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THE ROLE OF THE EUROPEAN CENTRAL BANK IN THE SUPPRESSION OF FINANCIAL CRIME

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Abstract

The subject of analysis in this paper is to identify the role and the formal position of the European Central Bank (ECB) in suppressing financial crime by reviewing its place in the criminal law policy framework, because central bank legislation is in an unquestionable process of evolutionary derogation, which in monetary nomotechnics refers to some new tasks and activities not always related to monetary conduct. The new wave in the development of ECB law is more complex, rich, and intense than ever before in monetary history and, although at first glance it may seem that monetary stability (as its the main task) has no direct connection with the crime suppression policy, the fact is that the central bank, as a government fiscal agent and supreme supervisor of the banking system must provide an appropriate contribution in its suppression and control. In the following text, special attention is paid to identifying and reviewing the potential legal mandate of ECB in this process, where a lack of hard law solution is retrieved by hard coordination with national criminal law authorities. We believe, in our analysis, that the role of the ECB is indirect, but that does not diminish the factual importance of its contribution to the established optimal multiagency framework preventing financial crime and protecting monetary stability as an important public good.

Key words: European Central Bank, financial crime, monetary law, monetary stability, financial supervision.

УЛОГА ЕВРОПСКЕ ЦЕНТРАЛНЕ БАНКЕ У СУЗБИЈАЊУ ФИНАНСИЈСКОГ КРИМИНАЛИТЕТА

Апстракт

Предмет анализе у овом раду јесте идентификовање улоге и процесног положаја Европске централне банке (ЕЦБ) у контексту сузбијања финансијског криминалитета, узимајући у обзир чињеницу да се легислатива централне банке налази у неупитном процесу еволутивне дерогације, која се у монетарној номо-

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техници односи на неке нове задатке и активности који нису увек везани за монетарно управљање. Нови талас у развоју права ЕЦБ је сложенији, богатији и интензивнији него икада раније у монетарној историји и иако се на први поглед може чинити да монетарна стабилност (као њен главни задатак) не стоји у директној вези са политиком сузбијања финансијског криминалитета, чињеница је да централна банка, као владин фискални агент и врховни супервизор банкарског система, мора дати одговарајући допринос у његовом сузбијању и контроли. У даљем тексту посебна пажња је посвећена разматрању и преиспитивању потенцијалног правног мандата ЕЦБ у овом процесу, где се недостатак решења у примарној монетарној легислативи надокнађује својеврсним механизмом чврсте координације са националним кривичним органима. Аутори су, у својој анализи, мишљења да је улога ЕЦБ у сузбијању финансијског криминалитета индиректна, али да то не умањује фактички значај њеног доприноса успостављеном оптималном мултиагенцијском оквиру за спречавање финансијског криминалитета и заштите монетарне стабилности као важног јавног добра.

Кључне речи: Европска централна банка, финансијски криминалитет, монетарно право, монетарна стабилност, финансијска супервизија.

INTRODUCTION

In traditional monetary law discussion, it is common to give expectations that the central bank should strongly undertake measures for both economic growth and economic stability (which is sometimes contradictory), but should also act as a leader in promoting monetary and financial innovations. We believe that for every one of its tasks (especially new ones where we can place contributions to financial crime prevention), the central bank must offer a strong response to all interested within the public if they have dilemmas about policy goals and instruments, which is a very important manifestation of its credibility and functional independence. Taking into account the dangers posed by financial crime, which by nature is connected with sovereign money, the role of the central bank is indispensable in the way of prevention, implementation, and fulfilment of the purpose of criminal law regulations in the field of abuse of the monetary system and prevention of money laundering and financing of terrorism (Adeoyé Leslie, 2014, pp. 1-10). In support of the fact that central banks seriously approach coordinated efforts to prevent money laundering, the best evidence are the new initiatives of the ECB to establish a special office for the prevention of money laundering and other forms of economic crime, which can have a positive effect on the national central banks of the member states for launching similar initiatives on to the level of domestic law. In the circumstances of the global economic crisis (2012), it became very noticeable that financial crime has a systemic nature with numerous consequences for a significant number of private, institutional, and public victims (Ligeti, Frannssen, 2017, pp. 2-3).

