošću prevesti na sprski jezik ili ne postoje u srpskom pravu, zadržavaju se u originalnom nazivu (složene kurzivom), s tim što se objašnjava njihovo značenje na srpskom jeziku. U tekstu ne treba koristiti podebljana (boldirana) niti podvučena slova.

Strani pravni život prihvata citiranje i oblikovanje referenci prema stilu citiranja i referenciranja – Harvard britanski standard, prema modelu autor/rad. Navedeni stil je modifikovan jedino u pogledu načina citiranja pravnih izvora. Način primene navedenog stila pri citiranju i sastavljanju spiska literature i popisa pravnih izvora objašnjen je detaljno u ovom uputstvu.

S obzirom na prihvaćeni stil referenciranja, beleške u dnu teksta (fusnote) sadrže dopunska objašnjenja, a ne treba da upućuju na korišćenu literaturu, što se čini u tekstu. Članovi i stavovi pravnih odredbi na koje se poziva autor navode se u tekstu, a ne u fusnotama.

Ime, srednje slovo i prezime autora (jednog ili više njih) navode se na prvoj strani rukopisa u gornjem levom uglu. Pišu se uz upotrebu posebnih znakova (č, đ, š itd.), bez naučnih titula. Imena stranih autora takođe se pišu dijakritičkim znacima, bez obzira na jezik rada.

Ostali podaci koji se odnose na autore: naučna i stručna zvanja, akademske titule, ORCID broj autora, naziv ustanove autora i podaci za kontakt (mejl autora) navode se u posebnoj belešci (fusnoti) na istoj strani ispod teksta, označeni zvezdicom.

Naziv ustanove autora (afilijacija): navodi se potpun, zvanični naziv i sedište ustanove (grad i država) u kojoj je autor zaposlen ili u kojoj je obavio istraživanje. Studenti poslediplomskih studija navode naziv ustanove u kojoj studiraju.

Istraživački podatak / istraživački projekat. Autor može nakon naslova uneti posebnu fusnotu u kojoj će navesti tačne, potpune i aktuelne podatke o okolnostima pod kojima je rad nastao (u okviru međunarodne saradnje, međunarodnog programa, kao deo naučnog ili istraživačkog projekta, u okviru postdiplomskih studija ili postdoktorskih studija, kao saopštenje sa održanog naučnog skupa, gostujuće predavanje i slično) i/ili naznaku o instituciji, državnom organu ili međunarodnoj organizaciji koja je finansijer ili korisnik projekta.

U zahvalnici (posebnoj napomeni na prvoj strani rada ispod teksta označeno zvezdicom posle naslova rada) navode se imena drugih lica koja nisu autori, ali su imala učešća u istraživanju ili su pomagala u priređivanju rada, sa objašnjenjem njihove uloge. U fusnoti se može navesti i obaveštenje da je rad urađen u okviru određenog naučnoistraživačkog projekta, da je ranije usmeno izlagan na naučnom skupu i slično.

Naslov rada piše se malim slovima na sredini, font 14 pt. Naslov ne bi trebalo da ima više od 10 do 12 reči.

Sažetak se navodi ispod naslova članka. Sažetak ne sme da bude duži od 800 znakova sa razmacima. Veličina fonta je 11 pt (složeno kurzivom). U sažetku autor ukazuje na značaj teme, osnovno istraživačko pitanje/hipotezu, cilj istraživanja, metodologiju i rezultate istraživanja. U apstraktu treba koristiti termine koji se često koriste za indeksiranje i pretraživanje članaka.

Ključne reči su termini ili fraze koji najbolje opisuju sadržaj članka za potrebe indeksiranja i pretraživanja. Potrebno je dati pet ključnih reči ili sintagmi na srpskom. U članku se navode ispod apstrakta (veličina fonta 11 pt, kurzivom).

Naslov rada, Sažetak i ključne reči na engleskom jeziku (ako je članak na srpskom jeziku), **odnosno, na srpskom jeziku** (ako je članak na engleskom jeziku) navode se dva reda ispod.

Podnaslovi u tekstu se pišu na sredini, malim slovima i podebljanim (boldiranim) slovima, veličine 12 pt i numerišu se arapskim brojevima. Uvod i zaključak se, takođe, označavaju rednim brojevima. Podnaslovi drugog reda se pišu podebljanim (boldiranim) slovima, složeno kurzivom. Podnaslovi trećeg reda se pišu kurzivom.

Tabele, grafikoni i slični prilozi dostavljaju se posebno u formatu i rezoluciji pogodnoj za štampu.

