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USKLAĐIVANJE ZAKONSKOG OKVIRA SISTEMA OSIGURANJA DEPOZITA U SRBIJI S PRAVNIM TEKOVINAMA EVROPSKE UNIJE

PREGLEDNI NAUČNI RAD

Apstrakt

Zakon o osiguranju depozita usklađivan je sukcesivno od 2008. prvo s Direktivom 94/19/EC, zatim s Direktivom 2009/14/EC, a po njenom ukidanju, i s Direktivom 2014/49/EU. Cilj ovog rada je da čitaocu približi proces usklađivanja zakonskog okvira kojim se uređuje sistem osiguranja depozita u Srbiji s odgovarajućim izvorima prava u Evropskoj uniji. Taj proces biće predstavljen hronološki, uz analizu neposrednih povoda i svrhe koju je zakonodavac nameravao da ostvari. Težište rada biće na najvažnijim odredbama evropskih propisa o osiguranju depozita i mogućnosti njihove primene u Srbiji s obzirom na realno stanje na bankarskom tržištu. Na kraju će biti predstavljen koncept mogućih daljih pravaca unapređenja evropske regulative za upravljanje krizama u bankarskom sistemu.

Ključne reči: osiguranje depozita, Zakon o osiguranju depozita, Direktiva EU o sistemima osiguranja depozita, usklađivanje s evropskim pravnim tekovinama

I Svrha i funkcija sistema osiguranja depozita

Primarni cilj sistema osiguranja depozita jeste da zaštiti vlasnike računa u bankama od gubitaka u slučaju stečaja ili likvidacije banke² (osigurani slučaj).

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² Prema čl. 2 Zakona o stečaju i likvidaciji banaka i društava za osiguranje, i stečaj i likvidacija pokreću se rešenjem nadležnog suda, i to na osnovu rešenja Narodne banke Srbije o ispunjenosti uslova za

U različitim formama, sistemi osiguranja depozita postoje u svim evropskim zemljama i velikoj većini zemalja sveta. Konceptiju i specifične odlike svakog sistema prvenstveno diktiraju ekonomske prilike u datoj jurisdikciji.

Saglasno odredbama Zakona o osiguranju depozita,³ po nastupanju osiguranog slučaja, Agencija za osiguranje depozita započinje isplatu osiguranih depozitenata u roku od sedam radnih dana od dana donošenja rešenja suda o pokretanju stečajnog odnosno likvidacionog postupka nad bankom. Sve banke s dozvolom za rad obuhvaćene su sistemom osiguranja i dužne da na ime osiguranja depozita plaćaju tromesečnu premiju u iznosu koji odgovara propisanom procentu (najviše 0,2 odsto kvartalno) ukupnih osiguranih iznosa depozita u banci. Od naplaćenih premija obrazuje se Fond za osiguranje depozita, čija se sredstva ulažu na način propisan Zakonom o osiguranju depozita i internim aktima Agencije za osiguranje depozita (Agencija). Osiguranici (deponenti) ne plaćaju premiju niti s Agencijom stupaju u ugovorni odnos. Treba imati u vidu da nisu zaštićeni svi deponenti banke. Osiguranjem su obuhvaćena fizička lica, preduzetnici, te mikro, mala i srednja pravna lica, dok recimo depoziti velikih pravnih lica, kako su razvrstana u Zakonu o računovodstvu,⁴ ne uživaju zaštitu. Iz sistema osiguranja isključene su i neke druge kategorije deponenata, poput pravnih ili fizičkih lica povezanih s bankom, lica čiji su depoziti nastali pranjem novca ili finansiranjem terorizma i slično. Ukupan osigurani iznos depozita koje jedan klijent čuva u jednoj banci jeste 50.000 evra. U slučaju stečaja ili likvidacije banke, ukoliko je ulog deponenta veći od tog iznosa, deo koji nije pokriven sistemom osiguranja depozita može se naplatiti prilikom deobe stečajne/likvidacione mase banke. Na isti način se, između ostalog, namiruje i sâm Fond za osiguranje depozita, koji ima apsolutni prioritet u naplati potraživanja od banke u stečaju/likvidaciji u odnosu na sve druge poverioce, uključujući i osigurane deponente.

Princip realne subrogacije svojstven je sistemima osiguranja depozita u celom svetu i zapravo predstavlja njihov temelj. Bez subrogacije, tj. zamene poverioca (u ovom slučaju, Agencija nastupa kao poverilac banke u stečaju umesto osiguranih deponenata, ispunivši prethodno obaveze banke prema njima, tj. vrativši im depozite do osiguranog iznosa), sistem osiguranja depozita ne bi uspeo da ispuni jedan od osnovnih ciljeva svog postojanja, a to je očuvanje finansijske stabilnosti kroz garantovanje zaštite osiguranim deponentima.

pokretanje stečajnog odnosno likvidacionog postupka, s tom razlikom što se postupak stečaja može sprovoditi i na predlog likvidacionog upravnika ukoliko utvrdi da imovina likvidacionog dužnika nije dovoljna da podmiri sva potraživanja poverilaca. Drugim rečima, u postupku likvidacije očekuje se da će likvidaciona masa biti dovoljna za pokriće svih obaveza prema poveriocima, dok se u stečajnom postupku nad bankom ili društvom za osiguranje poverioci namiruju procentualno i po isplatnim redovima sve do završne deobe stečajne mase.

³ Zakon o osiguranju depozita – ZOD, *Službeni glasnik RS*, br. 14/15, 51/17, 73/19 i 94/24, čl. 3, 4, 6, 10, 12, 15–17.

⁴ Zakon o računovodstvu, *Službeni glasnik RS*, br. 73/19, 44/21-dr. zakon, čl. 6.

Nosilac osiguranja depozita u Srbiji je Agencija za osiguranje depozita, koja pored te osnovne delatnosti, obavlja i druge poslove, poput organizovanja Fonda za zaštitu investitora i vršenja funkcije stečajnog i likvidacionog upravnika u bankama i društvima za osiguranje. Za obaveze Agencije prema osiguranim deponentima jemči država. Prema klasifikaciji utvrđenoj Baznim principima delotvornih sistema osiguranja depozita Međunarodnog udruženja osiguravača depozita (IADI) i Bazelskog komiteta za superviziju banaka (BCBS), kao osiguravač depozita, Agencija ima mandat isplatne blagajne plus (engl. *paybox plus*),⁵ jer pored isplate osiguranih iznosa, učestvuje i u postupku restrukturiranja banaka, i to pružajući finansijsku podršku izdvajanjem sredstava iz Fonda za osiguranje depozita.

II Usklađivanje domaće regulative s evropskim direktivama o osiguranju depozita

1. Izvori prava u EU i pravni osnov za usklađivanje

Proces usklađivanja domaće regulative s pravnim tekovinama Evropske unije pokrenut je još 2004. godine, pre nego što je Sporazum o stabilizaciji i pridruživanju (SSP) stupio na snagu (2013), pa čak i pre nego što ga je Republika Srbija potpisala i ratifikovala (2008). Potpisivanjem SSP-a, Srbija se obavezala na postepeno usklađivanje domaćeg zakonodavstva s pravom EU.⁶

Najviši pravni akt Evropske unije kojim se uređuje funkcionisanje sistema osiguranja depozita pripada korpusu sekundarnog zakonodavstva (engl. *secondary law*) i naziva se Direktivom o sistemima osiguranja depozita. Direktivama se postavljaju obavezujući ciljevi za zemlje članice, koje ih dalje moraju uklopiti u nacionalno zakonodavstvo i svaka za sebe propisati način na koji će biti postignuti.⁷

U procesu harmonizacije domaćeg zakonodavstva s pravnim tekovinama EU, u martu 2015. godine održan je prvi skrining u okviru pregovaračkog poglavlja 9 (danas deo klastera 2 – Unutrašnje tržište), koje je obuhvatalo finansijske usluge. Sâmo pregovaračko poglavlje otvoreno je u junu 2019. Agencija za osiguranje depozita učestvuje u radu Pregovaračke grupe 9 kao jedna od institucija nadležnih za praćenje i usaglašavanje domaćeg zakonodavstva s propisima EU o sistemima za osiguranje depozita.

⁵ International Association of Deposit Insurers (IADI), *Core Principles for Effective Deposit Insurance Systems* (Core Principles), November 2014, dostupno na: <https://www.iadi.org/uploads/cprevised2014nov.pdf> 10. 7. 2025, str. 19.

⁶ Kancelarija za evropske integracije, *Nacionalni program za usvajanje pravnih tekovina Evropske unije*, jul 2014, dostupno na: https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/npaa_2014_2018.pdf 11. 7. 2025, str. 1.

⁷ Types of legislation, https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en, 11. 7. 2025.

Transpozicija Direktive 94/19/EC Evropskog parlamenta i Saveta od 30. maja 1994. godine⁸ u Zakon o osiguranju depozita počela je još 2008. godine. To je, zapravo, bila prelomna godina u razvoju sistema osiguranja depozita u Srbiji jer je stupanjem na snagu Zakona o izmenama i dopunama Zakona o osiguranju depozita u decembru 2008. obrazovan moderni sistem osiguranja depozita, čija se kredibilnost, između ostalog, ogledala i u visini osiguranog iznosa i obuhvatu zaštićenih kategorija. Početkom 2009. godine usvojene su izmene i dopune Direktive (Direktiva 2009/14/EC od 11. marta 2009), kojima su modifikovani osigurani iznos i rok za početak isplate osiguranih iznosa.⁹ Trenutno je na teritoriji Evropske unije u primeni Direktiva 2014/49/EU od 16. aprila 2014. godine,¹⁰ koja bi u narednom periodu takođe mogla biti predmet izmena i dopuna po završetku javne rasprave o nacrtu novog okvira za upravljanje bankarskim krizama i osiguranje depozita.

Prema Planu za ispunjavanje najvažnijih obaveza iz procesa pregovora o pristupanju Republike Srbije Evropskoj uniji do kraja 2026. godine (donet u aprilu 2025),¹¹ rok za usvajanje izmena i dopuna Zakona o osiguranju depozita u cilju punog usklađivanja s Direktivom iz 2014. godine jeste četvrto tromesečje 2026. godine.

2. Zakonsko uređenje i stanje sistema osiguranja depozita na početku procesa usklađivanja

Iako sistem osiguranja depozita u Srbiji nominalno postoji od 1989. godine, tek 2005. postavljeni su zakonski i operativni temelji savremenog i funkcionalnog sistema. Na osnovu Zakona o osiguranju depozita iz 2005. godine,¹² osiguranjem su bili pokriveni depoziti fizičkih lica do iznosa od 3000 evra, a rok za početak isplate ograničen je na 30 dana od dana otvaranja stečajnog postupka nad bankom. Sve banke su bile obuhvaćene sistemom osiguranja i plaćale su unapred tromesečnu premiju po stopi koja je obezbeđivala adekvatnu kapitalizaciju Fonda za osiguranje depozita (osnovica za obračun premije bila je 22 puta veća nego prethodne godine). Ukupni depoziti fizičkih lica u bankama iste godine porasli su za 76,7 odsto.¹³

⁸ Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (Direktiva EU 1994), dostupno na:

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31994L0019> 11. 7. 2025.

⁹ Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (Direktiva EU 2009), dostupno na: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0014>, 11. 7. 2025.

¹⁰ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (Direktiva EU 2014), dostupno na: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0049>, 11. 7. 2025.

¹¹ dostupno na: https://www.mei.gov.rs/upload/documents/pristupni_pregovori/plan_spunjavanje_obaveza_pregovori__2026.pdf 24. 7. 2025, 97

¹² Zakon o osiguranju depozita (ZOD 2005), *Službeni glasnik RS*, br. 61/05, čl. 1–3, 13, 16–17.

