

CONTRADICTIONARY TENDENCIES IN BANKING SYSTEMS OF THE SLOVAK REPUBLIC AND THE RUSSIAN FEDERATION¹

Simona Heseková

Comenius University in Bratislava, Faculty of Law

Abstract: The paper analyzes the banking systems of the Slovak Republic under the influence of the European Union legislation and banking system of the Russia Federation from the perspective of opening the banking sector to foreign capital. A fundamental difference between the given legislations, which is reflected mainly in the recent period, lies in the degree of openness of the banking system to foreign capital. While the banking system of the Slovak Republic under the influence of the European Union law can be considered as highly open banking system to foreign capital, the legislation concerning the Russian banking system is characteristic by legal limitation for foreign capital entry. The analysis of these contradictory tendencies which have common goal – to ensure a stable banking system could bring important knowledge that may help in resolving the issue of stability of the banking system at the global level.

Key words: banking system, the European Union, the Slovak Republic, the Russia Federation, foreign capital

1 THE STRUCTURE OF THE BANKING SYSTEM

The structure of the banking system in the different legal systems reflects the position of banks, defines the scope of activities that banks may conduct and determines the role of central banks in the banking system as well as state influence on the banking system. The national banking systems are influenced by the historical development of state legal system and economy, international cooperation and the financial market requirements. According to S. Polouček² equally important factors affecting the banking system are e.g.: the political situation of the country, state regulation, legislation created by the Central Bank, monetary stability, degree of development of financial markets, historical development and traditions of the country, religion and international economic situation.³ The banking system is also influenced by the processes of integration and in terms of selected countries by their participation in the European Union as well. Banking systems are currently highly influenced by the geopolitical situation and the international relationships between countries.

The structure of the banking system may be given by an explicit legal definition or may implicitly come out from legislation without the existence of a direct legal definition. Considering legal definition of banking system, it is important to note, that the Slovak legislation does not comprise such

¹ The chapter was elaborated as an output in the framework of the project VEGA 1/0440/17 entitled “ Innovative forms of funds pooling and their transfer” (duration of the project 2017-2019).

² POLOUČEK, S. Peniaze, banky, finančné trhy, p. 279.

³ “All translations from Slovak and Russian language into English are done by the author of the present work unless otherwise noted.”

a definition. The structure of the Slovak banking system is closely linked to the definition of the bank which is contained in the Act on Banks and amending certain laws No 483/2001 Coll. (hereinafter only „Act on Banks“). According to the Act on Banks *“a bank is a legal person established as a joint stock company with a registered office in the territory of the Slovak Republic, classified as a credit institution in Article 4(1) point 1 of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June, 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, and operating on the basis of a banking authorization. A bank may not have any other legal form.”* A banking authorization is an authorization issued to carry on any or all of the banking activities listed in the Act on Banks, in the scope specified in that authorization and under the terms and conditions stipulated by Act on Banks and separate regulations. The granting of banking authorizations falls within the competence of competent supervisory authority – Národná banka Slovenska (the Central bank of the Slovak Republic). Only a bank under the banking authorization issued by the Národná banka Slovenska may conduct banking activities such as for example taking deposits and providing loans using repayable funds obtained from other people on the basis of a public offer or the provision of payment and settlement services or investment activities. The bank in the Slovak legislation plays an important role in the banking system, which is determined by an exclusive opportunity to conduct certain activities. Conduct of these activities is characterized by state intervention aimed at protecting bank consumers. This characteristic feature is typical not only for the Act on Banks, but also for other legislation considering the banking system in the Slovak Republic. From theoretical point of view based on the above stated we could define the Slovak banking system as system, which consists of the Narodná banka Slovenska, banks, foreign bank branches and representative offices of bank. The representative office of bank is an organizational unit of bank that promotes the bank’s operations abroad or gathers information about the possibilities of economic cooperation abroad. A representative office of bank may not conduct banking activities or do business in any other way.

