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ORIGINALNI NAUČNI RAD

Fond za osiguranje depozita u ulozi finansijera procesa restrukturiranja banaka

Deposit Insurance Fund in the role of a bank resolution process financier

Rezime

Osnovni zadatak Fonda za osiguranje depozita (FOD) jeste zaštita osiguranih depozita u bankama i, na taj način, doprinos očuvanju finansijske stabilnosti. FOD svoj zadatak može da izvrši kroz ulogu isplatioca osiguranih depozita u slučaju likvidacije ili stečaja banaka i to je njegova osnovna uloga, ali i kroz finansiranje procesa restrukturiranja banaka, koju možemo smatrati njegovom dopunskom ulogom. Imajući u vidu da se potreba za restrukturiranjem banaka više odnosi na velike, sistemski značajne banke, a da po svojoj prirodi FOD nije namijenjen za rješavanje sistemskih kriza, otuda ulogu finansijera procesa restrukturiranja banaka nazivamo dopunskom ulogom FOD. Kako bi se očuvala osnovna uloga FOD u procesima finansiranja restrukturiranja banaka jako je bitno da se uspostave zaštitni mehanizmi za FOD u navedenim procesima. Adekvatna primjena zaštitnih mehanizama omogućava da FOD, kroz finansiranje procesa restrukturiranja banaka, dodatno doprinese finansijskoj stabilnosti, uz istovremeno očuvanje njegove osnovne uloge.

Ključne riječi: Fond za osiguranje depozita, osigurani depoziti, restrukturiranje banaka, zaštitni mehanizmi.

Abstract

The primary task of the Deposit Insurance Fund (DIF) is to provide for protection of insured deposits in banks and by that contribute to maintaining the financial stability. The DIF can perform its task through the role of the payer of the insured deposits in the event of bank liquidation or bankruptcy, which is its primary role, but also through financing the bank resolution process, which we can be considered to be its complementary role. Bearing in mind that the need for bank resolution is more related to large, systemically significant banks, and by its nature DIF is not intended to solve systemic crises, therefore we call the role of the financier of the bank resolution process an additional role of the DIF. In order to preserve the basic role of DIF in the processes of financing bank resolution, it is essential to establish safeguard mechanisms for the DIF in these processes. Adequate application of safeguards allows the DIF to further contribute to financial stability by financing the bank resolution process while maintaining its core role.

Keywords: Deposit Insurance Fund, insured deposits, bank resolution, safeguard mechanisms.

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UVOD

Osnovna uloga FOD jeste zaštita malih štediša na način pravovremene i efikasne isplate osiguranih štednih uloga kada dođe do oduzimanja dozvole za rad banci i pokretanja postupka njene likvidacije ili stečaja. FOD na ovaj način štiti osigurane deponente i tako doprinosi finansijskoj stabilnosti. Posljednja velika svjetska finansijska kriza pokazala je da je FOD kroz svoju osnovnu ulogu značajno doprinio održanju finansijske stabilnosti, ali, istovremeno, različiti pristupi načinu rješavanja banaka kojima je prijetila propast otvorili su pitanje potrebe za dodatnom sinhronizacijom propisa i u dijelu novih oblika korišćenja FOD. Nepostupanje po istim pravilima u slučaju spašavanja banaka ukazalo je na potrebu da se na međunarodnom nivou, između ostalog, definišu načini i oblici korišćenja FOD, kako u procesima isplate osiguranih štednih uloga tako i u procesima restrukturiranja banaka. Na evropskom nivou, od 2014. godine uvodi se mogućnost korišćenja FOD u procesima finansiranja restrukturiranja banaka. Kroz Prijedlog Zakona o osiguranju depozita u bankama u Bosni i Hercegovini (BiH) otvorena je mogućnost korišćenja FOD u procesima restrukturiranja banaka sa ciljem da FOD, pored zaštite osiguranih deponentata u slučaju zatvaranja banaka, kroz novu ulogu finansijera procesa restrukturiranja banaka, dodatno doprinese finansijskoj stabilnosti i učestvuje u sprečavanju eventualnih negativnih efekata propadanja banaka na privredni i ekonomski sistem BiH.

1. METODE ISTRAŽIVANJA

Metode istraživanja koje su primijenjene u ovom radu jesu metode strukturalne i komparativne analize, te metoda sinteze u predstavljanju uloge FOD u procesima restrukturiranja banaka. Na osnovu istraživanja međunarodnih eksperata iz oblasti osiguranja depozita i restrukturiranja banaka, međunarodnog udruženja osiguravatelja depozita i međunarodnih finansijskih institucija identifikovani su zaštitni mehanizmi FOD u procesima restrukturiranja banaka na međunarodnom nivou i načini njihovog djelovanja. Provjera dosadašnjih rezultata istraživanja izvršena je na primjeru banke iz BiH koja se nalazi u stečajnom postupku.

Cilj je da se naučnoj i stručnoj javnosti ukaže na doprinos koji FOD može dati u zaštiti deponentata i ukupnoj finansijskoj stabilnosti.

U ovom radu polazimo od hipoteze da se očuvanje osnovne uloge FOD u procesu finansiranja restrukturiranja banaka obezbjeđuje dosljednom primjenom zaštitnih mehanizama u pogledu korišćenja sredstava FOD.

2. PRETHODNA ISTRAŽIVANJA

Osiguranje depozita, zajedno sa bankarskom supervizijom, institucijom koja vrši restrukturiranje banaka i centralnom bankom, posmatrano u najužem smislu, u nekoj državi, čini mrežu finansijske sigurnosti (engl. financial safety net). Oni zajedno stvaraju bankarski regulatorni okvir čiji je prvi cilj stvaranje uslova koji će, s jedne strane, smanjivati vjerovatnoću propadanja banaka, a sa druge strane, u slučaju da banke propadaju ili će vjerovatno propasti (engl. the bank is failing or likely to fail), obezbijediti njihov „tih“ izlazak iz sistema, uz što manje troškove poreskih obveznika. Nadalje, kroz adekvatno postavljen bankarski regulatorni okvir, cilj je i da se obezbijede uslovi za jednak pristup finansijskih učesnika tržištu, da se podstiče tržišna konkurencija, a što sve treba da doprinese

sveukupnom privrednom i ekonomskom razvoju države. Da li je postojeći regulatorni okvir neke zemlje odgovorio postavljenom cilju, mjeri se preko doprinosa intermedijaciji kapaciteta, smanjenja troškova i sposobnosti sprečavanja izbijanja sistemskih finansijskih kriza (Bašić, 2012, str. 417).

Za navedeni prvi cilj presudne su mjere rane intervencije i pravovremenog djelovanja u bankama, gdje kroz razne mehanizme bankarski supervizori podstiču banke na sigurno i stabilno poslovanje. Sa druge strane, ukoliko banke propadaju ili se procjenjuje da će propasti, onda regulatorni okvir treba da bude postavljen na način da se izlazak banke iz sistema ili, eventualno, njeno restrukturiranje izvrši u cilju obezbjeđenja finansijske stabilnosti i uz što manje troškove poreskih obveznika. U ovom dijelu značajnu ulogu ima osiguranje depozita koje, kroz zaštitu osiguranih depozita u propaloj banci, treba da spriječi „bježanje“ depozita iz drugih banaka (engl. bank run) i na taj način doprinese finansijskoj stabilnosti.

U pogledu načina funkcionisanja sistema osiguranja depozita, FOD prvenstveno treba da se koristi za isplaćivanje osiguranih depozita u slučaju propasti banaka (Directive 2014/49/EU, Core Principles for Effective Deposit Insurance Systems, 2014). Ipak, pored osnovne uloge FOD, od 2014. godine ukazuje se i na mogućnost uključenja FOD u procese finansiranja restrukturiranja banaka. Nakon posljednje velike svjetske finansijske i ekonomske krize, evidentno je da na evropskom nivou FOD dobija još najmanje jednu ulogu, a to je doprinos u procesu finansiranja restrukturiranja banaka (Gortsos, 2019).