The optimal legal framework for the prevention of financial crime is based on the standardisation of the criminalisation of money laundering

and effective rules for property confiscation, along with the development of a comprehensive system that would prevent the inflow of dirty money into the financial system, as well as the involvement of a wide range of subjects in that process (Siena, 2022: 216). The central bank as the holder of monetary sovereignty (which guarantees the stability of the monetary system and protects the right of citizens-monetary habitats to a healthy, safe, and solid currency) has a special role in that process, which is why its activities in the field of achieving criminal justice are not so surprising considering the evolution of its jurisdiction and the position of the government fiscal agent (which, in addition to protecting the entire financial system, must also guarantee an efficient and reliable banking system and payment system).

The inclusion of ECB in this process responds to the profound and better understanding of the need for intensified so-called multi-agency investigations (where subjects participating in the policy of suppression and crime prevention must share information), because the absence of it can be not only a reflection of distrust but also the absence of a clear and sustainable legal framework that enables efficient and effective cooperation. Even when such a legal framework exists, the problem of fragmented legislation with divergent rules for different financial sectors represents a major obstacle (e.g. differences in the protection degree of sensitive financial data and procedural financial user rights). This problem becomes particularly noticeable when the cooperation of institutions responsible for mutually different tasks at the national and international levels is required (e.g. national administrative bodies with EU bodies).

The absence of a legal framework for joint legal support between administrative and criminal procedures can relativise the success of policy measures for combating financial crime, that is why we *believe* that information-sharing duty must be strictly defined in both primary and secondary legislation (central bank statute). Following these short findings, the first chapter outlines the *convivium* between central banking and criminal law policy, while the last chapter analyses the ECB mandate in the field of combatting financial crime, where the authors find the ECB role useful, but note that there is a need for precise demarcation of its competencies and level of responsibility at least in a formal legal point of view, considering the heavy burden of the menu of traditional monetary and financial tasks (because, substantively, every contribution in the fight against financial crime is equally important). The research methodology includes the use of the dogmatic method to detect the content of norms dedicated to the influence of ECB primary and secondary legislation in the broad field of combatting financial crime. The appliance of this method allowed insight into positive legal solutions that exist in EU monetary jurisdiction, which is necessary for the defending synergetic and coherent approach in the new ECB tasks framework. The axiological and logical

method shall be used for a profound understanding of the central bank's new activities, and will review its constellation with traditional tasks in providing safe monetary order.

EUROPEAN CENTRAL BANKING AND CRIMINAL LAW POLICY CONVIVIUM

Contributing to the policy of the suppression and prevention of financial crime is a very important additional activity of the modern central bank, considering its primary competencies in the field of preserving general financial stability, where a sound banking system is an important segment. In the context of technological revolution and the emerging of private digital money, the central bank's evolvement looks even more urgent considering the fact that cryptocurrencies provide a solid opportunity for certain illegal activities by using blockchain technology, which guarantees complete anonymity and, thus, makes it impossible for government agencies to seize it (Dimovski, 2023, p. 977). In the broadest sense, effective monetary legislation for the prevention of financial crime is one which all banks in the banking system place in the function of financial agents that rigorously, reliably, and legitimately check and determine the identity of their clients when carrying out certain transactions according to their orders, where, in case of certain doubts, the aforementioned must be reported promptly (Dimitrijević, 2023, p. 290). International cooperation in the form of hard coordination (agreement) or soft coordination (dialogue, joint guidelines, and recommendations) in this area is the very prerequisite for the realisation of this contribution, because it enables the ex-ante exchange of (suspect) information that can be of crucial importance for the early prevention of financial crime. The main initiative for the greater participation of the ECB in combating financial crime began after the financial scandal in the work of the Estonian branch of the Danish Bank. After that, the European Anti-Fraud Office (OLAF) decided that it was necessary to create conditions for more consistent work of the ECB in the Single Supervisory Board to prevent such harmful transactions (which *de facto* represents a form of allocation of competencies in the division of powers to combat the grey economy).