In contrary to the Slovak legislation, the Russian legislation contains an explicit legal definition of the banking system. The current definition of the Russian banking system under the recent changes reflects a long development of the Russian economy and the legal system.⁴ According to V.I. Zalogina *„The banking system is an indispensable part of the monetary and financial system of the Russian Federation. The banking system in the Russian Federation ensures the circulation of money, which is essential to the functioning of the financial system as a whole.”*⁵ Under the current legal definition contained in the Federal Act on Banks and banking activities N. 395-1 of the Russian Federation (hereinafter only “the Act on Banks”)⁶, the banking system of the Russian Federation consists of the Central Bank of the Russian Federation, credit institutions (banks) and representative offices of foreign banks. Primarily legal definition of the banking system in the Russian Federation reflects the most dynamic recent changes in the structure of the Russian banking system. These changes lie in restrictions towards entry of foreign capital to the Russian banking system.

⁴ According to the author Shestakov was “the banking system of the Russian Federation set up in the present form in 1990 with the adoption of the Act on Banks and banking activities and Act the Central Bank of the Russian Federation.” SHESTAKOV, A.V. Bankovskaja sistema RF, p. 29.

⁵ ZALOGIN, V.I. Bankovskoje pravo, p. 20.

⁶ Federalnyj zakon N 395-1 “O bankach i bankovskoj dejatel’nosti”

2 THE FOREIGN CAPITAL IN THE BANKING SYSTEM

The banking system may be classified according to its degree of openness to foreign banks. From this point of view, it is possible to distinguish highly open banking system, and banking system with greater limitations for foreign capital entry. In terms of openness of the banking system play an important role conditions for conduct banking activities for foreign banks which are stipulated by the national law. From that point of view, it's important to take into consideration: i) within the European Union principle of a single passport which increases the level of banking systems openness, as well as ii) the principle by which the requirements for the conduct of bank activities for foreign banks should more or less comply with the requirements stipulated for domestic banks. In terms of the banking system openness, the process of granting a banking license, and determination of requirements for the conduct of bank activities, the author agrees with opinion that an open banking system can contribute to the stability of the banking system at the global level under several conditions concerning the stability of national banking systems or effective supervision are met.⁷ It is possible to agree with an opinion that the banking system is often said to act as the nervous system of an economy. Under certain conditions, the failure of a single bank can prompt depositors to flee from otherwise sound institutions and precipitate a collapse of the system. Therefore, opening the banking sector to foreign capital is a delicate operation that involves more complicated policy considerations than opening of other service or goods sectors.⁸ Mainly from a perspective of the banking system openness we can see the most antagonistic tendencies in recent changes in banking systems of the European Union and Russian Federation.

In terms of openness of the banking system, the Slovak banking system can be considered as highly opened banking system. "Dependence on foreign developments on financial markets it is enhanced by the fact that Slovak banks are mostly owned by European banking groups."⁹ The specifics of Slovak banking sector is the fact that the most of Slovak banks are owned by parent companies established in other European Member States. More than 90% of bank assets are owned by foreign companies. In the terminology of banking directives, the Slovak Republic is in host Member State position.¹⁰ Undoubted influence on the degree of openness of the Slovak banking system has membership of the Slovak Republic in the European Union. The impact of European law to the openness of the banking system is reflected in the basic principles of the European Union and especially the principle of a single internal market.

The establishment of common or single market has been the cornerstone of the European integration since its inception in 1957.¹¹ The openness of the Slovak banking system to foreign banks was highly influenced by the idea of single passport. This idea is based on the principles of mutual recognition and the "single passport", a system which allows to financial services operators to be

⁷ CARNEY, M. The future of financial reform. Bank of England, Speeches and articles. 2014. available at <<http://www.bankofengland.co.uk/publications/Documents/speeches/2014/speech775.pdf>>.

⁸ MARTINRZ-DIAZ, L. Banking Sector Opening: Policy Questions And Lessons For Developing Countries. Brookings. 2007. available at <<https://www.brookings.edu/research/banking-sector-opening-policy-questions-and-lessons-for-developing-countries/>>.