2.1. Uloga Fonda za osiguranje depozita u procesima finansiranja restrukturiranja banaka

Učestvovanje FOD u finansiranju procesa restrukturiranja banaka podrazumijeva da, kada se donese odluka o određenom obliku restrukturiranja banke, FOD svojim sredstvima omogući finansiranje procesa. Imajući u vidu da se potreba za restrukturiranjem banaka više odnosi na velike, sistemski značajne banke, a da po svojoj prirodi FOD nije namijenjen za rješavanje sistemskih kriza (IMF, Monetary and Capital Markets Department, 2018), otuda ulogu finansijera procesa restrukturiranja banaka nazivamo dopunskom ulogom FOD.

Osnovni preduslov za korišćenje sredstava FOD u restrukturiranju banaka jeste da je u postupku restrukturiranja banke omogućeno da deponenti i dalje raspolazu svojim sredstvima (Financial Sector Advisory Center, 2016). Nadalje, nije moguće korišćenje sredstava FOD za dokapitalizaciju banke koja se restrukturira vlastitim sredstvima („bail-in“ instrument), kao ni u slučaju obezbjeđenja kapitala banke za posebne namjene – „bridge bank“ (Directive 2014/59/EU).

Osnovne mehanizme zaštite FOD u procesima finansiranja restrukturiranja banaka možemo sumirati na sljedeći način (Directive 2014/59/EU, Directive 2014/49/EU):

- maksimalan iznos sredstava FOD koji može biti korišćen za finansiranje procesa restrukturiranja banke,
- nadoknada sredstava FOD za slučaj da on pretrpi veće gubitke u procesu restrukturiranja banke nego što bi ih imao u slučaju njene likvidacije ili stečaja,
- saradnja između učesnika mreže finansijske sigurnosti.

2.1.1. Maksimalan iznos sredstava FOD koji može biti korišćen za finansiranje procesa restrukturiranja banke

Nedavna istraživanja pokazuju da je većina sistema osiguranja depozita uvela određeni oblik definisanja maksimalnog iznosa FOD koji može biti korišćen u postupku restrukturiranja banaka (Bank for International Settlements, 2019).

INTRODUCTION

The primary role of the DIF is to protect small savers by timely and efficient reimbursement of insured savings deposits when operating license is revoked from a bank respectively bank liquidation or bankruptcy proceedings are initiated. In this way, the DIF protects insured depositors and thus contributes to financial stability. The last major global financial crisis has shown that the DIF has made a major contribution to maintaining financial stability, but at the same time, different approaches in dealing with banks likely to fail have raised the issue of the need to additionally bring into step regulations also in the part of new use of the DIF.

Failure to follow the same rules in the case of bank resolution has indicated the need to define, *inter alia*, ways and forms of using the DIF, both in the processes of insured deposit reimbursement and in the processes of bank resolution. Possibility to use DIF under the bank resolution processes has been introduced at European level since 2014. Proposal of the Law on Deposit Insurance at Banks in Bosnia and Herzegovina (BiH) opens the possibility of using the DIF under bank resolution with the aim that besides providing the protection to insured depositors in the event of bank failure, through the new role of the financier of bank resolution process, the DIF shall additionally contribute to financial stability and participate in preventing possible negative effects of bank failures on the economy and economic system of BiH.

1. RESEARCH METHODS

The research methods used in this paper are structural and comparative analysis methods, and synthesis methods in representing the role of the DIF under bank resolution processes. Based on the research of international experts in the field of deposit insurance and bank resolution, the International Association of Deposit Insurers and international financial institutions, there are defined safeguards for the DIF under bank resolution at international level as well as the ways of their function. Review of the former research results has been verified on the example of a BiH based bank undergoing bankruptcy proceedings.

The aim is to highlight to the scientific and professional public the contribution that the DIF can make in providing protection to depositors and overall financial stability.

In this paper, we start from the hypothesis that the preservation of the DIF basic role in the process of financing bank resolution is ensured by the consistent application of safeguards regarding the use of the DIF assets.

2. PREVIOUS RESEARCHES

Deposit insurance, together with banking supervision, an institution that performs bank resolution, and the central bank, viewed in the narrowest sense in a country, constitutes the financial safety net. Together, they create a banking regulatory framework whose first aim is to create conditions that will, on the one hand, reduce the likelihood of bank failures and, on the other, in the case of bank is failing or is likely to fail it provides their “quiet” exit from the system at the lowest cost to taxpayers. Furthermore, through an adequately set banking regulatory framework, the aim is also to provide conditions for equal access of financial participants to the market, to stimulate market competition, which should all contribute

to the overall economy and economic development of the country. Whether a country's existing regulatory framework has met its stated objective, it is measured by its contribution to capacity intermediation, cost reduction and the ability to prevent systemic financial crises (Bašić, 2012,417).

Measures of early intervention and timely action in banks are crucial to this first objective, where, through various mechanisms, banking supervisors encourage banks to operate safely and steadily. On the other hand, if banks fail or are estimated to fail, then the regulatory framework should be set up in such a way that the bank exits the system or, possibly, goes under resolution to ensure financial stability at the lowest cost to taxpayers. In this part, deposit insurance plays an important role, which, through the protection of insured deposits in a failed bank, should prevent the “bank run” of deposits from other banks and thus contribute to financial stability.

In terms of how the deposit insurance system works, the DIF should primarily be used to pay out insured deposits in the event of bank failure. (Directive 2014/49/EU, Core Principles for Effective Deposit Insurance Systems, 2014). However, in addition to the basic role of the DIF, since 2014, the possibility of involving the DIF to finance bank resolution has been pointed out. After the last major global financial and economic crisis, it is evident that at the European level, the DIF has at least one more role to play, a contribution to finance bank resolution process. (Gortsos, 2019).

2.1. The role of the Deposit Insurance Fund in financing the bank resolution processes

The DIF's involvement in financing the bank resolution process implies that, when a decision is made on a particular form of bank resolution, the DIF will, through its own resources, finance the process. Bearing in mind that the need for bank resolution is more related to large, systemically significant banks, and that by its very nature, the DIF is not intended to address systemic crises (IMF, Monetary and Capital Markets Department, 2018), therefore we call the role of the financiers of the bank resolution process as an additional role of the DIF.

Basic precondition for the use of DIF assets under bank resolution is that bank resolution process allows depositors to continue to dispose of their funds (Financial Sector Advisory Centre, 2016). Furthermore, it is not possible to use DIF assets to recapitalize a bank under resolution with its own funds (the “bail-in” instrument), as well as in the case of a bridge bank (Directive 2014/59 / EU).

The basic safeguard mechanisms for the DIF in financing bank resolution can be summarized as follows (Directive 2014/59 / EU, Directive 2014/49 / EU):

- The maximum amount of DIF assets that can be used to finance bank resolution process
- Compensation of the DIF in the event that it suffers greater losses under bank resolution process than it would have in the event of bank liquidation or its bankruptcy
- Collaboration between the financial safety network participants.

2.1.1. *The maximum amount of DIF assets that can be used to finance bank resolution process*

Recent research shows that most deposit insurance systems have introduced some form of defining the maximum amount of the DIF that can be used under bank resolution process (Bank for International Settlements, 2019).

The maximum amount of DIF assets that can be used in bank resolution processes may not exceed 50% of the DIF target amount

Maksimalan iznos sredstava FOD koji može biti korišćen u procesu restrukturiranja banke ne može preći 50% ciljanog iznosa FOD (Directive 2014/59/EU, 173/332) pri čemu se ciljani iznos FOD utvrđuje u procentu iznosa osiguranih depozita u banci od 0,8% (Directive 2014/49/EU, 173/164).