¹³ Izveštaj o radu Agencije za osiguranje depozita za 2005. godinu, mart 2006, 12.

Međutim, samo u oktobru 2008. godine, kao posledica globalne finansijske krize, zabeležen je odliv depozita fizičkih lica u bankama od oko osamsto miliona evra.¹⁴ Kako bi se odgovorilo na negativnu tendenciju u kretanju depozita, krajem godine je u hitnoj skupštinskoj proceduri usvojen Zakon o izmenama i dopunama Zakona o osiguranju depozita (ZOD 2008), kojim su promenjeni osnovni parametri sistema i praktično započeto postepeno usklađivanje s odredbama Direktive EU 94/19/EC.

Najvažnije izmene odnosile su se na osigurani iznos i obuhvat osiguranja. Osigurani više nisu bili samo fizička lica već i preduzetnici, te mala i srednja pravna lica. Osigurani iznos povećan je na 50.000 evra.

U Obrazloženju ZOD-a 2008, kao prvi razlog za donošenje akta navodi se „povećanje osiguranog iznosa zbog potrebe harmonizacije domaćeg zakonodavstva sa zakonodavstvom zemalja u okruženju i zemalja Evropske unije“. Prema proceni navedenoj u Obrazloženju, povećanjem osiguranog iznosa sa 3000 na 50.000 evra po deponentu po banci, osiguranjem depozita bi u celosti bilo pokriveno više od 99 odsto ukupnih deponenata u svim bankama u zemlji. Navodeći razloge za donošenje zakona po hitnom postupku, predlagač ukazuje na aktuelne probleme na finansijskom tržištu i „psihološkim faktorima izazvanu“ potrebu da se obezbedi sigurnost deponenata, a sistem osiguranja depozita prilagodi zemljama u okruženju i Evropskoj uniji. Premda se razlozi za prilagođavanje dalje ne objašnjavaju, pogotovo u pogledu zemalja u okruženju, može se zaključiti da je namera zakonodavca bila i da spreči pojavu regulatornog oportunizma, tj. da demotiviše prenos sredstava u države s povoljnijim uslovima osiguranja depozita, prvenstveno s većim osiguranim iznosom.

Sudeći po kretanju osiguranih depozita neposredno po donošenju ZOD-a 2008. godine, primenjena mera bila je pravovremena i delotvorna s obzirom na to da je već u novembru naredne godine ukupna suma osiguranih depozita u bankarskom sistemu Srbije dostigla nivo s kraja septembra 2008. godine.¹⁵

U vreme donošenja ZOD-a 2008, u Evropskoj uniji je na snazi bila Direktiva 94/19/EC, koja će i sama pretrpeti važne izmene već naredne godine. Propisivala je tek minimalne osnove za usklađivanje s nacionalnim zakonodavstvima.

U njenoj preambuli podseća se da je Evropska komisija krajem 1986. izdala preporuku da sve zemlje članice Evropske unije (tada ih je bilo dvanaest) uvedu sisteme osiguranja depozita, ali se ocenjuje da ta preporuka nije u potpunosti ostvarila željeni rezultat.¹⁶ Zemlje članice se obavezuju da na svojoj teritoriji uspostave sistem

¹⁴ Izveštaj o radu Agencije za osiguranje depozita za 2008. godinu, jun 2009, 4.

¹⁵ Izveštaj o radu Agencije za osiguranje depozita za 2009. godinu, maj 2010, 12.

¹⁶ Mnoge evropske zemlje uvele su sistem osiguranja depozita još pre 1986, ali su razlike među centralnim odlikama tih sistema bile izražene. Tako su, recimo, Nemačka, Francuska i Italija imale privatne sisteme osiguranja depozita na dobrovoljnoj osnovi (učesće u sistemu nije bilo obavezno za sve banke), dok je britanskim sistemom upravljalo državno telo i članstvo u njemu bilo je obavezno. Međutim, britanskim sistemom bilo je osigurano 20.000 funti po principu saosiguranja: državni sistem bi po nastupanju osiguranog slučaja isplatio 75 odsto osiguranog iznosa, dok bi na teret deponenta pao ostatak. U Francuskoj

osiguranja depozita, osim ako već nemaju određene šeme kojima se deponenti štite od gubitka u slučaju stečaja kreditne institucije. Osigurani iznos bio je na nivou od najmanje 20.000 ekija (evra) po deponentu po kreditnoj instituciji, s tim što jurisdikcije u kojima je bio manji od propisanog nisu morale da ga povećavaju ako do početka drugog milenijuma dostigne makar 15.000 ekija. Sami deponenti kao osiguranici ne definišu se posebno, što znači da se Direktivom nijedna kategorija ne isključuje automatski, ali se u preambuli naglašava da zemlje članice mogu izuzeti određene vrste depozita ili deponenata ukoliko smatraju da ne treba da uživaju zaštitu.

Važno je ukazati i na propisanu obavezu kreditnih institucija da svim deponentima pruže potrebne informacije o garantnoj šemi koja ih štiti, kao i o njihovim pravima ukoliko nastupi osigurani slučaj, ali im nije bilo dozvoljeno da članstvo u sistemu osiguranja depozita zloupotrebe u marketinške svrhe. Rok za isplatu osiguranih iznosa bio je tri meseca od dana kad je deponentima onemogućen pristup njihovim sredstvima na računu, s tim da se taj rok mogao produžiti za još tri meseca. U čl. 11 eksplicitno je navedeno da sistemi osiguranja depozita imaju pravo na naplatu potraživanja od stečajnog dužnika u ime deponenata po pravu subrogacije.¹⁷

3. Zakonske reforme u EU i Srbiji podstaknute globalnom finansijskom krizom

Ozbiljni poremećaji na finansijskom i bankarskom tržištu primorali su regulatore širom sveta, pa i u EU i Srbiji, da pruže čvršće i uverljivije garancije korisnicima bankarskih usluga da neće snositi gubitke usled problema u poslovanju kreditnih institucija ni kao deponenti ni kao poreski obveznici.¹⁸ Kako bi u većoj meri internalizovala troškove restrukturiranja banaka, EU je 2014. donela Direktivu o uspostavljanju okvira za oporavak i restrukturiranje kreditnih institucija i investicionih firmi (BRRD),¹⁹

je osigurani iznos bio 400.000 franaka (oko 63.000 američkih dolara), dok je u Italiji bilo osigurano dvesta miliona lira (oko 150.000 američkih dolara) u celosti, a preostali iznos do osamsto miliona lira do 80 odsto. Zanimljiv prikaz razlika između pojedinih evropskih sistema osiguranja depozita i sistema u Japanu i Kanadi daje američki General Accounting Office (GAO) u izveštaju izrađenom po nalogu predsednika Odbora za bankarstvo, stanovanje i urbanizam Senata SAD iz 1991. godine. Dostupno na <https://www.gao.gov/assets/nsiad-91-104.pdf>, 7. 7. 2025, 12–21.

¹⁷ Direktiva EU 1994, Preambula i članovi 3, 7, 9, 10 i 11.

¹⁸ Prema procenama MMF-a, gubici evropskih banaka u periodu od 2007. do 2010. godine dostigli su osam odsto BDP-a EU ili gotovo bilion evra. Evropska komisija je između 2008. i 2012. godine izdvojila skoro šeststo milijardi evra pomoći bankama u vidu dokapitalizacije i drugih mera sanacije. V. Rowe, James: „IMF Survey: Government Borrowing Is Rising Risk to World Financial System“, April 20, 2010, dostupno na: [https://www.imf.org/en/News/Articles/2015/09/28/04/53/sores042010a#:~:text=The%20report%20cut%20its%20estimates,\\$2.3%20trillion%2C%20the%20IMF%20estimates,](https://www.imf.org/en/News/Articles/2015/09/28/04/53/sores042010a#:~:text=The%20report%20cut%20its%20estimates,$2.3%20trillion%2C%20the%20IMF%20estimates,) 14. 7. 2025.

¹⁹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD), dostupno na: <https://eur-lex.europa.eu/eli/dir/2014/59/oj/eng>

predvidevši kompleksan niz instrumenata i mera kojima se sprečava prelivanje gubitaka banaka na deponente, ali i na državni budžet i druge oblike javnih davanja.

U domenu osiguranja depozita, evropska Direktiva iz 1994. dopunjena je i izmenjena u martu 2009. godine. U preambuli Direktive 2009/14/EC o sistemima osiguranja depozita navodi se da je Savet EU oktobra 2008. zaključio da su obnova poverenja u finansijski sektor i njegovo adekvatno funkcionisanje prioritetni zadaci, da se tokom krize pokazalo kako je minimalni iznos pokrića od 20.000 evra nedovoljan i da ga privremeno treba podići na 50.000 evra, s tim da do kraja 2010. godine na nivou EU bude utvrđen na najmanje 100.000 evra. Pored osiguranog iznosa, za deponente je veoma važno i da svojim sredstvima mogu pristupiti relativno brzo po zatvaranju banke. Stoga je rok za isplatu osiguranih iznosa skraćen sa tri meseca na 20 radnih dana, uz mogućnost produženja u vanrednim okolnostima do deset radnih dana.

Članom 12 Direktive iz 2009. Evropska komisija se obavezala da do kraja godine izvesti Evropski parlament i Savet, između ostalog, i o mogućim modelima uvođenja diferencijalnih premija osiguranja depozita (na osnovu procene rizika poslovanja svake banke članice sistema), kao i o potencijalnim koristima i troškovima uspostavljanja jedinstvenog sistema osiguranja depozita na nivou Evropske unije.

Diferencijalne premije osiguranja univerzalno se prepoznaju kao jedan od načina suzbijanja tzv. moralnog hazarda kod banaka. Moralni hazard je negativna posledica svih oblika osiguranja, pa i osiguranja depozita, a svojstven je kako bankama tako i deponentima. Zahvaljujući zaštiti koju im pruža sistem osiguranja depozita, deponenti gube interes da prate poslovanje banaka u kojima čuvaju novac, popušta tržišna disciplina, te banke postaju sklonije rizičnijim plasmanima.²⁰ Diferencijalnim premijama se makar delimično koriguje taj nedostatak jer su banke motivisane da dobiju bolje ocene rizika kako bi plaćale niže premije osiguranja depozita, nezavisno od percepcije njihovih klijenata. Obaveza obračuna diferencijalne premije biće uvedena već 2014, donošenjem nove direktive o sistemima osiguranja depozita, koja se primenjuje i danas.

O perspektivama uvođenja jedinstvenog sistema osiguranja depozita u Evropskoj uniji više reči biće u završnom delu rada.

I srpsko zakonodavstvo reagovalo je na posledice globalne finansijske krize. Već 2010. godine, Narodna skupština usvaja Zakon o izmenama i dopunama Zakona o osiguranju depozita (ZOD 2010), čiji je osnovni cilj „dalje približavanje sistema osiguranja depozita propisima EU i evropskim standardima“,²¹ kao i korigovanje određenih nedostataka odredaba čija se primena u praksi pokazala kao

²⁰ Krstić, B.; Radojičić, J., „Osiguranje depozita kao ex ante i ex post antikrizni mehanizam u bankarstvu“, *Ekonomске teme* br. 4, Univerzitet u Nišu, Ekonomski fakultet, 2012, 537–538.

²¹ Predlog Zakona o izmenama i dopunama Zakona o osiguranju depozita, Obrazloženje, 2010.

problematična. Zakonom iz 2010, međutim, nisu uvedene suštinski važne novine u samom sistemu osiguranja depozita, ali je u prvi plan stavljen potencijal sistema da doprinese očuvanju finansijske stabilnosti u zemlji, što se eksplicitno navodi kao jedan od ciljeva obaveznog osiguranja depozita.

