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THE NEW LAW ON MACEDONIAN CENTRAL BANK – LEGAL FICTION FOR A LEGAL ALIGNMENT?

INTRODUCTION

The creation of the *eurozone* and the introduction of the euro as a common currency for (currently) seventeen countries is the most successful project in the history of the process of the European integration, sometimes also perceived as a first step towards political union¹.

The importance of the monetary union has been confirmed during the financial crisis when the “sauvetage” of the *eurozone* was perceived as crucial for the future of the European Union (hereinafter EU) and for the future of the entire European integration project taking place in Europe for more than a half century. This conclusion was accepted by the most important European leaders. Thus, in her speech in the Bundestag, the German Chancellor Angela Merkel has underlined the importance of the euro for the future of the EU by saying that “If euro fails Europe fails”².

The process of creation of the monetary union was neither an easy task nor a straightforward process. The whole “journey” was full with different questions and doubts in many aspects. The creation of the monetary union without a state where monetary policy for seventeen countries is conducted by a supranational institution provided with vast independence is without precedent in the monetary history. The whole process was a “bold step into the unknown, not unlike Alice’s leap down the rabbit hole”³. Nevertheless, even the monetary union is facing the grates challenges since its creation while its future is uncertain, the effects the *eurozone* had on the economic performance of its members are more than positive⁴.

The creation of the European monetary union (hereinafter EMU) was based on two pillars – the convergence and the gradualism of the process⁵. The first promotes the economic and legal convergence as a precondition for being a member of the *eurozone* while the second makes the process of accession gradual were certain criteria in several stages have to be met. The same approach is applied for the enlargement of the EMU with new members. The process of

¹ Otmar ISSING, The Euro: Does a Currency Need a State?, *International Finance* 11/3, 2008, p. 300

² See: The Telegraph, 26.11.2011, <http://www.telegraph.co.uk/finance/financialcrisis/8850969/Merkel-wins-rescue-fund-vote-after-raising-spectre-of-war.html>, consulted on 5.4.2012.

³ Willem H. BUITER, Alice in Euroland, *Journal of Common Market Studies* Vol. 37, N° 2, June 1999, pg. 182

⁴ On the effects of the euro on the European economies see: ECB, 10TH Anniversary of the ECB, *Monthly bulletin*, 2008, pp. 89-100, Rose, ANDREW K. One Money, One Market: Estimating the Effect of Common Currencies on Trade, *Economic Policy* 30, 2000, pp. 9-45.

⁵ Paul De GRAUWE, *Economics of Monetary Union*, Oxford University Press, 2009, p. 143.

preparation for the euro adoption, from a point of view of a country which is candidate for joining the EU, starts in the pre-accession period in which in order to be able to join the EU and to participate in each of its policies the candidate country for EU accession has to adopt its legislation with the EU rules. Thus, as far as the monetary policy is concerned the obligation for legal approximation goes in two directions. Firstly, the county has to create a central bank completely independent from other public and private entities. The EU rules have to be respected when the organization and the status of the central bank in the country's legal system is determined⁶. Secondly, the country has to provide that the central bank is able to work in the framework of the European System of Central Banks (hereinafter ESCB).

The new law on the National bank of the Republic of Macedonia (hereinafter NBRM) makes significant legal approximation in the both fields. The independence of the central bank is guaranteed to a level that it might become a "monetary fortress" far from any influence from the real world and everyday politics. However, the Macedonian central bank has been independent and well protected by the law since its creation. Having in mind that the model for its creation was the German central bank or the Bundesbank the functional, personal, organizational and financial independence are not unknown categories in the Macedonian legislation. The second filed, or the creation of conditions by the law for functioning of the NBRM in the framework of the ESCB draws our attention from both academic and practical point of view. Taking into account that Macedonia is neither a Member of the *eurozone* nor a member of the EU the provisions in the new law on the NBRM governing the relations of the NBRM in the framework of the SEBC need to be analyzed.

The present text will examine the legal framework and the questions deriving from the participation of the Macedonian central bank in the ESCB (I) and the organizational aspects of the central bank in the conduct of the monetary policy in both the period after the accession to the EU and in the period following the euro introduction in the country (II).