⁹ JURČA, P. – RYCHTÁRIK, Š. Slovenský bankový sektor z makroprudenciálnej perspektívy. In Biatec, pp. 2–8.

¹⁰ PENZEŠ, P. Banková únia z pohľadu hostiteľského štátu. In Collection of the Papers from the international scholastic conference "Bratislava Legal Forum 2013", p 183.

¹¹ MARINIELLO, M., SAPIR, A., TERZI, A. The long road towards the European single market. Bruegel publications, 2015, available at <<http://bruegel.org/2015/03/the-long-road-towards-the-european-single-market/>>.

legally established in one Member State to establish/provide their services to the other Member States without further authorization requirements. The financial crisis which evolved and turned into the Eurozone debt crisis strengthened tendencies of the European Union toward deeper integration of the banking system. The idea of deeper integration of the banking system appeared as the main solution to the situation caused by the financial crisis and resulted in creations of the banking union.

The deeper integration of banking system through creation of banking union should i) ensure banks are robust and able to withstand any future financial crises, ii) prevent situations where taxpayers' money is used to save failing banks, iii) reduce market fragmentation by harmonizing the financial sector rules, iv) strengthen financial stability in the euro area and the European Union as a whole.¹² Banking union is perhaps the most transformative institutional response to the crisis experienced by the euro area in the last few years.¹³ One of the main building blocks of banking union is the Single Supervisory Mechanism.¹⁴ The Single Supervisory Mechanism as a new system of financial supervision is the direct outcome of the recent financial crisis which has shown how quickly and forcefully problems in the financial sector can spread. From the wider perspective the Single Supervisory Mechanism follows the idea of single passport based on the mutual recognition of banks from other Member States and equivalence of their prudential supervision which has been the key element in opening up the borders. The Single Supervisory Mechanism comprises the European Central Bank and the national competent authorities (hereinafter only "NCAs") of mainly euro area countries, including the Slovak Republic. The basis of the Single Supervisory Mechanism is a cooperation between the European Central Bank and NCAs, with *Národná banka Slovenska* operating as the NCA in Slovakia. For the purposes of the Single Supervisory Mechanism, banks (credit institutions) are categorized into "significant" and "less significant" institutions, with the European Central Bank directly supervising significant banks, while NCAs are in charge of the supervision of less significant banks. On that basis, the following banks in the Slovak Republic were categorized as significant: *Tatra banka*, *Všeobecná úverová banka*, and *Slovenská sporiteľňa*. Other banks in the Slovak Republic that are under direct European Central Bank supervision, in addition to the three most significant institutions, are *Československá obchodná banka* and *ČSOB stavebná sporiteľňa*, which are members of the KBC Group, and *Sberbank Slovensko*, a member of *Sberbank Europe AG*. The European Central Bank is directly supervising these banks owing to the significance of the groups of which they are part.¹⁵ As a response to the question whether existence of the banking union would prevent future financial crisis, is according to the Governor of *Národná banka Slovenska*, Mr. Jozef Makúch, necessary to continue in harmonization of rules for banks that are part of the Single Supervisory Mechanism in order to achieve a stage where conduct of bank activities are not affected by national arrangements and interests. More precise rules for banks, improvement of their risk management, better cooperation between supervisors are essential elements of the bank-

¹² Council of the European Union, "Banking Union", Consilium Europa, available at <<http://www.consilium.europa.eu/en/policies/banking-union/>>.

¹³ VERON, N. Europe's radical banking union. Bruegel publications, 2015, available at <<http://bruegel.org/2015/05/europes-radical-banking-union/>>.

¹⁴ For the second pillar of Banking Union (so-called Single Resolution Mechanism) see ČUNDERLÍK, L. Financial Implications of Mandatory Contributions of Bank Entities in Times of Financial Crisis in the Context of Banking Union Anticipation. In *Legal and Economic Aspects of the Business in V4 Countries – Conference Proceedings*, pp. 31–50.