Popis korišćene literature, pravnih izvora i spisak sudskih i drugih odluka navode se na kraju rada, fontom 11 pt. Popis bibliografskih jedinica sastavlja se po abecednom redosledu imena autora, bez numerisanja.

NAČIN CITIRANJA I SASTAVLJANJA SPISKA REFERENCI

Navođenje izvora unutar teksta

Od autora se očekuje da navedu korišćene izvore, i to potpuno i tačno, i da precizno prenesu tuđe navode, te se prilikom citiranja knjiga ili članaka preporučuje da, gde je moguće, budu navedene strane sa kojih se preuzima tuđi tekst. Brojevi stranica moraju biti sadržani kod doslovnog citiranja tuđeg teksta, prilikom parafraziranja ili upućivanja na određeni deo knjige ili članka. Jedna stranica se označava sa „p.", a više strana sa „pp." (skraćeno lat. *paper – pluta paper).* Moguće je koristiti i rad prihvaćen za objavljivanje, pod uslovom da je za rad određen digitalni identifikator (DOI broj), koji će biti naveden u spisku literature uz druge podatke o citiranom radu.

Način navođenja izvora zavisi od toga da li je potrebno istaći ime autora ili sadržaj njegovog teksta. U prvom slučaju se ime autora čiji se rad koristi navodi u samoj rečenici; u drugom slučaju se navodi na kraju rečenice u zagradi, uz godinu objavljivanja rada (po potrebi i strana). Na primer:

> Kako je istakao profesor Konstantinović (2006, p. 36) obimnost Skice za Zakonik o obligacijama i ugovorima bila je posledica težnje da zakon bude razumljiv svima, a ne da učesnike u prometu nauči pravu.
>
> Skica za Zakonik o obligacijama i ugovorima bila je obimna, zato što se težilo da zakon bude razumljiv svima, a ne da učesnike u prometu nauči pravu (Konstantinović, 2006, p. 36).

Isticanje imena autora. Kada se u rečenici pominje ime nekog autora, bez dodatnih informacija o sadržaju rada koji se citira (sumarni pregled ili ukazivanje na izvor), dovoljno je navesti prezime autora i u zagradi godinu u kojoj je objavljen rad. Navodimo primer:

> U svom radu Ćirić (2008) konstatuje da je…

Kada se upućuje na posebne delove u radu, mora biti naveden i broj stranice ili stranica na kojima se nalazi citat. Primeri:

> U svom radu Ćorić (2017, pp. 26-30) opisuje procesna sredstva za naknadu štete u sudskom poretku Evropske unije.
>
> Stoga, prema Đorđeviću (2016, pp. 28-29), trebalo bi da se uzmu u obzir i drugačija rešenja iz uporednog prava.

Preuzeti sadržaj drugog autora se može saopštiti i parafraziranjem:

> Stoga Perović u predgovoru ponovljenom izdanju Skice za Zakonik o obligacijama i ugovorima (Konstantinović, 2006, p. 16) zaključuje da svaki pravni sistem dopušta slobodu ugovaranja, ali do izvesne granice.

Ako se citira neodređen broj strana, navodi se samo početna stranica sa koje se preuzima citat, dok iza nje stoji „i dalje". Na primer:

> Sve ove teorije se mogu podeliti u nekoliko grupa (Čolović, 2009, pp. 83 i dalje)…

Kada se upućuje na izvor iz fusnote nekog rada, posle broja strane piše se skraćenica „fn.":

> Navedeno rešenje je nesumnjivo podložno kritici (Jovanović, p. 8, fn. 14)…

Doslovno citiranje koristi se retko, uglavnom da bi se izbeglo pogrešno tumačenje originalnog teksta, da se istakne bitan argument ili ideja koja će potom biti posebno analizirana ili pobijana ili kada je na lep i efektan način autor izrazio svoju misao, a taj efekat bi parafraziranje poništilo. U svakom slučaju doslovnog citiranja teksta drugog autora neophodno je navesti tačnu stranicu (ili strane) na kojima se citat nalazi, kako bi zainteresovani čitalac mogao proveriti iznete podatke.

Kraći citati, dužine do 30 reči, sastavni su deo rečenice, istaknuti navodnicima. Mogu biti direktno ili indirektno citirani, na primer:

> Kako ističe Stanković (1972, p. 177) „neimovinska šteta predstavlja posebnu pojavu i pojam za sebe".

Ili:

> Sve su to razlozi što treba prihvatiti da „neimovinska šteta predstavlja posebnu pojavu i pojam za sebe" (Stanković, 1972, p. 177).