I. Legal framework and the questions deriving from the participation of the NBRM in the ESCB

As previously underlined, the enlargement of the *eurozone* is conducted on two major principles – gradualism and convergence. In this respect, from the point of view of a candidate country for EU membership, one may distinguish three stages towards the full membership in the EMU. In the first, or the pre-accession stage, the country has to fulfill the Copenhagen criteria⁷ for being a member of

⁶ For an analysis of the independence of the Macedonian central bank in respect to the EU rules, see : Jovan ZAFIROSKI, NBRM – centralna banka po evropski model, Zbornik vo cest na prof. Kiki Mangova Ponjavic, Skopje 2012.

⁷ On the Copenhagen criteria see more: Marc MARESCEAU, *Pré-accession*, in Marise Cremona ed., *The Enlargement of the European Union*, Academy

the EU and to prepare its entire legal and economic system for assuming the obligations of being a member of the EU. It is a stage in the European integration process where the membership of the *eurozone* is a remote goal for the country while the preparations for membership are conducted under the general strategy for joining the EU. The country's main tasks concerning the monetary union are basically attached to the approximation of the legislation related to the EMU's *acquis*. In this respect, two fields of law are crucial. Firstly, the legal framework regulating the free movement of capital which is essential not only for providing conditions for functioning of the internal market of the union but also for the smooth functioning of the country as a part of the monetary union⁸. The second stage of the preparation process of the country for joining the EMU starts after the accession to the EU. At this point, the country has to achieve a certain degree of economic convergence with the *eurozone* members measured by certain criteria - called Maastricht criteria for the EMU⁹. The last or the third stage commence after the ECB and the European Commission estimate that the country has fulfilled the criteria when the process of euro introduction or the change of the national currency with the euro starts.

Having in mind this three stage process for joining the *eurozone* one may expect that the current obligations for a candidate country for joining the EU as Republic of Macedonia is the legal alignment of Macedonian legislation regulating the central bank. In this respect, Macedonian parliament has adopted the new law on the NBRM. The principle reason for adopting a new law is that NBRM has to be independent and settled in the whole economic and institutional structure of the country in a way which guarantees its independence and protect the institution from the influence and different forms of pressures that might change or control the conduct of the monetary policy and the achievement of the settled central bank's goals. The second task of the new law is to prepare the NBRM to be able to operate in the framework of the ESCB and to assume the obligations of being a member of the *eurozone* promoting the achievement of the primary goal of the monetary union i.e. price stability.

The Macedonian legislator decided that it should adopt the entire EU legal framework as defined by the Treaties relating to the status and functioning of the national central bank (hereinafter NCB) as a part of the ESCB. Having in mind that Macedonia is not yet a Member of the EU such a solution might be justified only with the obligation for legal approximation of the Macedonian legislation with

of European Law, European University Institute, Oxford University Press, 2003, pp. 12-14.

⁸ For the free movement of capital in the pre-accession period, see: Jovan ZAFIROSKI, Free movement of capital under the Stabilization and association agreement, Financial Systems Integration of Balkan countries in the European financial system, Ed. Claude Berthomieu, Srdjan Redzepagic, IEN, 2008, pp. 231-238.

⁹ On the Maastricht criteria on EMU see more: Jiri JONAS, Euro adoption and Maastricht criteria: Rules or discretion? International Monetary Fund, *Economic systems* 30, 2006, pp. 328- 345.

the EU *acquis communautaire*. Thus, the new law on the NBRM contains two titles regulating the positions and the task of the NCB as a part of the ESCB. Even if these provisions in the law don't have legal power and will enter into force after the accession of the country in the EU and the EMU their significance go beyond the simple legal application. It is a confirmation that the country's central bank will be devoted to the tasks of the ESCB and will be able to assume the obligation of being a member of this monetary union.

Macedonia is not a sole example with such a change of the legislation. Namely, the Croatian law on central bank uses the same approach¹⁰. In its law on the NCB the Croatian legislator has decided to include two titles determining the status and the functioning of the Croatian central bank in the framework of the ESCB. When analyzing the legal framework relating to the central bank and monetary policy in other candidates and potential candidates for accession to the EU one may conclude that further efforts are needed for complete harmonization of the national legislation in this field. Namely, none of the laws on the central bank in Serbia, Albania and Montenegro contains provisions on functioning of the central bank as a part of the ESCB¹¹.