A more active role of the ECB in the policy of combatting financial crimes (CFC) and anti-money laundering (AML) came as a recent result of extensive and complex reforms in the area of the EU monetary legal order. In that sense, the Fifth Anti-Money Laundering Directive adopted in 2018, with the expected start of implementation in 2020, accompanied by the Commission's proposal for enhanced supervisory oversight provides the necessary legal basis for greater ECB involvement (EU Directive 2018/843). In its announcement, the Commission emphasised the importance of defining an *action plan* whose goal is to timely identify

the factors that enabled money laundering through EU banks, map more relevant risks, expand supervisory convergence, and more seriously consider these opportunities in the prudential supervisory process, creating conditions for the effective cooperation of entities that perform prudential supervision and supervisors of money laundering, which overall must be accompanied by the exchange of information, and sharing the best practices to provide a supranational optimal response to this form of crime in practice (European Commission 2018). Other important steps taken by the EU legislator in this regard include the adoption of the Capital Requirements Directive (CRD), which was adopted in cooperation with the European Banking Authority (Regulation EU No 1093/2010), which clearly emphasises the creation of an optimal information sharing network. Also, the EU Council adopted the Anti-Money Laundering Plan, which provides a very smart manoeuvring space for designing a strong coordination plan that appears as a *conditio sine qua non* for shaping and correcting the joint path of monetary and criminal law actors. It is important to mention that all these acts arrange the behaviour of ECB in the process in a sophisticated manner that does not jeopardise its primary tasks, and at the same time does not overemphasise its role in the process, which can never be primary, but accessory priorities. This means that the ECB is placed in the role of a *sui generis* facilitator (interloper), which in its field of expertise helps national investigative and criminal authorities. Therefore, the role of the ECB in this regard should act primarily preventively, because as a supreme supervisor, it contributes to the harmonised operation of the entire banking system, the security of operation, and the protection of the financial services users' interests. A significant step in creating the preconditions for the greater involvement of the ECB was continued with the proposal of the Committee on Economic and Financial Affairs, which saw the EBA, the European Insurance and Pensions Board, and the European Board of Bonds and Market Authorities as the main addressees for the implementation of this plan, together with national subjects. With the emphasis on the previously mentioned good communication between AML and CFC actors (usually national) and those in charge of prudential control (supranational monetary), the plan aims to create functional instructions and adequately include the risk of money laundering in the supervisory functions of central banks (Directive (EU) 2019/878; Final Guidelines in cooperation and information exchange for Directive (EU) 2015/849). In this regard, the ECB cooperates not only with the EBA but also with the Basel Committee on Banking Supervision. In the field of EU monetary law, the factual scope and impact of instruction are far deeper than they seem, which refers to the fact that secondary monetary legislation in the form of an open method of coordination is more vivid and simpler to implement in times of crisis (with faster and visible goals).

The legal basis for the ECB's new role in the policy of combating financial crime was determined by a so-called second pillar of the EU banking union and the formation of the Single Supervisory Mechanism (Council Regulation No 1024/2013). Namely, Regulation Art. 28 and 29 prescribed the obligation of central banks to contribute to the fight against money laundering, and the prohibition of the financing of terrorism is established as the main objective of the national internal security policy. The legal measures used for this purpose include early disclosure and reporting of information by banks under the obligation of legally established duties, the non-compliance of which entails the application of strict sanctions, property freezing, (i.e. failure to act on client requests), and banning of banks that participated in such activities. With this provision, the ECB made it clear to all the public policy creators that a well-organised and efficient financial system is the first barrier against the financing of terrorism, which is why it must be established on a sustainable basis that reduces or makes such actions impossible.

In practice, the detection of suspect banking activities is very complex, because they are often connected with the use of legitimate sources of financing, such as donations, and the fact that financing is realised through the allocation of smaller monetary transactions (if we compare them with financial frauds, where these amounts are usually much larger, and thus even easier to discover). However, under the conditions of the EU, such duties also have their supranational dimension, because the supervision of the monetary jurisdiction of national central banks is carried out by the ECB. In these circumstances, when the ECB considers that the national central banks have not realised the mentioned goals (to the necessary degree), it can sanction them by withdrawing the license to work. Although it is clear that the competence of the ECB in internal security policy is not primary, it is important to define the *lower* and *upper liability thresholds to* avoid the effects of congestion (consumption of resources that could be alternatively used for other goals) and *negative populism* (which occurs when people have unrealistic expectations about ECB's position in society).

