*Marta Božina Beroš**
*Ivana Parać***
*Ivana Bajakić****

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THE 'INBETWEENERS' IN THE BANKING UNION: INSIGHTS FROM THE EXPERIENCE OF ECB-CNB CLOSE COOPERATION****

Summary: *In July 2020, the European Central Bank (ECB) has established close cooperation with the Croatian National Bank (cro. Hrvatska narodna banka, hereafter CNB) welcoming for the first time an 'inbetweener', i.e., a Member State outside the euro area to the Banking Union and the ECB Banking Supervision family.[1] Inbetweeners add to the complexity of BU governance, as close cooperation necessitates the ECB exercising bespoke supervisory powers, prompts the development of innovative regulatory and administrative solutions at Member State level to ensure the coexistence of different integration spheres, and demands institutional fine-tuning of national supervisors essential for reaping the benefits of SSM governance. In light of this, the paper examines the most significant changes to the CNB's institutional and legal framework, such as legislative and administrative amendments to empower its sanctioning role, the (ongoing) organizational overhaul in line with SSM's internal structure, and the CNB's institutional re-positioning within the national economic policy sphere in response to the narrowing of its monetary policy toolkit as a result of ERM II participation. The paper argues that inbetweeners add to the complexity of BU governance and suggests there is still much to learn about the legal and institutional implications of this agreement, lessons that can only be assessed from the perspective of an inbetweener.*

Keywords: *close cooperation, Croatian National Bank, institutional reform, policy capacity*

* Marta Božina Beroš, PhD, Full Professor, Faculty of Economics and Tourism „Dr. Mijo Mirković", Juraj Dobrila University of Pula, Preradovićeva 1/1, 52100 Pula. E-mail address: marta.bozina@unipu.hr. ORCID: https://orcid.org/0000-0001-5194-9804.

** Ivana Parać, mag. iur., Croatian National Bank, Trg hrvatskih velikana 3, 10000 Zagreb. E-mail address: ivana.parac@hnb.hr. ORCID: https://orcid.org/0009-0000-6423-500X. Views expressed herein are personal to the author and not necessarily attributable to the Croatian National Bank.

*** Ivana Bajakić, PhD, Full Professor, Faculty of Law, University of Zagreb, Trg Republike Hrvatske 14, 10000 Zagreb. E-mail address: ivana.bajakic@pravo.hr. ORCID: https://orcid.org/0000-0002-4109-0597.

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1 "ECB establishes close cooperation with Croatia's central bank" (*Croatian National Bank Press release*, 10 July 2020) <https://www.hnb.hr/en/-/ecb-establishes-close-cooperation-with-croatia-s-central-bank> accessed 14 March 2024.

'Cooperation is the foundation of the banking union;
it is not about giving up powers, it is about sharing powers.'

Andrea Enria, Chair of the ECB Supervisory Board

1. INTRODUCTION

The inception of the Banking Union (BU) prompted the dilemma of differentiated integration within the internal financial market as euro area and non-euro area Member States were now following distinct integration paths, at least temporarily.[2] This is because the BU centralizes banking supervision and resolution within a supranational policymaking framework underpinned by the Single Supervisory Mechanism (SSM) and Single Resolution Mechanism (SRM). In turn, BU countries benefit from the many advantages of common prudential policymaking, strengthening their financial and political ties. At the same time, through the option of 'close cooperation' with the European Central Bank (ECB), the BU framework remains open to voluntary participation from all EU Member States, which is a crucial design feature in terms of moderating centrifugal forces amplified by differentiated integration. Indeed, the close cooperation agreement is a valuable addition to the ECB's legal toolkit, proving that the divide between 'different spheres of integration' created by the BU's inception can be bridged rather nimbly.[3] So what does it mean for an EU Member State to be an 'inbetweener'[4] in the BU? What are the main regulatory, institutional, and policy developments that led to this status, and how does a Member State that is not a member of the euro area but is nevertheless subject to the ECB's supervision, function within the framework of the BU and its SSM?

This paper critically examines and appraises the legislative and institutional implications of the close cooperation agreement established between the Croatian National Bank (*cro*. Hrvatska Narodna Banka, hereafter CNB) and the ECB[5]. Formally adopted by the ECB's Governing Council in July 2020 the 'SSM opt in' was an unavoidable milestone in Croatia's integration trajectory, as close cooperation with the ECB was a prerequisite for the country's prospective participation in the Exchange Rate Mechanism II (ERM II). Croatia's BU preference, on the other hand, goes beyond monetary considerations, taking into account 'reputational gains' and financial stability benefits. The paper delves into all the nuances of this reasoning when setting the political economy context of Croatia's BU membership, but in short, we can say that because of its 'Eurocentric' trade relationships in addition to a predominantly foreign-owned banking system, the CNB ties future stability to the SSM 'badge of quality' of its

2 Mack S, 'How Does Differentiated Integration Work in the EU Financial Sector? Spotlight on Banking Union' (EU IDEA Policy Paper No. 4, 2020) 3.

3 Enria A, 'The institution of 'close cooperation' in the SSM: an introduction', ECB Legal Conference 'Building bridges: central banking law in an interconnected world' (European Central Bank, 2019) 279.

4 We borrow the versatile term 'inbetweener' from the seminal work on the hybrid nature of European agencies in the multilevel framework of EU governance by Michelle Everson, Cosimo Monda, Ellen Vos, *European Agencies in between Institutions and Member States* (Kluwer Law International 2014).

5 Decision (EU) 2020/1016 of the European Central Bank of 24 June 2020 on the establishment of close cooperation between the European Central Bank and Hrvatska narodna banka (ECB/2020/31) (2020) OJ L 224 I/4.

banking sector performance.[6] This in turn determines the main focus of this paper; that is, banking supervision as exercised by competent authorities within the SSM and as outlined by the ECB-CNB close cooperation agreement. At the same time, the paper reflects the full policy ramifications of Croatia's close cooperation agreement, namely that SSM opt-in also entails participation in the SRM, a fact that has further impacted the CNB's tasks and competencies and prompted significant changes to its legislative framework, as explained later in the paper.

The integrative potential of close cooperation is backed by a complex legal framework. Firstly, it is explicitly provided for by the BU legislative framework, specifically in Art. 7 of the SSM Regulation[7], which provides a granular description of the content of this unique relationship between the ECB and a national competent authority (NCA), as well as its finer operational modalities. Aside from the lex specialis provisions, the operative arrangements of ECB-NCAs close cooperation are further established by the 2014 ECB Decision on close cooperation with Member States whose currency is not the Euro, the 2013 Regulation amending the EBA founding legislation in light of the ECB's newly acquired supervisory responsibilities, and finally, the 2014 ECB Regulation on supervisory fees.[8] Despite its broad legal foundations, there is still much to learn about the institute of close cooperation, particularly from the perspective of institutional law. It has already been observed that at Member State level, close cooperation entails 'amendments of the regulatory framework, which involves the preparation and adoption of the relevant national legislation' ensuring smooth and responsive coordination between the ECB and a NCA.[9] This is no small feat, given that close cooperation requires the ECB exercising bespoke supervisory powers over significant credit institutions within a opt-in Member State. In fact, the ECB is without 'direct binding authority' over supervised entities within that jurisdiction, which means that it addresses its supervisory decisions on concrete banks in the form of instructions to the NCA in question. Henceforth, in the case of an inbetweener ECB's supervisory powers are in statu nascendi, at least until Croatia joins the monetary union. This has prompted the development of innovative regulatory solutions and administrative measures to ensure and protect the 'coherence and integrity of the SSM',[10] which necessitate deeper look. At the same time, NCA's institutional overhaul triggered by the SSM-opt merits closer inspection, because institutional developments are critical to fully reaping the benefits of SSM's 'polyarchic governance structure', which is based on a 'cooper-

6 Mack (n 2) 18.

7 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (2013) OJ L 287/63.

8 See Decision of the European Central Bank of 31 January 2014 on the close cooperation with the national competent authorities of participating Member States whose currency is not the euro (ECB/2014/5) (2014) *OJ L 198/7;* Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013 (2013) *OJ L 287/5;* Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41) (2014) OJ L 311/23.