Having in mind that the law on the NBRM aligns the Macedonian legislation to the rules as determined by the treaties the question deriving is whether this harmonization is necessary from the legal point of view. Taking into account that the treaties are part of the Union's primary legislation is it possible for Macedonian law on the central bank to determine certain obligations or rights which are in collision with the treaties or the Statutes of the ESCB and ECB? The answer seems clear. The primary EU legislation is directly applicable and binding in the Member States of the Union. The provision in the primary legislation has priority over the national legislation. Thus, it seems that this change in the Macedonian legal framework regulating and preparing the Macedonian central bank to be part and to operate as a part of the ESCB is not necessary from a pure legal perspective. Nevertheless, this change in the regulation makes the obligations and rights deriving from the membership in the EU and *eurozone* more clear and precise.

The text will further analyze the rights and obligations determined by the provisions of the new law on the Macedonian

¹⁰ The provision concerning the monetary policy and the central bank in the period after the accession to the EU are in the eight title of the Croatian law (articles 70-87) while the conduct of the monetary policy and the status of the central bank in the period following the introduction of the euro in Croatia are in the ninth title (articles 88-110). *cf.* Act on the Croatian National Bank, available at <http://www.hnb.hr/propisi/zakoni-htm-pdf/e-zakon-hnb--7-2008.pdf>

¹¹ [Law on the National Bank of Serbia](#), RS Official Gazette, Nos. 72/2003, 55/2004 and 44/2010, available at, http://www.nbs.rs/export/internet/english/20/laws/law_nbs_200455.pdf, Central Bank of Montenegro Law, OGM 40/10, 46/10 available at http://www.cb-mn.org/eng/slike_i_fajlovi/fajlovi_o_nama/regulativa/central_bank_mn_law4010.pdf, Law on the Bank of Albania N°.8269 de 23.12.1997.

central bank affecting the central bank which are deriving from the Macedonian membership in the EU and those deriving from the membership in the *eurozone*.

II. NBRM as a part of the ESCB

Being a member of the EU does not mean that the country is an automatic member of the *eurozone*. Following the accession to the EU the country has to fulfill the Maastricht convergence criteria to be part in the *eurozone*. Thus, after the EU accession, the country's central bank is a member of the ESCB while after the achievement of certain degree of economic convergence the country becomes member of the *eurozone* and introduces the euro as a national currency.

In each stage the country or the NCB has certain rights and duties to fulfill. In this respect, the new law on the NBRM makes distinction between the period after the accession to the EU and the period after the euro introduction. The text will analyze the rights and duties of the central bank in the both periods.

1. NBRM after accession to the EU

Even if the country remains independent in the field of the monetary policy and the NCB is still its monetary sovereign, the accession to the EU directly affects the conduct of the monetary affairs and the status of the NCB. Namely, in this period, the entire economic policy of the country has to be conducted in a way to contribute towards achieving the economic convergence as described by the criteria posed by the Treaty of Maastricht. In this respect, the country is obliged to treat its monetary policy as a matter of common interest. These provisions have to assure that the monetary policy of the country will not be abused by the monetary authorities in order to gain competitive advantage on the internal market and destroy the free competition based on the market rules settled fifty years ago.

The accession to the EU makes the NBRM a member of the ESCB and participant at the sessions of the General Council of the ECB¹² in which framework the central bank works on achieving the objectives in accordance with the provisions steered in the Treaty, the Statute of the ESCB and the ECB and the regulations directly applicable in the EU¹³. At this stage, the Republic of Macedonia participate in the monetary union as a Member State with derogation, that is to say that it will be fully integrated in the *eurozone* after it complies with the convergence criteria. These provisions in the new Macedonian law are fully compatible with the primary legislation of the Union. However, what does not seem logical and it repeats all through the text of the law is the reference on the EU legal sources i.e. the Treaties. Whenever the law makes reference to the EU treaty it refers to the Treaty establishing the EC which poses certain questions.

¹² Article 89 of the Law on NBRM, Official Gazzete of RM No.158/10.

¹³ Article 80.