Anticipirajući mogućnost nastanka problema u bankama od sistemskog značaja, koje najčešće nije moguće rešavati isplatom osiguranih iznosa i stečajnim postupkom, zakonodavac je ovim propisom predvideo da se iz Fonda za osiguranje depozita mogu izdvojiti sredstva za finansijsku podršku banci koja preuzima ili kupuje problematičnu banku (u administrativnom upravljanju) kako bi se pokrila razlika u vrednosti njene imovine i obaveza. Kako bi omogućila da posustala banka ostane na tržištu do konačne kupoprodaje (u celosti ili makar delomično) unutar bankarskog sektora, Agencija je mogla da osnuje banku za posebne namene i obavezni početni kapital obezbedi takođe iz Fonda za osiguranje depozita.

Nosiocima finansijske stabilnosti (Narodnoj banci Srbije, Ministarstvu finansija i Agenciji) omogućeno je da, po potrebi, sami procene da li je potrebno povećati osigurani iznos ili proširiti obuhvat osiguranih kategorija deponenata kako bi im se u određenom periodu obezbedila veća zaštita (čl. 4, st. 2 ZOD 2010). Veoma je bitno i to što je uvedena i mogućnost da Agencija samostalno utvrđuje premiju osiguranja na osnovu ukupnog stanja rizika u banci (čl. 9, st. 2 ZOD 2010). Kako bi Agencija stekla jasniju sliku o stanju depozita i ispravnije procenjivala izloženost Fonda, banke su od tada u obavezi da dostavljaju mesečne izveštaje o ukupnim i osiguranim depozitima, a Agencija može proveriti njihovu tačnost neposrednim uvidom u dokumentaciju banke.

Od posebne je važnosti i odredba kojom se predviđa obavezna razmena informacija između Agencije i Narodne banke Srbije, kao supervizora banaka, što obuhvata i blagovremeno obaveštavanje o preduzetim merama u postupku kontrole boniteta i zakonitosti poslovanja banaka. Najzad, kredibilnost sistema osiguranja depozita dodatno je pojačana i utvrđivanjem izvora za pribavljanje dopunskih sredstava u slučaju da ih u Fondu nema dovoljno za ispunjavanje zakonske obaveze.

Drugim rečima, iako izmenama i dopunama ZOD-a 2010. godine nije došlo do većih modifikacija sistema, pa ni do osetnijeg približavanja evropskim standardima, nove odredbe bitno su doprinele izraženijoj fleksibilnosti u reagovanju na potencijalne krize, proširile su obuhvat mera koje se mogu preduzeti u fazi kad se banka može restrukturirati i, što je još značajnije, omogućile su razmenu i akumulaciju odgovarajućih podataka na osnovu kojih se sistem može blagovremeno pripremiti za slučaj krize. Time su, između ostalog, obezbeđeni uslovi za drastično skraćenje roka za početak isplate osiguranih iznosa, koje će uslediti 2015. godine.

4. Oblikovanje savremenih sistema osiguranja depozita od 2014. godine do danas

a. Zakon o osiguranju depozita iz 2015. godine

Srpska privreda je 2014. godine ušla u recesiju treći put u šest godina, delom i zbog posledica katastrofalnih poplava u maju iste godine. Stopa nezaposlenosti dostigla je 18 odsto radno sposobnog stanovništva, a javni dug porastao na 70 odsto BDP-a. Bez sveobuhvatne promene javnih politika, situacija je bila neodrživa, uz izglede za privrednu stagnaciju.²²

Bankarski sektor se oporavljao posle ozbiljnog potresa koji je izazvalo zatvaranje pet banaka između 2012. i 2014. godine, pri čemu je Fond za osiguranje depozita bio ispražnjen i dodatno opterećen obavezom prema Svetskoj banci i Evropskoj banci za obnovu i razvoj po osnovu kredita, odnosno obezbeđenja sredstava iz predostrožnosti. Obaveze prema državi izmirene su već do kraja 2015. godine, kada je obustavljena i naplata vanrednih premija od banaka. Na saniranje bankarske krize iz Fonda je izdvojeno više od 350.000.000 evra.

Iste godine usvojen je set finansijskih zakona, među kojima je bio i Zakon o osiguranju depozita (ZOD 2015). Iako nije doneo veće novine u uređenju sistema osiguranja depozita, doprineo je zaokruživanju institucionalne i organizacione arhitekture budućeg okvira za restrukturiranje banaka, u najvećoj meri usaglašenog s Direktivom o oporavku i restrukturiranju kreditnih institucija i investicionih firmi (Direktiva 2014/59/EU ili BRRD) u delu koji se odnosi na banke.²³ Direktiva BRRD postavila je na nove temelje postupanje prema problematičnim bankama koje imaju sistemski značaj ili su suviše velike da bi se njihovi osigurani deponenti mogli isplatiti iz postojećih fondova.

Postupak restrukturiranja banaka, opisan pretežno u Zakonu o bankama iz 2015. godine, podrazumevao je uvođenje čitavog niza instrumenata u slučaju problema u sistemski važnim bankama ili kada bi se samim restrukturiranjem postiglo više nego sprovođenjem stečaja ili likvidacije.²⁴ Za postupak restrukturiranja nadležna je Narodna banka Srbije, kojoj su na raspolaganju mere i instrumenti za blagovremeno i efikasno postupanje u slučaju da je restrukturiranje problematične banke u javnom interesu. Dok se u Zakonu o bankama precizno propisuju uslovi pod kojima se za potrebe restrukturiranja mogu izdvojiti sredstva iz Fonda za osiguranje depozita (prvenstveno u članu 128h), ZOD 2015 sadržao je samo jednu odredbu

²² International Monetary Fund, *Republic of Serbia: Letter of Intent, Attachment I. Memorandum of Economic and Financial Policies*, „Recent Economic Developments and Outlook“, 6 February 2015, str. 3, dostupno na: <https://www.imf.org/external/np/loi/2015/srb/020615.pdf>, 16. 7. 2025.

²³ BRRD reguliše restrukturiranje kreditnih institucija i investicionih društava.

²⁴ Zakon o bankama, Službeni glasnik RS, 14/2015, čl. 128ž, st. 3.

koja se odnosila na obaveze Fonda u postupku restrukturiranja (čl. 6, st. 3, tačka 2)). Ukratko, sredstva Fonda se mogu upotrebiti za restrukturiranje banke ukoliko njeni deponenti i dalje mogu slobodno raspolagati novcem na svojim računima. Ukupan iznos tih sredstava ne može biti veći od onog koji bi se iz Fonda isplatio za izmirenje obaveza prema osiguranim deponentima po otvaranju stečajnog ili likvidacionog postupka, a svakako ne može preći polovinu ciljnog iznosa Fonda, propisanog Zakonom o osiguranju depozita (u 2015. godini, bio je ograničen na pet odsto osiguranih depozita, a od 2019. godine na 7,5 odsto ukupnih osiguranih iznosa).²⁵ U slučaju otvaranja stečaja ili likvidacije nad bankom po okončanju postupka restrukturiranja, Fond za osiguranje depozita ima pravo na prioritarno namirenje iz stečajne ili likvidacione mase po osnovu finansiranja restrukturiranja, ukoliko je u njemu učestvovao.²⁶ Obezbeđivanje sredstava za restrukturiranje banaka iz fondova za osiguranje depozita pod tim uslovima dozvoljeno je i Direktivom 2014.

b. Direktiva 2014/49/EU

Direktiva iz 2009. godine doneta je kao odgovor na finansijsku krizu, korijujući neke od osnovnih elemenata osiguranja depozita kako bi učvrstila poverenje deponentata i osujetila panično povlačenje novca iz banaka. Nova Direktiva 2014/49/EU (Direktiva 2014), s druge strane, predvidela je opsežnu reformu sistema osiguranja depozita na nivou EU kako bi stvorila predvidljivu, visokousklađenu i funkcionalnu mrežu sistema osiguranja depozita, ali bez ambicije da ih zameni jedinstvenim sistemom za teritoriju EU.²⁷ S obzirom na to da su prethodne direktive propisivale tek minimalnu harmonizaciju, evropski sistemi bili su krajnje heterogeni kako u pogledu arhitekture, finansiranja i upravljanja, tako i po važnim odlikama poput visine osiguranog iznosa, obuhvata pokrića, vrsta osiguranih računa i roka za početak isplate.²⁸

Kao prvo, po Direktivi 2014, nijedna kreditna institucija u državi članici EU ne može primati depozite ako nije deo zvanično priznatog sistema osiguranja depozita. Da bi se proverila adekvatnost i operativna spremnost sistema da reaguje u osiguranom slučaju, svi sistemi u EU podležu obaveznim periodičnim stres-testovima, koji se organizuju najmanje jednom u tri godine, i to počev od sredine 2017.

²⁵ Pod osiguranim depozitom podrazumeva se depozit obuhvaćen sistemom osiguranja, nezavisno od visine sredstava na računu, dok je osigurani iznos definisan kao deo osiguranog depozita do nivoa pokrića od 50.000 evra. Prema Direktivi EU iz 2014. godine, osnovicu za obračun premija i ciljnog iznosa Fonda predstavljaju upravo osigurani iznosi depozita. Usaglašavanje s tim odredbama Direktive postignuto je izmenama i dopunama Zakona o osiguranju depozita iz 2019. godine.

²⁶ Zakon o stečaju i likvidaciji banaka i društava za osiguranje, *Službeni glasnik RS*, br. 14/15, čl. 19, st. 1, tačka 6).

²⁷ Payne, Jennifer: „The Reform of Deposit Guarantee Schemes in Europe“, *European Company and Financial Law Review*, Volume 12, Issue 4, De Gruyter, 2015, 553.

²⁸ European Commission, MEMO/14/296, 15. april 2014, dostupno na: https://ec.europa.eu/commission/presscorner/detail/en/memo_14_296, 15. 7. 2025.

Direktivom 2014 nije promenjen osigurani iznos, koji je od početka 2011. utvrđen na sto hiljada evra, uračunavajući i dospelu kamatu. Osigurane kategorije takođe su ostale iste, a to su fizička i pravna lica uz određene izuzetke, poput finansijskih institucija i državnih organa, za koje se podrazumeva da imaju lakši pristup drugim izvorima finansiranja i da su u stanju da procene rizik poslovanja banke depozitara. S druge strane, uvodi se mogućnost privremeno većeg pokrića (u trajanju do najviše 12 meseci) u slučaju prodaje nepokretnosti ili nekog drugog jedinstvenog životnog događaja (dobitak nasleđstva, otpremnine i slično).

Do 1. januara 2024. godine, rok za početak isplate osiguranih iznosa sukcesivno je skraćivan sa 20+10 na sedam radnih dana. Objašnjavajući tehničke i organizacione promene koje će to omogućiti, Evropska komisija podsetila je da u Sjedinjenim Državama isplata počinje i završava se za nekoliko dana, a u Velikoj Britaniji za najviše jednu sedmicu. Kako bi to bilo izvodljivo i u drugim članicama EU, Direktivom iz 2014. propisana je obaveza institucija za nadzor poslovanja banaka da blagovremeno upozore osiguravače depozita na potencijalno rizične situacije u bankama, ali i obaveza samih banaka da svoju evidenciju o depozitnoj bazi i kretanju osiguranih depozita organizuju tako da bude kompatibilna sa informacionim sistemima osiguravača depozita.²⁹ Skraćanju rokova doprineće i eliminacija netiranja iz obračuna osiguranih iznosa, što znači da osigurani iznos koji se isplaćuje deponentu više neće biti umanjivan za iznos koji deponent duguje banci. Sve navedene mere kumulativno će doprineti unapređenju operativne pripravnosti sistema da promptno reaguje u slučaju potrebe.