In this context, the question arises whether the ECB has a legal mandate to use its competencies in the sense of initiating investigations and collecting evidence aimed at the possible revocation of a bank, with the important thing to emphasise being that these are not independent investigations (understood in the usual misdemeanour or criminal law policy context) because the ECB has no competence for such a thing. However, in carrying out entrusted activities as part of its supervisory function, the ECB may come across such (potentially incriminating evidence), about which it must necessarily inform the competent national authorities. The distribution of responsibility for the supervisory function is a direct consequence of the application of the *principle of proportionality* as the

leading criterion in the distribution of responsibilities in the domain of monetary policy, but also in other segments of economic policy, which means that the ECB may at any time (based on its assessment) require the assistance of national institutions and authorities in performing the supervisory function on the entire financial market to control the general systemic risk (and, at the same time, special risks that occur in different segments of the financial market). Certainly, at this point, the concept of risk control refers to banks' mandatory reserves to cover prudential risks. Practically, this implies that the ECB will not engage in checking whether a national bank has, for example, fulfilled its obligation in terms of forwarding a potentially suspicious order for verification, but it can check whether there is a far more dangerous reason behind the failure to submit a report (such as a deliberate failure to fulfil the mentioned obligation). Accordingly, the ECB can check whether there is a certain legal, organisational, or reputational risk to which the bank under its supervision is exposed (Dimitrijević, 2023, p. 129). Undisputed manifestations of such ECB activity are the annual supervisory review and evaluation process exercise, where the adopted ECB measures are applied from a prudential (monetary) aspect (not a criminal one). Nevertheless, in a certain sense, it is shown that this demarcation is becoming blurred.

THE LEGAL FRAMEWORK FOR ECB ACTIVITIES IN THE SUPPRESSION OF FINANCIAL CRIME

The aforementioned Articles 28 and 29 of the SSRM Regulation elaborate comprehensively on the connection and the importance of respected postulate and the value of criminal law policy in the law of monetary finances in the part that concerns financial supervision. In practice, the ECB within the Banking Union cannot itself conduct investigative actions aimed at determining compliance with the criminal law directives that define this issue, but relies on the factual material of other investigative bodies and interprets it to conclude future bank operations. It kind of seems that the ECB is placed in the role of a law interpreter, which, acting *de lege artis* decides whether bank behaviour in a specific case should be sanctioned by the decision given in the monetary legislation (work permit). We must *emphasise* that not every violation of the monetary legislation is a trigger for the response of the responsible bank; rather, it is similar to a legal standard, so its meaning and content must be determined in each specific case, wherein we can see similarities between the court and central bank reviewing concrete circumstances (Dimitrijević, Golubović, 2020, pp. 1-10). Also, the ECB often seeks cooperation with national bodies in the field of crime prevention to make legitimate and credible decisions. At the same time, the synergy on this front remains limited, which is also confirmed by the provisions of the founding acts,

where it is clearly stated that the ECB cannot assume the role of a watchdog or public prosecutor.

