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Bankarski rizik 50

BAIL IN / BAIL OUT (rizik solventnosti)

Rezime

Savremene bankarske industrije posluju u složenom makroekonomskom okruženju koje ciklično ulazi i u fazu globalnih ekonomskih kriza. Jedna od posledica ove ciklične faze je i ozbiljno ugrožavanje finansijske pozicije banaka. U slučaju velikih, sistemski značajnih banaka, koje su najčešće međunarodno aktivne preko supsidijara u različitim zemljama, rizik insolventnosti ukazao je da može rezultirati mnogo širim posledicama na ceo privredni i finansijski sistem zemlje. U želji da preventivno deluju u smislu sprečavanja rizika propasti velikih, sistemski, ali i šire, značajnih banaka, Evropski parlament i Savet su usvojili okvir za oporavak i sanaciju kreditnih institucija (Bank Recovery and Resolution Directive - BRRD) kojim je uveden i bail-in mehanizam sa ciljem da se teret oporavka banke prenese na privatni sektor.

Ključne reči: "bail in", „bail out“, oporavak i sanacija kreditnih institucija

JEL: F36, G21

Banking Risk 50

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BAIL IN / BAIL OUT (The Solvency Risk)

Summary

Modern banking industries operate in a complex macroeconomic environment which cyclically enters the stages of global economic crises. One of the consequences of these cyclical stages is the serious threat to the financial position of banks. In the case of big, systemically important banks that are mainly internationally active through subsidiaries in different countries, the risk of insolvency has suggested that this could result in much broader implications for the economic and financial sector of the country. In order to prevent the collapse of large, systemically, and beyond, important banks, the European Parliament and the Council adopted a framework for the recovery and resolution of credit institutions and investment firms, which introduced the „bail-in "mechanism with the aim of transferring the burden of bank recovery to the private sector.

Key words: "bail in", "bail out", rules and procedures for bank recovery and resolution

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U nameri da definiše mere za preventivno očuvanje stabilnosti sistemski značajnih bankarskih institucija u zemljama Evropske unije, koje su vrlo velike da bi propale, Evropska unija utvrdila je okvir za upravljanje finansijskim krizama, čiji su važan deo pravila i procedure za oporavak i reorganizaciju banaka. Pravila omogućavaju nadležnim organima da intervenišu pri prvim signalima da se banka suočava sa finansijskim problemima, kao i da se sačuvaju osnovne bankarske funkcije u slučaju da poslovanje banke nastavi da beleži negativni trend.

Usvajanjem Direktive Evropskog parlamenta i Saveta kojom se uspostavlja okvir za oporavak i reorganizaciju kreditnih institucija i investicionih firmi (u daljem tekstu: Direktiva), Evropa je kompletirala jedan od tri važna stuba Bankarske unije. Direktiva je usvojena 02.07.2014. uz obavezu zemalja članica da usklade svoje zakone sa Direktivom i počnu sa njenom primenom 01.01.2015.

Neophodnost donošenja i usvajanja Direktive na nivou Evropske unije pokazala se prilikom poslednje finansijske krize kada je jedan broj banaka bio saniran sredstvima iz državnih fondova („*bail-out*“ mehanizam), jer su bile „suviše velike da bi propale“. Nivo sredstava kojim su države podržale sanaciju banaka bio je bez presedana, pa je zaključeno da finansijski sistemi ubuduće moraju biti stabilniji, a da banke koje propadaju ne mogu više očekivati da se njihovi gubici pokrivaju sredstvima poreskih obveznika, odnosno, da ne mogu očekivati podršku iz državnih fondova. Osim toga, veliki broj nacionalnih i „prekograničnih banaka“ koje ne posluju uspešno poslednjih godina, potvrdio je ozbiljne nedostatke u postojećim raspoloživim alatima nacionalnih vlasti za prevenciju bankrota sistemskih banaka. U ovakvim slučajevima Direktiva obezbeđuje:

- nacionalne vlasti setom harmonizovanih alata i uspostavlja robustan okvir za razmenu informacija, konsultacije i saradnju između država i
- pokriva neuspehe nacionalnih i prekograničnih banaka.

Jedan od novih alata koje uvodi Direktiva je „*bail in*“ mehanizam ca ciljem da se teret oporavka banke prenese na privatni sektor. Ovaj alat omogućuje vlastima da rekapitalizuju banku koja propada kroz otpise obaveza i/ili kroz njihovu konverziju u akcijski kapital, kako bi

banka mogla da nastavi sa poslovanjem. Dakle, „*bail-in*“ mehanizam predstavlja mogućnost pretvaranja svih oblika bančnih dugovanja u kapital, sem neophodnih izuzetaka (osigurani depoziti, obaveze banke sa rokovima do 7 dana, plate zaposlenih). Prvi korak je pokrivanje gubitaka na teret akcijskog kapitala, a tek potom slede otpisi ili pretvaranje obaveza banke u kapital u visini nepokrivenog dela gubitka. Dakle, posle akcija i sličnih instrumenata, ako je neophodno, preostali gubici ravnomerno se raspoređuju na vlasnike subordiniranog duga banke, a tek potom, jednako na vlasnike starijeg duga. Da bi se izbeglo da banke i druge finansijske institucije strukturiraju svoju pasivu na način koji može da ugrozi efikasnost primene „*bail in*“ mehanizma ili drugih alata za restrukturiranje, Direktiva zahteva od finansijskih institucija da obezbede minimum sopstvenih sredstava (kapitala) i prihvatljivih obaveza.