S obzirom na to da je uspešnost sistema osiguranja depozita u odbrani finansijske stabilnosti direktno srazmerna stepenu informisanosti građana o njegovim prednostima i obimu pokrića, Direktivom 2014 utvrđena je obaveza banaka da obaveštenje o visini osiguranog iznosa i podatke o nadležnom osiguravaču depozita dostavlja deponentima uz izvode s računa, kao i da im najmanje jednom godišnje šalje informatore o osiguranju depozita.

Novom Direktivom definisan je i način finansiranja fondova za osiguranje depozita, te njihov ciljni obim. Sredstva fonda akumuliraju se naplatom doprinosa *ex ante* (pre nastupanja osiguranog slučaja), pri čemu, po potrebi, postoji i mogućnost naplate vanrednih doprinosa, pozajmica od drugih evropskih osiguravača depozita ili od trećih lica (javnih ili privatnih). Minimalni ciljni iznos fonda utvrđen je na 0,8 odsto ukupnih osiguranih iznosa, a treba ga dostići do 2024. godine (u slučaju isplate, može se produžiti za najviše četiri godine).

Osnovicu za obračun doprinosa (ili premija) banaka čine ukupni osigurani iznosi, ali i stepen rizika svake banke ponaosob. Smernice za obračun doprinosa po Direktivi daje Evropska bankarska agencija (EBA), uključujući računsku formulu,

²⁹ *Ibid.*

konkretni pokazatelje, klasifikaciju rizika i slično, s tim što osiguravači depozita mogu da koriste i drugačiju metodologiju, saglasno pravilima u sopstvenim jurisdikcijama.

Sredstva fonda za osiguranje depozita primarno se koriste za isplatu osiguranih iznosa, ali mogu se upotrebiti i za primenu alternativnih mera u banci kako bi se sprečila njena nesolventnost (ukoliko je osiguravač depozita nadležan za njihovu primenu), kao i u postupku restrukturiranja banke, uz odgovarajuća ograničenja.

Najzad, Direktiva se bavi i saradnjom među osiguravačima depozita u EU u slučaju stečaja banke s filijalama u drugim članicama Unije. Osnovno pravilo je da deponente inostrane filijale isplaćuje osiguravač u istoj državi u ime matičnog osiguravača depozita i po njegovim instrukcijama. Matični osiguravač depozita dužan je da pre planirane isplate doznači potrebna sredstva i naknadno izmiri sve ostale troškove u vezi s isplatom osiguranih iznosa.³⁰ Kako bi unapred regulisali međusobne odnose i, u perspektivi, uštedeli vreme, osiguravači depozita u EU i šire preventivno zaključuju bilateralne i multilateralne sporazume.

v. Neusklađeni elementi sistema u EU i Srbiji

Uprkos tome što je ZOD 2015 (naročito s izmenama i dopunama iz 2019. godine) dostigao visok stepen usaglašenosti s Direktivom 2014, identifikovane su i određena razmimoilaženja.³¹ U nastavku ćemo razmotriti samo najznačajnije nepodudarnosti.

1) Osigurani iznos

Članom 6 Direktive 2014 osigurani iznos po deponentu po banci utvrđen je na sto hiljada evra, dok je u Srbiji još 2008. godine maksimum pokriva za jedno osigurano lice po banci ograničen na 50.000 evra.

Kao razlog da se pokriće širom EU ustanovi upravo na sto hiljada evra, u preambuli Direktive iz 2014. navodi se da je to razumno rešenje, imajući u vidu, s jedne strane, potrebu da najveći deo depozita u nacionalnim sistemima bude zaštićen, a s druge strane, troškove popune fondova za osiguranje depozita.³² Prema već pomenutim Baznim principima delotvornih sistema osiguranja depozita, pokriće (u smislu iznosa i obuhvata) treba da bude ograničeno i dovoljno kredibilno da u isti mah spreči i panično povlačenje depozita iz banaka i slabljenje tržišne discipline. Pokriće treba da bude definisano tako da u punoj meri bude osigurana velika većina deponenata, ali da znatan deo vrednosti samih depozita ostane bez zaštite.³³

³⁰ Direktiva EU 2014, Preambula i članovi 2, 4, 5, 7, 10–16.

³¹ Kancelarija za evropske integracije Vlade Republike Srbije, *Nacionalni program za usvajanje pravnih tekovina Evropske unije – druga revizija*, dostupno na https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/NPAA_2016_revizija_srp.pdf, 17. 7. 2025, str. 396–7.

³² Direktiva EU 2014, Preambula, tačka 21).

³³ Core Principles, Principle 8 – Coverage, Essential Criteria 2, 27.

Detaljnije uputstvo nude Proširene smernice za utvrđivanje pokrića, takođe u izdanju IADI, po kojima osigurani iznos, između ostalog, treba da omogući punu zaštitu 90–95 odsto deponenata, i to samo u odsustvu velikih odstupanja u veličini depozita u bankarskom sistemu.³⁴ Sistemom osiguranja depozita (s nivoom pokrića od 50.000 evra) u potpunosti je pokriveno više od 99 odsto deponenata fizičkih lica i preduzetnika.³⁵ Shodno tome, moglo bi se zaključiti da je osigurani iznos u Srbiji adekvatan i dovoljan za uslove domaćeg bankarskog tržišta, te se može očekivati da će taj važan parametar sistema biti promenjen tek po pristupanju Srbije Evropskoj uniji, odnosno do isteka roka za puno usklađivanje propisa o osiguranju depozita s evropskim.

2) Osigurane kategorije deponenata

Direktiva 2014 definiše deponenta kao vlasnika depozita. (čl. 2, tačka 6), ali su iz sistema osiguranja izuzeti depoziti kreditnih i finansijskih institucija, društava za osiguranje, penzijskih fondova, investicionih firmi i državnih organa (osim lokalnih organa s godišnjim budžetom manjim od pola miliona evra), kao i depoziti nastali u vezi s pranjem novca. (čl. 2, st. 1, tačka 6) i čl. 5). U Preambuli (tačka 31)) pojašnjava se da pojedine kategorije deponenata ne treba da uživaju zaštitu sistema osiguranja depozita, a naročito finansijske institucije ili državni organi, s izuzetkom lokalnih, kao što je već pomenuto. Ističe se, međutim, da preduzeća koja se ne bave primarno finansijskim poslovima ne treba isključivati iz osiguranja, nezavisno od njihove veličine.

Prema ZOD-u 2015, osigurani su depoziti fizičkih lica, preduzetnika, mikro, malih i srednjih pravnih lica, a isključuju se depoziti lica povezanih s bankom, depoziti koji glase na šifru ili donosioca, depoziti nastali pranjem novca ili kao posledica finansiranja terorizma, te depoziti velikih pravnih lica, državnih organa i organizacija, organa autonomne pokrajine ili organa jedinice lokalne samouprave, malih investitora i stečajnih i likvidacionih masa. Isključeni su i depoziti položeni kao sredstvo obezbeđenja ako je iznos na taj način obezbeđenih potraživanja banke prema deponentu jednak iznosu tog depozita ili veći od njega. (čl. 2, st. 1, tačka 6)).

Na samom isteku 2015. godine, ukupna izloženost Fonda za osiguranje depozita prema velikim pravnim licima, kad bi ona bila obuhvaćena osiguranjem depozita, iznosila bi 66.000.000 evra, dok je stvarna izloženost Fonda prema osiguranim kategorijama dostigla više od devet milijardi evra.³⁶ Osiguranje velikih pravnih lica ne bi predstavljalo nesrazmerno veliko finansijsko opterećenje za Fond niti značajniji operativni izazov za Agenciju ili njene informacione sisteme, što znači da će do ulaska Srbije u EU relevantne zakonske odredbe biti promenjene u cilju pune

³⁴ IADI, *Enhanced Guidance for Effective Deposit Insurance Systems: Deposit Insurance Coverage*, str. 4, 2013, dostupno na: https://www.iadi.org/uploads/IADI_Coverage_Enhanced_Guidance_Paper.pdf, 17. 7. 2025.

³⁵ Agencija za osiguranje depozita, Izveštaj o radu za 2024. godinu, februar 2025, 21.

³⁶ Agencija za osiguranje depozita, Izveštaj o radu za 2015. godinu, april 2016, 39.

harmonizacije. U ovom trenutku, međutim, s obzirom na to da velika pravna lica imaju pristup raznovrsnijim izvorima finansiranja i više resursa da samostalno prate stepen rizika u poslovanju banke kojoj poveravaju svoja sredstva, njihovo isključenje iz osiguranih kategorija ima opravdanja u vidu mere suzbijanja moralnog hazarda.

3) Obračun premija osiguranja na osnovu rizika poslovanja u bankama

Naplata diferencijalnih premija na bazi rizika takođe je mera kojom se smanjuje moralni hazard. Prema Direktivi 2014, obračun diferencijalnih premija je pravičniji i podstiče banke da primenjuju manje rizične modele poslovanja (Preambula, tačka 36). Kako bi se obezbedila dosledna primena sistema diferencijalnih premija širom EU, smernice za pripremu metodologije za obračun premije na bazi rizika izrađuje Evropska bankarska agencija. Smernice sadrže obračunsku formulu, specifične pokazatelje, kategorije rizika, skale za primenu odgovarajućih pondera i slično. Revizija smernica obavlja se na pet godina, počev od 2017. (čl. 13).

Mogućnost uvođenja premija na bazi rizika u Srbiji uvedena je u Zakon o osiguranju depozita 2019. godine, te bi se moglo reći da je harmonizacija načelno izvršena. Međutim, ona podrazumeva ne samo uključivanje odredaba evropskih propisa u domaće, nego i njihovo sprovođenje i primenu. Kad se govori o sprovođenju, Agencija za osiguranje depozita usvojila je metodologiju obračuna diferencijalne premije na osnovu podataka koje dobija od Narodne banke Srbije, što je važan korak ka konačnoj primeni propisa. Ipak, metodologija do danas nije primenjena, te se očekuje da i taj element harmonizacije u bliskoj budućnosti bude ispunjen.

4) Privremeno visoki saldo na računu

Prema članu 6(2) Direktive EU iz 2014, depoziti nastali kao rezultat kupoprodaje nekretnine za lično stanovanje, naplate štete od osiguranja ili određenih vrsta odštete, te kao posledica nekog jedinstvenog životnog događaja (poput sklapanja braka, razvoda, penzionisanja, ostavinske rasprave, gubitka posla i slično) uživaju viši nivo zaštite od sto hiljada evra u vremenskom rasponu od tri meseca do godinu dana.

Zakon o osiguranju depozita ne predviđa takve izuzetke, a odgovarajuće dopune morale bi biti unete najkasnije do dana kada Srbija postane članica Evropske unije.

III Savremeni pravci razmišljanja o osiguranju depozita u EU

Najranije od globalne finansijske krize, na različitim platformama u Evropskoj uniji razmatra se mogućnost stvaranja panevropskog sistema osiguranja depozita. U novembru 2015. Evropska komisija predložila je da se osnuje takav sistem (EDIS) u zemljama evrozone, koji bi zapravo kompletirao Bankarsku uniju, uspostavljenu godinu dana ranije. Bilo je predviđeno da se uvede postepeno, u tri faze od 2017.

do 2024, te da pored jedinstvenog mehanizma kontrole poslovanja banaka (engl. *Single Supervisory Mechanism* – SSM) i jedinstvenog mehanizma za restrukturiranje banaka (engl. *Single Resolution Mechanism* – SRM), postane jedan od nosilaca stabilnosti evropske ekonomske i monetarne unije. Ipak, tokom godina nije postignut napredak u sprovođenju te inicijative.

