

stručni članak

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KOMPLAJANS FUNKCIJA - STATUS I PERSPEKTIVA

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Rezime

Nedostatak precizne regulative i smernica uslovio je različita shvatanja nadležnosti, metodologije i organizacije komplajans funkcije, kako na strani regulatora tako i na strani subjekata na tržištu. S tim u vezi, u radu se ukazuje na raznorodnost pristupa ovoj funkciji, i potrebi za njegovim usmeravanjem i standardizacijom. Posebna pažnja posvećena je ulozi i značaju komplajans funkcije, ne samo za poslovne aktivnosti i reputaciju banaka, već i za celokupnu privredu i društvo u celini, uz zaključak da se raznorodnost pristupa u komplajans funkciji može sjediniti jedino u najdubljim principima mere, pravde i pravičnosti, odnosno kulture časnog poslovanja.

Ključne reči: komplajans, etika, organizacija, metodologija, kultura

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COMPLIANCE FUNCTION - STATUS AND PERSPECTIVE

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Summary

The lack of precise regulations and guidelines has caused various interpretations of the jurisdictions, methodology and organization of the compliance function, both by the regulators and the market players. Accordingly, this paper points to the variety of approaches to this function, and the need for its being guided and standardized. Special attention has been paid to the role and significance of the compliance function, not only for the business activities and the reputation of banks, but also for the overall economy and society with the conclusion that the variety of approaches in the compliance function could only be united in the deepest principles of measure, justice and equity, i.e. the culture of fair business.

Keywords: Compliance, ethics, organization, methodology, culture

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Prošlo je više od dvanaest godina otkako je funkcija kontrole usklađenosti na mala vrata ušla u domaći zakonodavni okvir. U to vreme, rukovodeći se isključivo opštim normama Zakona o bankama ("Službeni glasnik RS" br. 107/2005, 91/2010 i 14/2015) i podzakonskog akta Narodne banke Srbije (Odluka o načinu i uslovima identifikacije i praćenja rizika usklađenosti poslovanja banke i upravljanja tim rizikom, "Službeni glasnik RS" br. 86/2007/, / ispravka 89/2007) kod uspostavljanja ove funkcije menadžment banaka je pribegavao relativno jednostavnim rešenjima, trudeći se uglavnom da forma minimalnog izveštavanja bude zadovoljena, a bez stvarne svesti o obimu i prirodi rizika usklađenosti poslovanja.

Nedostatak preciznije regulative i smernica (što je predmet posebnog ispitivanja u ovom tekstu) polako je vodio različitim interpretacijama nadležnosti, metodologije i organizacije ove funkcije, kako na strani regulatora tako i na strani subjekata na tržištu. Uprkos pojedinim zajedničkim imeniteljima koje su, u kontekstu pomenutih ključnih elemenata ove funkcije, formirale banke čije je sedište u Evropskoj uniji, značajan broj elemenata je ostao heterogen. Tako se pod istim imenom na tržištu mogu sresti najrazličitiji oblici delatnosti - počev od upravljanja prigovorima pa do učešća u proceni kapitalne adekvatnosti, od upravljanja otpadom do merenja i upravljanja operativnim rizikom. Ovakva raznorodnost koja, zbog magične reči "usklađenost", nije imanentna nijednoj drugoj funkciji u banci, navela je autora ovog teksta da pokuša da doprinese usmeravanju i standardizaciji pristupa odnosno razvoju kontrole usklađenosti poslovanja (komplajans funkcije).

Cilj ovog preispitivanja, razume se, nije samo strukovno profesionalni, već u širem smislu i društveni. Komplajans funkcija, više nego bilo koja druga, ima jedinstvenu šansu, da u eri digitalizacije i visoko tehnoloških informacionih ratova između učesnika na tržištu, povрати poljuljani bankarski imidž, poverenje i reputaciju. Nadahnuće koje komplajans treba da unese u redovne poslovne aktivnosti banaka nadalje treba da prožima celokupni krvotok privrede i doprinese opšte društvenom boljitku.

Paradoksalno ili ne, na svojevrsnom

korporativnom tehnokratskom vrhuncu, raznorodnost pristupa u komplajans funkciji, može se sjediniti jedino u najdubljim principima mere, pravde i pravičnosti, na kojima su još i antički mislioci zasnovali svoja najveća dela.