U citate duže od 30 reči autor nas uvodi svojim rečima, a zatim počinje citat, koji ističe navodnicima, obavezno uz naznaku prezimena autora i tačne strane ili strana na kojima se nalazi citat. Tekst se može preuzeti direktno:

> Nemogućnost korišćenja uništene stvari može da izazove neimovinsku štetu, nezavisno od *pretium affectionis*. Prema Stankoviću (1972, p. 307) reč je o slučajevima: „u kojima nemogućnost upotrebe uništene odnosno oštećene stvari unosi veliki poremećaj u oštećenikov svakodnevni praktični život, lančanu reakciju raznovrsnih maltretiranja i ograničavanja, koja mogu predstavljati potpunu dezorganizaciju oštećenikovog načina života i njegovih svakodnevnih navika".

Indirektno se isti tekst može preuzeti na sledeći način:

> Nemogućnost korišćenja uništene stvari može da izazove neimovinsku štetu, nezavisno od *pretium affectionis*, u slučajevima „u kojima nemogućnost upotrebe uništene odnosno oštećene stvari unosi veliki poremećaj u

> oštećenikov svakodnevni praktični život, lančanu reakciju raznovrsnih maltretiranja i ograničavanja, koja mogu predstavljati potpunu dezorganizaciju oštećenikovog načina života i njegovih svakodnevnih navika" (Stanković, 1972, p. 307).

Dugačke citate bi najpravilnije bilo preuzeti tako što se iza dve tačke navedu u posebnom redu uvučeno, složeno manjim fontom (11pt), uz naznaku izvora i stranice. Izostavljeni deo reči iz citata označava se trima tačkama u ugaonim zagradama, na primer:

> Prilikom organizacije izvršenja rada u javnom interesu „pragmatični razlozi […] ukazivali bi na potrebu većeg učešća lokalne zajednice (u sektoru službi socijalne zaštite)" (*Alternative zatvorskim kaznama*, 2005, p. 44).

Citiranje različitih radova dva autora. Kada se u istoj rečenici upućuje na radove dva autora (bilo da imaju saglasne ili oprečne stavove) u tekstu se navodi prezime svakog od autora, uz godine kada su radovi objavljeni, prema sledećim primerima:

> I Đorđević (2012, p. 34) i Mrvić Petrović (2011, p. 86-87) smatraju da uvođenje sistema dani-novčane kazne nije ostvarilo željene efekte u pravnom sistemu Republike Srbije.
>
> Kauzalitet kod propuštanja se različito objašnjava po teoriji aliud agere u odnosu na teoriju prethodno preduzete radnje (vid. za prvu Welp, 1968, p. 30, a za drugu Rudholphi, 1972).

Citiranje imena dva ili tri autora istog rada. U tekstu se upućuje na zajednički rad autora uz navođenje prezimena oba autora povezana simbolom &, dok se u zagradi navodi godina u kojoj je rad objavljen.

> Na ovakav odnos države i crkve trebalo bi da obratimo posebnu pažnju (Đorđević & Stanić, 2015, p. 63).
>
> U svom radu Nikolić & Čović (2018) ukazali su na…
>
> Uporednopravno istraživanje (Mrvić Petrović & Petrović, 2018) potvrdilo je…
>
> Mrkšić, Popović & Novaković (2018, pp. 477) analiziraju…

Citiranje rada koji ima više od tri autora. U tekstu se navodi samo prezime prvog autora i iza njega opšteprihvaćena skraćenica „*et al*." (*et alia*). Na primer:

> Ćeranić *et al.* (2018) istražili su..

Citiranje više radova istog autora, objavljenih iste godine. U tekstu se uz prezime autora i godinu dodaju latinična slova a, b, c, d, kako bi se označili različiti radovi istog autora objavljeni iste godine. Primer:

> Svakako, navedeni vid krivice trebalo bi da je više u našem fokusu (Ćirić, 2004a, p. 70)… Pored „tvrde", ne bismo smeli da zaboravimo „meku moć"… (Ćirić, 2004b, p. 334).

Citiranje rada objavljenog pod okriljem organizacije. U slučaju da je navedeni tekst objavila neka organizacija (pravno lice, udruženje, ustanova, međunarodna, nevladina organizacija i slično), tako da pojedini autor nije posebno naveden, u tekstu treba uputiti na naziv organizacije i godinu objavljivanja rada. Dozvoljena je upotreba uobičajenih službenih skraćenica međunarodnih organizacija ili njihovih tela, na primer:

> Od presudne je važnosti istraživati izborne procese u domaćem i stranom pravu (Institut za uporedno pravo, 2013, pp. 32-35).
>
> Media and information technologies can offer such spaces to allow different groups to interact with each other, so in Tallin Guidelines on National Minorities and the Digital Age (OSCE, 2019)…

Citiranje rada nepoznatog autora. Umesto podataka o autoru koristi se naslov rada:

> U *Teoriji države i prava* (1995, p. 204) jasno se kaže…

Rad nepoznate godine izdanja. U navedenom slučaju koristi se skraćenica n.d. (od *no date*):

> Zirojević (n.d.) ukazuje na obeležja terorizma…

Ili indirektno:

> Obeležja savremenog terorizma su… (Zirojević, n.d.).