U međuvremenu, bankarska kriza u SAD tokom 2023. godine podstakla je na dalje razmatranje mogućnosti uređenja tog pitanja u EU. U aprilu iste godine, Evropska komisija predložila je izmenu zakonskog okvira za upravljanje krizama u bankarskom sistemu i osiguranje depozita unutar EU (Direktiva BRRD, Direktiva 2014 i Uredba o jedinstvenom mehanizmu za restrukturiranje banaka). Ciljevi tog predloga bili su povećanje stepena zaštite deponenata u slučaju zatvaranja banke, usaglašavanje primene mera u procesu restrukturiranja širom EU i stvaranje mogućnosti da se mere restrukturiranja primenjuju i na bankama male i srednje veličine.

Krajem juna 2025. godine, Savet EU i Evropski parlament postigli su dogovor o reformi seta propisa kojima se uređuju upravljanje bankarskim krizama i osiguranje depozita, što, po njihovoj oceni, predstavlja korak bliže upotpunjavanju Bankarske unije.³⁷ Najveću novinu u aktuelnom nacrtu izmena i dopuna relevantnih direktiva predstavlja mogućnost da se sredstva fondova za osiguranje depozita koriste za obezbeđivanje kapaciteta malih i srednjih banaka za pokriće gubitaka i dokapitalizaciju kako bi ispunile minimalni zahtev za kapitalom i podobnim obavezama. Dok aktuelni zakonski okvir za upravljanje krizama podrazumeva primenu mera restrukturiranja samo na sistemski važne i velike banke, to znači da se nad srednjim i manjim bankama pokreće postupak stečaja praćen isplatom osiguranog iznosa ukoliko nemaju mogućnost da pokriju potencijalne gubitke. S druge strane, banke koje od obaveza uglavnom imaju samo depozite i ne pozajmljuju sredstva na tržištu kapitala ponekad teško mogu da ispune te uslove. Predloženim izmenama i dopunama direktiva otvorile bi se nove mogućnosti za male i srednje banke, pri čemu bi osiguravač depozita mogao da proceni stepen ekonomičnosti obe opcije (pružanje finansijske podrške restrukturiranju u odnosu na stečaj i isplatu osiguranih iznosa).

Ostali predlozi mahom se odnose na preciziranja ili dopunu postojećih odredbi: da se proširi krug državnih organa pokrivenih osiguranjem, da se u privremeno visoki saldo uvrste i depoziti namenjeni kupoprodaji nepokretnosti do 2.500.000 evra (Direktiva 2014 priznaje samo depozit nastao kao rezultat kupoprodaje), da se ograniči rok u kom se osigurani iznosi mogu preuzeti i slično.

³⁷ Council of the European Union: „Bank resolution: Council and Parliament strike deal to strengthen the EU crisis management framework“ (saopštenje za javnost), 25. jun 2025, dostupno na: <https://www.consilium.europa.eu/en/press/press-releases/2025/06/25/bank-resolution-council-and-parliament-strike-deal-to-strengthen-the-eu-crisis-management-framework/>, 18. 7. 2025.

IV Zaključak

Zakonski okvir kojim se u Srbiji uređuje sistem osiguranja depozita usaglašen je s evropskom Direktivom iz 2014. godine po duhu, ciljevima i većini pojedinosti. Neusklađena je ona materija koja je u ovom trenutku ili teško primenljiva ili ne odgovara realnoj situaciji na bankarskom tržištu prema proceni nosilaca finansijske stabilnosti. Nije retkost da zemlje kandidati svoje propise iz domena osiguranja depozita u potpunosti usaglasе s evropskim tek neposredno po pristupanju Evropskoj uniji (npr. Hrvatska).

U ovom radu pokušali smo da pokažemo kako je dalje usaglašavanje poželjno i neophodno i to ne samo radi ispunjavanja ciljeva definisanih u SSP-u, već i zbog toga što bi nove odredbe predstavljale korak napred u razvoju domaćeg sistema. Uprkos tome, uvek je potrebno sagledati svrsishodnost svake planirane promene. To se prvenstveno odnosi na povećanje osiguranog iznosa i proširenje obuhvata zaštićenih lica, imajući u vidu i druge međunarodne standarde, poput Baznih principa delotvornih sistema osiguranja depozita. Iako se percepcija uloge sistema osiguranja depozita naglo promenila posle globalne finansijske krize i potonjih potresa na bankarskim tržištima širom sveta, ne treba smetnuti s uma da pomeranje težišta na zaštitu finansijske stabilnosti nauštrb suzbijanja moralnog hazarda može imati ozbiljne posledice. U tom smislu, Srbija ima prostora da do priključenja Evropskoj uniji pažljivo razmotri sve mogućnosti harmonizacije s relevantnim izvorima prava imajući u vidu interese i potencijalne koristi svih zainteresovanih strana na sopstvenom tržištu.

Literatura

- Council of the European Union: „Bank resolution: Council and Parliament strike deal to strengthen the EU crisis management framework“, 25. jun 2025, dostupno na: <https://www.consilium.europa.eu/en/press/press-releases/2025/06/25/bank-resolution-council-and-parliament-strike-deal-to-strengthen-the-eu-crisis-management-framework/>, 18. 7. 2025.
- International Association of Deposit Insurers (IADI), *Core Principles for Effective Deposit Insurance Systems* (Core Principles), <https://www.iadi.org/uploads/cprevised2014nov.pdf> November 2014.
- International Association of Deposit Insurers (IADI), *Enhanced Guidance for Effective Deposit Insurance Systems: Deposit Insurance Coverage*, https://www.iadi.org/uploads/IADI_Coverage_Enhanced_Guidance_Paper.pdf, 2013.
- Kancelarija za evropske integracije, *Nacionalni program za usvajanje pravnih tekovina Evropske unije*, Beograd, jul 2014.

- Krstić, B., Radojičić, J., „Osiguranje depozita kao *ex ante* i *ex post* antikrizni mehanizam u bankarstvu“, *Ekonomске teme* br. 4, Univerzitet u Nišu, 2012, str. 535–554.
- Payne, J., „The Reform of Deposit Guarantee Schemes in Europe“, *European Company and Financial Law Review*, Volume 12, Issue 4, De Gruyter, 2015, str. 539–562.
- Rowe, James: „IMF Survey: Government Borrowing Is Rising Risk to World Financial System“, April 20, 2010

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HARMONISATION OF THE LEGAL FRAMEWORK OF THE DEPOSIT INSURANCE SYSTEM IN SERBIA WITH THE EUROPEAN UNION ACQUIS

REVIEW ARTICLE

Summary

The Deposit Insurance Act has been harmonised successively since 2008, initially with Directive 94/19/EC, then with Directive 2009/14/EC, and following its repeal, with Directive 2014/49/EU. The purpose of this paper is to provide the reader with insight into the harmonisation process of the legal framework governing the deposit insurance system in Serbia with the corresponding EU legislation. This process will be presented chronologically, with an analysis of the immediate triggers and the objectives the legislator intended to achieve. The paper will focus on the most important provisions of the European deposit insurance regulations and the feasibility of their implementation in Serbia, taking into account the actual conditions of the banking market. Finally, the paper will present the concept of possible future directions for enhancing European regulations on crisis management in the banking system.

Keywords: deposit insurance, Deposit Insurance Act, EU Directive on Deposit Guarantee Schemes, harmonisation with the EU acquis

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I Purpose and function of deposit insurance systems

The primary objective of deposit insurance systems is to protect bank account holders against losses in the event of a bank's bankruptcy or liquidation² (the insured event). In various forms, deposit insurance systems exist in all European countries and the vast majority of countries worldwide. The design and specific features of each system are determined primarily by the economic and institutional conditions prevailing in the respective jurisdiction.

In accordance with the provisions of the Deposit Insurance Act,³ upon the occurrence of the insured event, the Deposit Insurance Agency initiates reimbursement of insured depositors within seven working days from the date of the court decision to initiate bankruptcy or liquidation proceedings against the bank. All licensed banks are included in the deposit insurance system and are required to pay a quarterly premium for deposit insurance in an amount corresponding to the prescribed percentage (maximum 0.2% quarterly) of the total insured deposit amounts in the bank. Premiums collected are allocated to the Deposit Insurance Fund, whose resources are invested in accordance with the Deposit Insurance Act and the internal acts of the Deposit Insurance Agency (the Agency). Policyholders (depositors) do not pay premiums, nor do they enter into a contractual relationship with the Agency. It should be noted that not all bank depositors are protected. Coverage extends to natural persons, entrepreneurs, and micro, small and medium-sized legal entities, whereas deposits of large legal entities, as classified under the Accounting Law,⁴ are non-eligible for coverage. Certain other categories of depositors are also excluded from the deposit insurance system, such as legal or natural persons related to the bank, persons whose deposits originate from money laundering or terrorism financing, and the like. The maximum insured amount for deposits held by a single client in one bank is EUR 50,000. In the event of a bank's bankruptcy or liquidation, if the depositor's deposit exceeds that amount, the portion not covered by the deposit insurance system may be recovered from the distribution of the bank's bankruptcy/

² Pursuant to Article 2 of the Law on Insolvency and Liquidation of Banks and Insurance Companies, both insolvency and liquidation are initiated by a decision of the competent court, based on a decision of the National Bank of Serbia on the fulfilment of conditions for initiating insolvency or liquidation proceedings, with the difference that insolvency proceedings may also be conducted at the request of the liquidator if they determine that the liquidation debtor's assets are insufficient to satisfy all creditors' claims. In other words, in liquidation proceedings it is expected that the liquidation estate will be sufficient to cover all obligations to creditors, whereas in insolvency proceedings against a bank or insurance company, creditors are satisfied proportionately and according to payment ranks until the final distribution of the insolvency estate.

³ Deposit Insurance Act – DIA, *Official Gazette of the RS*, Nos. 14/15, 51/17, 73/19 and 94/24, Articles 3, 4, 6, 10, 12, 15–17.

⁴ Accounting Act, *Official Gazette of the RS*, Nos. 73/19, 44/21 – other law, Art. 6.

liquidation estate. Similarly, the Deposit Insurance Fund itself is reimbursed in the same manner, enjoying absolute priority in recovering claims from a bank under bankruptcy/liquidation over all other creditors, including covered depositors.

The principle of legal subrogation is inherent to deposit insurance systems worldwide and in fact constitutes their foundation. Without subrogation, i.e. the substitution of the protected depositor (in this case, the Agency acts as the creditor of the insolvent bank in place of the covered depositors, having previously fulfilled the bank's obligations towards them, by reimbursing their deposits up to the insured amount), the deposit insurance system would fail to achieve one of its fundamental objectives, namely the preservation of financial stability through guaranteeing protection to covered depositors.

Deposit insurance in Serbia is administered by the Deposit Insurance Agency, which, in addition to its core function, performs other tasks such as managing the Investor Protection Fund and acting as a bankruptcy and liquidator in banks and insurance companies. The state guarantees the Agency's obligations towards covered depositors. According to the classification established by the Core Principles for Effective Deposit Insurance Systems of the International Association of Deposit Insurers (IADI) and the Basel Committee on Banking Supervision (BCBS), the Agency, as a deposit insurer, has a *paybox plus* mandate.⁵ This means that, in addition to reimbursing insured deposits, the Agency also participates in the bank restructuring processes, providing financial support through allocations from the Deposit Insurance Fund.