Drugo ograničenje vezuje se za iznos očekivanog gubitka FOD (Directive 2014/59/EU). Gubitak FOD po osnovu isplate osiguranih depozita predstavlja razliku između isplaćenog iznosa osiguranih depozita u banci i naplaćenog iznosa sredstava od banke u likvidaciji ili stečaju. U situaciji kada dođe do oduzimanja dozvole za rad banci od strane supervizorskog autoriteta, obaveza FOD je da u zakonskom roku izvrši isplatu osiguranih depozita štedišama i to tada za FOD predstavlja realan odliv sredstava. FOD se pojavljuje kao

povjerilac u banci u likvidaciji ili stečaju po osnovu isplate osiguranih depozita i u postupku likvidacije ili stečaja banke potražuje svoja sredstva u skladu sa utvrđenim redom prioriteta. Stvarni gubitak FOD po osnovu isplate osiguranih depozita u banci koja prestaje sa radom predstavlja razliku između isplaćenih osiguranih depozita i naplaćenih sredstava po osnovu potraživanja za isplaćene depozite od banke u likvidaciji ili stečaju.

Radi boljeg razumijevanja pojma očekivanog gubitka FOD u kontekstu restrukturiranja banaka, daćemo jedan hipotetički primjer koji koristi dva scenarija, i to scenario likvidacije/stečaja i scenario restrukturiranja banke (Financial Sector Advisory Center, 2016, str. 158).

SCENARIO LIKVIDACIJE				SCENARIO RESTRUKTURIRANJA			
Aktiva		Obaveze		Aktiva		Obaveze	
1.600	Imovina	Obaveze koje nisu kvalif. za restrukturiranje	2.000	1.900	Imovina	Obaveze koje se isključuju	200
						Obaveze koje nisu kvalif. za restrukturiranje	2.000
2.600	Gubitak	Gubitak FOD	400	2.300	Gubitak	Gubitak FOD	300
		Prioritetne obaveze	950			Prioritetne obaveze	750
		Ostale obaveze	800			Ostale obaveze	800
		Dopunski kapital	30			Dopunski kapital	30
		Dodatni osn. kap.	30			Dodatni osn. kap.	30
		Redovni osn. kap.	390			Redovni osn. kap.	390

U navedenom primjeru, u slučaju da banka ide u likvidaciju/stečaj, gubitak koji bi ostvario FOD iznosi 400 novčanih jedinica, dok bi u slučaju restrukturiranja banke taj iznos bio 300 novčanih jedinica. Iz navedenog proizlazi da je za FOD bolji scenario restrukturiranja nego likvidacije banke. Međutim, izračuni očekivanih gubitaka FOD, kao i svih povjerilaca i akcionara banaka, u hipotetičkom slučaju likvidacije ili stečaja za potrebe restrukturiranja banaka, nisu nimalo jednostavni. U praksi, veoma je teško odrediti očekivane gubitke u likvidaciji i njihova procjena zavisi od nekoliko faktora (BIS, Financial Stability Institute, 2019).

Koliko je značajan proces izračuna očekivanih/hipotetičkih gubitaka svih povjerilaca i akcionara banaka koje se restrukturiraju (pa tako i FOD) govori činjenica da je na evropskom nivou nedavno usvojeno nekoliko uredbi, metodologija i uputstava koji se detaljno bave metodologijom za vrednovanje imovine i obaveza banaka (Commission Delegated Regulation EU 2018/345, Commission Delegated Regulation EU 2018/344, Framework for Valuation, 2019, Handbook on Valuation for purposes of resolution, 2019).

Vrednovanje imovine i obaveza banke svodi se na tri ključne procjene (Handbook on Valuation for purposes of resolution, 2019). Jedan od ciljeva postojanja više od jedne procjene imovine i obaveza banke koja se restrukturira je da niti jedan povjerilac i akcionar banke koja se restrukturira, pa ni FOD, ne može lošije da prođe u procesu restrukturiranja nego što bi prošao u procesu likvidacije ili stečaja banke (principle of „no creditor worse off“), što predstavlja i jedan od opštih načela restrukturiranja banaka (Directive 2014/59/EU, 173/251).

2.1.2. Način refundiranja veće ostvarenih gubitaka povjerilaca i akcionara banke u procesu njenog restrukturiranja

Ukoliko treća procjena imovine i obaveza banke koja se restrukturira pokaže da je povjerilac, a samim tim i FOD, lošije prošao u procesu

restrukturiranja nego što bi u procesu likvidacije ili stečaja banke, u takvim situacijama treba da postoji raspoloživi fond od kojeg će povjerioci potraživati razliku sredstava (Directive 2014/59/EU, 173/302). Navedeno je razlog zbog čega se definiše dodatni zaštitni mehanizam za FOD, a to je postojanje aranžmana koji omogućava da, u slučaju da FOD pretrpi veće gubitke nego što bi ih imao u likvidaciji ili stečaju banke, iznos veće ostvarenih gubitaka može da naplati na brz i jednostavan način.

2.1.3. Saradnja između učesnika mreže finansijske sigurnosti

U državama gdje se supervizorska ovlašćenja, ovlašćenja koja se tiču restrukturiranja banaka, te osiguranje depozita nalaze u okviru jedne institucije, ovaj zaštitni mehanizam nema toliki značaj. U slučaju kada govorimo o zasebnim institucijama, onda je za proces veoma bitno da postoji saradnja između navedenih institucija i kontinuiran protok informacija. Svaka od navedenih institucija ima svoje značajno mjesto u cijelom procesu i da bi on „tekao“ nesmetano, veoma je bitna koordinacija njihovih aktivnosti.

Istraživanja pokazuju da, u državama gdje odluku o restrukturiranju banaka ne donosi osiguravatelj depozita, on se konsultuje prije donošenja odluke o pokretanju postupka restrukturiranja (BIS, Financial Stability Institute, 2019).

3. REZULTATI ISTRAŽIVANJA

U BiH funkciju restrukturiranja banaka obavljaju Agencija za bankarstvo Republike Srpske¹ (Zakon o ABRS, 2017) i Agencija za bankarstvo Federacije BiH² (Zakon o FBA, 2017),³ dok se samo dio procesa (finansiranje restrukturiranja banaka) planira dodijeliti

¹ ABRS.

² FBA.

³ Za banke sa sjedištem u Republici Srpskoj nadležna je ABRS, a za banke sa sjedištem u Federaciji BiH FBA.

(Directive 2014/59 / EU, 173/332) whereby the DIF target amount is set as a percentage of the amount of insured bank deposits of 0,8% (Directive 2014/49/EU, 173/164). The second limitation relates to the amount of the expected loss of the DIF (EU Directive 2014/59/). DIF loss from reimbursement of insured deposits represents the difference between the amount of the insured deposits paid to the bank and the amount of funds recovered from the bank in liquidation or bankruptcy. In the situation when supervisory authority revoke operating license from the bank, the obligation of the DIF is to pay out insured deposits to the depositors within the statutory deadline, which then represents a real outflow of funds for the DIF. The DIF appears as a creditor in a bank in liquidation or bankruptcy

proceedings on the basis of reimbursement of insured deposits and during the bank liquidation or bankruptcy proceedings DIF claims its funds in accordance with the established order of priority. The actual loss of a DIF from the reimbursement of insured deposit in a failed bank is the difference between the insured deposits paid out and the recovered funds on the basis of a claim for paid deposits from a bank in liquidation or bankruptcy.

In order to better understand the concept of expected DIF loss in the context of bank resolution, we will provide one hypothetical example using two scenarios, the liquidation / bankruptcy scenario and the bank resolution scenario (Financial Sector Advisory Centre, 2016,158).