9 Lastra M. R, 'Close Cooperation in the SSM', ECB Legal Conference, 'Building bridges: central banking law in an interconnected world' (European Central Bank 2019) 285.

10 Close cooperation does not confer a seat on the SSM's primary decision-making body, the ECB Governing Council, which adopts draft decisions prepared by the SSM's Supervisory Board under the non-objection procedure. This unusual arrangement potentially challenges the legitimacy of SSM decision-making. For further insight close cooperation's contentious aspects see Moloney N, 'Close cooperation: the SSM institutional framework and lessons from the ESAs', ECB Legal Conference, 'Building bridges: central banking law in an interconnected world' (European Central Bank 2019) 297.

ative rather than hierarchical approach'.[11] As the effectiveness of the SSM supervisory model combines different strengths and resources at the EU and Member State levels, institutional fine-tuning is critical for an 'opt-in NCA.'[12]

Given that close cooperation has been tested in practice for less than a year with two recent SSM-opt ins,[13] the literature on the legal and institutional implications of ECB-NCA cooperation under this specific arrangement is expectedly limited. Henceforth, this paper provides timely and essential insights into how, through close cooperation, 'bridges are built, legal techniques finessed, and procedures are used'[14] to overcome the 'uneasy coexistence' between two jurisdictions, i.e., the Single Market and the BU,[15] a pivotal tension already highlighted in the introductory remarks to this special issue. To this end, the paper examines the most significant changes to the CNB's governance structure, such as legislative and administrative amendments to empower its sanctioning role, the (ongoing) organizational overhaul in line with SSM's internal structure, and the CNB's institutional re-positioning within the national economic policy sphere in response to the narrowing of its monetary policy toolkit because of ERM II participation.

Our arguments are organized as follows: after the introduction, section two outlines the reasoning behind Croatia's intention to join the BU, mainly through the lens of political economy. Sections three and four delve into a granular normative analysis of legal developments prompted by BU participation, as well as the regulatory finessing in response to close cooperation and, particularly, the CNB's policy recalibration. Section five examines how the CNB's institutional structure has evolved to collaborate with the ECB's Supervisory Branch. The last section concludes.

2. OUTLINING THE 'WHY' OF CROATIA'S BANKING UNION MEMBERSHIP

Croatia became the EU's youngest Member State in 2013, after nearly two decades of European integration where – although for different reasons and circumstances – its financial integration path coincided with the implementation of the Delors Plan[16] and the asymmetrical implementation of the EMU.[17] In addition to these external factors, the endogenous factor of repeated financial turmoils throughout the 1990s 'aided' in steering Croatian political and economic developments toward financial integration, euroisation, and institutional capacity building.

11 Zeitlin J, 'Uniformity, Differentiation, and Experimentalism in EU Financial Regulation: The Single Supervisory Mechanism in Action' (Amsterdam Centre for European Studies Research Paper No. 2021/04, 2021) 19.

12 Coman Kund F, Amtembrink F, 'On the Scope and Limits of the Application of National Law by the European Central Bank within the Single Supervisory Mechanism' (2018) 33 Banking & Finance Law Review 133, 4–5.

13 Alongside Croatia, in October 2020 the ECB has established close cooperation with the Bulgarian National Bank.

14 Moloney (n 10) 311.

15 Lastra R, 'Banking Union and Single Market: Conflict or Companionship?' (2013) 36 Fordham International Law Journal, 1213.

16 Report on Economic and Monetary Union in the European Community (*Committee for the study of Economic and Monetary Union*, 1989) <https://ec.europa.eu/economy_finance/publications/pages/publication6161_en.pdf> accessed 14 March 2024.

17 Lamfalussy's labelling of the EMU, i.e. asymmetry between Economic Union and Monetary Union, in Lastra R, Louis J-V, 'European Economic and Monetary Union: History, Trends, and Prospects', (2013) 32 Yearbook of European Law 1, 4–5.

In fact, Croatia encountered two major banking crises, during the 1990s, which have resulted in various after-effects. Following the belligerent breakdown of Yugoslavia, Croatia inherited an insolvent banking system. The first recovery and resolution process included two types of government intervention: the issuance of restructuring bonds for non-performing banking loans and the conversion of so-called 'old foreign currency savings' into public debt. Although the savings were instantly included into the Croatian government's deposit insurance scheme, the system was troubled for a few years due to the deficiency of Croatian foreign currency reserves subsequent to the withdrawal from the Yugoslav monetary system.[18] It also had a long-term negative impact on depositors' confidence, which, together with high inflation and other external factors contributing to the second banking crisis in late 1990s, resulted in a lack of trust in the national currency and, as a result, a high euroization of domestic household savings, which led to credit euroisation, despite a very successful anti-inflationary stabilisation program in 1993 and strong monetary control unceasing since 1997.[19]

The toxic combination of legacy systems, market transition, and paradigms at the time triggered the second banking crisis. There was a trend of excessive bank expansion, both in terms of quantity and credit expansion, with several of these banks managed by dubious privatisation champs piloting excessive risk taking. The banking sector was operating in a still immature institutional and legal environment, encumbered by the post-war macroeconomic circumstances. Henceforth, the new market-oriented narrative endorsed liberal banking legislation promoting competition to increase market efficiency, with liberalised banking entry through insignificant shareholders equity, minimum capital requirements and slack licensing provisions. Despite its legal independence, the CNB was jammed in operational inability to impose stricter procedures and prevent the spread of moral hazard in the banking business environment.[20]

The total fiscal cost of the two banking crises was estimated at 31 % of the GDP,[21] turning them into 'one of the most expensive crises in modern history'.[22] During the recovery process subsequent to the second banking crisis, certain banks were directed to bankruptcy procedures, while others were privatised following the rehabilitation process. The ownership structure shifted dramatically from 1998 to 2002. During that four year-period, the foreign

18 'Old foreign currency savings' refers to foreign currency savings that were defaulted due to bank's insolvency. The Government of Croatia issued bonds as a guarantee for the foreign currency savings in order to recapitalise troubled banks. Furthermore, Croatian Government put out a guarantee for all deposits of Croatian citizens in Croatian banks. During a certain period of time there was a limit for foreign currency deposit withdraws, however there was a secondary market enacted in which there was trading enabled, e.g. one could use the 'old foreign currency savings' to purchase government owned real estates or securities. For more detailed discussion: Jankov Lj, 'Banking Sector Problems: Causes, Solutions and Consequences', (Croatian National Bank – Surveys S-1, 2001).

19 Somewhat analogous scenario of delayed deposit insurance pay-out reoccurred between 1998 and 2000 during the second banking crisis in the bankruptcy procedure of the Glumina banka. In Škreb M, Kraft E, 'Financial Crises in South East Europe', Bank of Albania in the second decade of transition: The Third National Conference (*Bank of Albania*, 2002), 320–321 <https://www.bankofalbania.org/Publications/The_Third_National_Conference_Bank_of_Albania_in_the_second_decade_of_transition.html> accessed 5 May 2021.

Research shows that Croatians have 'deep-rooted fear of depreciation' since the 1960s. In Dumičić M, Ljubaj I, Martinis A, 'Persistence of Euroisation in Croatia' (Croatian National Bank – Surveys S-31, 2018), 3–6.

20 Šonje V, Vujčić B, 'Croatia In the Second Stage of Transition 1994 – 1999', (Croatian National Bank –Working Papers n. 1, 1999); M. Škreb and E. Kraft, see *n*. 18.

21 Jankov, (18) 7.

22 Šonje and Vujčić (n 20) 11–12.

ownership of Croatian banks increased from 6,7 % of total banking assets to over 90 % by 2002.[23] The majority of financial institutions (owners) originated in the euro area, predisposing Croatia to financial integration, via European capital and financial inflows, as well as the transfer of modern banking management systems. Additionally, Croatia's main trading partners come from the euro area, adding to stronger economic integration which has been reflected in elevated business cycle synchronisation with the euro area Member States.

