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THE IMPACT OF EUROPEAN INTEGRATION ON THE DEVELOPMENT OF SERBIAN MONETARY LEGISLATION[1]

The subject of the paper is the impact of European monetary integration on the formation and development of domestic monetary law, and as its subject of legal regulation. European monetary law is a hybrid branch of law understood as a set of legal norms defining the monetary unit for the denomination of public debt. As such, it represents a good example of flexibility, dynamism, complexity, and the vital importance of the contemporary monetary legislation, the significance and relevance of which, in both academic and practical terms, are reflected in the preservation of monetary stability, as an essential public good, and monetary rights of the monetary citizen, i.e. citizens who live under domestic monetary jurisdiction, to have a stable and sound domestic currency. The impact of European monetary integration is particularly noticeable in the harmonisation of regulations within the competence of the central bank with supranational lex monetae. The same is true for the central bank's competence to adopt monetary legal rules from acts of secondary monetary legislation defined within the new models of macroeconomic governance in EMU during the debt crisis, which enables the harmonisation of national banking policies at the EU level. Also, the new competencies of the supreme monetary national institution with regards to the aim of maintaining financial stability, its function as the bank of last resort for preventing the financing of terrorism, and competencies related to the fight against financial crimes, confirm the thesis about the evolution of central bank competencies towards common European values and axiology of European monetary legislation. By applying the dogmatic, comparative, and axiological methods, the paper seeks to identify existing differences between domestic and European monetary legal solutions and the achieved de lege results. The paper also offers certain de lege ferenda guidelines for shaping future monetary nomotechnique aimed at providing

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the optimal and sustainable monetary legal answers to the issues arising in the realm of the law of value.
Keywords: monetary law, EU, lex monetae, monetary stability, central bank.

1. INTRODUCTION

Among the existing monetary unions, the European Economic and Monetary Union (EMU) appears as the most developed monetary union ever despite the periods of institutional and economic crises during its existence. This Union is founded on a special corpus of legal rules, which is confirmed in the fact that a very intense process of disintegration of EU monetary law is underway, from which the *Law of the European Economic and Monetary Union (EMU)* and the *Law of the European Central Bank (ECB)* stand out as independent legal disciplines. The EMU law represents the entirety of legal norms that have enabled the creation of EMU, through its comprehensive and detailed regulation during the main stages of the evolution of EMU, institutional arrangements within the centralized monetary policy, as well as the norms on the responsibility of monetary subjects for tasks assigned to them. This corpus of legal norms reflects a critical evaluation of existing rules and a cohesive synthesis of past problems, current solutions and attempts to face future challenges in the functioning of the banking union and the formation of the fiscal union to round off the EMU concept uniquely and comprehensively (Amtenbrink, Herrmann, & Repasi, 2020, p. 5). ECB law refers to the entirety of legal norms that define the organizational structure, mandate, and tort liability of the highest monetary institution of the EU, which initiates the overall legislative process and uses monetary prerogatives derived from contemporary monetary sovereignty as so-called cooperative monetary sovereignty in the realm of money (Zimmerman, 2013, pp. 24-31). It is interesting to note that the influence of the ECB law as a specialized monetary legal discipline in the years after the outbreak of the financial and pandemic crisis became very dominant in domestic monetary law, which is shown by a large number of sources of secondary monetary legislation adopted by the National Bank of Serbia in this regard, *i.e.* a large number of amended units of monetary legislation that are aligned with new trends in the field of public law monetary management.

The monetary law of the EU, as well as the law of the EMU, has strong external effects on the monetary legislation not only of the member states but also on the legislation of the states that are in the process of European integrations, as well as on their foreign trade partners, yet with much lower intensity (Feibelman, 2012, p. 137). More precisely, this influence on foreign trade partners appears to be *modest* and *indirect* and concerns the knowledge of the basic principles of the functioning of the national monetary system due to the stipulation of monetary clauses in international economic agreements (especially payment agreements and investment agreements). At the same time, the intensity and scope of the influence with the countries acceding to the EU are greater and more direct, as is observed in the harmonization of domestic regulations on the work of the central bank and the structure of its mandate, which is largely adapted to European standards. On its European integration path, the Republic of Serbia harmonised the valid sources of both substantive and procedural monetary law, as well as the central bank law, which,

through the process of disintegration, developed into an independent branch of law in the domestic legal theory and practice. The harmonisation took place to a truly astonishing extent in accordance with the current trends in European monetary legislation. That is clearly reflected in the concept of the new competencies of the National Bank of Serbia, which no longer appears to be a guardian of only monetary stability but has also become a guardian of the national financial stability, and is also in charge of cooperation with the European Banking Authority (EBA), and has concluded agreements with the Single Resolution Board and the Single Supervisory Board as the main bodies of the European Banking Union. Also, its competencies include other activities, such as those in the field of the suppression of terrorist financing, as well as the new responsibilities regarding the issue of digital assets, which were established by the Law on a Digital Property (2019), where the monetary legislator and the public state management showed readiness to regulate by law the area of digital monetary competition promptly.