LIQUIDATION SCENARIO				RESOLUTION SCENARIO			
Assets		Liabilities		Assets		Liabilities	
1.600	Assets	Liabilities not eligible for resolution	2.000	1.900	Assets	Excluded liabilities	200
2.600	Loss	DIF loss	400	2.300	Loss	Liabilities not eligible for resolution	2.000
		Priority liabilities	950			DIF loss	300
		Other liabilities	800			Priority liabilities	750
		Additional capital	30			Other liabilities	800
		Additional core capital	30			Additional capital	30
		Ordinary core capital	390			Additional core capital	30
						Ordinary core capital	390

In the above example, in the event of a bank liquidation/bankruptcy, the loss incurred by the DIF would be 400 monetary units, while in the case of a bank resolution the amount would be 300 monetary units. From the above it means that bank resolution scenario is better for the DIF than bank liquidation. However, calculation of the expected losses of the DIF, as well as of all creditors and shareholders of banks, in the hypothetical case of liquidation or bankruptcy for the purposes of bank resolution are not an easy task at all. In practice, it is very difficult to determine the expected liquidation losses and their estimation depends on several factors (BIS, Financial Stability Institute, 2019).

How important is the process of calculating the expected/hypothetical losses of all creditors and shareholders of banks under resolution (including the DIF) is the fact that several regulations, methodologies and guidelines have been recently adopted at European level that are dealing in details with the methodology for valuation of banks' assets and liabilities (Commission Delegated Regulation EU 2018/345, Commission Delegated Regulation EU 2018/344, Framework for Valuation, 2019, Handbook on Valuation for purposes of resolution, 2019).

The valuation of a bank's assets and liabilities comes down to three key valuations (Handbook on Valuation for purposes of resolution, 2019). One of the goals of having more than one asset and liability valuation of a bank under resolution is that no creditor or shareholder of a bank under resolution, not even the DIF, can be worse off in the resolution process than it would undergo in the bank's liquidation or bankruptcy process (principle of "no creditor worse off"), which is one of the general principles of bank resolution (Directive 2014/59/EU, 173/251).

2.1.2. A way of recovering the larger losses incurred by creditors and shareholders of the bank during its resolution

If the third valuation of the assets and liabilities of the bank under resolution proves that the creditor and, consequently, the DIF, performed worse under the resolution process than in the process of bank

liquidation or bankruptcy proceedings, in such situations there should be an available fund from which the creditors will claim the difference of funds (Directive 2014/59 / EU, 173/302). This is the reason why an additional DIF safeguard mechanism is defined, which is the existence of an arrangement that allows the DIF to incur greater losses than it would in liquidation or bankruptcy of a bank, to recover the amount of higher losses incurred in a quick and easy manner.

2.1.3. Cooperation between the financial safety network participants

In countries where supervisory powers, powers relating to bank resolution and deposit insurance are located within a single institution, this safeguard mechanism is not of such importance. If we are talking about separate institutions then it is very important for the process that there is cooperation between these institutions and a continuous flow of information. Each of these institutions has a significant place in the whole process and in order for it to "flow" smoothly, it is very important to coordinate their activities.

Research shows that in countries where the decision to put bank under resolution is not made by a deposit insurer, than deposit insurer is consulted before making a decision to initiate the resolution process. (BIS, Financial Stability Institute, 2019).

3. RESULTS OF THE RESEARCH

In BiH, the function of bank resolution is performed by the Banking Agency of Republika Srpska¹ (BARS Law, 2017) and the Banking Agency of the Federation of BiH² (FBA Law, 2017), while only part of the process (financing of the bank resolution) is planned to be allocated to the Deposit Insurance Agency of BiH (DIA) which manages the DIF (Proposal of the Law on Deposit Insurance in Banks of BiH, 2017³).

¹ BARS.

² FBA.

³ Draft proposal of the LoDI

Agenciji za osiguranje depozita BiH (AOD), koja upravlja FOD-om (Prijedlog Zakona o osiguranju depozita u bankama BiH, 2017⁴).

U ulozi institucije koja provodi postupak restrukturiranja banaka, nadležna entitetska agencija za bankarstvo donosi odluku o pokretanju postupka restrukturiranja. Nadležna agencija za bankarstvo pokrene postupak restrukturiranja banke ako ocijeni da je stanje banke takvo da ona ne može ili vjerovatno neće moći nastaviti poslovanje, da nije razumno očekivati da bilo koja druga mjera banke ili lica iz privatnog sektora, uključujući i mjere nadzora i rane intervencije mogu u razumnom roku otkloniti prepreke za dalji nastavak poslovanja, te da je restrukturiranje banke u javnom interesu. Javni interes u ovim procesima ostvaruje se ukoliko proces restrukturiranja banke obezbjeđuje finansijsku stabilnost i na određeni način dovodi do ostvarivanja jednog ili više ciljeva koji se ne bi mogli ostvariti u istoj mjeri u procesu likvidacije ili stečaja banke. Ti ciljevi su: ostvarivanje kontinuiteta ključnih funkcija u banci, izbjegavanje većeg štetnog uticaja na finansijsku stabilnost, zaštita javnih sredstava, osiguranih depozita, kao i imovine drugih klijenata banke (Zakon o bankama RS, Zakon o bankama Federacije BiH, 2017).

U ulozi finansijera procesa restrukturiranja banaka u BiH, FOD se uključuje u navedene procese u skladu sa regulatornim okvirom (Prijedlog ZOD, 2017). Izuzev sredstava FOD koja se mogu koristiti samo u određenim slučajevima u procesima restrukturiranja banaka, u BiH nema drugog fonda koji bi bio isključivo namijenjen za finansiranje procesa restrukturiranja, što predstavlja nedostatak cjelokupnog okvira za restrukturiranje banaka u BiH (Krunic, 2018).

Kako bismo objasnili načine djelovanja zaštitnih mehanizama FOD u procesima finansijske podrške restrukturiranju banaka u BiH, prikazaćemo primjer Banke Srpske u stečaju, tačnije, krenućemo od pretpostavke da se odlučuje da li banka ide u proces restrukturiranja ili likvidacije/stečaja.

Za analizu ćemo koristiti bilansne podatke Banke Srpske sa 31. 12. 2015. godine⁵. Ukupna vrijednost imovine Banke za posmatrani period bila je 145.810 hiljada KM, dok su ukupne obaveze iznosile 215.166 hiljada KM. Obaveze su se odnosile na depozite (150.576 hiljada KM), obaveze po kreditima (46.071 hiljada KM), obaveze po emitovanim obveznicama (5.000 hiljada KM), te ostale obaveze (13.519 hiljada KM). Kapital Banke bio je u minusnom iznosu od 69.356 hiljada KM. Na dan oduzimanja dozvole za rad Banci Srpske, iznos osiguranih depozita bio je 55,4 miliona KM⁶ i u okviru analize ćemo uzeti u obzir navedeni iznos.

3.1. Definisane procenta ciljanog iznosa FOD koji može biti korišćen u procesima restrukturiranja banaka

Za potrebe finansiranja procesa restrukturiranja banaka, maksimalan iznos sredstava FOD koji se može koristiti u navedenom procesu je 50% ciljanog iznosa FOD. Međutim, ne postoji tačno

definisani ciljani iznos FOD u okviru sistema osiguranja depozita u BiH (Prijedlog ZOD, 2017). Kod ovog zaštitnog mehanizma izdvajaju se dva ključna pitanja, i to: način utvrđivanja ciljanog iznosa FOD i pitanje adekvatnosti ovog zaštitnog mehanizma.