Sekundarne reference. Ako primarni izvor nije bilo moguće pronaći, nego ga autor preuzima iz rada drugog autora, mora se pozvati na primarni izvor i sekundarnu referencu na sledeći način:

> Zlatarić (1967), kako navodi Kambovski (2005, p. 701) uključuje u saizvršilaštvo i radnje preduzete pre ili posle dovršenja krivičnog dela.

Ili:

> U ranijoj teoriji se smatralo da saizvršilaštvo uključuje i radnje preduzete pre ili posle dovršenja krivičnog dela (Zlatarić, 1967, navedeno u Kambovski, 2005, p. 701).

Navođenje propisa. Naziv zakona i drugog propisa navodi se u tekstu punim nazivom (složeno običnim slovima), uz broj godine kada je usvojen, sem kada se analizira određena izmena ili dopuna propisa, kada se navodi kao izvor službeno

glasilo u kome je objavljena takva izmena. Prilikom prvog pominjanja propisa može se dodati crta posle naziva i navesti skraćenica pod kojom će se isti propis dalje u tekstu navoditi. U daljem tekstu dovoljno je koristiti samo skraćenicu. Isto pravilo važi i za inostrane pravne akte, s tim što se podaci koji se na njih odnose navode na način kako je to uobičajeno za to strano pravo. Skraćenice se sačinjavaju prema izvornom nazivu propisa, a ne prema njihovom prevodu na srpski ili engleski jezik.

U krivičnom zakonodavstvu Srbije (Krivični zakonik RS, 2005 – KZ).

Temeljna reforma krivičnih dela protiv privrede u pravu Republike Srbije izvršena je 2016. godine (Zakon o izmenama i dopunama Krivičnog zakonika, 2016).

Pravo na obeštećenje se žrtvama nasilja u Nemačkoj priznaje od 1976. godine na osnovu posebnog saveznog zakona, s tim što je 1985. godine donet novi (*Gesetz* über *die Entschädigung für von Gewalttaten* – OEG) s tim što je 1985. godine donet novi zakon koji je i sada na sanzi (OEG, 1985).

U francuskom Građanskom zakoniku (*Code civil* – CC), prema poslednjoj verziji od 1. oktobra 2018. Godine predviđeno je… (CC, 1804).

Akti međunarodnih organizacija citiraju se tako što se u tekstu navodi donosilac akta i pun naziv akta, koji se, po potrebi skraćeno, navodi u zagradi uz naznaku godine u kojoj je donet.

U Istanbulskoj konvenciji Saveta Evrope (CETS No. 210) od 11. 5. 2011. godine (CoE CETS, 2011) predlaže se…

Prava deteta, regulisana Konvencijom Organizacije ujedinjenih nacija o pravima deteta (Zakon o ratifikaciji Konvencije Ujedinjenih nacija o pravima deteta, 1990)…

U pravu Evropske unije doneta je Uredba o stečajnim postupcima br. 1346/2000 (Concil Regulation (EC), 2000)…

Na isti način kako je citiran propis naveden u tekstu, mora biti označen u popisu literature.

Autor može da koristi tekst propisa preuzet sa interneta sa službene stranice nadležnog organa ili javnog servisa zaduženog za objavljivanje pravnih propisa i praćenje izmena. U tom slučaju u popisu literature moraju biti označeni osnovni podaci o propisu i godini u kojoj je objavljena poslednja verzija dostupna na službenoj stranici nadležnog organa ili preuzeta sa javnog servisa zaduženog za objavljivanje pravnih propisa i praćenje izmena. Autor može da koristi tekst propisa i prema objavljenom službenom prevodu na engleski (ili neki drugi) jezik (što mora biti naznačeno).

Član, stav i tačka propisa skraćeno se pišu čl., st. i tač., a iza napisanih brojeva se ne stavlja tačka. Na primer:

čl. 5, st. 2, tač. 3 ili čl. 5, 6, 9 i 10 ili čl. 4–12.