I Harmonisation of national regulation with EU Directives on deposit insurance

1. Sources of EU law and legal basis for harmonisation

The process of harmonising national legislation with the *acquis* of the European Union was initiated as early as 2004, before the Stabilisation and Association Agreement (SAA) entered into force (2013), and even before the Republic of Serbia signed and ratified it in 2008. By signing the SAA, Serbia committed to the gradual harmonisation of national legislation with EU law.⁶

The highest legal act of the European Union governing the functioning of deposit insurance systems belongs to the body of *secondary law* and is known as

⁵ International Association of Deposit Insurers (IADI), *Core Principles for Effective Deposit Insurance Systems* (Core Principles), November 2014, available at: <https://www.iadi.org/uploads/cprevised2014nov.pdf>, accessed: 10. 7. 2025, 19.

⁶ European Integration Office, *National Programme for the Adoption of the Acquis of the European Union*, July 2014, available at: https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/npaa_2014_2018.pdf, accessed: 11. 7. 2025, 1.

the Deposit Guarantee Schemes Directive. The Directives establish binding objectives for Member States, which must incorporate them into national legislation and individually determine the way of achieving these objectives.⁷

In the process of harmonising national legislation with the EU acquis, the first screening under Negotiating Chapter 9 (now part of Cluster 2 – Internal Market), which covered financial services, was held in March 2015. The negotiating chapter itself was opened in June 2019. The Deposit Insurance Agency participates in the work of Negotiating Group 9 as one of the institutions responsible for monitoring and aligning national legislation with EU regulations on deposit guarantee schemes.

The transposition of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994⁸ into the Deposit Insurance Act began as early as 2008. That was, in fact, a pivotal moment in the development of the deposit insurance system in Serbia, as the entry into force of the Law on Amendments to the Deposit Insurance Act in December 2008 established a modern deposit insurance system, the credibility of which was reflected, *inter alia*, in the level of covered deposits and the scope of protected categories. In early 2009, amendments to the Directive were adopted (Directive 2009/14/EC of 11 March 2009), which modified the coverage level and the payout period.⁹ Currently, Directive 2014/49/EU of 16 April 2014, is in force within the European Union,¹⁰ which may also be subject to amendment in the coming period following the conclusion of the public consultation on the draft new framework for banking crisis management and deposit insurance.

According to the Plan for fulfilling key obligations from the EU negotiation process for the Republic of Serbia's Accession to the European Union by the end of 2026 (adopted in April 2025),¹¹ the deadline for adopting amendments to the Deposit Insurance Act in order to achieve full alignment with the 2014 Directive is the fourth quarter of 2026.

⁷ Types of legislation, https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en, accessed: 11. 7. 2025.

⁸ Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (EU Directive 1994), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31994L0019>, accessed: 11. 7. 2025.

⁹ Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay (EU Directive 2009), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0014>, accessed: 11. 7. 2025.

¹⁰ Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast) (EU Directive 2014), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0049>, accessed: 11. 7. 2025.

¹¹ Available at:

https://www.mei.gov.rs/upload/documents/pristupni_pregovori/plan_spunjavanje_obaveza_pregovori_2026.pdf, accessed: 24. 7. 2025, 97.

2. Legal framework and state of the deposit insurance system at the beginning of the harmonisation process

Although the deposit insurance system in Serbia has nominally existed since 1989, it was not until 2005 that the legal and operational foundations of a modern and functional system were established. Under the Deposit Insurance Act of 2005,¹² coverage extended to deposits of natural persons up to EUR 3,000, and the payout deadline was limited to 30 days from the date of the court decision initiating bankruptcy proceedings against the bank. All banks were included in the deposit insurance system and were required to pay a quarterly premium in advance at a rate that ensured adequate capitalisation of the Deposit Insurance Fund (the premium calculation base was 22 times higher than in the previous year). Total deposits of natural persons in banks increased by 76.7% in the same year.¹³

However, in October 2008 alone, as a consequence of the global financial crisis, withdrawals of household deposits from banks amounted to approximately €800 million.¹⁴ In order to counter this negative trend in deposit movements, the Law on Amendments to the Deposit Insurance Act (DIA 2008) was adopted at the end of the year under urgent parliamentary procedure, which changed the key system parameters and effectively initiated the gradual harmonisation with the provisions of EU Directive 94/19/EC.

The most important amendments concerned the insured amount and the scope of coverage. Insured parties were no longer limited to natural persons but also included entrepreneurs as well as small and medium-sized legal entities. The insured amount was increased to EUR 50,000.

In the Explanatory Memorandum of DIA 2008, the first reason cited for adopting the act was “the increase in the insured amount due to the need to harmonise national legislation with the legislation of neighbouring countries and EU countries”. According to the assessment stated in the Explanatory Memorandum, by increasing the insured amount from EUR 3,000 to EUR 50,000 per depositor per bank, deposit insurance coverage would fully cover more than 99% of all depositors in all banks in the country. Citing reasons for adopting the law under urgent procedure, the proposer highlighted the current problems in the financial market and the “psychologically induced factors” need to ensure depositor security and to align the deposit insurance system with neighbouring countries and the EU. Although the reasons for harmonisation are not further explained, particularly with regard to neighbouring countries, it can be concluded that the legislator’s intention was also to prevent the occurrence of regulatory arbitrage, i.e. to discourage the transfer of

¹² Deposit Insurance Act (DIA 2005), *Official Gazette of the RS*, No. 61/05, Articles 1–3, 13, 16–17.

¹³ Report on the Work of the Deposit Insurance Agency for 2005, March 2006, 12.

¹⁴ Report on the Work of the Deposit Insurance Agency for 2008, June 2009, 14.

funds to states offering more favourable deposit insurance conditions, primarily with higher coverage levels.

Judging by the trends in insured deposits immediately following the adoption of the 2008 DIA, the measure applied was timely and effective, given that by November of the following year, the total sum of insured deposits in the Serbian banking system had reached the level from the end of September 2008.¹⁵

At the time of the adoption of the 2008 DIA, Directive 94/19/EC was in force in the European Union, which itself would undergo significant amendments the following year. It prescribed only minimum requirements for harmonisation with national legislation.

Its preamble recalls that at the end of 1986, the European Commission issued a recommendation that all EU Member States (there were twelve at the time) introduce deposit insurance systems, but it is assessed that this recommendation did not fully achieve the desired result.¹⁶ Member States are obliged to establish deposit insurance systems on their territory, unless they already have certain schemes that protect depositors against loss in the event of a credit institution's insolvency. The insured amount was set at a minimum of EUR 20,000 per depositor per credit institution, with the provision that jurisdictions where the amount was lower than prescribed did not have to increase it as long as it reached at least EUR 15,000 by the beginning of the second millennium. Depositors as insured parties are not specifically defined, meaning that the Directive does not automatically exclude any category, but the preamble emphasises that Member States may exclude certain types of deposits or depositors if they consider that they should not enjoy protection.

It is also important to note that the prescribed obligation on credit institutions to provide all depositors with the necessary information about the deposit guarantee scheme that protects them, as well as about their rights in the event of an insured case, but they were not permitted to misuse deposit insurance membership for marketing purposes. The payout deadline was three months from the date depositors were denied access to their funds, with the provision that this deadline could be extended by additional three months. Article 11 explicitly states that

¹⁵ Report on the Work of the Deposit Insurance Agency for 2009, May 2010, 12.

¹⁶ Many European countries had already introduced deposit insurance before 1986, but there were significant differences in the core features of these systems. For example, Germany, France, and Italy operated private, voluntary deposit insurance schemes, while in the UK membership in the state-administered scheme was compulsory. The UK system insured GBP 20,000 on a co-insurance basis: the state system would pay 75% of the insured amount, and the remainder was borne by the depositor. In France, the insured amount was 400,000 francs (approx. USD 63,000), while in Italy, 200 million lire (approx. USD 150,000) was fully covered, with the remaining amount up to 800 million lire covered at 80%. A comparative overview of European deposit insurance systems and those in Japan and Canada is provided by the US General Accounting Office (GAO) in a 1991 report commissioned by the US Senate Committee on Banking, Housing, and Urban Affairs, available at <https://www.gao.gov/assets/nsiad-91-104.pdf>, accessed: 7. 7. 2025, 12–21.

deposit insurance systems have the right to recover claims from the insolvent debtor on behalf of depositors under the principle of subrogation.¹⁷

3. Legislative reforms in the EU and Serbia prompted by the global financial crisis

Serious disturbances in the financial and banking market prompted regulators worldwide, including in the EU and Serbia, to provide stronger and more credible guarantees to users of banking services that they would not bear losses due to problems in the operations of credit institutions, either as depositors or as taxpayers.¹⁸ In order to internalise the costs of bank resolution to a greater extent, in 2014 the EU adopted the Bank Recovery and Resolution Directive (BRRD),¹⁹ providing for a complex set of tools and measures designed to prevent the transfer of bank losses onto depositors, the state budget, or other forms of public funding.

Within the domain of deposit insurance, the European Directive from 1994 was amended in March 2009. The preamble to Directive 2009/14/EC on deposit guarantee schemes states that the EU Council concluded in October 2008 that restoring confidence in the financial sector and its proper functioning were priority tasks, that during the crisis the minimum coverage of EUR 20,000 proved insufficient, and that it should be temporarily raised to EUR 50,000, with the requirement that by the end of 2010 the minimum coverage across the EU be set at €100,000. In addition to the coverage amount, it is very important for depositors to be able to access their funds relatively quickly following a bank closure. Therefore, the payout deadline was shortened from three months to 20 working days, with the possibility of extension under exceptional circumstances by up to 10 working days.

Under Article 12 of the 2009 Directive, the European Commission undertook to report to the European Parliament and the Council by the end of the year, *inter alia*, possible models for introducing risk-based deposit insurance premiums (based on the assessment of business risk of each member bank of the system), as well as the potential benefits and costs of establishing a single deposit insurance system at the European Union level.

¹⁷ EU Directive 1994, Preamble and Articles 3, 7, 9, 10, 11.

¹⁸ According to IMF estimates, losses incurred by European banks between 2007 and 2010 reached eight per cent of the EU's GDP, or nearly one trillion euros. Between 2008 and 2012, the European Commission allocated almost six hundred billion euros in support to banks in the form of recapitalisation and other resolution measures. V. Rowe, James: "IMF Survey: Government Borrowing Is Rising Risk to World Financial System", April 20, 2010, available at:

[https://www.imf.org/en/News/Articles/2015/09/28/04/53/sores042010a#:~:text=The%20report%20cut%20its%20estimates,\\$2.3%20trillion%2C%20the%20IMF%20estimates](https://www.imf.org/en/News/Articles/2015/09/28/04/53/sores042010a#:~:text=The%20report%20cut%20its%20estimates,$2.3%20trillion%2C%20the%20IMF%20estimates), accessed: 14. 7. 2025.

¹⁹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (BRRD), available at: <https://eur-lex.europa.eu/eli/dir/2014/59/oj/eng>.

Risk-based premiums are universally recognised as one of the ways to combat so-called moral hazard in banking. Moral hazard is a negative consequence of all forms of insurance, including deposit insurance, affecting both banks and depositors. Thanks to the protection provided by the deposit insurance system, depositors lose interest in monitoring the operations of banks where they hold funds, market discipline weakens, and banks become more inclined towards riskier lending.²⁰ Risk-based premiums partially correct this deficiency, as banks are motivated to obtain better risk ratings in order to pay lower deposit insurance premiums, regardless of their clients' perceptions. The obligation to calculate risk-based premiums was introduced as early as 2014, with the adoption of the new directive on deposit guarantee schemes, which is still in force today.

More will be said about the prospects for introducing a single deposit insurance system in the European Union in the concluding part of the paper.