Svaki ugovor o preuzimanju obaveza nacionalnih banaka u zemljama članicama Evropske unije i njihovim supsidijarima u zemljama Evropske unije (ugovori o depozitima, izdavanje bankarskih garancija, otvaranje dokumentarnih akreditiva, davanje meničnih avala, akceptiranje menica) *mora u buduću da sadrži „bail in“ klauzulu („Bail in recognition clause“)*, kojom se priznaje i prihvata „*bail in*“ mehanizam (član 55 Direktive).

„*Bail in*“ mehanizam obavezan je za sve banke u zemljama članicama Evropske unije i njihove supsidijare u zemljama Evropske unije, ali je i njegovim uvođenjem teret oporavka velikih, sistemski značajnih banaka, koje su najčešće finansijski restrukturirane iz sredstava državnih fondova („*bail out*“), sada prenet sa države na privatni sektor („*bail in*“). Iako Direktiva dozvoljava određena odstupanja od pravila, ona će sigurno doprineti koordiniranom pristupanju restrukturiranju nacionalnih banaka, ali i onih koje imaju supsidijare u zemljama članicama Evropske unije.

Literatura / References

1. Directive 2014/59/EU of the European Parliament and of the Council of May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and

In order to define the preventive stability measures for systemically important banking institutions in the European Union countries, which are too big to fail, the European Union established a framework for financial crisis management, whose important part are the rules and procedures for bank recovery and resolution. The rules enable the authorities to intervene when a bank faces the first signals of financial problems, as well as to save the basic banking activities if the bank continues to record the negative trend in its business.

With the adoption of the European Parliament and Council Directive establishing a frame for the recovery and resolution of credit institutions and investment firms (hereafter to be referred to as: the Directive), Europe has completed one of the three important pillars of the Banking Union. The Directive was adopted on the 2nd of July 2014 with the obligation of the member countries to harmonize their laws with the Directive and to start with its implementation on the 1st of January 2015.

The necessity of adopting and approving the Directive at the level of the European Union showed during the recent financial crisis, when a number of banks were bailed out by means of the state funds, because they were "too big to fail". The amount of resources which countries used to support the rehabilitation of banks was unprecedented, and it was concluded that the financial systems in the future must be stable, and that the failing banks can no longer expect to have their losses covered by the funds of tax payers, i.e. they cannot expect the aid from state funds.

Furthermore, a large number of national and cross-border bank failures in the last few years, revealed some serious shortcomings in the existing tools available to the authorities for preventing failures of systemic banks. In these cases, the Directive:

- secures the national authorities with the set

of harmonized tools and restores a robust frame for information sharing, consultation and cooperation between countries and

- covers both national and cross-border bank failures.

One of the new tools introduced in the Directive is the „*bail in*“ mechanism with a view to transfer the burden of bank recovery to the private sector. This tool enables the authorities to recapitalize a failing bank through the write-down of liabilities and/or their conversion to capital so the bank can continue operating as a going concern. Thus, the „*bail in*“ mechanism represents a possibility of conversion of all kinds of bank debts into capital with a few necessary exceptions (deposits covered by mandatory insurance, seven days deposits, wages of employees). Equity has to absorb the losses in full in the first step, before any debt claim is subject to write-off or conversion into capital at the level of uncovered losses. After shares and other similar instruments, if necessary, the remaining losses get evenly distributed among the holders of subordinated debt and then evenly among the senior debt-holders.

Each contract on undertaking obligations by the banks in the EU member states and their subsidiaries in the European Union countries (contracts on deposits, issuing of bank guarantees, opening of letters of credit, granting of bills sureties, bills of exchange acceptances) must contain the „*bail in*“ clause in the future („*Bail in recognition clause*“), recognizing and accepting the bail in mechanism (Article No. 55 of the Directive).

„*Bail in*“ mechanism is obligatory for all national banks in the European Union member states and their subsidiaries in the European Union countries, and its implementation enables the burden of big, systemically important banks that were mostly financially restructured from the state funds („*bail out*“) to be transferred to the private sector („*bail in*“). Although the Directive permits some exceptions from the rules, it will certainly contribute to the coordinated approach to the restructuring of the national banks and those which have subsidiaries in the European Union member states.