2. BRIEF REVIEW OF THE SIGNIFICANCE AND AXIOLOGY OF MONETARY LAW IN THE EU AND THE DOMESTIC LEGAL SCHOLARSHIP

When considering the subject of EU monetary law, we must consider that it developed from national monetary law, which in our region was studied almost exclusively in the domain of private law because monetary obligations represent an element of various types of cargo contracts. We believe that this approach to defining national monetary law is rather narrow and inadequate because it leaves room for numerous legal gaps, which partially explain the unsatisfactory legal argumentation of domestic courts in monetary disputes (Golubović & Dimitrijević, 2020, p. 14). Namely, we think that the monetary norm must be understood as a special form of the legal norm that regulates social relations with the monetary element in the broadest sense of the word. In terms of its nature, this norm is very similar to the tax norm, which means that it regulates concrete legal-economic factual (here monetary) situation, the realisation of which is the *initio* of the monetary legal relationship. At the moment of the factum of the event determined by the monetary norm, the abstract monetary relationship becomes a concrete one and, as such, produces effects in the monetary circulation. This kind of hybrid factual situation, we note, is not determined exclusively by legal facts but also by those of economic nature, which is why it is quite clear that the legal definition of the concept of money must also include the functions of money as an economic category defined in the broadest sense.

In domestic legal science, a small number of works deal with the issue of monetary law. *Meichsner,* in his monography, defines monetary law as "a set of legal norms that, while regulating relations within the boundaries of one legal area, conceptually imply money and monetary relationships" (Meichsner, 1981, p. 40). In our opinion, this view of national monetary law today does not follow the current trends and economic conditions in the EU. This conclusion is primarily based on the fact that the "problem of intermittency" characterising the EU as a co-federation *sui generis* was not taken into account, which at the time seemed justified "because of the non-existence of international money, neither in the economic nor in the legal sense and the international monetary authority that would

introduce such a unit and sovereignly issue monetary-right regulations" (Ibid). In this context, monetary law has traditionally been treated in the international framework as an area of international private law, and the conflicts between monetary and other laws were resolved by applying conflict of law norms. It is clear that the mentioned argument no longer finds its justification in the objective social reality, given that in the past thirty years, there has been an intensive development of the European and international monetary order thanks to the work of international institutions that created "new" international monetary law, whose institutes, standards and principles must be taken into consideration by the domestic legislator when regulating the internal monetary rules.[2]

The prominent theorist of monetary law, *Arthur Nussbaum*, was the first to talk about this tendency in his capital work "*Money in the Law*", which represents the first comprehensive study of the science of monetary law, although it was not regarded as belonging to the obligation law scholarship.[3] Considering the *modus operandi* of monetary sovereignty, the author states that international monetary law cannot be clearly "subsumed under the domain of private international law, nor the domain of public international law" because it is a hybrid branch of law. Similarly, this work was written in 1939, before the extensive globalization of international financial flows took place. Today it is unequivocally clear that international monetary law is much closer to the branch of public law because the main subjects in international monetary legal relations are specialized international economic organizations, such as the International Monetary Fund, the World Bank, the Bank for International Settlements and the European Central Bank (Dimitrijević, 2018, p. 42).

The relevance of EU monetary law stems from the fact that solving monetary problems directly affects the rights and obligations of subjects in monetary relations. This issue is particularly clear to practising lawyers, especially lawyers who cannot give a precise answer to the question of what is the attitude of the legal profession towards changes in the law of value. Hence, their answer is usually superficial and incomplete. Interestingly, many monetary problems throughout history could not be solved at a given moment, so their resolution was deferred to the extent that they became a burden to future generations. That is visible in the fact that some of the problems that escalated during earlier monetary crises are still relevant today, such as the consequences of hyperinflation, oil crises, and bad monetary reputation due to the collapse of the domestic monetary system (Hirschberg, 1979, pp. 92-93).

In reality, a distinction can be made between the *two legal corpuses* (Hirschberg, 1981, p. 271). The *first corpus* is traditional and, as such, included in textbooks, statutes, judgments, and precedents. The main characteristic of the *second corpus* is that it is a direct consequence

[2] Even though the international monetary order of the 70s and 80s of the last century was not developed in today's sense of the word, we think that regardless of that fact, the concept of monetary sovereignty had to be seen within the framework of the international order. One can better understand the norms of classical international monetary law, which will be the subject of the later analysis, in the manner of its manifestation, conditions, and obstacles for the realization of state monetary prerogatives outside the territory of the domestic monetary jurisdiction.