Ono što se danas uobičajeno podrazumeva pod komplajansom, svakako počiva na jednoj društvenoj ravni, a proisteklo je iz sjedinjavanja pojedinih principa korporativnog upravljanja i socioloških teorija velikih filozofa i mislilaca (od Rusoa do A. Ecionija). Najpre je na najrazvijenijim tržištima moderne privrede uočena potreba da se poslovanje ne može isključivo rukovoditi beskrupuloznim sticanjem profita, već na umeren i održiv način, baziran na fer odnosima između učesnika i poverenju. Uviđa se da najdublji etički princip može biti jedina osnova za rast, bez obzira na to što se razne forme neadekvatnog poslovanja mogu sprovoditi u pravnim okvirima, na štetu društva i ispod radara regulatora. Ciklusi u kojima se nakon kriza i afera donosi rogobatna i stroga regulativa, počev od industrija oružja, hrane, farmacije pa sve do finansija, ukazuju nesumnjivo na manjak preventivnog delanja, odnosno manjak svesti o načinu na koji se sprovodi održivo poslovanje. Takođe, uočena je i ranjivost na neetičko ponašanje u samostalnim procesima koji prate skoro svaku industriju, a na prvi pogled predstavljaju samo vezivna tkiva između prodavaca odnosno pružalaca usluga i korisnika tj. potrošača - prevoz i logistika, nabavka, prodaja, posredovanje, poveravanje poslovnih procesa trećim licima, ugovaranje na daljinu i slično.

Najdominantniji pravni izvor principa bankarskog komplajansa su Bazelski dokumenti (Basel Committee of Banking Supervision, 2005) gde se na opšti način nalaže bankama odnosno regulatorima da u svoje pravne okvire unesu fer tretman klijenata, transparentnost u poslovanju (sa posebnim akcentom na ekonomskim efektima transakcije, odnosno poslovnog odnosa), zaštitu konkurencije i upravljanje rizicima koji mogu narušiti finansijske pokazatelje, reputaciju i poverenje zainteresovanih strana (gde je bankarski sektor najosetljiviji na fenomen pranja novca).

Iako je normativni rad kako nacionalnih, tako i nadnacionalnih tela i asocijacija na temu komplajansa relativno skroman, smatramo da isti nije nužan da bi se ostvario napred pomenuti cilj

It has been more than twelve years since the function of the compliance control surreptitiously entered the national legal framework. At that time, governed exclusively by the general norms of the Law on Banks (Official Gazette of RS, no. 107/2005, 91/2010 and 14/2015) and the bylaw of the National Bank of Serbia (Decision on the Manner and Conditions of Identification, Monitoring and Management of Bank Compliance Risk, Official Gazette of RS, no. 86/2007, /correction 89/2007), when establishing this function the bank management resorted to the relatively simple solutions, mainly by trying to satisfy the form of minimal reporting, without truly being aware of the scope and the nature of the business compliance risks.

The lack of precise regulations and guidelines (which is the subject of special research in this text) has slowly led to the various interpretations of the jurisdictions, methodology and organization of this function, both by the regulators and the market players. Despite certain common denominators which, in the context of the mentioned key elements of this function, were formed by the banks based in the EU, a significant number of elements has remained heterogeneous, and thus, under the same name, various forms of this activity can be found on the market - starting from the complaint management to the participation in the assessment of capital adequacy, from waste management to the operational risk measurement and management. This kind of variety which, due to the magic word "compliance", is not immanent to any other function in a bank, made the author of this paper try to contribute to the guiding and standardization of the approach to the business compliance function, i.e. its development.

Certainly, the aim of this reconsideration is not only vocational and professional, but also social in a broader sense. Compliance function, more than anything else, has a unique chance to restore the shaken image of banks and its trust and reputation in this era of digitalization and high technology wars among the market players. The inspiration that the compliance brings into the regular business activities of the banks should in the future permeate the entire circulation system of the economy, thus contributing to the common social welfare.

Paradoxically or not, at a corporate technocratic peek of a kind, the variety of approaches to the compliance function can be united only in the deepest principles of measure, justice and equity, on which the ancient thinkers based their greatest works long time ago.