Ciljani iznos FOD trebalo bi da ukaže na iznos koji je dovoljan za odgovarajuću zaštitu osiguranih deponenata u bankama. Kada se isti dostigne, institucija koja vrši osiguranje depozita ocjenjuje da li dalje naplaćivati premiju osiguranja depozita od banaka na isti način i u istom iznosu.

S obzirom na to da se ciljani iznos FOD može bitno razlikovati od raspoloživog iznosa FOD, ovaj zaštitni mehanizam ne može se smatrati toliko značajnim. Ako pretpostavimo da neki FOD raspoloživo sredstvima u iznosu od 200 miliona KM, a ciljani iznos FOD je 400 miliona KM, to praktično znači da, u hipotetičkom slučaju, za restrukturiranje banke može biti utrošen cijeli iznos FOD (ograničenje je 50% ciljanog, a ne raspoloživog iznosa FOD).

3.2. Gubitak koji bi FOD pretrpio da je nad bankom pokrenut postupak likvidacije ili stečaja

Ovaj zaštitni mehanizam uzima u obzir koliko će se FOD naplatiti u procesu hipotetičke likvidacije ili stečaja banke. Naime, za slučaj oduzimanja dozvole za rad banci i otvaranja postupka likvidacije ili stečaja nad bankom, FOD ima rok od 20 radnih dana da stavi na raspolaganje osigurane iznose depozita njihovim vlasnicima (Prijedlog ZOD, 2017). Istovremeno, nakon što FOD isplati osigurane depozite, on se pojavljuje kao jedan od prioritetnih povjerilaca i u likvidacionom ili stečajnom postupku ostvaruje pravo na povrat sredstava iz raspoložive imovine banke u likvidaciji ili stečaju (Zakon o bankama RS, 2017). Dakle, gubitak FOD u slučaju isplate osiguranih depozita nije nivo osiguranih depozita već isplaćenih osiguranih depozita umanjnih za naplaćeni iznos sredstava od banke u likvidaciji ili stečaju.⁷

Na primjeru Banke Srpske objasnimo kako djeluje ovaj zaštitni mehanizam. Pretpostavićemo da je odlučeno da se pokretanje postupka restrukturiranja Banke Srpske vrši sa 31. 12. 2015. godine. To praktično znači da se prije 31. 12. 2015. godine od strane nezavisnog procjenitelja vrši prva procjena imovine i obaveza Banke, koja pokazuje da je Banka nesolventna, te da su ispunjeni uslovi za pokretanje postupka restrukturiranja. Nadalje, nezavisni procjenitelj vrši i drugu procjenu, koja pokazuje koje mjere i oblike restrukturiranja Banke bi bilo najbolje preduzeti. Druga procjena za rezultat ima i izračune gubitaka koje bi povjerioci i akcionari ostvarili da Banka Srpske ide u stečaj.

U okviru scenarija 1, pretpostavićemo da druga nezavisna procjena pokazuje da imovina Banke Srpske vrijedi 145.810 hiljada KM, a obaveze Banke 215.166 hiljada KM (kako je i prikazano sa 31. 12. 2015. godine).

Scenario 1.

Aktiva (u 000 KM)		Pasiva (u 000 KM)	
145.810	Imovina	Izlučni povjerioci*	10.000
		Osigurani depoziti (obaveza FOD)	55.400
		Ostali depoziti (1)	80.410
104.375	Gubitak	Ostali depoziti (1)	14.766
		Ostali povjerioci	54.590
		Kapital	35.019

*Pretpostavljeni iznos

⁴ Prijedlog ZOD.

⁵ Podaci iz izvještaja eksternog revizora.

⁶ www.aod.ba/index.php/bhs/aktuelnosti

⁷ U slučaju Banke Srpske, FOD je do septembra 2016. godine isplatio 55,5 miliona KM, a naplatio 33 miliona KM, što znači da je njegov gubitak tada bio 22,5 miliona KM (www.capital.ba/klijenti-od-banke-srpske-potrazuju-268-miliona-km).

In the role of the institution that implements the bank resolution process, the competent entity banking agency decides to initiate resolution process. The competent banking agency will initiate a bank resolution process if it determines that condition of the bank is such that it cannot or probably will not be able to continue its business, and it is not reasonable to expect any other measures taken by the bank or private sector entities, including supervisory and early intervention measures, to remove obstacles for further business continuity within a reasonable time, and that resolution of the bank is in the public interest. Public interest in these processes is realized if the bank resolution provides financial stability and in a certain way leads to the achievement of one or more goals that could not be achieved to the same extent in case of bank liquidation or bankruptcy process. These goals are: achieving continuity of key functions in the bank, avoiding a major adverse impact on financial stability, protection of public funds, insured deposits, as well as assets of other bank clients (Law on Banks of RS, Law on Banks of the Federation BiH, 2017).

In its role as a financier of the bank resolution in BiH, the DIF engages in these processes in accordance with the regulatory framework (Proposed LoDI, 2017). With the exception of DIF assets that can only be used in certain cases under bank resolution, there is no other fund in BiH exclusively intended to finance the resolution process, which is a lack of an overall framework for bank resolution in BiH (Krunić, 2018).

In order to explain the ways in which DIF safeguards work in the processes of financial support for bank resolution in BiH, we will present an example of Banka Srpske in bankruptcy, more precisely starting from the assumption about taking decision whether the bank is to go under bank resolution or liquidation/bankruptcy proceedings.

We will use the balance sheet data of Banka Srpske as of 31 December 2015 for analysis⁴. The total value of the Bank's assets for the observed period was BAM 145,810 thousand, while the total liabilities amounted to BAM 215,166 thousand. Liabilities related to deposits (BAM 150,576 thousand), credit liabilities (BAM 46,071 thousand), liabilities per issued bonds (BAM 5,000 thousand), and other liabilities (BAM 13,519 thousand). Capital of the Bank was overdrawn in amount of BAM 69,356 thousand. On the day of revocation of Banka Srpske operating license, the amount of insured deposits was BAM 55.4 million⁵ and within the analysis we will take into account the stated amount.

3.1. Defining the percentage of the DIF target amount that can be used in bank resolution processes

For the purpose of financing bank resolution process, the maximum amount of DIF assets that can be used in that process is 50% of the DIF target amount. However, there is no well-defined target amount of DIF within the deposit insurance system in BiH (Proposed

Scenario 1

Assets (BAM 000)		Liabilities (BAM 000)	
145.810	Assets	Secured creditors*	10.000
		Insured deposits (DIF liability)	55.400
		Other deposits (1)	80.410
104.375	Loss	Other deposits (1)	14.766
		Other creditors	54.590
		Capital	35.019

*assumed amount

LoDI, 2017). There are two key issues with this safeguard: the way to determine the target amount of DIF and the adequacy of this safeguard mechanism.

Target amount of the DIF should indicate an amount sufficient to adequately protect insured depositors in banks. When this is reached, the deposit insurance institution evaluates whether to continue to collect the deposit insurance premium contribution from banks in the same way and in the same amount.

Given that the target amount of DIF may differ significantly from the available amount of DIF, then this safeguard mechanism cannot be considered as significant. Assuming that a DIF has assets in the amount of BAM 200 million and the target amount of DIF is BAM 400 million, practically this means that in the hypothetical case, the entire DIF amount can be spent for bank resolution (the limit is 50% of the target, not the available amount of DIF).