[3] Although the aforementioned work was written in the first half of the 20th century, the author's argumentation, in our opinion, was far ahead its time. Although it was a pioneering study in a certain sense (since it is the first comprehensive monetary legal thought), its quality has become the standard to which modern theorists of monetary law still strive today.

of modern legislative activity aimed at solving contemporary social and economic problems (here, we can also classify monetary law). However, with its modern methodology and principles, legal jurisprudence has not yet managed to unify these two branches of law. In addition to various traditional and classical legal rules, the concept of *emergent law* also finds its place in practice. It represents a different manifestation of the public policy program, which also means that it is interpreted and applied differently in crisis periods than in normal circumstances (Dimitrijević, 2019, p. 301). We find the full meaning of monetary law in preventing the harmful effects of recessions and the spreading of those effects, primarily in the social and economic realm. For a long time, public policy creators paid attention only to the prevention of crises during wars or political revolutions. Still, over time it became clear that special legal rules must be established to prevent and resolve economic crises in all their forms (financial, monetary, public debt crises and others). In essence, monetary law is the response of legal science to the changes that follow the law of value when the scope of legal rules in the monetary sphere is tangible.

3. EUROPEAN CENTRAL BANK AS A KEEPER OF MONETARY LEGISLATION

Monetary legal thought in the EU area is highly valued in theory and practice, which is proven by the comprehensive study of the discipline of substantive and procedural EU monetary law, the discipline of EMU law, and the law of the European Central Bank. In terms of the nature of contemporary banking powers, subject matter and territorial range of their decisions, this law more and more concerns some other segments of the economic policy of the Union, such as fiscal policy, environmental policy, a policy of technical and technological development, as well as non-economic areas, such as social policy, living standards and protection of human rights. In our opinion, these disciplines should justifiably find their place in the domestic syllabi of studying legal sciences as an independent branch of the legal system.

The legal subjectivity of the ECB is very developed and specific, which is not surprising considering its role in the international monetary order. Since the initial years of its establishment, the ECB's institutional structure has always developed and adapted to current events on the monetary scene. That was true both in terms of formal and essential elements, which greatly influenced the evolution of its competencies, that was in the first years of the Union based on classical monetary principles on the tasks of the central bank and how its operations should be organized. Later on, it reflected the modernisation of the basic postulates with new tasks from the domain of fiscal and other segments of general economic policy, to the point of arriving at completely new views, seen by some scholars as somewhat radical and peculiar, on the conception of the ECB as the legislator the mandate of which surpasses its character of the EU communitarian body and exists independently of it.

The jurisdiction of the ECB in the creation of the so-called *soft legislation* is of inestimable importance for the science of contemporary monetary law because its effect on legal transactions is far from its attribute of "soft" law. The guidelines, instructions, measures, announcements, interpretations and measures applied by the European Central Bank are

indispensable sources for filling legal gaps in EMU regulations that cannot be replaced by any other type of legal and other materials. The primary monetary legislation could not play its role during the crisis due to its rigidity and excessive formalism, and the need to harmonise the activities of various subjects participating in its adoption. Through its crisis management actions, the ECB has shown the ability to include the problem of the social market in its programs and implement its mandate in a "more humane way", and provide the much-needed "human component" to the overall scheme of the EU's monetary policy.

Speaking about the judicial assessment of the legality of the ECB decisions, as well as of central banks in general, we must note that, in practice, the key legal concept that stands in the assessment of the legality and review of each act is the so-called *standard of review* (Ziloli, 2019, p. 23). Its content somewhat resembles a legal standard, the specific content and meaning of which depend on the situational framework and tenuous circumstances otherwise characteristic of monetary disputes, especially in critical moments). However, in most cases, it comes down to the readiness of the courts to consider the very substance of the acts of public administration bodies, including of the central banks.

It is important to note that with the establishment of the European System of Central Banks (ESCB), the member states agreed to restrictions in certain segments of their monetary sovereignty regarding the free creation and conduct of monetary policy. With the creation of the European Central Bank, national banks did not cease to exist because of the national monetary sovereignty erosion (Zimmermann, 2013, pp. 7-20), but their competencies in the field of monetary and credit policy were undoubtedly narrowed. By centralizing monetary policy in the Eurosystem, the ECB has become a supranational monetary institution that determines the direction and instruments of coordination of a centralized monetary policy. The ECB has the status of a legal entity, *i.e.* can be the holder of rights and obligations and can conclude various types of contracts and undertake other activities with legal effect, dispose of movable and immovable property, and has the status of a participant in court proceedings (Prokopijević, 2012, p. 116). In terms of the contemporary monetary and financial flows, it is pointed out that the ECB conducts monetary policy with elements of opportunistic policy because decisions and measures are taken based on observing the movement of monetary aggregates. That is why the so-called "monetary rule" does not work in the Eurozone, given that there is no monetary aggregate whose path is close to the sum of inflation and the rate of economic growth in the previous year (Prokopijević, 2012, p. 117).