The typical understanding of compliance today is certainly based on one social level, and it originates from the unification of individual principles of corporate management and sociological theories of great philosophers and thinkers (from Rousseau to A. Etiony). First, in the most developed markets of modern economy it was observed that doing business cannot be exclusively conducted by unscrupulous gaining of profit but in a moderate, sustainable way, based on fair relations among the participants and their mutual trust. It has been noticed that the deepest ethical principle can be the only basis for growth, regardless of the fact that various forms of inadequate business activities can be done within the legal framework, to the detriment of the society and below the radar of the regulators. The cycles in which, following the crises and affairs, inept and strict regulatory rules are established, in the areas ranging from arms industry, food industry and pharmacy to finances, point to the indubitable lack of preventive actions, i.e. the lack of awareness about the way of performing sustainable business actions. Also, it has been noticed that there is unethical behaviour in individual processes that accompany almost every industry, which, at first glance, represent only the connective tissue between the sellers, i.e. service providers and the users, i.e. consumers – transport and logistics, procurement, sales, mediation, outsourcing, remote contracting, etc.

The most dominant legal source of the principle of bank compliance is the compendium of Basel Committee documents (Basel Committee of Banking Supervision, 2005), generally obliging the banks, i.e. the regulators to introduce into their legal frameworks the fair treatment of clients, the transparency in doing business (with special emphasis on the economic effect of transactions, i.e. business relations), competition protection and management of risks which could jeopardize financial indicators, reputation and the trust of the relevant stakeholders (the banking sector

komplajans funkcije i njena efikasna integracija u sistem internih kontrola banke. Ovo pre svega zato što bi preterano normiranje komplajans funkcije moglo oduzeti preko potrebnu slobodu u kreiranju zaključaka i izveštaja, ali i u savetovanju organa odlučivanja u banci.

Intencija široko postavljenih principa zapravo i jeste osnova za PRILAGOĐAVANJE komplajans funkcije modelu poslovanja institucije, njenoj kompleksnosti i obimu poslovanja tj. bazama podataka (dakle, mnogo šire od pojma obrade podataka o klijentima i transakcijama). Iz perspektive privrednog subjekta, na akcionarima, kao ultimativnim nosiocima rizika je da preko upravnog odbora uspostave komplajans funkciju na način koji je adekvatan dugoročnoj strategiji banke i u kontekstu raspoređivanja nadležnosti sa ostalim srodnim funkcijama, definisanim različitim regulatornim i strukovnim standardima (upravljanje rizicima, unutrašnja revizija, bezbednost informacija i informacionih sistema, back office, pravna služba, upravljanje ljudskim resursima i dr.).

Nadležnost komplajans funkcije mora podrazumevati određene referentne tačke u odnosu na koje će se razlikovati od ostalih komponenata sistema internih kontrola. Pomenuti principi i postojeće norme ne ograničavaju upravu banke da ovakve polazne osnove budu kako procesi tako i tematske celine, najčešće objedinjene na način na koji ih vidi važeća bankarska regulativa. Tako će komplajans, na temeljima strategije i dugoročnih poslovnih ciljeva banke, uspostaviti određene metodološke pristupe na jasno imenovanim oblastima, adekvatno formalizovanim.

Međuzavisnost jurisdikcije poslovanja, vrste servisa koje banka nudi i sledstveno tome vrste klijenata, odnosno ugovarača, i savetodavno kontrolnih mehanizama za upravljanje rizicima u najširem smislu, jasna je smernica za opredeljivanje ovih oblasti. Ishod ove elastičnosti biće da su komplajans funkcije tradicionalne banke i investicione banke podjednako adekvatne, ali različite. Podrazumeva se da će PROGRAM kao skup svih akata (bez obzira na hijerarhiju) koji povezuju relevantne teme za komplajans funkciju biti pravovremeno ažuriran, prateći najširi opseg promena u poslovnom okruženju. Suvišno je napominjati da se pri svakoj promeni nadležnosti komplajans

funkcije mora rukovoditi holističkim gledanjem na sistem internih kontrola kako se ne bi desilo preklapanje nadležnosti sa ostalim funkcijama, dok pojedine novine ostaju neadekvatno obrađene. Ovaj princip naročito je uočljiv kod tendencije integracije komplajans funkcije u "tradicionalni" okvir za upravljanje rizicima, gde se prvo formalno, kroz EU Direktive i nacionalne akte (The Capital Requirements Directive (CRD IV), 2013/36/EU; The Bank Recovery and Resolution Directive, 2014/59/EU; The Payment Accounts Directive, 2014/92/EU; The Payment Services Directive (PSD 2), 2015/2366/EU; Odluka o upravljanju rizicima banke „Službeni glasnik RS“, br. 45/2011, 94/2011, 119/2012, 123/2012, 23/2013 - dr. odluka, 43/2013, 92/2013, 33/2015, 61/2015, 61/2016, 103/2016 i 119/2017), a potom i praktično sa regulatorne strane želi videti uzimanje u obzir komplajans rizika, kako u definisanju apetita za rizikom, SREP metodologiji, tako i u obračunu kapitala.