3.2. The loss that the DIF would suffer if liquidation or bankruptcy proceedings were initiated against the bank

This safeguard mechanism takes into account how much assets the DIF would recover in the bank's hypothetical liquidation or bankruptcy process. Namely, in case of revocation of the bank's operating license and the opening of liquidation or bankruptcy proceedings against the bank, the DIF has a deadline of 20 working days to make insured deposit available to their owners (Proposed LoDI, 2017). At the same time, after the DIF reimburses the insured deposits, it emerges as one of the priority creditors both in the liquidation or bankruptcy proceedings and exercises the right to recover funds from the bank's available assets in liquidation or bankruptcy (Law on Banks of RS, 2017). Thus, the loss of the DIF in the event of reimbursement of insured deposits is not the level of insured deposits but of the insured deposits paid-out minus the amount of funds recovered from a bank in liquidation or bankruptcy.⁶

In the case of Banka Srpske, we will explain how this safeguard mechanism works. We will assume that it was decided that resolution process of Banka Srpske should be initiated as of 31 December 2015. This practically means that before 31 December 2015, an independent valuator is to perform the first valuation of the Bank's assets and liabilities which shows that Bank is insolvent and that conditions for initiating the resolution process are fulfilled. In addition, the independent valuator also makes another assessment that shows what measures and forms of bank resolution would be best to take. The second assessment for the result also includes calculations of the losses that creditors and shareholders would have if Banka Srpske sent under bankruptcy.

Under scenario 1, we will assume that a second independent assessment shows that the assets of the Banka Srpske are worth BAM 145,810 thousand and the liabilities of the Bank are BAM 215,166 thousand (as shown as of 31 Dec 2015).

⁴ Data from External Auditor's Report

⁵ www.aod.ba/index.php/en/news

⁶ In case of Banka Srpske, by Sep 2016 the DIF paid out BAM 55 million and recovered BAM 33 million which means that DIF loss would be BAM 22,5 million (www.capital.ba/klijenti-od-banke-srpske-potrazuju-268-miliona-km).

S obzirom na to da je imovina manja od obaveza Banke Srpske, u slučaju stečaja nad Bankom, svi akcionari gube svoje uloge. Nadalje, imovina Banke je manja od obaveza za 69.356 hiljada KM, što znači da svi povjerioci koji se nalaze u kategoriji „ostali povjerioci“ gube novac i suštinski oni učestvuju u „pokriću“ gubitka Banke. Veći dio ostalih deponenata očekuje naplatu, dok u slučaju potraživanja AOD po osnovu isplate osiguranih depozita sva potraživanja bivaju naplaćena, što znači da je očekivani gubitak FOD nula. To praktično

Scenario 2.

Aktiva (u 000 KM)		Pasiva (u 000 KM)	
50.500	Imovina	Izlučni povjerioci*	10.000
		Osigurani depoziti (obaveza FOD)	40.500
199.685	Gubitak	Osigurani depoziti (gubitak FOD)	14.900
		Ostali depoziti	95.176
		Ostali povjerioci	54.590
		Kapital	35.019

*Pretpostavljeni iznos

Kada bismo pretpostavili da je imovina Banke Srpske procijenjena na iznos od 50.500 hiljada KM, a obaveze 215.166 hiljada KM, to bi onda značilo da bi sav ulog izgubili akcionari, ali i ostali povjerioci, ostali deponenti i djelimično AOD (14.900 hiljada KM). Kada bi bila donesena odluka o pokretanju postupka restrukturiranja Banke, od FOD bi se moglo očekivati učešće u finansiranju procesa restrukturiranja u iznosu od maksimalno 14.900 hiljada KM, a to je iznos koji FOD ne očekuje da će naplatiti u procesu stečaja Banke.

Još jedna dodatna zaštita za sve povjerioce Banke u restrukturiranju, pa tako i za FOD, u okviru ovog mehanizma se obezbjeđuje kroz treću procjenu koju nezavisni procjenitelj vrši odmah nakon provedenog postupka restrukturiranja. U našem primjeru, treća procjena bi se vršila početkom 2016. godine i ona bi pokazala da li su povjerioci Banke, pa samim tim i FOD u procesu restrukturiranja prošli lošije nego što bi u stečaju Banke. Pretpostavićemo da je FOD učestvovao u finansiranju procesa sa 14.900 hiljada KM. Trećom procjenom se pokaže da imovina vrijedi više nego što je pokazala druga procjena, te da bi FOD ostvario gubitak 2.000 hiljada KM da je Banka išla u proces stečaja, u tom slučaju FOD ostvaruje pravo refundiranja razlike od 12.900 hiljada KM iz sredstava vanredne premije (Prijedlog ZOD, 2017).

3.3. Saradnja članica mreže finansijske sigurnosti

Za lakše razumijevanje potrebe saradnje svih učesnika mreže finansijske sigurnosti u procesu restrukturiranja banaka koristimo naš primjer. Pretpostavićemo da je nezavisni procjenitelj utvrdio da očekivani gubitak FOD u slučaju stečaja Banke iznosi 50 miliona KM, a da je za restrukturiranje Banke neophodno 45 miliona KM. To znači da bi ABRS mogla odmah da traži od FOD da učestvuje u procesu restrukturiranja Banke. Ipak, to neće biti moguće ukoliko 45 miliona KM prelazi iznos od 50% ciljanog iznosa FOD. U slučaju nepostojanja adekvatne saradnje između navedenih institucija, ovo bi značilo da se nakon provedbe cijelog procesa i donošenja odluke od strane ABRS dolazi do saznanja da takva odluka ne može biti realizovana. Ovakav scenario je izuzetno loš jer dovodi do zastoja u procesu, dodatnog pritiska na banku, ali i na cijeli bankarski sektor.

4. DISKUSIJA

U radu smo naveli osnovne mehanizme zaštite FOD u procesima restrukturiranja banaka u BiH i oni su vezani za sam proces restrukturiranja. Ipak, zaštitni mehanizmi za FOD i, uopšte, za sve povjerioce

znači da u slučaju da se donijela odluka da Banka Srpske ide u restrukturiranje pred kraj 2015. godine, od FOD se ne bi moglo očekivati finansiranje procesa jer su izračuni izvršeni na osnovu nezavisne procjene pokazali da FOD u slučaju stečaja Banke ne snosi gubitak (koliko bi isplatio sredstava, toliko bi se i naplatio).

U okviru scenarija 2, pretpostavićemo da je druga nezavisna procjena pokazala da imovina Banke Srpske vrijedi 50.500 hiljada KM, a obaveze Banke 215.166 hiljada KM.

banaka, pronalaze se već u fazama supervizorskog nadzora, koji obuhvata i mjere rane intervencije (dodatni kapitalni zahtjevi, zahtjevi za dodatnim nivoom prihvatljivih obaveza, imenovanje savjetnika ili privremenog upravnika u banci i dr.).

Iz ovog rada nameće se nekoliko ključnih pitanja, i to:

- Odgovarajuća procjena javnog interesa za donošenje odluke o restrukturiranju banke. U ocjeni da je restrukturiranje banke u javnom interesu ima elemenata diskrecije, što ima svoje prednosti, ali i nedostatke. Tako npr. sama činjenica da stečajni postupci u bankama, zbog dugotrajnih sudskih postupaka, mogu da traju veoma dugo stvara dodatni pritisak na donošenje odluke o restrukturiranju banke u odnosu na njen stečaj. Ovo svakako jača moralni hazard u bankarskom sektoru, koji može da prouzrokuje veće troškove za povjerioce banke, FOD, te, konačno, poreske obveznike.
- Značaj adekvatne procjene imovine i obaveza banke koja se planira restrukturirati. S obzirom na složenost procjena imovine i obaveza za potrebe restrukturiranja banaka (tri procjene), veoma je značajno da se prilikom odabira nezavisnog procjenitelja koji će raditi ovaj posao uzme u obzir izbor privrednog društva koje ima dovoljno iskustva i kapaciteta za ovako složene aktivnosti.
- Značaj dužine trajanja cijelog procesa. Dužina trajanja procesa određena je i kvalitetom uspostavljene saradnje i razmjene informacija između učesnika sigurnosne mreže. Pogotovu je značajna saradnja između nadležnih entitetskih agencija za bankarstvo koje provode funkciju restrukturiranja banaka i AOD, koja upravlja FOD, čija sredstva se mogu koristiti za finansiranje procesa restrukturiranja banaka.
- Restrukturiranje banke treba da bude kako u funkciji uspostavljanja finansijske stabilnosti, tako i u funkciji stvaranja banke sa dugoročnom održivosti. U slučaju restrukturiranja banke vlastitim sredstvima, veoma je bitno da se, pored ostvarivanja ciljeva restrukturiranja koji treba da dovedu do finansijske stabilnosti, analizira dugoročna održivost banke. U ovom dijelu je veoma značajan adekvatan plan reorganizacije banke, koji treba da bude zasnovan na realnim pretpostavkama uslova u kojima će banka na tržištu poslovati.
- Formiranje fonda za restrukturiranje banaka. Zbog neuspostavljanja fonda za restrukturiranje banaka u BiH nije zaokružen regulatorni bankarski okvir u pogledu restrukturiranja banaka. Ostalo je nejasno iz kojih sredstava će se finansirati restrukturiranje banaka ako to nije moguće, zbog zakonskih rješenja, iz