When we talk about the sources of EU monetary law, in practice, we can distinguish between *primary* and *secondary* sources. Primary sources are embodied in the provisions of the so-called founding acts of the EU and in the provisions of the national monetary legislation that regulates the work and establishment of central banks and the area of public debt management. Secondary sources are embodied in the so-called "soft law" provisions, which are elaborated by the norms of secondary legislation, such as the statute on the work of central banks, the strategy of public debt administrations, and the protocols attached to the ECB Statute. The sui *generis* interstate and intergovernmental agreements on the new models of macroeconomic management in the Eurozone - the Agreement on the European Stabilization Mechanism (further "ESM") and the Agreement on Coordination,

Management and Stabilization in the Economic and Monetary Union (the so-called "Fiscal Contract") - have a special place among these secondary sources. The legal nature of this new model, especially ESM, was the subject of considerations of the constitutional courts of the member states and later of the European Court of Justice precisely because of its non-compliance with the provisions of the primary legislation in the sphere of centralized monetary policy (examples are: BVefG Case No. 2 BvR 1390/12, partly separated as 2 BvR 2728/13 and judgment on September 12, 2012, *Thomas Pringle vs Government of Ireland*, Ireland, Judgment in Case C-3370-12, where ECJ finally confirmed the legality of ESM). The mentioned secondary sources of European monetary law were created as an institutional response of the EU to the global financial crisis. Their *ratio* was the protection of economic stability rather than of legal certainty, which is an atypical situation, but the social and economic developments asked for such a response in order not to avoid the fiscal moratorium.

We must not forget that the importance of secondary sources in European and international monetary law is exceptionally high because they fill legal gaps in the existing provisions of primary law and regulate more concisely the conditions for the implementation of the monetary norm. The rigidity of hard law cannot follow the dynamics of monetary relations because the process of amending laws (especially international agreements) is complicated and burdened with technocratic requirements. Hence, the flexibility of soft law is its advantage in newly emerging economic circumstances that the legislator could not foresee when shaping the primary legislation. Precisely for the mentioned reason, we can see the practical importance of the economic education of lawyers, who must know the basic principles of macroeconomic models that economists use and determine the economic effects of applying specific legal norms. A good law is a law that, in addition to its normative efficiency, also exhibits economic efficiency, which is essential for the optimal regulation of the economic system of every country.

4. THE ROLE OF THE EUROPEAN CENTRAL BANK IN SHAPING MODERN MONETARY LEGISLATION: THE EXPERIENCE OF SERBIA

On Serbia's path toward European Union membership, the harmonization of domestic legal regulations with the *acquis communitaire* takes on special importance, where the formation of an optimal economic policy program is possible only with the determination of essential elements of the coordination mechanisms of the common economic policy. At the same time, these are a prerequisite for constructing optimal monetary legal instruments (Dimitrijević, 2020, p. 994). The impact of European integration is in the domestic monetary legal discourse mainly observed through the way the European Central Bank law shapes domestic monetary regulations. That applies not only to the primary sources, such as the law on the work of the NBS, but also to the secondary sources (intergovernmental monetary agreements, protocols and *sui generis* legal documents issued by the NBS). Nonetheless, one could observe that this represents a kind of "legal phenomenon" in the monetary law, given that Serbia is not a member of the EU and, therefore, not a member of the Eurozone.

We believe that this is a consequence of the fact that the EU monetary law, with its modern nomotechnics in the regulation of challenging and complex social relations, does not insist on a conventional distinction between "hard" and "soft" law, procedural and material sources, but sublimates them and uses them to create a constructive synergy. That is how a legal instrument for the regulation of dynamic and intellectually "winding legal landscapes", which cannot be brought under the precious heritage of Roman private law established in the European continental legal space and modernised according to the proclaimed social goals, is to be created. Monetary policy is the most important and the oldest subsystem of general economic policy and an intellectually exciting and entertaining legal spectacle of immeasurable theoretical and practical potential.

The *ratio legis* of the entire monetary legislation, the development of which was initiated, advocated and expanded by the ECB in the EU and, at the domestic level, by the National Bank of Serbia (NBS), is the preservation of *monetary stability*, which is a fundamental value of monetary legislation. The preservation of monetary stability in globalised economic relations is associated with numerous challenges. One of them certainly is the efficient coordination of the cooperation of the agents responsible for the preservation of monetary stability when they are situated at different levels of state organization,[4] which is especially noticeable in federal states or monetary unions, but it can be challenging as well in the unitary states (Satragno, 2021, pp. 59-60).

The National Bank of Serbia, as the supreme monetary institution at the national level, has largely adapted its work to the good practices, axiology, and the way the ECB is conducting monetary policy. As already noted, over the last twenty years, the ECB has developed its branch of law, which according to some theoreticians of European monetary law, in parallel, has grown into a discipline outside the EU law. Regardless of whether they argue for the more conservative or more modern approach to the ECB law, the scholars generally agree that the *modus operandi* of the ECB in the system of monetary management is its legal acts which *de lege artis* must be respected (to a lesser or greater extent) in all monetary jurisdictions of the world. The influence of the ECB on improving the effectiveness and efficiency of domestic monetary regulations is present not only in the European values and solutions that find their justification for application and the necessity of existence in the domestic monetary system but also in the very way of determining and presenting goals, monetary strategy and the results achieved in the field of monetary policy. We believe that increasing the level of transparency of regulations, their clarity and precision is needed to bring monetary legal issues closer to all citizens in a way they can understand them. The object of monetary legislation is monetary stability and the preservation of a special category of social and economic rights derived from it, such as a right to a stable and safe currency, controlled inflation and a credible monetary system in the service of all citizens in the economy.