Opredeljivanju tema koje se stavljaju u nadležnost komplajans funkcije ne može se pristupiti samo iz jedne perspektive, već isključivo simultano sa uspostavom metodološki standardizovanog načina rada. PROGRAM rada funkcije će dakle dati odgovor i na pitanje - kako komplajans radi. Ovde je takođe vidljiv uticaj veličine, volumena i raznovrsnosti poslovanja organizacije pa će se tako jednostavniji sistemi sasvim zadovoljiti (doduše prevashodno sa pravnog aspekta) jednokratnim i opisnim izveštajima o nadolazećim rizicima i isto tako paušalno određenim kontrolama (tzv. drugog nivoa odbrane prema međunarodno prepoznatim standardima). Nasuprot tome, iole složeniji sistem, a naročito onaj koji pretenduje na jak i dugotrajan prodor na tržište i širok opseg proizvoda, zahtevaće što detaljniju granulaciju i standardizaciju metodoloških postupaka prilikom detekcije, merenja i upravljanja rizikom. Uporedo vodeći računa o optimizaciji procesa u svakom smislu, banka će metodološki model upravljanja komplajans rizikom prilagođavati na način da se osnovne matematičke matrice (čije će koordinatne ose uvek kao minimum sadržati preteću sankciju i verovatnoću nastupanja neželjenog događaja) oplemene i kvalitativnim komponentama, uključujući i bez ograničenja, razne dostupne informacije i profesionalne stavove zaposlenih

being most sensitive to the phenomenon of money laundering).

Although the normative work of both national and supranational bodies and associations on the topic of compliance is relatively modest, we believe it is not necessary for achieving the abovementioned goal of the compliance function and its efficient integration into a bank's system of internal controls. This is primarily because the excessive standardization of the compliance function could deprive it of the essential freedom, both in creating the conclusions and reports and in advising the decision-making bodies in a bank.

The intention of the widely set principles actually is to serve as the basis for the ADJUSTMENT of the compliance function to the institution's business model, its complexity and scope of operations, i.e. its database (thus, it is much broader than the notion of processing data about clients and transactions). From the perspective of a company, it is up to the shareholders, as the ultimate carriers of risk to establish the compliance function via the board of directors in a way that is adequate to the bank's long-term strategy and in the context of assigning the jurisdictions with other similar functions, adjusted to various regulatory and professional standards (risk management, internal audit, information and IT system security, back office, legal department, human resources management, etc.).

The jurisdiction of the compliance function must comprise certain reference points based on which it will differ from other components of the internal controls system. The abovementioned principles and the existing standards do not limit the bank's management to assign both processes and theme units as these starting points, most frequently united in the way defined by the banking regulations in force. Thus, the compliance function, based on the strategies and long-term business goals of a bank, will establish certain methodological approaches in respect of the clearly defined, adequately formalized areas.

The interdependence between the business jurisdiction, types of services offered by the bank and, accordingly, types of clients, i.e. contractors and advisory control mechanisms for risk management in the broadest sense, is a clear guideline for the determination of these areas.

The outcome of this elasticity will be that the compliance function of a traditional bank and an investment bank are equally adequate, but different. It certainly means that the PROGRAM, as a set of all bylaws (regardless of the hierarchy) which connect compliance-related topics, will be timely updated, in line with the widest range of changes in the business environment. There is no need to emphasize that every change in the jurisdiction of the compliance function must be based on the holistic view of the internal controls system in order to avoid the overlapping of jurisdictions with other functions, while certain new items may remain inadequately processed. This principle can particularly be noticed in the tendency of integrating the compliance function into the "traditional" frame of risk management, where, first of all formally (Capital Requirements Directive (CRD IV), 2013/36/EU; Bank Recovery and Resolution Directive, 2014/59/EU; Payment Accounts Directive, 2014/92/EU; Payment Services Directive (PSD 2), 2015/2366/EU; Decision on the Manner and Conditions of Identification, Monitoring and Management of Bank Compliance Risk, Official Gazette of RS, no. 86/2007, /correction No. 89/2007 and Decision on Risk Management by Banks, Official Gazette of RS, no. 45/2011, 94/2011, 119/2012, 123/2012, 23/2013, 43/2013, 92/2013, 33/2015, 61/2015, 61/2016, 103/2016 and 119/2017), and then practically as well, it can be observed how compliance risk is taken into consideration, both in terms of the risk appetite definition, SREP methodology, and capital calculations.