Serbian legislation also responded to the consequences of the global financial crisis. As early as 2010, the National Assembly adopted the Law on Amendments to the Deposit Insurance Act (DIA 2010), the primary objective of which was "further alignment of the deposit insurance system to EU regulations and European standards",²¹ as well as correcting certain deficiencies in provisions whose application in practice proved problematic. The 2010 Law, however, did not introduce fundamentally important innovations in the deposit insurance system itself, but it foregrounded the system's potential to contribute to financial stability in the country, which is explicitly stated as one of the objectives of mandatory deposit insurance.

Anticipating the possibility of problems arising in systemically important banks, which most often cannot be resolved through payout of insured amounts and bankruptcy proceedings, the legislator provided in this regulation that funds from the Deposit Insurance Fund could be allocated for financial support to a bank that takes over or acquires a troubled bank (under administrative management) in order to cover the difference in the value of its assets and liabilities. In order to enable a failing bank to remain on the market until final sale (fully or partially) within the banking sector, the Agency could establish a bridge bank and provide the mandatory initial capital also drawn from the Deposit Insurance Fund.

The guardians of financial stability (the National Bank of Serbia, the Ministry of Finance and the Agency) were empowered to assess independently, as necessary, whether to increase the insured amount or expand the coverage of depositor categories in order to provide higher protection during specific periods (Article 4, paragraph 2 of DIA 2010). It is also very important that the possibility was introduced for the Agency to determine the deposit insurance premium independently based on the

²⁰ Krstić, B.; Radojičić, J., „Osiguranje depozita kao ex ante i ex post antikrizni mehanizam u bankarstvu“, *Ekonomске teme* br. 4, University of Niš, Faculty of Economics, 2012, 537–538.

²¹ Draft Law on Amendments and Supplements to the Deposit Insurance Law, Explanatory Memorandum, 2010.

overall risk position in the bank (Article 9, paragraph 2 of DIA 2010). In order for the Agency to gain a clearer picture of the deposit portfolio and more accurately assess the Fund's exposure, banks have since been required to submit monthly reports on total and insured deposits, and the Agency may verify their accuracy through direct inspection of the bank records.

Of particular importance is the provision prescribing mandatory exchange of information between the Agency and the National Bank of Serbia, as the banking supervisor, which includes timely notification of measures taken during prudential supervision and supervision of banks' lawful operations. Finally, the credibility of the deposit insurance system was further enhanced by establishing sources for procuring supplementary funding in the event that the Fund does not have sufficient funds to meet statutory obligations.

In other words, although the 2010 amendments to the DIA did not result in major modifications to the system, nor in any significant approximation to EU standards, the new provisions significantly enhanced flexibility in responding to potential crises, expanded the scope of measures available during the restructuring phase, and more importantly, enabled the exchange and accumulation of relevant data on the basis of which the system can prepare in a timely manner for crises. Among other things, these measures laid the groundwork for the drastic reduction in the payout period for insured deposits, which was implemented in 2015.

4. Shaping of modern deposit insurance systems from 2014 to the present

a. Deposit Insurance Act of 2015

In 2014, the Serbian economy entered recession for the third time in six years, partly due to the consequences of catastrophic floods in May of that year. The unemployment rate reached 18 per cent of the working-age population, and public debt rose to 70% of GDP. Without comprehensive changes in public policies, the situation was unsustainable, with prospects for economic stagnation.²²

The banking sector was recovering from a serious shock caused by the closure of five banks between 2012 and 2014, whereby the Deposit Insurance Fund was depleted and further burdened by obligations to the World Bank and the European Bank for Reconstruction and Development under loans and precautionary funding arrangements. Obligations to the State were settled by the end of 2015, when the collection of extraordinary premiums from banks was also discontinued. More than EUR 350 million was allocated from the Fund for bank crisis resolution.

²² International Monetary Fund, *Republic of Serbia: Letter of Intent, Attachment I. Memorandum of Economic and Financial Policies*, „Recent Economic Developments and Outlook”, 6 February 2015, 3, available at: <https://www.imf.org/external/np/loi/2015/srb/020615.pdf>, accessed: 16. 7. 2025.

In the same year, a set of financial laws was adopted, including the Deposit Insurance Act (DIA 2015). Although it did not introduce major innovations in the regulation of the deposit insurance system, it contributed to the completion of the institutional and organisational architecture of the future bank resolution framework, largely aligned with the Bank Recovery and Resolution Directive (Directive 2014/59/EU or BRRD) in the part relating to banks.²³ The BRRD Directive laid new foundations for dealing with failing banks that have systemic importance or are too large for their covered depositors to be paid out from existing funds.

The bank resolution procedure, described primarily in the Banking Law of 2015, entailed the introduction of a whole range of tools in the event of problems in systemically important banks or where more would be achieved through the resolution than through bankruptcy or liquidation proceedings.²⁴ The National Bank of Serbia is in charge of resolution proceeding, and has at its disposal measures and tools for timely and efficient action in the event that resolution of a failing bank is in the public interest. Whereas the Banking Law precisely prescribes the conditions under which funds from the Deposit Insurance Fund may be allocated for resolution purposes (primarily in Article 128h), DIA 2015 contained only one provision relating to the Fund's obligations in resolution proceedings (Article 6(3)(2)). In short, the Fund resources may be used for bank resolution provided that covered depositors retain full access to their deposits. The total amount of such resources may not exceed the amount that would be paid out from the Fund to settle obligations to covered depositors in the event of bankruptcy or liquidation proceedings, and certainly may not exceed half of the target level of the Fund prescribed by the Deposit Insurance Act (in 2015, it was limited to 5% of covered deposits, and from 2019 to 7.5% of total covered amounts).²⁵ In the event of bankruptcy or liquidation proceedings against a bank following the resolution, the Deposit Insurance Fund has the right to priority repayment from the bankruptcy or liquidation estate on account of the resolution financing it had provided.²⁶ The use of deposit insurance funds for bank resolution under these conditions is also permitted by the 2014 Directive.

²³ The BRRD regulates the resolution of credit institutions and investment firms.

²⁴ Banking Law, *Official Gazette of the RS*, 14/2015, Article 128ž, para. 3.

²⁵ A covered deposit is understood to mean a deposit covered by the deposit insurance system, regardless of the amount of funds in the account, whereas the covered amount is defined as the portion of a covered deposit up to the coverage level of EUR 50,000. According to the 2014 EU Directive, the calculation base for premiums and the target level of the Fund consists precisely of covered amounts of deposits. Alignment with these provisions of the Directive was achieved through amendments to the Deposit Insurance Act in 2019.

²⁶ Law on Bankruptcy and Liquidation of Banks and Insurance Companies, *Official Gazette of the RS*, No. 14/15, Article 19, para. 1, point 6.

b. Directive 2014/49/EU

The 2009 Directive was adopted as a response to the financial crisis, correcting some of the fundamental elements of deposit insurance in order to strengthen depositor confidence and prevent panic bank runs. The new Directive 2014/49/EU (the 2014 Directive), on the other hand, provided for a comprehensive reform of deposit guarantee schemes at the EU level in order to create a predictable, highly harmonised, and functional network of deposit guarantee systems, but without the ambition of replacing them with a single system for the EU territory.²⁷ Given that previous directives prescribed only minimum harmonisation, European systems were highly heterogeneous both in terms of architecture, funding and governance, as well as in important features such as the coverage level, scope of coverage, types of covered accounts and the payout deadline.²⁸

First, under the 2014 Directive, no credit institution in an EU Member State may accept deposits unless it is part of an officially recognised deposit guarantee scheme. In order to verify the adequacy and operational readiness of the system to respond in the event of an insured event, all systems in the EU are subject to mandatory periodic stress tests, which are organised at least once every three years, starting from mid-2017.

The 2014 Directive did not change the coverage level, which from the beginning of 2011, has been set at EUR 100,000, including accrued interest. The covered categories also remained the same, namely natural and legal persons with certain exceptions, such as financial institutions and government bodies, which are assumed to have easier access to other sources of funding and to be able to assess the risk associated with the bank holding their deposits. On the other hand, the Directive introduced the possibility of temporary higher coverage (for a period of up to 12 months) in the event of the sale of real estate or some other specific life event (inheritance, severance payment and the like).

By 1 January 2024, the payout deadline was successively shortened from 20+10 to seven working days. In explaining the technical and organisational changes that will enable this, the European Commission recalled that in the United States payout begins and ends within a few days, and in the United Kingdom within a maximum of one week. In order to make this feasible in other EU Member States, the 2014 Directive prescribed the obligation of banking supervisory authorities to give deposit insurers a timely warning of potentially risky situations in banks, as well as the obligation of the banks themselves to organise their records on the deposit base and movements in covered deposits in a manner compatible with the

²⁷ Payne, Jennifer: „The Reform of Deposit Guarantee Schemes in Europe“, *European Company and Financial Law Review*, Volume 12, Issue 4, De Gruyter, 2015, 553.

²⁸ European Commission, MEMO/14/296, 15 April 2014, available at: https://ec.europa.eu/commission/presscorner/detail/en/memo_14_296, accessed: 15. 7. 2025.

information systems of deposit insurers.²⁹ The shortening of deadlines will also be facilitated by the elimination of set-off from the calculation of covered amounts, which means that the covered amount paid to a depositor will no longer be reduced by the amount the depositor owes to the bank. All the aforementioned measures will cumulatively contribute to enhancing the operational readiness of systems to respond promptly when needed.

Given that the success of deposit insurance in safeguarding financial stability is directly proportional to the level of public awareness of its benefits and scope of coverage, the 2014 Directive established the obligation of banks to provide notification of the coverage level and information about the competent deposit insurer to depositors with account statements, as well as to send them information materials on deposit insurance at least once a year.

The new Directive also defined the method of financing deposit insurance funds and their target level. Fund resources are accumulated through the collection of *ex ante* contributions (before the occurrence of the trigger event), with the possibility, where necessary, of collecting extraordinary contributions, borrowing from other European deposit insurers or from third parties (public or private). The minimum target level of the fund is set at 0.8% of total covered deposits and should be reached by 2024 (in the event of a payout, it may be extended by a maximum of four years).

The calculation base for banks' contributions (or premiums) consists of total covered deposits, but also the degree of risk of each individual bank. Guidelines for calculating contributions under the Directive are provided by the European Banking Authority (EBA), including the calculation formula, specific indicators, risk classification and the like, with the provision that deposit insurers may use a different methodology in accordance with the rules in their own jurisdictions.

Fund resources are used primarily for the payout of covered deposits, but may also be used for the application of alternative measures in a bank in order to prevent its insolvency (if the deposit insurer has competence for their application), as well as in bank resolution proceedings, subject to appropriate limitations.

Finally, the Directive addresses cooperation among deposit insurers in the EU in the event of bank failures with branches in other Member States. The basic rule is that depositors of a foreign branch are paid out by the insurer in the same state on behalf of the home deposit insurer and according to its instructions. The home deposit insurer is obliged to transfer the necessary funds before the planned payout and subsequently settle all other costs related to the payout of insured amounts.³⁰ In order to regulate mutual relations in advance and, in the long term, save time, deposit insurers in the EU and beyond preventively conclude bilateral and multilateral agreements.

²⁹ *Ibid.*

³⁰ Directive 2014/49/EU, Preamble and Articles 2, 4, 5, 7, and 10–16.

c. Non-aligned elements of the systems in the EU and Serbia

Despite the fact that DIA 2015 (particularly with the amendments of 2019) achieved a high level of alignment with the 2014 Directive, certain discrepancies have been identified.³¹ The following section discusses only the most significant inconsistencies.

1) Coverage level

Article 6 of the 2014 Directive sets the coverage level at EUR 100,000 per depositor per bank, whereas in Serbia the maximum coverage per depositor per bank has been limited to EUR 50,000 since 2008.