[4] Monetary management can be seen as a segment of state management aimed at preserving monetary stability and establishing and strengthening international monetary cooperation with leading monetary institutions, primarily the IMF, which is the *actor primus* in shaping the settings, categories, and principles of international monetary law.

The high degree of transparency in the work of the NBS and its unequivocally clear and consistent commitment to the realization of monetary targets is confirmed not only by the valid regulations that regulate the work of the NBS but also by the logical and systematic arrangement and transparency of the National Bank's website, where all interested parties can find a simple and free way to get acquainted with the results of domestic monetary policy and get to know how to protect their rights and legal interests. Here, it could be pointed out that, when it comes to the relationship between independence, responsibility, and transparency in the work of central banks, the empirical research shows that there is a high degree of correlation between the degree of transparency and degree of responsibility demonstrated in the work of central banks (Laurens, Arnone & Segalloto, 2009, p. 170). Namely, if the central bank shows a high degree of responsibility in its work, it also means a high level of transparency. That certainly applies to the activities of the domestic monetary authority. A responsible approach to own mandate is primarily seen as the presence of clearly defined goals that the bank wants to achieve, while transparency means the public disclosure and publication of macroeconomic reasons that call for a specific type of monetary policy. It is quite logical that clearly defined goals enable the central bank to communicate detailed information about the monetary strategy and the medium-term outcomes, as well as the mathematical models and assumptions behind them. Although, at first glance, it seems that the development of the economic system of a specific country can influence the fact that sometimes there is a high degree of responsibility in performing the mandate and a low degree of transparency, as well a vice versa situation in which there is a low degree of responsibility, and a high degree of transparency, this does not always have to be the case as shown in the high level of clarity of domestic legal solutions. According to some IMF studies, this discrepancy can be explained by the fact that the degree of transparency can be relatively easily increased by issuing a greater number of publications on the central bank's work. At the same time, a more responsible approach to its mandate requires changing the legal regulations on the central bank's work, which is a more complex process.

We are of the opinion that when it comes to transparency, the question of its scope must be raised because monetary laws are not *lex certa* (no matter how much the derogations bring them closer to that ideal), *i.e.* their content cannot be easily understood by the ordinary citizens, this being even more so when it comes to by-laws and other secondary legal acts adopted by the central bank. The demand for clarity and precision in monetary legislation must suffer justified limitations. That is why monetary legislation has not been codified in any monetary jurisdiction and is difficult to implement from a legal-technical point of view because of the extraterritorial effects of many segments of monetary legislation. It is necessary to have the specialized legal knowledge to understand the monetary regulations, which only a small number of citizens possess, so transparency in an effective sense can only be achieved among scholars and professionals and not among the general public, or at least not of the same quality.

An effective application of European monetary law is not possible without the independent position of the ECB and, in general, the central banks of the member states, which is defined negatively as the obligation of states to refrain from issuing instructions and orders and as the obligation of the ECB to directly or indirectly request or receive

orders from member states or other EU institutions. However, this guarantee should not be understood in the sense of the existence of an absolute ban on the communication of the ECB with other institutions and cooperation with national banks, which is not only not prohibited and harmful but is desirable and useful in harmonising the monetary policies of the Eurozone members. That is also valid for domestic monetary policy. According to these provisions, the ECB and national central banks have long been prohibited from granting negative balances or any other form of credit to institutions and bodies of the Community, central administrations, regional and local public organizations, bodies, as well as to companies of member states. In Serbian law, this prohibition refers to the ban on the so-called "soft budgeting", which is determined in the Law on the Budgetary System and the provisions of the Law on the National Bank (Article 61).[5] We can note that, although these are primary law norms that have an imperative character (*ius cogens*), member states often behaved as if they were dispositive norms that best respond to the needs created by the global financial crisis, which asked for different actions on the part of the ECB to preserve the monetary stability of the Union. Deviation from the basic rules of successful coordination of monetary policy caused the need to reform the old coordination mechanisms, change the role of the ECB and create new institutions outside the framework of primary law.

In the circumstances of the global financial crisis, the National Bank of Serbia, by looking at the actions of the ECB, extended its jurisdiction to the area of general financial policy, thus providing support for a harmonised and sustainable fiscal framework that serves to prevent the deepening of the consequences of the crisis. Accordingly, the NBS, even with the amendments to the Law on the National Bank (2010), has secondary jurisdiction in the area of fiscal policy. That is not surprising because there is a high degree of interrelatedness between monetary and fiscal policy measures and instruments, as the two most significant subsystems of general economic policy. We can note that, according to the interpretation of the positive law of the ECB, the mandate of the National Bank of Serbia cannot be viewed as a static category, but sufficient room for manoeuvre must always be left for the acquisition of some new competencies that market conditions require. The acquisition of new financial competencies by central banks is justified by the concept of the so-called "bank of the last bank". That concept is based on the fact that the central bank approves loans to all institutions, including public ones financed from the budget, which have problems with liquidity, *i.e.* to meet their financial obligations. Such financial support is usually intended for banks to regulate their solvency; it is not limited in time and lasts as long as there is a justified need. However, certain penalties for late interest payments may be charged in some instances. There is also the requirement of the central bank that the commercial banks deposit a certain type of pledge and the discretionary assessment on (dis) approval of loans based on an assessment of specific cases (Steinbach, 2016, pp. 364-365).