The banking crises of the 1990s created a dynamic authority cycle for the CNB with volatile credibility issues, e.g. it was praised for low inflation and stable exchange rates and then harshly criticised and condemned for inadequate bank supervision.[24] On the bright side, managing the banking crises generated specific expertise and experience, i.e. institutional capacity building. The CNB's operational independency grew and matured during the first decade of the 2000's. The CNB implemented, at the time rare, restrictive countercyclical monetary and macroprudential policy, going solitary in contradiction to the common policy standards of self-regulation and liberalisation paradigm at the time. The early 2000's exhibited excessive foreign capital inflows going after high demand on the underdeveloped credit market in both the public and the private sector. To prevent credit expansion for banks, the CNB first introduced the so called 'speed limit' for bank lending with high penalties, followed by marginal reserve requirements in 2004 to decelerate foreign borrowings of banks, and afterwards, in 2008 commenced higher capital adequacy requirements, above the officially required threshold and in correlation to the bank balance sheet growth.[25] When the global financial crisis struck in 2007–08, accumulated liquidity and capital buffers aided the stability of the Croatian financial sector,[26] which has remained highly capitalised to the present day.[27]

Current political activity is centred on Croatia's entry into Schengen and the euro area by the beginning of the 2023.[28] On the one hand, the Government of Croatia supports euro adoption, therefore promoting arguments in favour of the EMU such as financial and macroeconomic stability, e.g. currency risk elimination, interest rates reduction, transaction costs savings, investment and trade opportunities, access to the European Stability Mechanism. Additionally, high currency risk exposure, i.e. depreciation of the Croatian kuna could significantly increase the indebtedness level of households, corporations and the government due to a large share of household's savings and loans, along with public and private debt liabilities,

23 'Annual Report for 2000' (Croatian National Bank, 2001) <https://www.hnb.hr/documents/20182/122149/e-gi-2001.pdf/216a40f5-c782-4bd4-b0f5-5bdd2ad66df7> accessed 14 March 2024, 85; 'Annual Report for 2002', (Croatian National Bank, 2003) <https://www.hnb.hr/documents/20182/122203/e-gi-2003.pdf/270c613f-38ec-484c-b81a-23e301ef4330> accessed 14 March 2024, 84.

24 Šonje and Vujčić (n 20) 13–16; Škreb and Kraft (n 19) 317–322.

25 Jankov Lj, 'Spillovers of the Crisis: How Different Is Croatia?', Recent Developments in the Baltic Countries – What Are the Lessons for Southeastern Europe? – (Proceedings of OeNB n. 15, 2009) at 126–131; Tomislav Galac, 'The Central Bank as Crisis-Manager in Croatia – A Counterfactual Analysis' (Croatian National Bank – Working Papers no. 27, 2010), 19.

26 Mihaljek M, 'The Global Financial Crisis and Fiscal Policy in Central and Eastern Europe: the 2009 Croatian Budget Odyssey', (2009) 33 Financial Theory and Practice, 239.

27 'Enria o prednostima i nedostacima banaka u RH i izazovima koji slijede' (Enria on the advantages and disadvantages of banks in the Republic of Croatia and the challenges that follow) (*Croatian Radio-Television*, 24th February 2021) <https://vijesti.hrt.hr/hrvatska/enria-hrvatske-banke-su-jako-dobro-kapitalizirane-849796> accessed 26 February 2021.

28 'The National Euro Changeover Plan' (*Government of the Republic of Croatia and the Croatian National Bank*, 2020) <https://euro.hr/wp-content/uploads/2022/07/The-national-euro-changeover-plan.pdf> accessed 14 March 2024; European Commission, A strategy towards a fully functioning and resilient Schengen area, Brussels, 2.6.2021 COM(2021) 277 final, 22.

which are all linked to the euro.[29] Furthermore, Croatian trade is highly integrated with the euro area and foreign ownership from the euro area dominates the Croatian banking system.[30]

On the other hand, there are anti-initiatives, the most prominent of which is a referendum proposal on euro adoption backed by populistic rhetoric about protecting Croatian economic interests, sovereignty and forewarnings of retail prices increases.[31] However, one cannot dismiss the perception that such minority positions represent some sort of 'patriotism paradox,' in which claims of loyalty to national symbols such as the national currency are in conflict with Croatian citizens' long-standing financial behaviour of saving in foreign currencies. For example, the share of foreign currency savings deposits since the introduction of Croatian kuna in 1994 ranged between 80 – 90 %, while deposit and credit euroisation is among the highest in the world.[32]

Admittedly, parliamentary debates on euro-related topics, particularly prior to the ERM II accession, were depleted both in quantity and quality.[33] More substantial critical concerns of Croatia's readiness to join the euro area point to Croatia's competitiveness level, i.e. low level of labour productivity, absence of visible convergence of incomes, lack of implementation of structural reforms and inadequate level of quality of institutions.[34] These are, indeed, vulnerability areas which were at the heart of the vicious spiral that led to the euro area crisis 2010-11 for Greece, Spain and Portugal. Cheaper lending that derived as a positive effect of joining the euro area, became a double-edged sword for these countries due to their lack of competitiveness and high indebtedness combined with their slack public finance policies.

Research shows that Croatian policy makers are more inclined to implement structural reforms as a result of an outside pressure, e.g. EU integration process.[35] The euro area membership could therefore prove to be a motivational stimulant for Croatia to implement various structural reforms and improve resilience of public finances in the post COVID-19 pandemic political and economic environment. Furthermore, following the lessons learned succeeding the euro area crisis 2010–11, the EU presently has the experience and stability mechanisms in place for monitoring and managing the aforementioned issues.

29 'Strategy for the adoption of the euro in the Republic of Croatia' (*Government of the Republic of Croatia and the Croatian National Bank,* 2018) <https://euro.hr/wp-content/uploads/2022/07/Strategy-for-the-Adoption-of-the-Euro-in-the-Republic-of-Croatia.pdf> accessed 14 March 2024.

30 *Ibid*.; Velimir Šonje, Euro u Hrvatskoj: Za i protiv (Euro in Croatia: Pros and Cons) (Arhivanalitika 2019).

31 'Suverenisti započinju s prikupljanjem potpisa za raspisivanje referenduma: Uvođenje eura će dodatno ugroziti standard građana' (Sovereignists Party begins collecting signatures to call referendum: Introduction of euro will further jeopardize citizens' standard) (*Večernji list*, 8th September 2021) <https://www.vecernji.hr/vijesti/suverenisti-zapocinju-s-prikupljanjem-potpisa-za-raspisivanje-referenduma-uvodenje-eura-ce-dodatno-ugroziti-standard-grada na-1521678> accessed 11 September 2021.

32 Dumičić, Ljubaj and Martinis (n 19) 3.

33 Grdović Gnip A, Božina Beroš M, Bajakić I, 'All action, no talk? Determining euro's political salience in Croatia' in I Bajakić and M Božina Beroš (eds.), *EU Financial Regulation and Markets - Beyond Fragmentation and Differentiation: Jean Monnet Module International Scientific Conference*, Conference Proceedings (Faculty of Law University of Zagreb 2021) 220–236.

34 E.g. Maruška Vizek in 'Interview with Maruška Vizek "Hrvatska nije spremna za euro"' (Maruška Vizek: Croatia is not ready for the euro) (*N1TV*, 14th September 202) <https://hr.n1info.com/vijesti/vizek-o-uvodenju-eura-nece-europska-monetarna-unija-rijesiti-nase-probleme/> accessed 15 September 2021.

35 Petak Z, 'Policy Making Context and Challenges of Governance in Croatia' in Z Petak and K Kotarski (eds.) *Policy-Making at the European Periphery – The Case of Croatia* (Palgrave Macmillan 2019).