In practice, the inclusion of money laundering risk in the supervisory function of the ECB is carried out in the form of *horizontal coordination* based on the structuring of *three levels*, where the *first* level acts as a contact key point for stored information which is operationalised by signing a memorandum of cooperation between institutions (ECB, 2019). The *second* level of action should provide a system-consistent approach that enables better integration of the financial risks into the supervisory strategy, while the *third* level appears as an internal expert unit for this issue (intra-institutional expert function). Currently, the ECB has a signed agreement on the exchange of information with more than fifty national institutions in Europe that have different roles in the process of combating financial crime. Accordingly, the ECB creates the conditions for the safe storage of all relevant data by working simultaneously on their selection, which requires greater bank capacities. The exchange of information that appears here as necessary must not be carried out *ad hoc*, but should be summarised and guided in the function of the realisation of established goals. At the level of macroeconomic dialogue in the EU, the Administrative Arrangement between the ECB and the European Anti-Fraud Office is particularly significant, as it regulates in detail the actions of OLAF when receiving information from the ECB regarding a potentially illegal activity whose financial impact is greater than 10,000 Euros (Administrative Arrangements between the ECB and the OLAF, 2016). These agreements are proof of the improvement of communication because it is interesting to point out that the ECB does not recognise the jurisdiction of OLAF over its affairs. After all, OLAF is an internal body of the Commission formed according to the rules of procedure between the organisational units of the Commission itself, and the ECB as the supreme monetary institution in European monetary law certainly does not have such a status (Dimitrijević, 2018: 121). Also, the ECB's active role in the exchange of information can be understood as a direct consequence of bank credibility and distancing from a 'secrecy period' in which central banks systematically limited their communication to an environment in which discourse is not only used extensively but has also assumed an effective role for monetary policy (Fortes, Le Guenedal, 2020: 3).

In this respect, it is also noted that, even though the ECB is not responsible for establishing breaches in anti-money laundering (from a crime avoidance perspective), it may, based on the facts identified, apply measures from a prudential perspective within the scope of its tasks (when assessing, in qualifying holding proceedings, a proposed acquirer of shareholdings in a credit institution, in the course of the *supervisory review* and *evaluation process*, or when assessing the suitability of a (proposed) board member in fit-and-proper proceedings for significant

credit institutions) (Gortsos, 2020, pp. 85-100). The aforementioned suggestions and recommendations of the central bank must be included in commercial bank business models, which can redefine the pattern of tolerance according to banking risks, but also affect their profitability, so certain trade-offs are necessary.

In emphasising the importance of the ECB's work in the field of criminal law policy, we have to take a *restrictive approach*, which of course does not diminish its contribution to this field. Therefore, we must clearly define where it begins and where it ends. The European Court of Auditors emphasises in its studies that a strategy that well unites the goals of prudential and anti-criminal policy must be based more on *rule-based* approaches for very clear guidelines for the actions of the various bodies that participate in it, where the fact of supervisory fragmentation at the level of the EMU must also be taken into account.

Also, a major contribution to the fight against financial crime was made by the Financial Action Task Force, whose goal is to protect society from crime and ensure the European financial system, while simultaneously protecting the assets and values of the single market and creating better conditions for the cooperation of judicial authorities in criminal matters. It should not be misunderstood that the task of the ECB is to check whether a commercial bank or other financial institution has failed to provide information in potentially suspicious transactions, but whether there is some other deep problem that caused the system of providing information to fail in practice. In EU monetary law, it is certainly necessary to introduce fit and *proper criteria* for expanding or granting greater investigative powers to the European Public Prosecutors Office, because the nature of financial crime is multijurisdictional, where illicit financial flows are usually understood as money that is illegally transferred or used in cross border payments, although the competence for processing is primarily at the level of the authorities of the member states (Reuter, 2017, p. 2)

In its recent studies, among other things, the ECB considered the problem and emphasised the importance of fast, affordable, widespread, easily accessible payments in a safe environment guaranteed by the central bank (ECB, 2019). Nevertheless, at this point, we are faced with one – let us call it monetary law ancestor, which is reflected in the indisputable fact that, in the circumstances of monetary integration and delegation of monetary sovereignty, the position of national central banks is quite weakened (due to the erosion of monetary powers), while on the other hand, the position of the ECB is (still) not strong enough to provide a stronger response in the fight against financial crime (or rather due to the evolution and expansion of other primary duties, these secondary activities are of limited scope in practice). Besides, the supervisory function of the ECB is always in the grey zone in open legal interpretations to

achieve these tasks in practice, which further complicates the anti-criminal policy (Demetriades, Vassileva, 2020, p. 509).

At the beginning of 2019, the ECB took a significant step towards creating the conditions for a better implementation of the previously mentioned Fifth Directive, which implies a *two-way channel* for the exchange of information, which can be at the request of the signatories of the agreement or the initiative of the imposition of sanctions and other measures, or other reasons related to the formation of second-hand models. In any case, the exchange of information must be relevant and necessary, and the volume of information exchanged in practice may concern material deficiencies relevant to the Directive, deficiencies concerning financial operators, or measures taken on previously observed deficiencies (ECB Banking Supervision 2022).