[5] Law on the National Bank of Serbia, *Official Gazette of the Republic of Serbia*, no. 72/2003, 55/2004, 85/2005, 44/2010, 76/2012, 106/2012, 14/2015, 40/2015, 44/2018, Art. 8-a. Also, according to Article 4, item 4 of the Law, the National Bank of Serbia "determines and implements, within its competence, activities, and measures to preserve and strengthen the stability of the financial system".

Considering the above-mentioned, it is important to emphasize that the full implementation of the monetary-fiscal policy goals in the Serbian monetary law demands the full commitment of the central bank and other monetary and fiscal authorities whose actions affect financial flows. Monetary and financial stability are two fundamental goals of the central bank. Therefore, the monetary policy pursued by the central bank cannot be viewed in isolation from the economic policy pursued by the government because while recognising this connection, the modern monetary legislation seeks to regulate not only the responsibility of the central bank for monetary and financial stability but also establishes its obligation to support the realisation of other economic policy goals (Golubović, 2018, pp. 80-82). The relationship between the central bank and the government in modern monetary law cannot be reduced to the question of its independence because, in practice, it is much more complex (Lastra, 2015, p. 200). During their history, the central banks have built a specific and, we would say, rather burdensome two-sided relationship with the governments, in which the government is expected to fully fulfil its tasks in ensuring the conditions for independence of the bank, while the central bank is expected to provide for the privileged position to government that, in the first place, means to credit its debts. The National Bank of Serbia also has an enviably high number of interstate protocol agreements and memoranda of cooperation with the most important bodies of the EMU, which shows its willingness to apply monetary norms through a wide range of technical instruments and continuously monitor developments in this field. The National Bank of Serbia also provides programs for the continuous training of its employees, which points to the National Bank of Serbia's capacity to respond to lawyers' real and logical need to acquire specialized skills in this area. That contributes to an easier resolution of disputes, which are very frequent in the practice of the European Court of Justice and represent a new type of administrative dispute in which the different procedural roles of the ECB come to the fore, *i.e.* its ability to be the plaintiff or the defendant in the proceedings. Among the most recent cases is Case C-62/14 on the legality of the ECB programme of outright monetary transactions, which refers to the request for a preliminary ruling under Article 267 TFEU from the Bundesverfassungsgericht in which the ECJ confirmed its mandate. At this point, it is important to emphasise that the ECB law, as a special branch of monetary law, began to develop in the late nineties of the last century. Its main task initially was to ensure price stability, but in the circumstances characterising the outbreak of the debt crisis, it became more focused on providing financial and monetary supervision in the Eurozone (Gorstos, 2020, pp. 1-2).

It is important to emphasize the fact that since the beginning of the process of European integration, the National Bank of Serbia (NBS) has been a credible and accountable participant in all its phases, while the harmonisation of the monetary legal and institutional framework with the EU convergence criteria and standards is one of the priorities of the NBS. The participation of NBS representatives is envisaged in all bodies of the coordination structure of the Republic of Serbia for the EU accession process. In the chapter on Financial Services and Economic and Monetary Policy negotiations, the NBS is the presiding institution. At the same time, it also has a crucial role in the negotiations in the chapter on the Free Movement of Capital. During the regular annual meeting within the

Economic and Financial Dialogue of the EU member states in 2019, the Western Balkans and Turkey, as well as the European Central Bank and the European Commission, the European Central Bank assessed that the domestic banking sector is well-capitalized and liquid (Joint Conclusions of the Economic and Financial Dialogue between the EU and the Western Balkans and Turkey, 2019, pp. 1-16). Significant results of Serbia in terms of reducing the share of problematic loans, with further dynamic growth of its lending activity both with regards to the business sector and the natural persons, were especially noted, as well as measures related to the unsecured, non-purpose lending to households after long repayment periods (Ibid).

Besides this, on July 25, 2018, the NBS signed an Agreement on Cooperation with the Single Resolution Board (SRB), the European regulatory body responsible for restructuring financial institutions. With this agreement, the NBS and the Single Restructuring Board reaffirmed their commitment to further improve their mutual communication and cooperation, to improve and facilitate the restructuring of banks and banking groups with a cross-border element and to preserve financial stability in the event of a crisis.[6] The Agreement's main aim is to provide a basis for the exchange of information and coordination in planning and implementing the restructuring of financial institutions operating in Serbia and within the Banking Union in the European Union (sections three and four of the Agreement). By signing the Agreement on Cooperation with the Single Resolution Board, in terms of the growing globalisation of the world's financial markets and the increase in cross-border operations and activities of financial institutions, the NBS and the Republic of Serbia also expressed their willingness to cooperate in order to fulfil their respective statutory objectives, enhance communication and cooperation, assist each other in planning and conducting the agreed tasks, with the aim of maintaining confidence and financial stability in Serbia and the European Banking Union. In that capacity, the NBS is responsible for planning, initiating, and implementing the restructuring of banks and banking groups under its jurisdiction to protect the public interest.