3. OUTLINING THE 'HOW' OF CROATIA'S BANKING UNION MEMBERSHIP

With the establishment of close cooperation between the ECB and the CNB in July 2020, the CNB ceased to be the sole entity responsible for the conduct of banking supervision in Croatia, a radical political and policy shift that needed to be reflected in, and supported by, national legislation. As a result, the Act on the Croatian National Bank was amended[36] prescribing that banking supervision is to be carried out by the CNB within close cooperation with the European Central Bank, in accordance with Art. 7 of the SSM Regulation and Part IX of the SSM Framework Regulation.[37]

The legislative foundation for the ECB's active role in banking supervision in Croatia has henceforth been established. Nonetheless, the role of the ECB within the close cooperation framework differs from full-fledged SSM participation based on euro area status, with the reasons for these distinctions emanating from the TFEU[38]. The TFEU was enacted prior to the establishment of the SSM, and the role of the ECB described therein foresees the direct involvement and the responsibility of the ECB outside of the euro area only in a limited number of cases[39]. On the other hand, in accordance with Article 139(2)(e) of the TFEU, acts of the ECB are not envisaged to be directly applicable in Member States whose currency is not the Euro (i.e. in 'Member States with a derogation'). Furthermore, the ECB does not have the sanctioning powers prescribed in Article 132(3) of the TFEU outside of the Euro area. Given the mentioned limitations, it is clear that close cooperation and the role of the ECB in it, cannot be founded on the same grounds as in the fully-fledged SSM participation.

As already discussed in the preceding paragraph, the role of the ECB differs significantly in euro area and non-euro area Member States under the provisions of the TFEU. Although non-euro area countries have their own currencies and monetary policies, ECB decisions still exert effect even if outside of the single monetary area. This is also reflected in the structure of the ECB's decision-making bodies, whereas only governors of the national central banks of the Member States whose currency is the euro participate in the Governing Council. On the other hand, governors of all central banks of the Member States participate in the General Council.

Furthermore, in the context of SSM, NCAs in close cooperation can never have a position that is completely equal to the position of NCAs from the euro area. While the representatives of all NCAs participate in Joint Supervisory Teams (JSTs), as well as in the Supervisory Board of the SSM, Member States outside of the euro area do not have their representative in the ultimate decision-making body of the SSM – the Governing Council. As a result, one could argue that the position of NCAs in close cooperation is imminently weaker than the position of euro

36 Art 4 of the Act on Amendments to the Act on the Croatian National Bank (OG 47/2020) (HR).

37 Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities [2014] OJ L 141/1.

38 The Treaty on the functioning of the European Union [2012] OJ C 326/47.

39 For instance, pursuant to Art 127 (4) second indent of the TFEU, ECB needs to be consulted by national authorities (both euro area and non-euro area) regarding any draft legislative provision in its fields of competence. Another example is the role of the General Council of the ECB as a third decision-making body of the ECB.

area NCAs. However, Article 118 of the SSM Framework Regulation prescribes in detail the procedure in case an NCA in close cooperation disagrees with the Supervisory Board's draft decision. The result of such a disagreement could be the termination of close cooperation. However, this is only a presumption, as it appears from practical – albeit modest – experience so far that having a seat in the Governing Council may not play a pivotal role in the division of powers within the SSM and that theoretical constraints can easily be overcome through day-to-day cooperation and coordination between the ECB and the NCA in close cooperation.

The vertical dimension of close cooperation i.e. the individual relationship between the ECB and the NCA in close cooperation is also specific and noteworthy. The instructions issued by the ECB are the primary tool for ensuring coordination between the ECB and the NCAs in close cooperation. Within the close cooperation framework, the ECB issues to the CNB or any other NCA, specific or general instructions in respect of significant supervised entities and groups while only general instructions can be issued in respect of less significant supervised entities and groups.[40] In addition to issuing instructions, the ECB may also issue guidelines or make requests.[41] The application of such instructions is mandatory for the NCA in close cooperation.[42] Simply put, in close cooperation significant institutions are formally supervised by their NCAs (in Croatia this is the CNB), but this supervision is carried out in accordance with instructions issued by the ECB, which the NCA (in this case: the CNB) must follow as potential disagreement between the ECB and the NCA about a draft decision in relation to a supervised entity can ultimately lead to the termination of close cooperation.[43]

What follows from this is that highest priority has been given to ensuring the CNB's obligation to follow the ECB's instructions, guidelines, and requests. The following section of this paper provides a brief overview of the national legislation changes required to ensure all aspects relevant to the establishment of close cooperation and the CNB's policy recalibration. Following that, changes to the CNB's internal organization that are required for the establishment of close cooperation are described.

4. THE ECB-CNB CLOSE COOPERATION: FINE TUNING THE LEGISLATIVE FRAMEWORK

Amendments to Croatian legislation for the purpose of close cooperation can be broadly divided into three groups. First, the group of amendments to national legislation that were adopted in July 2019, at which point only the Credit Institutions Act was amended. This set of amendments enabled the implementation of the second group of amendments in April 2020, more specifically to the: Credit Institutions Act, the Act on the Croatian National Bank and the Act on the Resolution of Credit Institutions and Investment Firms[44] (hereafter, 'Res-

40 Cf. Art 107(3) of the SSM Framework Regulation.

41 Art 108(1) of the SSM Framework Regulation.

42 Art 108(5) of the SSM Framework Regulation.

43 Art 118 and 119 of the SSM Framework Regulation.

44 OG (19/2015, 16/2019, 47/2020, 146/2020) (HR); OG (146/2020, 21/2022) (HR).

olution Act' or 'RA'). Finally, in December 2020 the third group of amendments was adopted. Although this set does not directly relate to close cooperation because it was adopted after its establishment (i.e. later than 1 October 2020) and they primarily relate to the implementation of the CRD V,[45] this set of amendments also entailed further fine-tuning of the Credit Institutions Act and the Resolution Act, which are important in terms of close cooperation, and thus, it is relevant to provide their succinct overview.

4.1. FIRST GROUP OF LEGISLATIVE AMENDMENTS

Croatian national legislation was first amended for the purpose of close cooperation in July 2019, and while this round of amendments was limited to the Credit Institutions Act,[46] it nonetheless constituted a substantive change of national legislation. As mentioned earlier, the ECB's instructions, guidelines and requests are the main tools for ensuring coordination between the ECB and the CNB. To that end, the first amendments to national legislation have introduced the obligation of the CNB to abide by any guidelines or requests issued by the ECB and to implement any credit institution-related measure requested by the ECB.[47] Secondly, the amendments ensured that all legal acts adopted by the ECB pursuant to the SSM Regulation are directly applicable in the Republic of Croatia,[48] which also corresponds to Art 139(2)(e) of the TFEU. As previously mentioned, and in accordance with our discussion of the TFEU's provisions, ECB's acts are not intended to be applied in Member States outside of euro area. The third significant novelty introduced by the 2019 amendments to national legislation was the establishment of a legal basis for conducting comprehensive assessments of Croatian banks.[49]

4.2. SECOND GROUP OF LEGISLATIVE AMENDMENTS

The second set of amendments to Croatian legislation was more comprehensive than the first one, both in terms of the number of legal acts included (the Credit Institutions Act, the Act on the Croatian National Bank and the Resolution Act) and in scope. For instance, the amendments to the Credit Institutions Act[50] adopted in April 2020 (hereinafter, the April 2020 CIA Amendments) were much more detailed than the 2019 Amendments.

The April 2020 CIA Amendments enabled identifying significant credit institutions in Croatia by the ECB. The distinction between significant and less significant credit institutions (or

45 Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures [2019] OJ L 150/253.