¹⁵ List of Slovak banks which are subject to Single Supervisory Mechanism is available at http://www.nbs.sk/_img/Documents/_Dohlad/ORM/BankyAOcp/SSM.pdf

ing union. According to Mr. Jozef Makúch there is no doubt that in the event of a future crisis there will be better conditions to avoid it or minimize its consequences.¹⁶

According to the Act on Banks, a foreign bank can conduct banking activities through its branch located in the territory of the Slovak Republic under the authorization granted by Národná banka Slovenska. In compliance with the idea of single passport a foreign bank established in a Member State may carry on, through its branch, banking activities in the territory of the Slovak Republic¹⁷ without a banking authorization, if an authorization to perform such activities has been granted to this foreign bank in its home Member State, on the basis of a written statement delivered by the competent supervisory authority of that Member State to Národná banka Slovenska. Certain tendencies to restrict the activities of foreign banks in the Slovak Republic were associated with the special mortgage transactions in the first half of 2013. Under the Act on Banks 'mortgage transaction' means: a) the provision of mortgage loans and the related issuance of mortgage bonds; b) the provision of municipal loans and the related issuance of municipal bonds by bank.¹⁸ In 2013 the legislative amendment process took place, which in its original wording proposed completely deleted from the Act on Banks the option to perform special mortgage transactions by branches of foreign banks under banking license. Branches of foreign banks would not be able to obtain a banking license to perform this activity. The wording of the amendment finally was not accepted and foreign banks either with seat in or outside the European Union have the opportunity to provide mortgage transactions if this activity have authorized Národná banka Slovenska. The argumentation in favor of proposal lied in specific nature of mortgage transaction and complexity of related cross-border legal relations in the overlapping of several national legal systems which complicate conduct of special mortgage transactions by branches of foreign banks. In the Slovak Republic there is a specific nature of special mortgage transactions also connected with the issue of 'state interest subsidy'. The state interest subsidy means a percentage by which the rate of interest set in a mortgage loan agreement is reduced by the state. The state interest subsidy for mortgage loans shall be determined for each calendar year by the respective State Budget Act and shall apply to all mortgage loan agreements in the relevant year. In relation with the state interest subsidy was discussed the question of the adequacy of the provision of such benefits to citizens through foreign banks, as well as question of the different legislation concerning state interest subsidy provided by various countries, which entails potential risks from a legal perspective.¹⁹

As follows from the stated facts, under the influence of the European Union membership, the Slovak banking system does not contain bigger restriction that would prevent the entry of foreign capital into the Slovak banking system. It is mainly due to the fact, that issues which the European Union faced due to the financial crisis has resulted in deeper integration of the internal market.

¹⁶ MENDEL, J. Rozhovor s guvernérom NBS Jozefom Makúchom: Prípravy únie odhalili nové riziko. In *Hospodárske noviny*, p. 3.

¹⁷ except for the special mortgage transactions and performance of the functions of a depository under a separate regulation

¹⁸ Under the Act on Banks a mortgage loan is a loan with a maturity of at least four years and a maximum of thirty years, secured by a security interest established in any domestic real property, including property under construction, and financed, up to at least 90% unless this Act provides otherwise, through the issuance and sale of mortgage bonds by a mortgage bank under a separate regulation, which mortgage banks provide for the following purposes: a) acquisition of domestic real property or any part thereof; b) construction or modification of existing buildings or structures; c) maintenance of domestic real properties; or d) repayment of an outstanding mortgage loan drawn for any of the purposes mentioned in subparagraphs (a) to (c); e) repayment of an outstanding loan drawn for any of the purposes mentioned in subparagraphs (a) to (c), other than a mortgage loan.