As the reason for establishing coverage throughout the EU at precisely EUR 100,000, the preamble to the 2014 Directive states that this is a reasonable solution, taking into account, on the one hand, the need for the largest share of deposits in national systems to be protected, and on the other hand, the costs of funding deposit guarantee scheme funds.³² According to the aforementioned Core Principles for Effective Deposit Insurance Systems, coverage (in terms of amount and scope) should be limited and sufficiently credible to simultaneously prevent both panic bank runs and the weakening of market discipline. Coverage within a deposit guarantee scheme should be defined in such a way that the vast majority of depositors are fully protected, while a significant share of the value of deposits remains uncovered.³³ More detailed guidance is provided by the Enhanced Guidance for Deposit Insurance Coverage, also published by IADI, which states, *inter alia*, that the insured amount should ensure full protection of 90–95% of depositors, and that this applies only where there are no substantial outliers in the distribution of deposit sizes within the banking system.³⁴ With the current coverage level of EUR 50,000, the Serbian deposit insurance system fully protects more than 99% of individual depositors and entrepreneurs.³⁵ Accordingly, it could be concluded that the insured amount in Serbia is adequate and sufficient for the conditions of the domestic banking market. Therefore, it can be expected that this important system parameter will be changed only upon Serbia's accession to the European Union, or by the expiry of the deadline for full harmonisation of deposit insurance legislation with the EU acquis.

³¹ Office for European Integration of the Government of the Republic of Serbia, *National Program for the Adoption of the EU Acquis – Second Revision*, available at: https://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/NPAA_2016_revizija_srp.pdf, accessed: 7. 7. 2025, 396–397.

³² EU Directive 2014, Preamble, Recital 21.

³³ Core Principles, Principle 8 – Coverage, Essential Criteria 2, 27.

³⁴ IADI, *Enhanced Guidance for Effective Deposit Insurance Systems: Deposit Insurance Coverage*, 4, 2013, available at: https://www.iadi.org/uploads/IADI_Coverage_Enhanced_Guidance_Paper.pdf, accessed: 17. 7. 2025.

³⁵ Deposit Insurance Agency, *Annual Report for 2024*, February 2025, 21.

2) Covered depositor categories

The 2014 Directive defines a depositor as the holder of a deposit (Article 2, point 6), but deposits of credit and financial institutions, insurance companies, pension funds, investment firms and government authorities (except local authorities with an annual budget of less than half a million euros) are excluded from the deposit insurance scheme, as are deposits connected to money laundering (Article 2(1)(6) and Article 5). The Preamble (Recital 31) explains that certain categories of depositors should not enjoy the protection of deposit guarantee schemes, particularly financial institutions or public authorities, with the exception of local authorities, as already mentioned. It is emphasised, however, that undertakings not primarily engaged in financial business should not be excluded from coverage, regardless of their size.

Under DIA 2015, covered deposit categories include deposits of natural persons, entrepreneurs, micro, small and medium-sized legal entities. Excluded are deposits of persons connected to the bank, bearer or coded deposits, deposits arising from money laundering or as a result of terrorist financing, deposits of large legal entities, government authorities and organisations, bodies of the autonomous province or local self-government units, small investors and bankruptcy and liquidation estates. Deposits pledged as collateral are also excluded if the amount of the bank's secured claims against the depositor is equal to or exceeds the deposit amount (Article 2(1)(6)).

At the very end of 2015, the total exposure of the Deposit Insurance Fund to large legal entities, had they been covered by deposit insurance, would have amounted to EUR 66 million, whereas the Fund's actual exposure to covered categories exceeded EUR 9 billion.³⁶ Extending coverage to large legal entities would therefore not constitute a disproportionate financial burden for the Fund, nor a significant operational challenge for the Agency or its information systems. This means that by the time of Serbia's accession to the EU, the relevant legal provisions will be amended in order to achieve full harmonisation. At present, however, given that large legal entities have access to more diverse sources of funding and greater capacity to independently assess the risk profile of the bank entrusted with their funds, their exclusion from covered categories is justified as a measure to combat moral hazard.

3) Risk-based calculation of deposit insurance premiums

The collection of risk-based premiums is also a measure that reduces moral hazard. According to the 2014 Directive, risk-based premium calculation is fairer and encourages banks to apply less risky business models (Preamble, Recital 36). In order to ensure consistent implementation of the risk-based premium systems

³⁶ Deposit Insurance Agency, Annual Report for 2015, April 2016, 39.

throughout the EU, guidelines for preparing the methodology for risk-based premium calculation is developed by the European Banking Authority. The guidelines contain the calculation formula, specific indicators, risk categories, weighting scales, and similar parameters. The guidelines are reviewed every five years, starting from 2017 (Article 13).

The possibility of introducing risk-based premiums in Serbia was introduced into the Deposit Insurance Act in 2019, so it could be said that harmonisation has been carried out in principle. However, it implies not only the transposition of EU provisions into domestic law, but also their implementation and application. When it comes to implementation, the Deposit Insurance Agency has adopted a methodology for calculating risk-based premiums based on data received from the National Bank of Serbia, representing an important step towards the final application of the regulations. Nevertheless, the methodology has not been implemented yet, and it is expected that this element of harmonisation to be fulfilled in the near future.

4) Temporary high account balance

Pursuant to Article 6(2) of the 2014 EU Directive, deposits arising from the sale of a private residential property, insurance indemnification, certain types of compensation claims, or other specific life events (such as marriage, divorce, retirement, inheritance proceedings, job loss, etc.) enjoy a higher level of protection than EUR 100,000 within a time period of three months to one year.

The Deposit Insurance Act does not provide for such exceptions, and corresponding amendments would need to be incorporated no later than the date when Serbia becomes a member of the European Union.

II Contemporary approaches to deposit insurance within the EU

Since the global financial crisis, the possibility of creating a pan-European deposit insurance system has been under consideration on various platforms in the European Union. In November 2015, the European Commission proposed the establishment of such a system - the European Deposit Insurance Scheme (EDIS) in the euro zone countries, which would effectively complete the Banking Union, established a year earlier. It was planned to be introduced gradually, in three phases from 2017 to 2024, with EDIS becoming, alongside the Single Supervisory Mechanism (SSM) and the Single Resolution Mechanism (SRM), one of the key pillars supporting the stability of the Economic and Monetary Union. However, no progress has been made in implementing this initiative over the years.

In the meantime, the banking crisis in the USA during 2023 prompted further consideration of the renewed discussion of this issue within the EU. In April of the same year, the European Commission proposed an amendment to the legal

framework for crisis management in the banking system and deposit insurance within the EU (the BRRD Directive, the 2014 Deposit Guarantee Schemes Directive and the Regulation on the Single Resolution Mechanism). The objectives of this proposal were to increase the level of depositor protection in the event of bank closures, to harmonise the application of measures in the resolution process across the EU, and to create the possibility for resolution measures to small and medium-sized banks as well.

At the end of June 2025, the EU Council and the European Parliament reached an agreement on reforming the crisis management and deposit insurance (CMDI) framework, which, in their assessment, represents a step towards completing the Banking Union.³⁷ The greatest innovation in the current draft amendments to the relevant directives is the possibility for deposit insurance funds to be used to provide small and medium-sized banks with loss-absorption capacity and recapitalisation, enabling them to meet the minimum requirement for own funds and eligible liabilities (MREL). Whereas the current crisis management legal framework limits the application of resolution measures only to systemically important and large banks, this means that bankruptcy proceedings are opened against medium-sized and smaller banks, followed by the payout of the covered deposits if they lack sufficient capacity to absorb losses. Conversely, banks whose liabilities consist mainly of deposits only and which do not borrow funds on the capital market sometimes find it difficult to meet these conditions. The proposed amendments would open up new possibilities for small and medium-sized banks, allowing the deposit insurers to assess the cost-effectiveness of the options available, providing financial support in resolution or, alternatively, allowing the bank to enter bankruptcy and payout.

Other proposals mainly relate to clarifying or supplementing existing provisions: expanding the range of government authorities covered by the framework, including temporarily high balances (up to EUR 2,500,000) arising from real estate transactions under the scope of the Deposit Guarantee Schemes Directive (DGSD) (whereas the 2014 Directive only covered such balances if they resulted from a transaction), limiting the time-frame within which covered amounts may be claimed.

III Conclusion

The legal framework governing the deposit insurance system in Serbia is aligned with the 2014 European Directive in spirit, objectives and most specific provisions. Those areas that remain non-aligned are either difficult to implement at

³⁷ Council of the European Union: "Bank resolution: Council and Parliament strike deal to strengthen the EU crisis management framework" (press release), 25 June 2025, available at: <https://www.consilium.europa.eu/en/press/press-releases/2025/06/25/bank-resolution-council-and-parliament-strike-deal-to-strengthen-the-eu-crisis-management-framework/>, accessed: 18. 7. 2025.

this stage or do not correspond to the actual situation in the banking market according to the assessment of the financial-stability authorities. It is not uncommon for candidate countries to fully align their regulations in the field of deposit insurance with European framework only immediately upon accession to the European Union (e.g. Croatia).

In this paper we have attempted to demonstrate that further alignment is desirable and necessary, not only for the purpose of fulfilling the objectives defined in the SAA, but also because the new provisions would represent a step forward in the development of the domestic system. Nevertheless, it is always necessary to consider the appropriateness of each planned amendment. This primarily relates to increasing the coverage level and expanding the scope of protected persons, bearing in mind other international standards, such as the Core Principles for Effective Deposit Insurance Systems. Although the perception of the role of deposit insurance systems changed noticeably after the global financial crisis and subsequent shocks to banking markets worldwide, it should not be forgotten that shifting the focus to protecting financial stability at the expense of limiting moral hazard can have serious consequences. In this regard, Serbia has scope to carefully consider all harmonisation options with relevant sources of law prior to accession to the European Union, taking into account the interests and potential benefits of all stakeholders in its domestic market.

Literature

- Council of the European Union: “Bank resolution: Council and Parliament strike deal to strengthen the EU crisis management framework”, 25 June 2025, available at: <https://www.consilium.europa.eu/en/press/press-releases/2025/06/25/bank-resolution-council-and-parliament-strike-deal-to-strengthen-the-eu-crisis-management-framework/>, 18 July 2025.
- Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31994L0019>.
- Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 amending Directive 94/19/EC on deposit-guarantee schemes as regards the coverage level and the payout delay, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009L0014>.
- Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (recast), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0049>.
- International Association of Deposit Insurers (IADI), *Core Principles for Effective Deposit Insurance Systems (Core Principles)*, November 2014, <https://www.iadi.org/uploads/cprevised2014nov.pdf>.

- International Association of Deposit Insurers (IADI), *Enhanced Guidance for Effective Deposit Insurance Systems: Deposit Insurance Coverage*, 2013, https://www.iadi.org/uploads/IADI_Coverage_Enhanced_Guidance_Paper.pdf.
- International Monetary Fund, Republic of Serbia: *Letter of Intent, Attachment I. Memorandum of Economic and Financial Policies*, 6 February 2015, available at: <https://www.imf.org/external/np/loi/2015/srb/020615.pdf>.
- Kancelarija za evropske integracije, *Nacionalni program za usvajanje pravnih tekovina Evropske unije*, Belgrade, July 2014.
- Krstić, B., Radojičić, J., "Osiguranje depozita kao ex ante i ex post antikrizni mehanizam u bankarstvu", *Ekonomске teme* No. 4, University of Niš, 2012, 535–554.
- Payne, J., "The Reform of Deposit Guarantee Schemes in Europe", *European Company and Financial Law Review*, Volume 12, Issue 4, De Gruyter, 2015, 539–562.
- Rowe, James: "IMF Survey: Government Borrowing Is Rising Risk to World Financial System", 20 April 2010.

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