46 The Act on the Amendments to the Credit Institutions Act (OG 70/2019) (HR).

47 Art 11a(1) of the Credit Institutions Act.

48 Art 11a(2) of the Credit Institutions Act.

49 Art 11b of the Credit Institutions Act.

50 The Act on the Amendments to the Credit Institutions Act (OG 47/20) (HR).

Sis and LSIs, respectively) in the SSM is extremely important, as it determines the extent of the ECB's competences. Indeed, in the fully-fledged SSM significant institutions are directly supervised by the ECB, whereas direct supervision by the ECB is not possible in close cooperation, as we've discussed above. In close cooperation significant institutions formally remain supervised by their NCAs – and therefore by the CNB in the case of Croatia – the inbetweener, but this supervision is conducted in line with ECB's instructions. In relation to less significant credit institutions, the ECB's competences are somewhat more limited. Similarly to the fully-fledged SSM, the ECB may continue to play a leading role in some cases even though the supervised entity is classified as less significant. This is true, for example, of ECB's role in authorising credit institutions and withdrawing such authorisations; in assessing notifications of the acquisition and disposal of qualifying holdings in credit institutions etc.[51] In principle, less significant institutions are supervised by the CNB, but under the oversight of the ECB.[52]

What is even more important is that the April CIA 2020 amendments gave the CNB a new competence: imposing administrative sanctions. In addition to increasing the policy capacity of the CNB, the new competence had important ramifications for the bank's institutional setup, which we explain in the following sections.

The fact that prior to this arrangement, the CNB was not authorised to impose sanctions on credit institutions confirms that the CNB has experienced true policy empowerment as a result of close cooperation.[53] Indeed, prior to close cooperation, if the CNB concluded during banking supervision that a credit institution had breached a legal act and that there was reason to suspect that such a breach constituted a misdemeanour, misdemeanour proceedings would have been initiated before the Municipal Misdemeanour Court in Zagreb. The ruling of the Municipal Misdemeanour Court in Zagreb (in principle) would not be final, and the party who was dissatisfied with the Court's ruling (either the bank in question, or the CNB) could file an appeal to the High Misdemeanour Court of the Republic of Croatia.

Therefore, prior to close cooperation, the power to impose sanctions had not been a prerogative of the CNB as sanctioning was conducted by the judiciary bodies. To improve the effectiveness of imposing sanctions in close cooperation, the described setup had to be replaced by the current one, in which sanctions are imposed by the CNB. Firstly, it is important to note that the procedure for imposing sanctions has been radically changed, and that judicial misdemeanour proceedings have been replaced by the administrative proceedings[54] conducted by the CNB.

As a result, the CNB conducts proceedings following the provisions of the General Administrative Procedure Act.[55] However, until February 2022, the CNB has not made use of this capacity in relation to SIs, partly because in most cases the CNB cannot initiate such procedures

51 Art. 4 of the SSM Regulation.

52 Eight credit institutions in Croatia have been assessed as significant, while all remaining credit institutions in Croatia fall into the category of less significant. Further information is available at the ECB's web-site - 'ECB oversight of less significant institutions' (*European Central Bank*, 2021) <https://www.bankingsupervision.europa.eu/banking/lsi/html/ index.en.html> accessed 17 September 2021.

53 In this paper we use the term sanctions to refer to broader punitive instruments, such as imposing fines.

54 Art 359c(1) of the Credit Institutions Act (OG 159/2013, 19/2015, 102/2015, 15/2018, 70/2019, 47/2020, 146/2020 and 151/2022) (HR).

55 OG (47/2009) (HR).

against SIs on its own, and partly because the ECB has very specific rules about initiating this type of procedures.

In the fully-fledged SSM, the ECB would in most cases be authorised to impose penalties directly on SIs, and no involvement of the NCA would be required. Exceptionally and based on Art. 17(5) of the SSM Regulation, the ECB may require NCAs to open proceedings in order to ensure that appropriate penalties are imposed on SIs in accordance with the national legislation transposing directives, Member State options allowed by Union regulations and any relevant national legislation which confers specific powers which are not required by Union law. On the other hand, NCAs are in principle authorised to impose penalties on LSIs.

In our opinion, the described division of powers does not preclude the need to align sanctioning policies between the ECB and NCAs, to the greatest extent possible. A certain degree of coordination or, at the very least, vigilance about sanctioning policies within the SSM is necessary to ensure a level-playing field. Namely, significant differences between the ECB's sanctioning policy and the sanctioning policies of NCAs could lead to different treatment of SIs and LSIs for comparable breaches, which would not be desirable or even acceptable.

In principle, decisions taken by the CNB within the administrative procedure may not be appealed, but an administrative dispute may be instituted against such decisions[56] before the Administrative Court in Zagreb. It is also interesting to mention that the Administrative Court in Zagreb has exclusive territorial jurisdiction in disputes initiated against decisions of the CNB on imposing administrative sanctions.[57] This is the only exception to generally applicable rules on territorial jurisdiction in relation to administrative disputes against the CNB's decisions and it is mandated by the Credit Institution Act. This exceptionality shows the importance that the Croatian legislator has assigned to this type of administrative procedures conducted by the CNB.

The types of administrative sanctions, which can be imposed in accordance with the April 2020 CIA Amendments are: fines, periodic penalty payments and warnings.[58] The imposition of administrative sanctions (penalties) in close cooperation is governed by Article 113 of the SSM Framework Regulation, prescribing that the 'provisions on administrative penalties shall apply *mutatis mutandis* in respect of supervised entities and supervised groups in participating Member States in close cooperation'.

The expression '*mutatis mutandis*' is partly explained in the following paragraph, which states that the ECB shall not address a decision (i.e. impose administrative sanction/penalty) to a supervised entity. Instead of addressing the decision directly to a supervised entity, the ECB shall issue an instruction to the NCA, hence the CNB in the case of Croatia. Thereafter, the CNB shall address a decision to a supervised entity in accordance with such instruction. As explained above, this principle applies only to significant supervised entities. In relation to less significant supervised entities, the CNB in principle imposes administrative sanctions independently, without an instruction issued by the ECB being required.

56 Art 69(1) of the Act on the Croatian National Bank.

57 Art 359.k of the Credit Institutions Act.

58 Article 359b(2) of the Credit Institutions Act.

In contrast, and as explained above, in a fully-fledged SSM, there would be no need for the NCA to act as an intermediary between the ECB and the significant supervised entity for breaches of directly applicable Union acts or for breaches of the ECB regulations and decisions. Within the close cooperation framework, in all cases where the CNB is required to obtain an instruction from the ECB to impose a sanction on a supervised entity, the ECB would impose a sanction directly.

The Croatian National Bank Act also needed to be amended because of the recalibration of the Bank's powers in response to close cooperation, as previously highlighted. Furthermore, the decision-making process in the close cooperation framework is significantly different from previous governance arrangements, primarily because the CNB assumed an obligation to abide by the instructions, guidelines and requests issued by the ECB, a 'hierarchy' that also needed to be reflected in the Act which governs the CNB's competences and procedures to be followed.

Apart from aligning the role of the CNB with the participation in the SSM, close cooperation entails participation in the Single Resolution Mechanism or the SRM. This further affects the tasks and competences of the CNB and needs to be reflected in the Act on the Croatian National Bank[59]. These Amendments to the Act on the Croatian National Bank, among other things, aimed at: (1) addressing issues identified by the ECB in Convergence Reports for 2014, 2016 and 2018; (2) allowing application of negative interest rates on monetary policy instruments and (3) implementing Guideline (EU) 2016/2249[60] and applying its provisions to financial statements of the CNB.

In accordance with the SRM Regulation[61] participating Member States within the meaning of the SSM Regulation (this includes Member States in close cooperation) are considered to be participating Member States for the purposes of the SRM Regulation as well. Consequently, the Resolution Act needed to be amended as well, since it needed to provide a legal basis for the implementation of the SRM Regulation.

Similar to the Credit Institutions Act, the RA was also amended twice in 2020. The April 2020 RA Amendments enabled Croatia to join the second pillar of the Banking Union. The central institution in the SRM is the Single Resolution Board (hereinafter, 'the SRB'). Together with national resolution authorities of participating Member States, the SRB forms the SRM. The mechanism is further supported by a Single Resolution Fund.

Unlike the ECB, the SRB exercises its powers directly in Member States whose currency is not the euro since it is an EU-wide agency and there is no need to issue instructions to national resolution authorities. However, and again unlike the ECB, the SRB in any event cannot directly execute its decisions in the Member State. Therefore, relationship between the SRB and the relevant NRA is not influenced by the seat of the NRA i.e. whether it is located in the euro area or beyond. At the time of the April 2020 RA Amendments, Croatia had two resolution authorities for credit institutions: the Croatian National Bank and the State Agency for

59 The Act on the amendments to the Act on the Croatian National Bank (OG 47/20) (HR).

60 Guideline (EU) 2016/2249 of the European Central Bank of 3 November 2016 on the legal framework for accounting and financial reporting in the European System of Central Banks (ECB/2016/34), [2016], OJ L 347/37.