Namely, after the adoption of the Treaty of Lisbon¹⁴ the new title of the Treaty establishing the EC is Treaty on the functioning of the EU¹⁵ which becomes the primary legal text as far as the monetary union is concerned. This difference does not concern only the title but also the chapters and the numbering of the articles relating to the monetary union. From a legal point of view this unclearness of the law cannot make any substantial difficulties since by using the previous versions of the Treaties one may easily locate the provisions concerning the monetary affairs in the TFEU. However, having in mind that the new law on NBRM is adopted after the changes in the EU legislation were made, these provisions in the Macedonian law should make reference to the new legal framework of the EU or the TFEU.

In the light of the new law on NBRM the period after the accession to the EU brings certain changes in the field of monetary policy and institutional aspects of the Macedonian central bank. In this respect, the principle objective of the monetary policy is the price stability. Without prejudice to the principle objective the National Bank will act in accordance with the principle of an open market economy with free competition and will support the general economic policies of the EU¹⁶. Also, when adopting measures related to the exchange rate of the national currency, the NBRM is taking into account the common interest of the Member States of the EU¹⁷.

The accession's effects on the status of the NBRM are far more significant. In the first line, the law strengthens the independence of the central bank guaranteed in the national division of powers between different institutions by adding the provisions that members of the National Bank's Council, shall neither seek nor take instructions from the institutions and bodies of the European Union, from any government of a Member State or from any other EU body¹⁸. Also, the Governor of the National Bank will have the right to appeal before the European Court of Justice against the decision on removal from office¹⁹.

As the NBRM is participating in the ESCB and makes part of the General Council of the ECB it should subscribe and pay up the capital in the ECB in accordance with Articles 28 and 29 of the Statute of the ESCB and the ECB²⁰. The capital which is not subscribed to the ECB is managed by the NBRM in a common interest of the Union and in cooperation with the ECB.

The NBRM is not free in adopting bylaws or any other act which might influence the monetary policy of the *eurozone*. Thus, any draft-law and regulation within the ECB's competence shall be submitted to the ECB for an opinion²¹. Also, for this stage towards the

¹⁴ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, *OJ C 306 of 17 December 2007*.

¹⁵ Treaty on the Functioning of the European Union, *OJ C 83 of 30.3.2001*.

¹⁶ Article 82 of the Law on NBRM.

¹⁷ Article 84.

¹⁸ Article 81.

¹⁹ Article 88.

²⁰ Article 83.

²¹ Article 85.

full membership in the *eurozone* the law contains provisions concerning data confidentiality, collection of statistics, prohibition on privileged access and prohibition of lending, protection of banknotes and coins against counterfeiting.

NBRM after the euro adoption

The introduction of the euro as a national currency in the Republic of Macedonia means loss of the country's monetary sovereignty which directly affects the status and the competences of the NCB. The transfer of the monetary sovereignty to the ECB opens a new page in the monetary history of the country, member of the monetary union. In this respect, the relations between the ECB and the Macedonian national bank are clearly determined by the new law on NBRM. However, in the theory, there is a significant ongoing debate on the relationship between the NCB on one hand and ECB on the other hand concerning the legal status of the NCB in the framework of the ESCB. In other words, the dilemma is whether the NCB are simple agents on the ECB or they are independent and sovereign in certain areas. As far as the position of the NCB in the framework ESCB is concerned two opinions are present. The first opinion underlines the legal personality provided by the national legislation given to the NCB which makes this institution indivisible from the national institutional system. Moreover, the national legislator has the power to amend the legislation and to change the mode of functioning of the NCB which in theory is called *l'autonomie organisationelle*. The second view understands the relations between the NCB and the ECB as a certain *dédoublement fonctionnel*²² that is to say that even if the BCN have legal personality which derives from the national law as far as the monetary policy is concerned they are disconnected from the national system and act as agents of the ECB in implementing the monetary policy of the *eurozone*. However, besides the tasks of the NCB as part of the ESCB there are other areas where they keep their competences and are still monetary sovereigns in the country. This debate seems unnecessary when taking into account that the Treaties give the exclusive right of the ECB for conducting the monetary policy in the *eurozone* while the NCB are responsible for implementing the policy decided by the ECB. Also, all the tasks conferred to the NCB which are out the scope of interest of the ESCB should not endanger the achievement of the principal objective of the ESCB i.e. the price stability.