The definition of the topics that are the subjects of the compliance function jurisdiction cannot be approached from only one perspective, but exclusively simultaneously with the establishment of the standardised methodology. The operating PROGRAM of the function will then also answer the question of how compliance works. This is also where the influence of the size, volume and variety of the organization's business activities is obvious, hence the simpler systems will be completely satisfied (primarily from the legal aspect) by one-off and descriptive reports about the upcoming risks and also by flat-determined controls (the so-called second level of defence according to the internationally recognized standards). Contrary to that, a system that is even a bit more complex, and especially

kojima je povereno obavljanje komplajans poslova. Modeli kalkulacija komplajans rizika takođe su podložni prilagođavanju, pa stoga bilo kakvo kvantifikovanje statusa komponenata (tj. mogućih aspekata implementacije željenog standarda, dakle ne samo pravne norme) koje utiču na verovatnoću nastupanja rizika, mora biti odmereno u kontekstu ukupne slike o potencijalnim rizicima.

Kontrole drugog nivoa, shvaćene u najužem smislu (ne kao celokupan drugi nivo odbrane gde komplajans nije jedina funkcija, niti celokupan učinak komplajans funkcije), treba da prate prethodno što je više moguće jednoobrazno mapiranje procesa i procedura koji zahtevaju implementaciju poželjnog ponašanja. Drugim rečima, kontrole koje sprovodi komplajans funkcija korespondiraju tematskim celinama koje opredeli upravni odbor u okviru Sistema upravljanja rizicima. Dakle, cilj kontrola je da potvrde život jedne interne norme u praksi, na osnovu fino podešenih parametara (čija kompleksnost očekivano varira), takođe adekvatno formalizovanih. Rezultati kontrole bivaju uzeti u obzir ad hoc ali i sistematično, kroz dalju integraciju sa procenjenim rizikom i izveštavanje ka menadžmentu.

Trenutno važeći nacionalni i međunarodni pravni okvir ne podrazumeva da savetodavna uloga komplajans funkcije isključuje sprovođenje kontrolnih aktivnosti. Naprotiv, savetodavna uloga se nameće kao kompas poslovnih aktivnosti banke i stoga ne bi trebalo da podleže formi, već samo da omogući pravilno i dosledno tumačenje usvojenih standarda. Od komplajansa se očekuje da upravo putem savetovanja (uključujući smernice, uputstva, odgovore na pojedinačne zahteve, učešće u uvođenju novih poslovnih aktivnosti, ad hoc procene rizika, redovno prisustvo u odborima i radnim telima) aktivno saučestvuje i doprinese ostvarenju strateških poslovnih ciljeva.

Kada je reč o ORGANIZACIJI, izuzev opšte norme koja predviđa postojanje organizacionog dela, u regulativi nema daljih smernica u vezi sa veličinom, brojnošću i načinom ustrojstva komplajans funkcije. Stoga praksa poznaje različite formate ovog organizacionog dela, podele poslova unutar njega, organizacione pripadnosti kao i razlike u pogledu raspoloživih budžetskih resursa. Ovi

očekivani organizacioni varijeteti ne nameću dileme u vezi sa izveštavanjem (gde postoje jasne norme i smernice da se izveštaji adresiraju na najviše organe banke) i imenovanjem rukovodioca, koliko zamagljuje pojamovnu razliku između organizacionog aspekta i same funkcije. U skladu sa napred iznetim, organizacija komplajans funkcije može zauzeti različita mesta u organizacionoj šemi banke (sa podrazumevanjem nezavisnosti pre svega imenovanog lica - rukovodioca), a pojedini poslovi se mogu poveravati strukturama i zaposlenima izvan onoga što je označeno kao komplajans. Takav totalitet, koji podrazumeva sistem u okviru Sistema (internih kontrola) podrazumeva FUNKCIJU.