61 Article 4(1) of the Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010, [2014], OJ L 225/1.

Deposit Insurance and Bank Resolution.[62] The purpose of the Amendments to the Resolution Act has therefore been enabling the SRB to exercise its powers directly in Croatia, since the SRB exercises its powers in relation to the entities, which are deemed significant in the context of close cooperation with the ECB, plus one additional entity (Wüstenrot stambena štedionica). Namely, in accordance with Art 8(1) of the SRM Regulation, the SRB is competent for drawing up and adopting resolution plans for the entities and groups referred to in Article 7(2) of the SRM Regulation, and for the entities and groups referred to in Article 7(4)(b) and (5) of the SRM Regulation where the conditions for the application of those paragraphs are met. Based on cited provisions, the list of credit institutions with its headquarters in the Republic of Croatia that fall under the direct responsibility of the SRB was made publicly available on the CNB's website.[63]

The operational reality of SRB convening in two different sessions: the executive and plenary one[64] coupled with the fact that Croatia had two different national resolution authorities at that point, raised the issue of voting modalities, or rights to be precise. According to the April 2020 RA Amendments, the representative of the CNB had the right to vote in the SRB plenary and executive sessions.

Finally, another important novelty introduced by the April 2020 RA Amendments is the transfer of part of the funds from the national Resolution Fund to the Single Resolution Fund. The Single Resolution Fund has been established by the SRM Regulation and is owned by the SRB.[65] In order to meet obligations related to the establishment of the SRM, the Croatian Parliament has also ratified the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund.[66]

4.3. THIRD GROUP OF LEGISLATIVE AMENDMENTS

As mentioned, the third group of amendments to national legislation has not been directly related to close cooperation, but relates primarily to the implementation of the CRD V. In addition, the Credit Institutions Act has been amended and new Resolution Act has been adopted for the purpose of determining competences of national authorities in case of bank insolvency and bank resolution.

Yet, a closer examination of the supporting documents presented to the Croatian Parliament reveals that, apart from implementing CRD V, some minor adjustments of the Credit Institutions Act for the purpose of close cooperation have also been adopted. These were only minor improvements and clarifications to the existing text, intended to remove ambiguities

62 Article 8(1) of the Act on the Resolution of Credit Institutions and Investment Firms (OG 19/2015, 16/2019, 47/2020) (HR). This agency has later on been renamed to 'Croatian Deposit Insurance Agency', which reflects the loss of resolution powers.

63 'Credit institutions with its headquarters in the Republic of Croatia that as of 1 October 2020 fall under the direct responsibility of the Single Resolution Board' (*Croatian National Bank*, 2020) <https://www.hnb.hr/documents/20182/120871/e-popis-kreditnih-institucija-odgovoran-jso.pdf/bd77f5bb-9c55-61a8-4918-6908dfb830a7?t=1619541583465> accessed 23 February 2022.

64 Recital 32 of the SRM Regulation.

65 Article 67 of the SRM Regulation.

66 OG, International Part (1/2020) (HR).

detected thus far, most of which related to the precise delineation of powers between competent authorities.

The new Resolution Act adopted in December 2020 introduced among other things one important novelty. As of January 1st, 2021, CNB became the only national resolution authority responsible for Croatian credit institutions which are not under the direct competence of the SRB or under competence of a resolution authority from another Member State.

5. THE ECB-CNB CLOSE COOPERATION: BUILDING INSTITUTIONAL BRIDGES

As pointed out by Andrea Enria, the Chair of the ECB Banking Supervisory Board, close cooperation entails first and foremost the sharing of competences.[67] For that reason, coordination between the ECB and the CNB is of utmost importance. Needless to say, coordination between an EU institution and a public authority with different traditions and structures is bound to be challenging. Prior to close cooperation, banking supervision in Croatia (aside from the formal, legal setup) had its own procedures and methods of conduct. This had to be modified slightly in order for close cooperation to run smoothly.[68]

What can be concluded from the publicly available organizational chart of the CNB[69] is that banking supervision is functionally separated from other CNB's policy responsibilities. This is particularly relevant in relation to consumer protection and bank resolution, due to the potential conflicts of interest, but the same rule also applies to imposing administrative sanctions, which is a new role for the CNB as we have shown. For example, persons working on imposing administrative sanctions in the CNB are not permitted to be involved in banking supervision because this could potentially lead to conflicts of interest.[70] For the same reason, imposing administrative sanctions needs to be functionally and organizationally separated from banking supervision.

Four divisions responsible for (a) Prudential Regulation and Methodology, (b) Prudential Supervision, (c) Expert Supervision and Oversight and (d) Coordination of Prudential Supervision, Oversight and Risk Management are coordinated and managed by the vice-governor responsible for banking supervision. It bears noting that the described institutional setup has

67 Enria (n. 3), 279–282.

68 For valuable insights into how the SSM reconciles diverse supervisory cultures, focuses on NCAs' knowledge, and fosters the development of a common supervisory culture – including, for example, through expertise networking within Joint Supervisory Teams – see D'Ambrosio R (ed.) *Law and Practice of the Banking Union and of its Governing Institutions (Cases and Materials)* (Quaderni di Ricerca Giuridica della Consulenza Legale No. 88 Banca d'Italia 2020); Lo Schiavo G, 'The Single Supervisory Mechanism: Building the New Top-Down Cooperative Supervisory Governance in Europe' in F Fabbrini, E Hirsch Ballin, H Somsen (eds.) *What Form of Government for the European Union and the Eurozone?* (Hart Publishing 2015), 111-132; J. Zeitlin, *n.* 10.

69 'Organizational chart of the CNB' (*Croatian National Bank*, 2015) <https://www.hnb.hr/en/about-us/functions-and-structure/organisation> accessed 18 September 2021.

70 The same principle is prescribed in Art 123(2) of the SSM Framework Regulation which states: 'The investigating officers shall not be involved, and shall not for the two years before taking up the position of investigating officer, have been involved in the direct or indirect supervision or authorisation of the relevant supervised entity.'

been introduced in 2019 as part of preparation for close cooperation. Characteristics of this setup are: (a) separation of prudential regulation from prudential supervision, (b) separation of prudential supervision from expert supervision and oversight, (c) creation of special organizational unit responsible for coordination, primarily with the ECB. The institutional setup of the CNB prior to close cooperation had been a lot simpler, with less specialized organizational units and a lot more commingling of different functions within one unit. However, at this point in time it is still too early to fully validate the effects of this institutional change.

These functional units are further divided into smaller sub-units. For instance, this implied that prudential supervision must reflect the difference between SIs and LSIs and that expert supervision and oversight have to include a department dedicated specifically to the Anti-Money Laundering oversight. Similarly as in some other Member States, the CNB is a competent authority for the Anti-Money Laundering oversight of credit institutions. However, this type of oversight needed to be functionally separated from prudential supervision and it was thus placed within the business unit in charge of expert supervision and oversight. Prior to the introduction of institutional changes in 2019, AML oversight has been conducted by the same business unit of the CNB which conducted prudential supervision as well.

An important development also resulted from the CNB's newly obtained sanctioning competence. Pursuant to Art 113 of the SSM Framework Regulation, provisions on administrative penalties apply mutatis mutandis in respect of supervised entities and supervised groups in participating Member States in close cooperation. This rule also needed to be applied to Art 123 of the SSM Framework Regulation, which prescribes that the investigating unit needs to be fully independent. Henceforth, investigating officers cannot be involved in the direct or indirect supervision or authorization of the relevant supervised entity for the two years before taking up the position of investigating officer. In addition, investigating officers have to perform their investigative functions independently of the decision-making bodies and are not to take part in the deliberations of the decision-making bodies.