Navođenje sudske prakse i odluka drugih organa. Autor u tekstu treba da navede što potpunije podatke: vrstu odluke sudskog, upravnog tela ili Ustavnog suda, naziv donosioca i druge podatke na osnovu kojih je odluka klasifikovana (slovo koje označava vrstu postupka, broj postupka, godinu pokretanja postupka) i datum kada je doneta i, ako postoji, izvor iz kog je preuzeta. Za presude Evropskog suda za ljudska prava merodavan je i broj predstavke. Iza teksta autor navodi u zagradi skraćeno oznaku odluke, koja će biti korišćena i u popisu literature. Na primer:

Odluka Ustavnog suda Republike Srbije, broj IUo-173/2017 utvrđena je nesaglasnost… (Odluka US, 2017).

Cass. crim., 19 December 1991, RCA 1992.170 (*Ius Commune Casebook for the Common Law of Europe*, 2018).

… kako se navodi u obrazloženju Presude Apelacionog suda u Beogradu, Gž.636/2011 od 28. 5. 2012 (*Arhiv Apelacionog suda u Beogradu*, 2012).

Odluke međunarodnih sudova i tribunala treba da sadrže što potpunije podatke (vrsta odluke, podaci o sudskom veću koje je odluku donelo, datum donošenja odluke, uobičajeni naziv predmeta, registarski broj, kod (ako ga ima), strana, stav ili tačka na koju se upućuje ili sa koje je citiran deo odluke). Odluke međunarodnih sudova ili tribunala navode se uz korišćenje skraćenica za nazive sudova npr: PCIJ, ECHR, ICJ, ICTY i slično. Prilikom citiranja sudskih slučajeva koristi se veznik skraćenica „*v*" za veznik *versus*, npr. *Fremkin v Russia*, *Goobald v Mahmood*.

Prilikom citiranja prakse Evropskog suda za ljudska prava navodi se i broj podnete predstavke. Na primer:

Borodin v Russia, predstavka br. 41867/04, presuda ECHR, 6. 2. 2013, par. 166.

Sudska praksa Suda Evropske unije obavezno se navodi uz korišćenje evropske identifikacione oznake sudske prakse (*European Case Law Identifier* – ECLI). Na primer:

Judgment of the General Court (Second Chamber) of 13 October 2015.

Intrasoft International SA v European Commission (Case 403/12, ECLI:EU:T:2015:774)

Citiranje referenci preuzetih sa interneta. Ukoliko se u radu koriste sadržaji sa interneta, navode se na isti način kao i ostali sadržaji, ako su poznati autori ili organizacije ili državne ustanove koje su ih publikovale, s tim što će u spisku literature na odgovarajući način biti naglašeno da je reč o URL izvoru ili o članku sa DOI brojem. Elektronski dostupni sadržaji retko imaju označene stranice, pa se preciznost kod navođenja citata postiže pozivanjem na odeljke ili pasuse, ako su numerisani u tekstu.

Citiranje rada nepoznate godine izdanja ili rada nepoznatog autora. U radu se navedena vrsta rada citira tako što se na mestu gde bi trebalo da stoji godina navodi „n.d." (*non dated* – nepoznat datum), na primer:

> Njihov značaj za parlamentarne procese je nemerljiv (Ostrogorski, n.d).

Ako se u rukopisu koristi rad nepoznatog autora, navešće se naslov rada koji se citira, uz godinu, ako je poznata:

> Sve nam to potvrđuje i mešovita, objektivno-subjektivna teorija (Elementi krivičnog dela, 1986, p. 13).

Sastavljanje spiska literature i popisa pravnih izvora

Spisak literature je obavezan na kraju rada. U spisak literature se unose sve bibliografske jedinice korišćene u radu, osim pravnih izvora i spiska sudskih odluka, koji se posebno navode, iza spiska literature.

U spisku literature se bibliografske odrednice (reference) navode po abecednom redu, prema početnom slovu prezimena autora, početnom slovu organizacije u slučaju da je autor nepoznat ili, ako su nepoznati i autor i organizacija, prema početnom slovu naslova bibliografske jedinice. Kod koautorstva, neophodno je navesti prezime i početno slovo imena svakog koautora.

1. Knjige (elektronske), druge monografije i udžbenici, poglavlja u monografijama

Navode se obavezno sledeći elementi po modelu: Prezime, inicijal(i) autora. Godina izdavanja. *Naslov: podnaslov.* Podatak o izdanju. Mesto izdanja: izdavač. Kada ima više od četiri autora, knjiga se sortira prema početnom slovu prezimena prvog autora, a umesto imena ostalih autora može se koristiti skraćenica „*et al*.". Kada knjiga nema podatak o autoru, ali je istaknuto ime urednika ili organizacije, umesto autorovog imena navodi se ime urednika (uz naznaku tog svojstva) ili naziv organizacije koja je izdala publikaciju.