Pomenuto pojamovno razgraničenje nikako ne znači da se komplajans shvaćen kao kao pravac, način rada i skup principa odnosi samo na funkciju već celu organizaciju. Ovakvo shvatanje ne kreira dilemu po pitanju uloge rukovodioca komplajansa (u smislu njegovih odgovornosti) već upućuje na jedno šire, ali suštinsko pitanje - kolika je svest, odnosno kakva je KULTURA zaposlenih kada je reč o komplajans standardima? Nije stoga čudno što napredna inostrana praksa regulatorima nalaže da sve više obavljaju superviziju putem procene, *judgement-based*, ispitujući ispravnost pojedinih oblika ponašanja, iako su pravno dozvoljena.

Kada se opisanim varijablama po pitanju ustrojstva komplajans funkcije doda uvek prisutna ograničenost resursa postavlja se razumno pitanje - kako komplajans tj. menadžment banaka treba da odgovori trenutnom okruženju? Za razmatranje svih regulatornih novina (uglavnom poreklom iz EU kada je reč o našoj zemlji), poput onih iz oblasti zaštite podataka, tržišta kapitala, platnog sistema, elektronskog poslovanja i slično, u kombinaciji sa tehnološkim inovacijama koje zasipaju tržište i čine ga još konkurentijim, bilo bi potrebno mnogo više prostora. Međutim, kao što je napred rečeno, odgovor na nove okolnosti nije puko proceduralno tehničko prilagođavanje već rad na kreiranju SVESTI i kulture tržišnih učesnika, kako zaposlenih, tako i klijenata, partnera i dobavljača.

Kultura (organizacije) kao bazična komponenta komplajans misije naglašava društveni karakter ove funkcije. Kao

one which strives to achieve a strong and long-lasting penetration onto the market, offering a wide range of products, will demand as detailed as possible granulation and standardization of methodological actions for the risk detection, measurement and management. Simultaneously paying attention to the optimization of the process in every way, a bank will adapt the methodological model of the compliance risk management in the manner that the basic mathematical matrices (the axes will always, as a minimum, contain the proposed sanction and the probability of occurrence of the undesirable event) are enriched by qualitative components as well, including but not limited to, the available information and professional attitudes of the employees entrusted to perform the compliance jobs. The models of compliance risk calculations are prone to adjustments as well, and thus, any kind of quantification of the component status (i.e. possible aspects of the implementation of the desired standard, and not only the legal standard) which influence the probability of risk occurrence, must be measured in the context of the overall information about the potential risks.

The second-level controls, taken in the narrowest sense (not as the overall second level of defence where compliance is not the only function, nor as the overall effect of the compliance function), should, as much as possible, follow the uniform mapping of the processes and procedures which demand the implementation of the desired behaviour. In other words, the controls conducted by the compliance function correspond to the theme units determined by the board of directors within the risk management system. Thus, the aim of the controls is to confirm the existence of an internal norm in practice according to the fine-tuned parameters (the complexity of which varies, as expected), also adequately formalized. The results of the control are taken into consideration both ad hoc and systematically, through further integration with the estimated risk and reporting to the management.

The currently valid national and international legal frameworks do not imply that the advisory role of the compliance function excludes the execution of control activities. On the contrary, the advisory role imposes itself as a compass of a bank's business activities and thus it should

not be subject to the form, instead enabling the correct and consistent interpretation of the adopted standards. Compliance is expected to actively participate and contribute to the accomplishment of the strategic business goals, precisely through advisory services (including but not limited to guidelines, instructions, responses to individual requests, participation in the introduction of new business activities, ad hoc risk assessment, regular presence at the board and working bodies meetings).

When it comes to the ORGANIZATION, besides the general norm that stipulates the existence of the organizational part, the regulations do not provide any further guidelines concerning the size, staff number and structure of the compliance function. Therefore, the practice is familiar with various formats of this organizational part, the division of assignments within it, the organizational affiliation as well as the differences regarding the available budget resources. These expected organizational varieties do not impose dilemmas in terms of reporting (which is regulated by the clear norms and guidelines stipulating that the reports are addressed to the top management bodies of a bank) and the appointment of managers, but they blur the terminological difference between the organizational aspect and the function itself. In accordance with the abovementioned, the compliance organization can take various places in the organizational scheme of a bank (with the implicit independence of the appointed person - manager) and certain activities can be assigned to the structures and the employees outside of what is determined as compliance. Such a totality, which implies a system within the System (of internal controls), also implies the FUNCTION.