As a result, the investigating unit had to be organizationally separated from other divisions responsible for banking supervision. To avoid conflict of interest, the investigating unit could not be subordinated to the vice-governor responsible for banking supervision. Since administrative sanctions are to be imposed within an administrative procedure, this demands specialist legal skills and expertise. Therefore, an investigating unit has been organized within the legal function and subordinated to a vice-governor in charge of the Legal Department. Similarly to cases described above, coordination with the ECB in this respect shall also be of the utmost importance. At this point in time (February 2022) no administrative penalties were imposed by the CNB upon the instruction of the ECB.[71]

71 This information is easy to verify since it is publicly available. The CNB is obliged to publish on its website decisions on each administrative penalty imposed on credit institutions and responsible persons of credit institutions, which have been adopted in the procedure for imposing administrative penalties. The decisions should be published without undue delay but after the person on whom the sanction is imposed is informed thereof. (Art 215(5) of the Credit Institutions Act). In February 2022, no such decisions have been published.

6. CONCLUDING REMARKS

Almost a decade after its inception, the BU is still an unfinished project. Nonetheless, despite the many uncertainties surrounding the establishment of the final, third pillar of common deposit insurance for the euro area, the legislative, institutional, and policy implications of the BU's functioning two pillars can be critically assessed. This is especially true in the case of the SSM, whose establishment prompted an institutional re-settling and policy recalibration of existing actors in banking supervision not only across the eurozone but also beyond, by incorporating the nimble institute of close cooperation in the SSM's founding regulation. Because of policymakers' foresight, the EU can bridge the gap between the euro and non-euro area banking markets caused by the advent of the BU, an admirable ability that attests to the significant integration potential of this flexible legal instrument.

Indeed, it is through close collaboration that the BU becomes a truly European project, as it allows member states outside the euro area to 'opt in' and participate in common stability frameworks. However, it is important to remember that close cooperation cannot be identified with full BU membership based on euro area participation. In fact, when it comes to inbetweeners, there are significant differences in BU law and practice, which adds to the complexity of BU governance and necessitates proactive 'legislative finessing' and institutional adaptations from the member state in question. Croatia's experience as an inbetweener, as well as that of its central bank, confirm this.

As mentioned, banking supervision has been the responsibility of the CNB, ever since Croatia's independence in the 1990s. Naturally, the practice and modalities of banking supervision have changed and evolved over time, but the competent authority responsible for banking supervision remained the same. As argued in the paper, the supervisory landscape changed because of Croatia's strategic policy orientation toward euro area membership, which prompted its participation in the BU. While the country's accession to the European Union in 2013, when credit institutions in Croatia became obliged to implement the relevant EU legislation, namely the CRD[72] and the CRR,[73] was one of the major changes for the Croatian banking sector from a regulatory standpoint, the biggest game changer from an institutional point of view has been the establishment of close cooperation with the ECB. The described institutional adjustments and amendments to organizational structure of the CNB are probably not final. Since the CNB and the Bulgarian National Bank are the first national competent authorities to establish close cooperation with the ECB, there is probably a lot to be learned by doing and by mirroring peers. At the same time, legislative fine-tuning was not less engaging; in fact, in preparation for the SSM-opt in, the relevant national regulation underwent three rounds of legislative amendments and revisions, in order to recalibrate the policy capacity of the CNB and ensure a responsive relationship between the ECB and CNB in the conduct of their everyday supervisory workload.

72 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC [2013] OJ L 176/338.

73 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 [2013] OJ L 176/1.

BIBLIOGRAPHY

1. Coman Kund F, Amtembrink F, 'On the Scope and Limits of the Application of National Law by the European Central Bank within the Single Supervisory Mechanism' (2018) 33 Banking & Finance Law Review 133
2. D'Ambrosio R (ed.) *Law and Practice of the Banking Union and of its Governing Institutions (Cases and Materials)* (Quaderni di Ricerca Giuridica della Consulenza Legale No. 88 Banca d'Italia 2020)
3. Dumičić M, Ljubaj I, Martinis A, 'Persistence of Euroisation in Croatia' (Croatian National Bank – Surveys S-31, 2018)
4. Enria A, 'The institution of 'close cooperation' in the SSM: an introduction', ECB Legal Conference 'Building bridges: central banking law in an interconnected world' (European Central Bank, 2019) 279
5. Everson M, Monda C, Vos E, *European Agencies in between Institutions and Member States* (Kluwer Law International 2014)
6. Galac T, 'The Central Bank as Crisis-Manager in Croatia – A Counterfactual Analysis', (Croatian National Bank – Working Papers n. 27, 2010)
7. Grdović Gnip A, Božina Beroš M, Bajakić I, 'All action, no talk? Determining euro's political salience in Croatia' in I Bajakić and M Božina Beroš (eds.), *EU Financial Regulation and Markets - Beyond Fragmentation and Differentiation: Jean Monnet Module International Scientific Conference*, Conference Proceedings (Faculty of Law University of Zagreb 2021)
8. Jankov Lj, 'Banking Sector Problems: Causes, Solutions and Consequences', (Croatian National Bank – Surveys S-1, 2001)
9. Jankov Lj, 'Spillovers of the Crisis: How Different Is Croatia?', Recent Developments in the Baltic Countries – What Are the Lessons for Southeastern Europe? – (Proceedings of OeNB n. 15, 2009)
10. Lastra M. R, 'Close Cooperation in the SSM', ECB Legal Conference, 'Building bridges: central banking law in an interconnected world' (European Central Bank 2019)
11. Lastra R, 'Banking Union and Single Market: Conflict or Companionship?' (2013) 36 Fordham International Law Journal, 1213
12. Lastra R, Louis J-V, 'European Economic and Monetary Union: History, Trends, and Prospects', (2013) 32 Yearbook of European Law 1
13. Lo Schiavo G, 'The Single Supervisory Mechanism: Building the New Top-Down Cooperative Supervisory Governance in Europe' in F Fabbrini, E Hirsch Ballin, H Somsen (eds.) *What Form of Government for the European Union and the Eurozone?* (Hart Publishing 2015)
14. Mack S, 'How Does Differentiated Integration Work in the EU Financial Sector? Spotlight on Banking Union' (EU IDEA Policy Paper No. 4, 2020)
15. Mihaljek D, 'The Global Financial Crisis and Fiscal Policy in Central and Eastern Europe: the 2009 Croatian Budget Odyssey', (2009) 33 Financial Theory and Practice 239
16. Moloney N, 'Close cooperation: the SSM institutional framework and lessons from the ESAs', ECB Legal Conference, 'Building bridges: central banking law in an interconnected world' (European Central Bank 2019)
17. Petak Z, 'Policy Making Context and Challenges of Governance in Croatia' in Z Petak and K Kotarski (eds.) *Policy-Making at the European Periphery – The Case of Croatia* (Palgrave Macmillan 2019)
18. Šonje V, 'Euro u Hrvatskoj: Za i protiv (Euro in Croatia: Pros and Cons)' (Arhivanalitika 2019)

19. Šonje V, Vujčić B, 'Croatia In the Second Stage of Transition 1994 – 1999', (Croatian National Bank –Working Papers n. 1, 1999)
20. Zeitlin J, 'Uniformity, Differentiation, and Experimentalism in EU Financial Regulation: The Single Supervisory Mechanism in Action' (Amsterdam Centre for European Studies Research Paper No. 2021/04, 2021)