Za urednike koristiti skraćenicu „ur." (ako je knjiga izdata na srpskom jeziku), a „ed." (za knjige na engleskom jeziku sa jednim urednikom) ili „eds." (kada ima dva ili više urednika). Na primer:

- Ćirić, J. 2008. *Objektivna odgovornost u krivičnom pravu*. Beograd: Institut za uporedno pravo.
- Ćeranić, J. 2015. *Unitarni patent*. Beograd: Institut za uporedno pravo; Banja Luka: Pravni fakultet Univerziteta.
- Sime, S. 2018. *A Practical Approach to Civil Procedure*. 31st ed. Oxford: Oxford University Press.
- Carlen, P. & Worrall, A. 1987. *Gender, Crime and Justice*. Philadelphia: Open University.
- UNICRI. 1997. *Promoting Probation Internationally*. Publ. no 58. Rome/ London: UNICRI.
- Tappan, P. W. (ed.). 1951. *Contemporary corrections*. New York: McGraw-Hill.
- Srzentić, N., Stajić, A. & Lazarević, Lj. 1995. *Krivično pravo Jugoslavije. Opšti deo*. 18. izd. Beograd: Savremena administracija.

Obavezni elementi koji se moraju navesti kada se citira sadržaj elektronske knjige su: Autor, Inicijal(i) godina. Naslov knjige, [e-book], Izdanje (samo u slučaju da se ne radi o prvom izdanju), Mesto izdavanja e – knjige: Izdavač, pristup preko Naziv baze podataka, URL za tu e – knjigu (datum pristupa). Na primer:

- Molan, M. T. 2012. *Series: Questions & Answers*, [eBook]. 8th ed, 2012-2103. Oxford: OUP Oxford. Database: eBook Academic Collection. Dostupno na: http://eds.a.ebscohost.com/ (18. 1. 2019).

2. Doktorske disertacije, magistarski ili završni master radovi

Obavezno se navode: Prezime, inicijal(i) autora. Godina izdavanja. *Naslov*. Doktorska disertacija. Mesto publikovanja: fakultet/univerzitet na kome je odbranjen. Na primer:

- Stanić, M. 2017. *Pravna priroda poslaničkog mandata*. Doktorska disertacija. Beograd: Pravni fakultet Univerziteta u Beogradu.

3. Poglavlja u knjigama i naučni/stručni radovi objavljeni u zbornicima i zbirkama radova sa naučnih skupova

Podaci o navedenim bibliografskim jedinicama sadrže obavezno sledeće elemente koje treba navesti po modelu: Prezime, inicijal(i) autora. Godina izdava-

nja. Naslov rada: podnaslov. U: Prezime, inicijal(i) urednika (ur.). *Naslov zbornika: podnaslov.* Mesto izdavanja: izdavač, str. od-do.

Za urednike koristiti skraćenicu „ur." (ako je zbornik na srpskom jeziku), a „ed." (za zbornike na engleskom jeziku sa jednim urednikom) ili „eds." (kada zbornik uređuju dva ili više urednika). Primer:

- Moss, G. 2015. New World and Old World: Symphony or Cacophony?. In: Parry, R. & Omar, P. (eds.), *International Insolvency Law: Future Perspectives.* Nottingham/Paris: INSOL Europe, pp. 17-42.
- Čolović, V. 2011. Status stranog stečajnog postupka u nemačkom zakonodavstvu. U: Vasiljević, M. & Čolović, V. (ur.), *Uvod u pravo Nemačke.* Beograd: Institut za uporedno pravo i Pravni fakultet Univerziteta u Beogradu, pp. 524-541.

4. Članci

Obavezni elementi koji se navode su: Prezime, inicijal(i) autora. Godina izdavanja. Naslov članka: podnaslov. *Naslov časopisa,* oznaka sveske/godišta/volumena (broj), str. od-do. Ako je članak prihvaćen za objavljivanje ili je već objavljen sa DOI brojem, taj broj treba dodati u obliku linka: https://doi.org/DOIbroj.