The new law on NBRM follows the EU rules in determining the tasks and the status on the Macedonian central bank after the euro adoption. In this respect, the central bank will be an "agent" of the ECB responsible for implementation of the monetary policy but it will keep some functions not covered by the ESCB. Thus, the principle task of the NBRM is the implementation of the monetary policy, conduct of foreign exchange operations managing the foreign reserves of the Republic of Macedonia that have not been transferred to the

²² Chiara ZILIOLI and Martin SELMAYR, *The European Central Bank*, Hart Publishing, 2001, p. 76.

ECB and ensuring the smooth operation of payment systems²³. Also, NBRM remains responsible for the supervision of banks, is charged to collect and process statistics and continue to act as fiscal agent of the Republic of Macedonia. This, dualism of task where the conduct of the monetary policy is transferred to the ECB while the national bank maintains certain tasks in the domestic monetary and economic system, is fully compatible with the EU rules. The new Macedonian law on central bank and was evaluated as a positive step in the harmonization of the union *acquis* in the monetary field and was welcomed by the EU Commission in its latest Report on the progress on the Republic of Macedonia in its path towards the EU membership²⁴. However, the Macedonian legal framework regulating the status and functioning of the NCB cannot yet be deemed as fully compatible with the EU rules. Namely, the law on NBRM is the most important and comprehensive legal act in this area but the NCB, its status and main functions are defined in the constitution of the Republic of Macedonia which is the highest legal source in the hierarchy of Macedonian legal sources. Thus, the Constitution defines the NBRM as a currency-issuing bank which is autonomous and responsible for the stability of the currency, monetary policy and for the general liquidity of payments in the Republic and abroad²⁵. On one hand, the constitutional confirmation of its independence and the definition of the exclusive competences in the monetary field granted to the NBRM is more than positive in present time when the country is conducting its own monetary policy. It protects the institution from the influence of the others state institutions and guarantees the achievement of the central bank's objectives. However, in order to be compatible with the EU treaties the Macedonian Constitution should be adopted to the new conditions where the NBRM is part of the ESCB. As it is expected the Constitution is the legal act that it will be modified on the final stage of the harmonization on the Macedonian legislation with the Union's *acquis*. Until then, the new law on the NBRM brings significant level of legal approximation in the field of monetary policy which will promise smooth functioning of the NBRM in the framework of the ESCB and the achievement of its objective i.e. price stability.

CONCLUSION

The new law on NBRM makes a significant progress toward full harmonization of the Macedonian legislation with the EU *acquis* related to the central bank. All along with strengthened independence of the NBRM the law provides a legal framework for functioning of this institution as part of the ESCB in both the period after the

²³ Article 93.

²⁴ European Commission, Commission Staff Working Paper, Republic of Macedonia 2011 Progress Report, SEC (2011) 1203 final, Brussels, 12.10.2011, p. 51.
http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf

²⁵ Article 60 of Constitution of the Republic of Macedonia, available at <http://www.sobranie.mk/en/default-en.asp?ItemID=9F7452BF44EE814B8DB897C1858B71FF>

accession to the EU and the period following the introduction of the euro. In both stages, the NCB has different task it should perform clearly defined by the law. What makes these provisions challenging and attractive for an analysis from a legal point of view is that fact that the Republic of Macedonia is neither a member of the EMU nor the EU.

Besides the progress made the Macedonian legal framework regulated the NCB and the conduct of the monetary policy is not fully harmonized with the EU rules. Namely, the main tasks and the definition of the NBRM are part of the Macedonian Constitution which has to be amended in order a full approximation to be achieved.

Abstract

The recent financial crisis and the turbulences caused by the sovereign debts in several European countries in the *eurozone* has undoubtedly shown that the EMU is the most important project in the history of the European integration process taking place in Europe for more than sixty years. Even if it faces the most difficult times since its creation the *eurozone* is still attractive and desirable for new members which in order to be able to join this monetary union are making profound reforms and preparations in the entire economic and legal systems. From a point of view of a candidate country for accession to the EU the process of preparation starts in the pre-accession period in which the principle task is the harmonization of the national legislation with Union's *acquis* related to the monetary union. Thus, the national legislation has to assure that the NCB is independent while it is able to assume the obligations deriving from the membership in the monetary union. This text examines the new law on the NBRM from the point of view of the ability of the Macedonian central bank to participate in the framework of the ESCB and to assume the obligations of being part of the *eurozone*.

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