REGULATIONS AND DOCUMENTS

1. Act on Amendments to the Act on the Croatian National Bank (OG 47/2020) (HR)
2. Act on the Amendments to the Credit Institutions Act (OG 70/2019) (HR)
3. Act on the Amendments to the Credit Institutions Act (OG 47/20) (HR)
4. Act on the Croatian National Bank (OG 19/2015, 16/2019, 47/2020, 146/2020) (HR)
5. Act on the Resolution of Credit Institutions and Investment Firms (OG 146/2020, 21/2022) (HR)
6. Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund (OG, International part 1/2020) (HR)
7. Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (2013) OJ L 287/63
8. Credit Institutions Act (OG 159/2013, 19/2015, 102/2015, 15/2018, 70/2019, 47/2020, 146/2020 and 151/2022) (HR)
9. Decision (EU) 2020/1016 of the European Central Bank of 24 June 2020 on the establishment of close cooperation between the European Central Bank and Hrvatska narodna banka (ECB/2020/31) (2020) OJ L 224 I/4
10. Decision of the European Central Bank of 31 January 2014 on the close cooperation with the national competent authorities of participating Member States whose currency is not the euro (ECB/2014/5) (2014) OJ L 198/7
11. Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (2019) OJ L 150/253
12. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (2013) OJ L 176/338
13. European Commission, A strategy towards a fully functioning and resilient Schengen area, Brussels, COM(2021) 277 final
14. General Administrative Procedure Act (OG 47/2009) (HR)
15. Guideline (EU) 2016/2249 of the European Central Bank of 3 November 2016 on the legal framework for accounting and financial reporting in the European System of Central Banks (ECB/2016/34), (2016), OJ L 347/37
16. Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (Euro-

pean Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013 (2013) OJ L 287/5

17. Regulation (EU) No 1163/2014 of the European Central Bank of 22 October 2014 on supervisory fees (ECB/2014/41) (2014) OJ L 311/23
18. Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (2014) OJ L 141/1
19. Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (2013) OJ L 176/1
20. Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (2014) OJ L 225/1
21. The Treaty on the functioning of the European Union (2012) OJ C 326

INTERNET SOURCES

1. Report on Economic and Monetary Union in the European Community (*Committee for the study of Economic and Monetary Union*, 1989) <https://ec.europa.eu/economy_finance/publica tions/pages/publication6161_en.pdf> accessed 14 March 2024
2. 'Annual Report for 2000' (*Croatian National Bank*, 2001) <https://www.hnb.hr/documents/20182/122149/e-gi-2001.pdf/216a40f5-c782-4bd4-b0f5-5bdd2ad66df7> accessed 14 March 2024
3. 'Annual Report for 2002' (*Croatian National Bank*, 2003) <https://www.hnb.hr/documents/20182/122203/e-gi-2003.pdf/270c613f-38ec-484c-b81a-23e301ef4330> accessed 14 March 2024
4. "ECB establishes close cooperation with Croatia's central bank" (*Croatian National Bank Press release*, 10 July 2020) <https://www.hnb.hr/en/-/ecb-establishes-close-cooperation-with-croatia-s-central-bank> accessed 14 March 2024
5. Organizational chart of the CNB (*Croatian National Bank*, 1 December 2015) <https://www.hnb.hr/en/about-us/functions-and-structure/organisation> accessed 18 September 2021
6. 'ECB oversight of less significant institutions' (*European Central Bank*, 2021) <https://www.bankingsupervision.europa.eu/banking/lsi/html/index.en.html> accessed 17 September 2021
7. 'The National Euro Changeover Plan' (*Government of the Republic of Croatia and the Croatian National Bank*, 2020) <https://euro.hr/wp-content/uploads/2022/07/The-national-euro-changeover-plan.pdf> accessed 14 March 2024
8. 'Strategy for the adoption of the euro in the Republic of Croatia' (*Government of the Republic of Croatia and the Croatian National Bank,* 2018) <https://euro.hr/wp-content/uploads/2022/07/Strategy-for-the-Adoption-of-the-Euro-in-the-Republic-of-Croatia pdf> accessed 14 March 2024
9. 'Credit institutions with its headquarters in the Republic of Croatia that as of 1 October 2020 fall under the direct responsibility of the Single Resolution Board' (*Croatian National Bank*, 2020) <https://www.hnb.hr/documents/20182/120871/e-popis-ki-odgovoran-jso.pdf/bd77f5 bb-9c55-61a8-4918-6908dfb830a7?t=1619541583465> accessed 23 February 2022

10. 'Enria o prednostima i nedostacima banaka u RH i izazovima koji slijede' (Enria on the advantages and disadvantages of banks in the Republic of Croatia and the challenges that follow) (*Croatian Radio-Television*, 24th February 2021) <https://vijesti.hrt.hr/hrvatska/enria-hrvatske-banke-su-jako-dobro-kapitalizirane-849796> accessed 26 February 2021
11. 'Interview with Maruška Vizek "Hrvatska nije spremna za euro"' (Maruška Vizek: Croatia is not ready for the euro) (*N1TV*, 14th September 202) <https://hr.n1info.com/vijesti/vizek-o-uvodenju-eura-nece-europska-monetarna-unija-rijesiti-nase-probleme/> accessed 15 September 2021
12. Škreb M, Kraft E, 'Financial Crises in South East Europe', Bank of Albania in the second decade of transition: The Third National Conference (*Bank of Albania*, 2002), 320–321, <https://www.bankofalbania.org/Publications/The_Third_National_Conference_Bank_of_Albania_in_the_second_decade_of_transition.html> accessed 5 May 2021
13. 'Suverenisti započinju s prikupljanjem potpisa za raspisivanje referenduma: Uvođenje eura će dodatno ugroziti standard građana' (Sovereignists Party begins collecting signatures to call referendum: Introduction of euro will further jeopardize citizens' standard) (*Večernji list*, 8th September 2021) <https://www.vecernji.hr/vijesti/suverenisti-zapocinju-s-prikupljanjem-potpisa-za-raspisivanje-referenduma-uvodenje-eura-ce-dodatno-ugroziti-standard-gradana-1521678> accessed 11 September 2021

*Marta Božina Beroš**
*Ivana Parać***
*Ivana Bajakić****

NEPUNOPRAVNO ČLANSTVO U BANKOVNOJ UNIJI: ISKUSTVO BLISKE SURADNJE IZMEĐU ESB-A I HNB-A

Sažetak

U srpnju 2020. Europska središnja banka (ESB) uspostavila je blisku suradnju s Hrvatskom narodnom bankom (HNB) i Bugarskom narodnom bankom otvarajući, prvi put, članstvo u Bankovnoj uniji i Jedinstvenom nadzornom mehanizmu državama članicama izvan europodručja. Države nepunopravnog članstva (engl. "inbetweeners") usložnjavaju upravljanje Bankovnom unijom zato što u režimu bliske suradnje ESB ne može primijeniti svoje supervizijske ovlasti izravno i samostalno, dok nacionalni supervizor mora razviti inovativna regulatorno-administrativna rješenja kako bi se pomirile razlike između integracijskih domena (europodručje i države izvan europodručja) unutar Jedinstvenog nadzornog mehanizma. U tom kontekstu ovaj rad analizira najznačajnije promjene institucionalnog i pravnog okvira HNB-a, poput zakonodavnih i administrativnih izmjena kojima se uspostavlja njegova uloga sankcioniranja, zatim njegove organizacijske revizije u svjetlu unutarnje organizacije Jedinstvenog nadzornog mehanizma te institucionalno pozicioniranje HNB-a među akterima nacionalne ekonomske politike.

Ključne riječi: *bliska suradnja, Hrvatska narodna banka, institucionalna reforma, političke ovlasti*

* Dr. sc. Marta Božina Beroš, redovita profesorica Fakulteta ekonomije i turizma „Dr. Mijo Mirković" Sveučilišta Jurja Dobrile u Puli, Preradovićeva 1/1, 52100 Pula. E-adresa: marta.bozina@unipu.hr. ORCID: https://orcid.org/0000-0001-5194-9804.

** Ivana Parać, mag. iur., Hrvatska narodna banka, Trg hrvatskih velikana 3, 10000 Zagreb. E-adresa: ivana.parac@hnb.hr. ORCID: https://orcid.org/0009-0000-6423-500X. Stavovi izneseni ovdje osobni su stavovi autora i ne pripisuju se nužno Hrvatskoj narodnoj banci.

*** Dr. sc. Ivana Bajakić, redovita profesorica Pravnog fakulteta Sveučilišta u Zagrebu, Trg Republike Hrvatske 14, 10000 Zagreb. E-adresa: ivana.bajakic@pravo.hr. ORCID: https://orcid.org/0000-0002-4109-0597.