Starting with January 1, 2020, the ECB has had a distinctly active role in the success of the abuse of the financial system for non-obvious criminal activities. Of course, the legal framework by which it received the aforementioned powers is not a revolutionary step forward, but it is significant in the final establishment of the much-needed minimum harmonisation of legal acts that regulate the aforementioned area. Today, the ECB has a significant role in directing, developing, and supervising the application of legal acts in this area, where it cooperates with other bodies with which it works on the evaluation of the implementation of established measures and instruments, risk assessment, and the development of new approaches and methodologies for risk assessment and identification. This also refers to the formation of databases, the provision of technical and logistical support, and other activities aimed at ensuring financial and monetary stability, as well as the violation of EU rights in an act related to the single market, banking union, and competition protection policy. In that sense, the ECB has the mandate to issue Guidelines addressed to both competent authorities and to credit and financial institutions on the risk factors to be considered and the measures to be taken in situations where simplified customer due diligence and enhanced customer due diligence are appropriate (Directive EU 2015/849; Directive EU 2019/878).

When it comes to reviewing the ECB integration in the system of prudential supervision, the European Court of Auditors finds that, despite all the improvements, the information-sharing matrix is not fully efficient because national supervisors use different methodologies and bases of including all the specificity in EBA guidance (ECA, 2021). So, the ECA suggests that the ECB should define internal policy in a manner that enables more the efficient sharing of information with national supervisors, and propose the establishment of a *direct communication network* as the potential solution for this problem. In that network, there will be places for easy and secure information sharing between the ECB and national subjects dealing with criminal law policy enforcement, where the Mem-

ber States of the Eurozone – or even the non-Eurozone – could be asked to nominate one of their agencies as the contact point for the ECB, which would be entitled to receive information and requests for information and transmit them to the law enforcement offices in charge (Allegrezza, 2020, pp. 302-310). Giving this possibility to non-member states looks like a really smart solution – providing the same instruments to all countries in the process is essential, because the spread of financial crime as an aggressive spill-over effect is not limited to only members. It is interesting to mention that, in monetary law theory, there is an argument for eliminating high denomination notes to increase costs and detection risks for tax evaders, criminals, terrorists, and those who give and receive bribes even for a single country acting unilaterally (Sands et al, 2016, pp. 60-62).

It is important to note that the coordination between the ECB and other authorities participating in the fight against financial crime is not merely technical, but rather a mechanism of firm coordination that provides an added level of prevention and discipline of actors in the banking market in a way that prevents opportunities for undertaking illegal activities. It is only through joint work and the expertise of these authorities that it is possible to ensure the conditions for the creation of sustainable disclosure rules. The comprehensive implementation of standardised disclosure rules for banks and companies and the use of state-of-the-art technology can be very important for enhancing the sustainability and transparency of common solutions for money laundering and a sound banking system.

CONCLUSION

The ECB, during its activities so far, has shown an enviable institutional ability and strength to regulate the challenges of contemporary social and economic upheavals with appropriate legal instruments, which was particularly noticeable during the global economic and financial crisis and, especially, during the (post-)pandemic crisis. This is seen through the redefinition of traditional competencies in the field of monetary policy, the establishment of new competencies in the field of fiscal policy (which was previously unthinkable and even strictly prohibited by the norms of firm monetary legislation), and the adoption of some new competencies in the sphere of (non-)economic flows such as is the area of social policy and care for the personal well-being of individuals in society. If we remember here the frequent emphasis on monetary law as a law of necessity (police law) in literature, then using that analogy we can say that the ECB Law is an example of the law of 'more urgent necessity,' where the linguistic use of this pleonasm is not accidental, because it reflects a far higher and more serious level of urgency of the moment in regulating the problems of monetary finance. In the previous period, the ECB, as an institution specialised in such actions, undoubtedly proved

and confirmed its position as an innovator and creator – the optimal legal regulation of not only monetary but also of financial innovations (starting with the legalisation on the function of the bank of last resort, through the relativisation of the clause prohibiting collective guarantees for public debt, up to deliberations and announcements on the regulation of digital money, and the fight against financial crime and the prevention of the financing of international terrorism), which undoubtedly confirmed its indisputable and unavoidable role as the highest monetary institution in EU law, while also showing care and understanding for citizens and the circumstances in which they found themselves when proposing and implementing new monetary measures and instruments.