Restructuring of a bank and a banking group implies the application of restructuring measures and instruments by the National Bank of Serbia to avoid the negative impact of the bank's closure on financial stability, economy and households while minimizing budget costs and use of other public funds. Restructuring of a bank or a banking group is an alternative to bankruptcy and liquidation proceedings, which are resorted to when it is estimated that the public interest would not be adequately protected in these proceedings or when it is estimated that the termination of a bank through regular bankruptcy or liquidation proceedings can cause significant negative consequences for financial stability, the economy, and the population. In these provisions, we can recognize the direct impact of the EU Banking Union law by adopting the Single Supervisory Mechanism and the Single Resolution Mechanism. The position of the national central bank on the euro integration path is indispensable in creating optimal public monetary conduct, establishing credible macroeconomic dialogue, and a sound

[6] Amendments to the domestic Law on Banks, *Official Gazette of the Republic of Serbia*, no. 107/2005, 91/2010, 14/2015, which came into force on April 1, 2015, established a comprehensive legal framework for restructuring of banks, and the National Bank of Serbia has been entrusted with the function of the body responsible for bank restructuring.

fiscal framework under EU values and standards. Its new monetary jurisdiction in the field of macroprudential policy and maintaining general financial stability will contribute to the consistent preservation of monetary stability as an important public good and protection of lex monetae (Dimitrijević, Golubović, 2020, pp. 79-91).

Also, the influence of European integration is reflected in the domestic conception of the so-called "humanised monetary legal regulations" that also take into account the citizen as an individual because central banks have ceased to be a public body, the work of which remains abstract to the life and behaviour of citizens. The jurisdiction of the National Bank of Serbia is today largely shaped in a way that respects basic human rights, so we can say that it fully corresponds to the tenet of humanised monetary regulations. A useful concept in analysing monetary stability management in complex economic circumstances is the so-called "common concerns of humankind", which emphasises humanity in the analysis of monetary values. The application of this concept in the field of monetary law and the ECB law is very important for identifying different channels and levels of monetary cooperation. The theoretical paradigm of the concept of "common concerns of humankind" is derived from everyday life circumstances that correspond to the social and individual sense of shared problems and to the need to establish joint responsibility for events, happenings, and objects of human reality that arise outside the entity of international law, that is, the state as defined by that same law in formal-organizational sense (Cottier, 2021, p. 378).

In the trend of the ubiquitous digitization of rights and the ECB's announcement that central banks should start thinking about issuing their digital currency, which would resolve problems related to the protection of personal rights, privacy, and the preservation of monetary sovereignty, Serbia adopted the Law on Digital Assets (2019), where competence for the implementation and control of law enforcement is divided between the National Bank of Serbia and the Securities Commission. That confirms that the concept of digital assets has both private and public law aspects.[7] The domestic Law on Digital Assets defines digital (virtual) assets very extensively as "a digital record of value that can be digitally bought, sold, exchanged or transferred and that can be used as a medium of exchange or for investment purposes", whereby digital assets do not include digital currency notes that are legal tender (Art. 2). At this point, we must note that with the adoption of the given law, the domestic monetary legislator did not accept digital currency as a legal tender. The digital currency is not issued, nor is its value guaranteed by the central bank or by any other public authority, for the reason of which it is not a legal tender and has no legal status of money or currency, but natural or legal persons accept it as a means of exchange, which means that it can be bought, sold, exchanged, transferred and stored electronically. The law also allows the issuance of financial instruments in the form of digital assets by using blockchain technology and establishes a liberal system adapted to the needs of small and medium-sized enterprises. We can note that the attention of the domestic legislator is also directed towards the development of digital entrepreneurship and the adaptation of the domestic financial market to monetary and financial innovations developed on the global stage, with the fact that continuous monitoring of the circumstances concerning digital assets is a necessity.

[7] Law on Digital Assets, *Official Gazette of the Republic of Serbia*, no. 153/2020.