The abovementioned terminological difference by no means implies that compliance, understood as a direction, a methodology and a set of principles, refers only to the function, but to the whole organization. This understanding does not create a dilemma concerning the role of a compliance manager (in the sense of his/her responsibilities) but it points to a wider, but essential question - how strong is the awareness, i.e. what is the CULTURE of the employees when the compliance standards are concerned? Therefore, it is not strange that the advanced foreign practice obliges the regulators to

prevashodno antropološki koncept koji datira iz XIX veka i za čiji transfer u menadžment je bio potreban skoro ceo jedan vek, organizaciona (komplajans) kultura pledira na dva koloseka: organizaciono ponašanje i upravljanje ljudskim resursima. Razumevanje interdisciplinarnе prirode organizacione kulture (menadžment, psihologija, socijalna psihologija, antropologija i sociologija), može biti načelna smernica za dalje oblikovanje poželjnog načina poslovanja. Danas se na temu organizacione kulture može naći nekoliko hiljada naslova što govori o trendovima, aktuelnosti i značaju teme, ali se za jedno praktično gledište za ovu priliku možemo poslužiti jednom od jezgrovitih definicija koja kulturu vidi kao *model zajedničkih vrednosti koje daju zaposlenima institucionalna značenja kao i pravila ponašanja u svakodnevnom životu* (Davis, 1984).

Idući dalje kroz mnoštvo elemenata koji prositiču iz ovakve polazne tačke (npr. pretpostavke, obrazac komunikacije, stavovi, modeli ponašanja, verovanja, ceremonije, klima, anegdote, posvećenost, običaji u organizaciji, ETIKA, način obavljanja poslova, zajednička očekivanja, navike, osećanja, itd.) uviđaju se potencijalni načini delovanja menadžmenta i komplajans funkcije, a kojima bi se na "mentalne adrese" zaposlenih isporučile željene VREDNOSTI. Stoga je od presudnog značaja za etabliranje kulture da se poruke zaposlenima komuniciraju iz nekoliko pravaca, a naročito sa strane najvišeg menadžmenta (koji rukovodi sopstvenim primerom). Takođe, bitno je zaustaviti praksu merenja uspešnosti poslovnih rezultata bez uključivanja kvalitativne procene u vezi sa načinom postizanja tih rezultata, zatim izdvajati prioritete teme za EDUKACIJU (shodno konkretnim rizicima i poslovnoj strategiji) zaposlenih i menadžmenta kao i unaprediti u skladu sa tim sistem nagrađivanja i kažnjavanja. Dalje, adekvatna formalna uspostava procesa i procedura treba da objedini korpus vrednosti i doprinese konzistentnosti, izvesnosti, smislu i poretku unutar banke.

Uspešnost ili bolje reći istinitost uspostavljenog sistema vrednosti ogledala bi se u uviđanju svojevrsnog sinhroniciteta u pogledu poželjnog ponašanja (uzročno nepovezanih ali smislenih) zaposlenih (nasuprot očekivane kauzalnosti u ponašanju

proistekle iz procedura). Ovo je nužna pretpostavka bez koje novi profili komplajans struke uzrokovani novim, napred pomenutim tržišnim okolnostima, ne bi mnogo doprineli unapređenju prakse. Ukoliko bi se, pak, pored nadolazećeg strukovnog udruživanja razvila ideja dalje aktivnosti banaka, različitih profesionalnih profila i regulatora sa svrhom formiranja svojevrsnog suda ČASNOG poslovanja (nalik *Prudential Regulation Authority* u Velikoj Britaniji), kolektivnu svest bi sve više prožimala misao velikog Kanta: "Dve stvari me ispunjavaju sve većim strahopoštovanjem i divljenjem što ih više promišljam - zvezdano nebo nada mnogom i moralni zakon u meni." (Kant, 1788)