The ECB as the *actor primus* in public monetary management should participate in the field of suppressing and fighting financial crime to fulfil monetary and financial stability and output financial legitimacy, which is a *condition sine qua non* of all achieving legal certainty and predictability in macroeconomic management and the protection of the economic and social rights of citizens (nowadays, especially in terms of technological revolutions and global financial liberalisation). Taking into account the dangers posed by the so-called (cyber) financial crime, which by nature is connected with (sovereign) money, the role of the central bank is indispensable in the way of prevention, implementation, and fulfilment of the purpose of criminal law regulations (policy) in the field of the abuse of the monetary system, and the prevention of money laundering and financing of terrorism. ECB does not have an original mandate in fighting financial crime or the derivative one, and maybe it is preferable to talk about her contribution to activities under the prudential control of centralised banking policy which contributes to controlling illegal financial activities stretched across a sound banking system, the credibility of monetary and banking finances and the protection of financial user rights. The contribution of the ECB in the fight against money laundering and the prevention of financed terrorism seems like the response of the European legislator to the development of the normative framework of the monetary system in the context of rounding off the concept of economic and monetary union in a comprehensive way, where the banking union represents a significant step in this regard. The legal basis for the ECB's activity in that context is established in the provisions of the soft monetary legislation, which rounded off the concept of the unified supervision of the work of commercial banks on the financial market, because such competencies can hardly be defined in the provisions of the primary monetary legislation, up to their rigidity and complex change procedure. The reason why the legal basis is defined in soft legislation is related to its flexibility and easy adaptation to the current circumstances, which can be seen in the circumstances of the technological revolution, the emergence of private and public digital money, and modern innovations that further complicate the efforts of states in the fight against financial crime.

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УЛОГА ЕВРОПСКЕ ЦЕНТРАЛНЕ БАНКЕ У СУЗБИЈАЊУ ФИНАНСИЈСКОГ КРИМИНАЛИТЕТА

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Резиме

Допринос политици сузбијања и спречавања финансијског криминалитета представља један од значајних задатака савремене централне банке с обзиром на њене ингеренције на терену очувања опште финансијске стабилности. У најширем значењу, ефикасна монетарна легислатива за спречавање финансијског криминалитета јесте она које све банке у банкарском систему поставља у функцију субјекта који ригорозно, поуздано и легитимно проверавају и утврђују идентитет својих клијената при реализацији одређених трансакција према њиховим налозима, где се у случају одређених сумњи исти морају благовремено пријавити не би ли се извршиле потребне провере и покренуле безбедоносне процедуре.

У Европској унији значајан корак у сузбијању финанијског криминалитета јесу нове активности Европске централне банке на том плану, где се она, у извесном смислу, појављује као секундарни субјект у генералној превенцији. Правни основ нове улоге ЕЦБ у политици сузбијања финансијског криминалитета је утврђен конституисањем тзв. другог стуба банкарске уније, односно, доношењем Уредбе о формирању Јединственог надзорног механизма. Иако је јасно да је надлежност ЕЦБ у борби против финансијског криминалитета деривативна, а не оригинарна, неопходно је утврдити јасне параматре за раздвајање надлежности националних централних банака и ЕЦБ у овом сегменту политике унутрашње сигурности ради избегавања ефеката закрчења, трошења ресурса који су се алтернативно могли употребити у друге сврхе и истовремено улагати додатне напоре за повећење степена ефективности делокруга њихових послова на том плану.

Европска централна банка нема надлежност да самостално утврђује и кларификује одређене поступке у банакрском пословању као појавне облике финансијског криминалитета, али у томе може помагати надлежним органима и може изрицати самосталне санкције у склопу вршења своје супервизијске функције, што је још један доказ константне еволуције њених надлежности у европском монетарном праву.