5. CONCLUSION

The impact of European monetary law on the domestic monetary system contributed to the improvement of its transparency, normative and economic efficiency, and effectiveness of domestic legal solutions. It also redefined the role of by-laws and soft law instruments, as well as the way the legal science now approaches these sources of law, which in a certain sense in the national legal frameworks always appeared as sources of law of lower importance. The provisions of the law on the work of the domestic central bank show respect for the European standards and values that no longer treat the work of central banks as panaceas because it is unreasonable to expect that the central bank would be able to solve and should be responsible for all problems in an economy. The new competencies that the National Bank of Serbia has in the area of fiscal policy, as well as the measures it undertakes to contribute to the fight against financial crimes, social cohesion, and the digitalization of the financial market and its derivatives, follow the main trends in the field of European monetary law. These competencies and measures find their legal expression in the domestic monetary policy. With the expansion of its competencies *vis-à-vis* the preservation of monetary stability and a stable economic environment, the reputation of the National Bank of Serbia, as the highest monetary and legal institution at the national level, has been growing as well and, as such, gave an important impetus for the society based on knowledge and long-term sustainable economic development.

LIST OF REFERENCES

Amtenbrink, A. *et al.* 2020. *The EU Law of Economic and Monetary Union*. Oxford: Oxford University Press. https://doi.org/10.1093/oso/9780198793748.001.0001

Cooperation Arrangement between the National Bank of Serbia and the Single Resolution Board. Available at: https://www.srb.europa.eu/system/files/media/document/bilateral_ca_between_srb_and_nbs_-_signed.pdf (25. 8. 2018).

Cottier, T. (ed.) 2021. *The Prospects of Common Concerns of Humankind in International Law*. Cambridge: Cambridge University Press. https://doi.org/10.1017/9781108878739

Dimitrijević, M. 2019. The Evolving Concept of Lex Monetae in European and International Monetary Law. *Foreign Legal Life,* 63(4), pp. 81-92. https://doi.org/10.5937/spz63-21464

Dimitrijević, M. 2020. The Institutional Aspects of European Economic Policy Mechanism: The Implication for Serbia. *EU and Comparative Law Issues and Challenges Series: EU 2020 – Lessons from the past and Solutions for the Future,* 2020(4), pp. 993-1015. https://doi.org/10.25234/eclic/11936

Dimitrijević, M., Golubović, S., 2020. The Influence of the EU Banking Union on the Development of Serbian Monetary Law. in: I. Bajakić & M. Bozina (eds.) *EU Financial Regulation and Markets - Beyond Differentiation and Fragmentation*. Zagreb: Faculty of Law, pp. 79-91.

Feibelman, A. 2012. Europe and Future of International Monetary Law. *TLCP*, pp. 101-137.

Golubović, S. 2018. The Legal Basis of the National Bank of Serbia's Responsibility for Preserving Monetary and Financial Stability. *Collection of Papers of Niš Law Faculty*,

pp. 81-99. https://doi.org/10.5937/zrpfni1881069G
Golubović, S. & Dimitrijević, M. 2020. *Vodič kroz monetarno pravo EU*. Niš: Centar za publikacije i izdavaštvo Pravnog fakulteta.
Gortsos, C. V. 2020. *European Central Banking Law: The Role of the European Central Bank and the National Central Banks under European Law*. London: Palgrave Macmillan. https://doi.org/10.1007/978-3-030-34564-8
Hirschberg, E. 1973. Modern Problems of Monetary Law. *Comparative & International Law Journal of Social Affairs,* 1973(6), pp. 259-272.
Hirschberg, E. 1981. Contemporary Monetary Problems and Their Legal Effects. *Acta Juridica*, 1981, pp. 89-93.
Lastra, M. R. 2015. *International Monetary and Finacial Law*. Oxford: Oxford University Press.
Laurens, B. J. *et al*. 2009. *Central Bank Independence, Accountability and Transparency*. London: Palgrave Macmillan. https://doi.org/10.1007/978-0-230-28212-4
Law on Digital Assets, *Official Gazette of the Republic of Serbia*, no. 153/2020.
Law on National Bank of Serbia, *Official Gazette of the Republic of Serbia*, no. 72/2003, 55/2004, 85/2005, 44/2010, 76/2012, 106/2012, 14/2015, 40/2015, 44/2018.
Meichsner, P. 1981. *Osnovi monetarnog prava*. Zagreb: Informator.
Prokopijević, M. 2012. *Evropska unija – Uvod.* Beograd: Službeni glasnik.
Satragno, L. 2021. *Monetary Stability as Common Concerns in International Law - Policy Cooperation and Coordination of Central Banks*. Leiden & Boston: Brill Nijhoff. https://doi.org/10.1163/9789004508736
Steinbach, A. 2016. The Lender of Last Resort in the Eurozone. *Common Market Law Review,* 53(2), pp. 364-378. https://doi.org/10.54648/COLA2016034
Ziloli, C. 2019. Standard of Review of Central Bank Decisions: An Introduction, In: *Building Bridges: Central Banking Law in an Interconnected World*. Frankfurt am Maine ECB Press, pp. 1-6.
Zimmerman, C. D. 2013. *A Contemporary Concept of Monetary Sovereignty.* Oxford: Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199680740.001.0001
Joint Conclusions of the Economic and Financial Dialogue between the EU and the Western Balkans and Turkey, The Economic and Financial Dialogue between the EU and the Western Balkans and Turkey, Brussels, May 17, 2019, ECOMP 1A, 9474/19.