Since Banka Srpske's assets are less than the liabilities, in the event of bankruptcy against the Bank, all shareholders lose their roles. Furthermore, the Bank's assets are less than the liabilities by BAM 69,356 thousand which means that all creditors who are in the category "other creditors" lose money and essentially they participate in "covering" the Bank's loss. Majority of other depositors expect payment, while in the case of DIA claims for reimbursed insured deposits, all claims are collected, which means that the expected loss of the DIF is zero. This practically means that if a decision was made to put Banka Srpske under resolution by the end of 2015,

Scenario 2

Assets (BAM 000)		Liabilities (BAM 000)	
50.500	Assets	Secured creditors*	10.000
		Insured deposits (DIF liability)	40.500
		Insured deposits (DIF loss)	14.900
199.685	Loss	Other deposits (1)	95.176
		Other creditors	54.590
		Capital	35.019

*assumed amount

Assuming that the assets of the Banka Srpske were estimated at BAM 50,500 thousand and liabilities at BAM 215,166 thousand, and then this would mean that all shareholders, but also other creditors, other depositors and partially the DIA (BAM 14,900 thousand) would lose their stake. If a decision was made to initiate Bank resolution process, the DIF could be expected to participate in financing the resolution process in the amount of BAM 14,900 thousand, which is an amount that DIF does not expect to recover in the Bank's bankruptcy process.

Another additional protection to all creditors in bank resolution as well as for the DIF as part of this mechanism is provided by a third valuation by an independent appraiser performed immediately after the resolution procedure. In our example, the third valuation would be carried out in early 2016 and it would show whether the creditors of the Bank, and therefore also the DIF have been worse off under bank resolution than they would be case of Bank bankruptcy proceedings. Let's us assume that the DIF participated in financing the process with BAM 14,900 thousand. Third valuation has shown that the assets is worth more than shown in the second valuation, and the net loss of the DIF would be BAM 2,000 thousand if the Bank went into bankruptcy proceedings, which means then in that case the DIF has a right to refund the difference of BAM 12,900 thousand out of the extraordinary premium (Draft proposal of the LoDI, 2017).

3.3. Cooperation with the financial safety network participants

We'll use our example for easier understanding of the need for cooperation among all financial safety network participants under bank resolution. Assume that the independent appraiser has determined the expected loss of the DIF in the case of Bank bankruptcy to amount to BAM 50 million, and that BAM 45 million is needed for bank resolution. This means that the BARS could immediately ask the DIF to participate in bank resolution process. However, it will not be possible if BAM 45 million exceeds 50% of the target amount of the DIF. In the absence of an adequate cooperation between the mentioned institutions, this would mean that after implementation of the whole process an after the BARS has taken its decision, it was concluded that such a decision cannot be realized. This scenario is very bad because it leads to delays in the process, additional pressure on the bank, but also on the entire banking sector.

the DIF could not be expected to finance the resolution process because the calculations made on the basis of an independent valuation assessment showed that the DIF does not bear a loss in case of Bank's bankruptcy (DIF would recover amount equal to reimbursed amount).

Under scenario 2, we will assume that a second independent valuation showed that the assets of Banka Srpske were worth BAM 50,500 thousand and the liabilities of the Bank were BAM 215,166 thousand.

DISCUSSION

In this paper we mentioned the basic safeguard mechanisms for the DIF under bank resolution process in BiH and they are directly linked to the resolution process itself. However, safeguards for the DIF and in general for all bank creditors are already found in the banking supervision review that includes early intervention (additional capital requirements, requirements for additional level of eligible liabilities, the appointment of consultants or provisional administrator at the bank, etc.).

This Paper imposes a number of key issues including:

Appropriate assessment of the public interest in making the decision on bank resolution. The assessment that bank resolution is in the public interest contains elements of discretion which has both its advantages and also disadvantages. Thus, for example the mere fact that bankruptcy proceedings in banks, due to lengthy court proceedings could last for a very long time, create an additional pressure for taking decision on bank resolution in relation to its bankruptcy. This certainly strengthens the moral hazard in the banking sector, which can cause higher costs for creditors of the bank, the DIF, and ultimately the taxpayers.

Importance of adequate valuation of the assets and liabilities of the bank planned to go under bank resolutions. Given the complexity of the valuation of assets and liabilities for bank resolution (three valuations) it is very important when selecting an independent appraiser who will do this job to take into account an organisation that has enough experience and capacity for this complex activity.

Importance of the duration of the whole process. Length of the process is determined by the quality of established cooperation and exchange of information between safety network participants. Especially important is the cooperation between the competent entity banking agencies that implement the function of bank resolution and the DIA which manages DIF whose funds can be used to finance the bank resolution process.

Bank resolution should be both in the function of establishing financial stability and in the function of creating a bank with long-term sustainability. In the case of bail in bank resolution, in addition to achieving the resolution objectives that should lead to financial stability, it is essential to analyse the long-term sustainability of

sredstava FOD.⁸ Takođe, ostalo je nejasno od koga će se povjerioci banke koji učestvuju u procesu restrukturiranja naplatiti za slučaj da ostvare veće gubitke u procesu restrukturiranja banke nego što bi ostvarili u procesu njene likvidacije ili stečaja.

- Nezavisna procjena usklađenosti okvira za restrukturiranje banaka sa evropskim standardima. S obzirom na to da se na evropskom nivou novi oblici restrukturiranja banaka primjenjuju od 2014. godine, te da je 2016. godine razvijena metodologija za procjenu osnovnih karakteristika efikasnih sistema za restrukturiranje finansijskih institucija (Financial Stability Board, 2016), otuda bi se u budućem periodu mogla provesti nezavisna procjena domaćeg regulatornog okvira za restrukturiranje banaka u skladu sa međunarodnim standardima. Cilj je da se, ukoliko su se u implementaciji rješenja na evropskom nivou pojavili određeni nedostaci, isti otklone pravovremeno, tj. prije pojave prvog oblika restrukturiranja banaka u BiH.

ZAKLJUČAK

Sa svojom osnovnom ulogom koja se odnosi na zaštitu osiguranih depozita u bankama, FOD predstavlja značajnu kariku unutar mreže finansijske sigurnosti. Nakon posljednje velike svjetske finansijske i ekonomske krize, uloga FOD se na evropskom nivou dodatno proširuje u dijelu uključivanja u procese finansiranja restrukturiranja banaka pod određenim uslovima, sa namjerom dodatnog doprinosa FOD finansijskoj stabilnosti.