Navodimo primere:

- Kostić, J. 2018. Investiranje društava za osiguranje na tržištu kapitala Republike Srbije. U: Petrović, Z. & Čolović, V. (ur.), *Odgovornost za štetu, naknada štete i osiguranje: zbornik radova sa XXI međunarodnog naučnog skupa*. Beograd/Valjevo: Institut za uporedno pravo, pp. 463-476.
- Gasmi, G., Prlja, D. & Jerotić, A. 2017. European leading legal principles of combating gender based violence: "Istanbul Convention". U: Lilić, S. (ur.), *Perspektive implementacije evropskih standarda u pravni sistem Srbije: zbornik radova. Knj. 7*, (Biblioteka Zbornici). Beograd: Pravni fakultet, Centar za izdavaštvo i informisanje, pp. 335-349.
- Đukić-Milosavljević, I. *et al.* 2017. Jedinice za podršku deci žrtvama i svedocima u krivičnom postupku – Domaće pravo i praksa. *Temida,* 20(1), pp. 45-64.
- Višekruna, A. 2018. Ostvarivanje saradnje u stečajnim postupcima sa elementom inostranosti: primer protokola. *Strani pravni život*, 62(3), pp. 65-88. Dostupno na: https://doi.org/10.5937/spz1803065V (18. 1. 2019).

5. Članci objavljeni u elektronskom časopisu ili online bazi podataka

Navode se sledeći podaci: Prezime, inicijal(i) autora. Godina izdavanja. Naslov rada: podnaslov. *Naslov časopisa* volumen/godište (broj). DOI broj, ako ga članak ima ili URL adresa elektronskog izdanja časopisa ili naziv *online* baze podataka (datum posete stranici). Odlučujući kriterijum za određeni način navođenja jeste kako korisnik najlakše može pronaći dokument koji ste citirali. Na primer, prethodno navedeni izvor u kome je naznačen link sa DOI brojem (Višekruna, A.) može biti citiran i na sledeće načine:

- Višekruna, A. 2018. Ostvarivanje saradnje u stečajnim postupcima sa elementom inostranosti: primer protokola. *Strani pravni život*, 62(3), pp. 65-88. Dostupno na: https://www.stranipravnizivot.rs/index.php/SPZ/article/view/686 (18. 1. 2019).

Ili:

- Višekruna, A. 2018. Ostvarivanje saradnje u stečajnim postupcima sa elementom inostranosti: primer protokola. *Strani pravni život*, 62(3), pp. 65-88. Dostupno u: SCIndeks.ceon.rs (18. 1. 2019).

6. Članci, izveštaji, radovi iz zbornika dostupnog na internetu, koji imaju autora

Članci koji su dostupni na internetu, sa poznatim autorom, ali nisu iz elektronskog časopisa, i različiti izveštaji navode se prema sledećem modelu: Prezime, inicijal(i) autora. (godina izdavanja). *Naslov: podnaslov*. Mesto izdavanja: izdavač ili organizacija odgovorna za održavanje stranice na internetu. URL: (datum posete stranici). Na primer:

- Mutavdžić Obradović D. 2015. *Odgovornost vlasnika odnosno držaoca psa za štetu koju je prouzrokovao drugom licu*. Beograd: Paragraf. Dostupno na: https://www.paragraf.rs/ (18. 1. 2019).
- Lietonen, A. & Ollus, N. 2017. *The costs of assisting victims of trafficking in human beings: a pilot study of services provided in Latvia, Estonia, Lithuania, Report Series 87.* Helsinki: HEUNI. Dostupno na: https://www.heuni.fi/material/attachments/heuni/reports/HY3EXasQ3/HEUNI_Report_no.87.pdf (18. 1. 2019).

Podaci o radu iz zbornika čiji je sadržaj objavljen na internetu navode se na sledeći način: Prezime, inicijal(i) autora. Godina izdavanja. *Naslov rada* (sa

nazivom časopisa i drugim podacima koji se zahtevaju za članak). URL: (datum posete stranici).

- Rabrenović, A. 2008. Razvoj službeničkog sistema federalne uprave SAD: od potrage za političkim plenom ka ostvarenju javnog interesa. U: Ćirić, J. (ur.), *Uvod u pravo SAD*. Beograd: Institut za uporedno pravo, pp. 49-70. Dostupno na: http://iup.rs/wp-content/uploads/2017/10/Uvod-u-pravo-SAD.pdf (18. 1. 2019).

7. Članak dostupan na internetu koji nema naznačenog autora

Osnovni podaci koje treba navesti su: Naslov rada, godina izdanja, URL ili naziv *online* baze podataka, (datum pristupa stranici). Na primer:

- *National Action Plan to combating corruption – Mongolia*. 2016. Dostupno na: https://www.opengovpartnership.org/.../06-national-action-plan-combating-corruption (18. 1. 2019).