Literatura / References

1. Basel Committee of Banking Supervision (2005). *Komplajans and komplajans function in Banks*. <https://www.bis.org/publ/bcbs113.pdf>, datum pristupa: 27.03.2018.
2. Davis S. (1984). *Managing corporate culture*. USA: Ballinger Publishing Company.
3. Kant I. (1788). *The Critique of Practical Reason*. (Translated by Tomas Kingsmill Abbott). New York: Dover Publications, INC.
4. Odluka o načinu i uslovima identifikacije i praćenja rizika usklađenosti poslovanja banke i upravljanja tim rizikom, "Službeni glasnik RS" br. 86/2007, / ispravka br. 89/2007.
5. Odluka o upravljanju rizicima banke „Službeni glasnik RS“, br. 45/2011, 94/2011, 119/2012, 123/2012, 23/2013 - dr. odluka, 43/2013, 92/2013, 33/2015, 61/2015, 61/2016, 103/2016 i 119/2017.
6. The Capital Requirements Directive (CRD IV) 2013/36/EU.
7. The Bank Recovery and Resolution Directive, 2014/59/EU.
8. The Payment Accounts Directive, 2014/92/EU.
9. The Payment Services Directive (PSD 2), 2015/2366/EU.
10. Zakon o bankama "Službeni glasnik RS" br. 107/2005, 91/2010 i 14/2015.

increasingly perform supervision in the form of assessment, i.e. "judgement-based" supervision, by examining the correctness of certain forms of behaviours, even though they are legally allowed.

When the described variables concerning the organization of the compliance function are joined by the always present limitation of resources, a reasonable question arises - how should compliance, i.e. the bank management respond to the current environment? To consider all the regulatory novelties (mainly originating from the EU when Serbia is concerned), such as those in the area of data protection, capital market, payment system, e-business etc., in combination with the technological innovations that shower the market and make it even more competitive, one would require much more space. However, as it has already been said, the response to the new circumstances is not a simple procedural technical adjustment but also the activity of generating AWARENESS and the culture of the market actors, both on the part of the employees and on the part of the clients, partners and suppliers.

The culture (of the organization) as the basic component of the compliance mission emphasises the social character of this function. As a primarily anthropological concept which dates back to the 19th century and whose transfer to management took almost the whole century, the organizational (compliance) culture pleads to two tracks: organizational behaviour and human resources management. The understanding of the interdisciplinary nature of the organizational culture (management, psychology, social psychology, anthropology and sociology) may be the general guideline for further shaping the desired way of doing business. Today, there are several thousands of titles on the topic of organizational culture, focusing on trends, actuality and significance of the topic, but from a practical point of view, for this purpose, we can use one of the concise definitions which views culture as a model of common values that provide the employees with institutional meanings as well as the rules of conduct in everyday life (Davis, 1984).

Going further through the numerous elements which originate from this starting point (eg. suppositions, communication pattern, attitudes, models of behaviour, beliefs,

ceremonies, climate, anecdotes, dedication, customs in the organization, ETHICS, ways of doing business, mutual expectations, habits, feelings, etc.), one can notice the potential actions of the management and the compliance function that could deliver the desired VALUES to the "mental addresses" of the employees. That is why it is of crucial importance to establish the culture so that the messages to the employees may be communicated from several directions, and especially from the top management (which guides by its own example). Also, it is important to stop the practice of measuring the success of the business results without including the qualitative assessment of the ways in which these results were accomplished, also to extract the priority topics for the purpose of EDUCATION (in accordance with the concrete risks and business strategy) of the employees and the management, as well as to accordingly improve the system of rewards and punishments. Moreover, the adequate formal establishment of the process and procedures should unite the corpus of values, thus contributing to the consistency, certainty, meaningfulness and order within a bank.

The success, or better said, the truthfulness of the established system would be reflected in noticing a unique synchronicity regarding the desired behaviour (conditionally unconnected but sensible) of the employees (contrary to the expected causality in the conduct based on procedures). This is the necessary supposition without which the new profiles of professional compliance caused by the aforementioned market circumstances would not contribute much to the improvement of practice. If, however, besides the upcoming professional unification, an idea of further activities of banks develops, along with the various professional profiles and regulators with the purpose of forming a unique court of HONOURABLE business (similar to *Prudential Regulation Authority* in Great Britain), the collective consciousness would be even more permeated by the thought of the great Kant: "Two things fill the mind with ever new and increasing admiration and reverence, the more often and more steadily one reflects on them - the starry heavens above me and the moral law within me" (Kant, 1788).