Uključivanje FOD u finansiranje procesa restrukturiranja banaka zahtijeva jasno definisanje uslova pod kojima se on može uključivati u navedene procese, tačnije određivanje zaštitnih mehanizama koji se uspostavljaju u cilju očuvanja osnovne uloge FOD. Ti mehanizmi su jasno definisani u okviru relevantnih evropskih direktiva, a kao takvi su preneseni i u okviru domaćeg zakonodavstva. Oni se odnose na definisanje mehanizama koji određuju maksimalan iznos sredstava koji može biti korišćen za procese finansiranja restrukturiranja banaka iz FOD, načina nadoknade sredstava FOD za slučaj da on pretrpi veće gubitke u navedenim procesima nego što bi u procesu likvidacije ili stečaja banaka, te način saradnje između učesnika mreže finansijske sigurnosti koja treba da doprinese donošenju adekvatnih odluka u pogledu restrukturiranja banaka. Inače, zaštitni mehanizmi za FOD i, uopšte, za sve povjerioce banaka se, pored faze restrukturiranja, pronalaze i u fazama supervizorskog nadzora banaka.

U pogledu uređenja sigurnosne mreže, svaka država ima svoje specifičnosti, zbog čega primjenu međunarodnih standarda treba sa tim specifičnostima i uskladiti. Tako u BiH treba uzeti u obzir da fond za restrukturiranje banaka nije uspostavljen, da je funkcija restrukturiranja banaka dodijeljena dvjema institucijama (dvije entitetske agencije za bankarstvo), te da se finansiranje procesa restrukturiranja planira dodijeliti FOD, kojim upravlja AOD. Uzimajući u obzir da je jedan od bitnih faktora uspjeha procesa restrukturiranja banaka brzina provođenja procesa, otuda je veoma bitno da se obezbijedi čvrsta saradnja između navedenih institucija kako bi sve faze restrukturiranja banaka bile provedene brzo i efikasno. Navedena saradnja će olakšati entitetskim agencijama za bankarstvo procese donošenja određenih odluka koje se tiču restrukturiranja banaka, a koje imaju elemente diskrecije. Diskrecija u procesu donošenja odluka u postupku restrukturiranja banaka

ima svoje prednosti zbog različitih okolnosti u kojima proces može da se odvija, ali istovremeno stvara dodatni pritisak u odlučivanju.

Dosljednom primjenom zaštitnih mehanizama u pogledu korišćenja FOD u procesima restrukturiranja banaka, institucije koje vrše funkciju restrukturiranja banaka, a u BiH su to entitetske agencije za bankarstvo, najvećim dijelom štite FOD u smislu očuvanja njegove osnovne uloge. Posebno se ističe zaštitni mehanizam koji se odnosi na očekivani gubitak FOD u hipotetičkoj likvidaciji ili stečaju banke kao gornjoj granici iznosa FOD koji može biti iskorišćen u procesu finansiranja restrukturiranja banke. Za efikasnu primjenu ovog zaštitnog mehanizma presudna je dobro izvršena procjena imovine i obaveza banke od strane nezavisnog procjenitelja, kojeg imenuje nadležna entitetska agencija za bankarstvo, ili od strane same agencije za bankarstvo. Restrukturiranje banke je u funkciji očuvanja finansijske stabilnosti, ali istovremeno treba da bude i u interesu stvaranja banke sa dugoročnom održivosti, posebno u slučaju restrukturiranja banke vlastitim sredstvima. Procjenu stvaranja banke sa dugoročnom održivosti vrši nadležna entitetska agencija za bankarstvo i ta procjena treba da bude zasnovana na realnim pretpostavkama uslova u kojima će banka posloovati.

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⁸ Kada se kaže da nije jasno iz kojih sredstava će se finansirati procesi restrukturiranja banaka, misli se na činjenicu da nije formiran aranžman finansiranja koji ne bi direktno opteretio poreske obveznike, već koji bi bio finansiran od strane bankarske industrije.

the bank. At this point extremely important is the adequate bank recovery plan, which should be based on realistic assumptions of the conditions in which the bank will do business in the market.

Establishment of a Bank Resolution Fund. Failure to establish a bank resolution fund in BiH has not encompassed a regulatory banking framework regarding bank resolution. It is unclear from which funds bank resolution will be financed if it is not possible from the DIF funds⁷ due to legal solutions. It is also unclear from whom the creditors of the bank under resolution will recover in case that they achieve more losses under bank resolution process than they would have in the process of bank liquidation or bankruptcy.

Independent assessment of the bank resolution framework compliance with the European standards. New forms of bank resolution have been applied at European level since 2014, and in 2016 there was developed an Assessment Methodology of the Key Attributes of Effective Resolution Regimes to Financial Institutions (Financial Stability Board, 2016), hence, in the future period, this could be used for an independent assessment of the domestic regulatory framework for bank resolution in line with international standards. (‘ Methodology for the assessment of basic characteristics of effective systems for resolution of financial institutions. The aim is that if certain shortcomings have occurred in the implementation of solutions at the European level, the same should be promptly removed, i.e. before the first form of bank resolution in BiH occurs.

CONCLUSION

With its primary role of providing for the protection of insured deposits in banks, the DIF represents a significant element within the financial safety network. After the last major global financial and economic crisis, DIFs role in the European level is further extended to the part of its inclusion in the process of financing the bank resolution under certain conditions with the intention of additional DIF's contribution to the financial stability.

The inclusion of DIF to finance bank resolution process requires clear definition of the conditions under which it can be included in the specified processes, namely the determination of safeguard mechanisms established to preserve the basic role of the DIF. These mechanisms are clearly defined within the framework of the competent European directives, and as such are transposed also into the framework of domestic legislation. They relate to defining the mechanisms that determine the maximum amount of funds that can be used from the DIF to finance bank resolution, the method of compensation of the DIF funds in case it suffers higher losses in the specified processes than in case of bank liquidation or bankruptcy, and the manner of cooperation between the financial safety network participants, which is to contribute to the making of adequate decisions on bank resolution. Otherwise, the safeguard mechanisms for the DIF and in general for all bank creditors, in addition to the phase of bank resolution, they are also found in the banking supervision phases.

In terms of arranging the safety network, each country has its own specificity, which makes it necessary to apply international standards to make these specifics complied with. For this reason in case of BiH, it should be taken into account that Bank Resolu-

tion Fund has not been established, that the function of a bank resolution has been assigned to the institutions (two entity level banking agencies), and that it is planned to assign funding of the resolution process to the DIF being managed by the DIA. Taking into account that one of the important factors for successful bank resolution is quickness, therefore it is very important to ensure the firm cooperation between the above institutions so that all phases of the bank resolution are implemented promptly and effectively. Mentioned co-operation will facilitate entity banking agencies with the process of making certain decisions concerning the bank resolution, which have elements of discretion. Discretion in the decision-making process in the procedure of bank resolution has its advantages due to different circumstances in which the process can take place, but at the same time creates additional pressure in decision-making.

With the consistent implementation of safeguard mechanisms regarding the use of the DIF under bank resolution processes, institutions that perform the function of bank resolution which in the case of BiH are the entity level banking agencies, protect in the largest part the DIF in terms of preserving its primary role. A specific safeguard mechanism relates to the expected loss of DIF in hypothetical bank liquidation or bankruptcy as the upper limit of the DIF amount that can be used to finance bank resolution process.

For an effective implementation of this safeguard mechanism, a well-done valuation of the assets and liabilities of the bank by an independent appraiser, appointed by the competent entity level banking agency, or by the banking agency itself, is crucial. Bank resolution is in the function of preserving financial stability, but at the same time it should be in the interest of creating a bank with long-term sustainability, especially in the case of a bail in bank resolution. The assessment of creating a bank with long-term sustainability is conducted by the competent banking agency and the assessment should be based on realistic assumptions of the conditions in which the bank will do business operations.

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