8. Spisak korišćenih pravnih izvora i izvora sudske prakse

Popisuju se nazivi zakona i drugih propisa korišćenih u radu, sa brojevima službenih glasila u kojima su objavljeni ili podacima o elektronskim izvorima sa kojih su preuzeti. U slučaju potrebe, razdvajaju se domaći od stranih propisa (u podnaslovima se navodi na koju se državu propisi odnose). Propisi se navode prema hijerarhiji citiranih pravnih akata (od Ustava, preko zakona do uredbi i pojedinačnih akata). Ako se navodi više akata iste pravne snage, koristi se abecedni red. Kada se navode akti Evropske unije, obavezno se navodi broj službenog glasnika u kome je propis objavljen i strana na kojoj se nalazi:

- Krivični zakonik RS 2005. *Službeni glasnik RS*, br. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016.
- Izmene KZ RS 2016. *Službeni glasnik RS*, br. 94/2016.
- OEG, 1985. Gesetz über die Entschädigung für Opfer von Gewalttaten, od 7. januara 1985 (*BGBl*. I S. 1), sa poslednjom izmenom od 17. jula 2017 (*BGBl*. I S. 2541). Dostupno na: https://www.gesetze-im-internet.de/oeg/ (18. 1. 2019).
- CC, 1804. Code civil, poslednja verzija od 25. decembra 2018. Dostupno na: https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070721 (18. 1. 2019).
- CETS, 2011. Council of Europe, Convention on preventing and combating violence against women and domestic violence (CETS No.210) od 11. 5. 2011. godine. Dostupno na: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210 (18. 1. 2011).

- EU Decision 2010. EU Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under document C(2010) 593 (Text with EEA relevance). *OJ* L 39, 12. 2. 2010, pp. 5-18.
- Rec 2011. Council of Europe, Recommendation CM/Rec (2011)13 of the Committee of Ministers to member states on mobility, migration and access to health care. Adopted by the Committee of Ministers on 16 November 2011.
- UNSC Resolution 1286, UN dok. S/RES/1286 (19 January 2000).

Izvori sudske prakse ili prakse drugih državnih organa se posebno navode. Praksa međunarodnih sudova ili tribunala navodi se uz korišćenje službenih skraćenica sudova, na primer: ICJ, PCIJ, ICTY, ICTR, ECHR, zatim se piše naziv predmeta, vrsta odluke, datum donošenja, publikacija u kojoj je odluka objavljena i strane na kojoj je objavljena.

Kod presuda međunarodnih krivičnih tribunala se nakon naziva predmeta navodi i sudsko veće (po potrebi i podaci koji se tiču izdvojenih sudskih mišljenja, ako se na njih pozivao autor u radu), dok se kod odluka Evropskog suda za ljudska prava navodi i broj predstavke. Sudska praksa Suda Evropske unije obavezno se navodi uz korišćenje evropske identifikacione oznake sudske prakse (*European Case Law Identifier* – ECLI).

Domaće i strane sudske presude, pravna shvatanja i slično, kao i presude međunarodnih sudova mogu se navoditi uz pozivanje na elektronske pravne baze iz kojih su preuzete (Paragraf Lex, Intermex, EUR-Lex, CURIA, Lexiweb.co.uk, Légifrance, HUDOC itd.).

Različite načine navođenja ilustruju sledeći primeri:

- Pravno shvatanje, 1999. Pravno shvatanje utvrđeno kroz odgovore na pitanja na sednici Odeljenja za privredne sporove Višeg privrednog suda od 6. oktobra 1999, dostupno u elektronskoj pravnoj bazi Paragraf Lex.
- Odluka US, 2017. Odluka Ustavnog suda Republike Srbije, broj IUo-173/2017 o utvrđivanju nesaglasnosti sa Ustavom i Zakonom Pravilnika opštine Bečej iz 2013. godine o kriterijumu i postupku dodele sredstava crkvama i verskim zajednicama, *Službeni glasnik RS*, br. 68/2018.
- Cass. crim., 19 December 1991, RCA 1992.170. *Ius Commune Casebook for the Common Law of Europe*, 2018.
- Presuda Apelacionog suda u Beogradu, Gž.636/2011 od 28. 5. 2012. *Arhiv Apelacionog suda u Beogradu*, 2012.
- *Goobald v Mahmood*, 2005 All ER (D) 251 (Apr). Dostupno na: https://Lexisweb.co.uk/cases/2005/april/godbold-v-mahmood (18. 1. 2019).

- *Intrasoft International SA v European Commission*, 2015. EGC, Judgment of the General Court (Second Chamber) of 13 October 2015 (Case 403/12, ECLI:EU:T:2015:774). Dostupno na : https://eur-lex.europa.eu/l (18. 1. 2019).

Uredništvo stoji na raspolaganju autorima i za sva druga neophodna razjašnjenja (pitanja uputiti elektronskom poštom na adresu uredništva).

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