¹⁹ The explanatory statement to the draft law amending the Act on Banks and amending certain laws No 483/2001 Coll. prepared by the Ministry of Finance of the Slovak Republic in cooperation with the National Bank of Slovakia in accordance with the legislative program of the Government of the Slovak Republic for the year 2013

Completely opposite trend is visible in the legislation of the Russian Federation. In the analysis of recent trends in the banking system of the Russian Federation it is necessary to take into consideration the economic and political aspects of international cooperation between the Russian Federation, the European Union and the United States of America which was reflected mainly in sanctions against the Russian Federation. Since the start of the geopolitical tensions, the Russia Federation has been subject to several rounds of sanctions by developed economies. First, sanctions directed at specific individuals, groups, and companies imposed restrictions on travel and business operations and froze their assets. Later, sanctions aimed at Russia's military, energy, and financial sectors followed. The Russia Federation introduced counter sanctions, banning food imports from sender countries. According to the economic report of the World Bank, sanctions and counter sanctions hit the economy through three channels: (i) Massive capital outflows made the foreign exchange market more volatile and caused a significant depreciation of the ruble; (ii) Financial sanctions restricted access to international financial markets for some Russian banks and firms and made external borrowing very expensive for others; and (iii) The already low confidence of domestic businesses and consumers in future growth prospects diminished further, reducing consumption and investment. Sanctions also started to impact trade flows.²⁰ The purpose of this article and its questions will not be concerned with deeper and more structural analysis of these sanctions but our attention will be fixed on routing of the Russian Federation bank system in term of openness towards foreign investments.

When analyzing the Slovak banking system, it must be taken into account: i) the impact of the European Union law, ii) the existence of a single internal market and iii) the creation of the banking union. In the case of the banking system of the Russian Federation, the situation is different. Analysis of the openness of the Russian banking system to foreign capital is based on the legal definition of the banking system. Under the current legal definition contained in the Russian Act on Banks, the banking system of the Russian Federation consists of the Central Bank of the Russian Federation, credit institutions (banks) and representative offices of foreign banks.²¹ Changes in the legal definition of the Russian banking system reflect the extensive changes in the banking system of the Russian Federation in terms of its openness to foreign capital. Probably one of the most important changes in the Russian banking sector is connected with the possibility of foreign banks to conduct their activities through their branches on the territory of the Russian Federation. Until the amendment to the Act on Banks in March 2013, which changed the structure of the banking system largely, the banking system of the Russian Federation consisted of the Central Bank of the Russian Federation, credit institutions, branches and representative offices of foreign banks. The amendment to the Act on Banks has excluded the branch of foreign banks from the list of subjects enshrined in the legal definition of the Russian banking system. By this step the bank possibility to provide services in the Russian Federation through the establishment of a branch was ultimately concluded.²² The form of representative office of foreign bank remained part of the banking system, but since representative office of foreign bank has a similar character as it has in the Slovak legislation, this form

²⁰ THE WORLD BANK IN THE RUSSIAN FEDERATION. Russia economic report, World Bank org., 2015, available at <<http://www.worldbank.org/en/country/russia>>

²¹ Until 1996, till the adoption of the amendment to the Russian Act on Banks, the banking system of the Russian Federation under the legal definition consisted of the Central Bank of the Russian Federation, the Bank for Development and Foreign Economic Affairs, Sberbank, credit institutions, branches and representative offices of foreign banks. Significant portion of the shares of the Bank for Development and Foreign Economic Affairs and Sberbank were owned by the Central Bank of the Russian Federation.

²² The relevant amendment to the Act on Banks is linked to March 2013.

is not relevant when considering possibility to conduct banking activities. A representative office of a bank in Russian Federation, as well as in the Slovak legislation, is just an organizational unit of a bank that promotes the bank's operations abroad or gathers information about the possibilities of economic cooperation abroad. A representative office of a bank may not conduct banking activities or do business in any other way. The possibility of Russian banks, which have a banking license from the Central Bank of the Russian Federation, set up branches or subsidiaries in the territory of other states remained unchanged. The exclusion of branch of foreign bank from legal definition thus has affected only branches of foreign banks in order to prevent foreign banks to provide banking services through the establishment of a branch on the territory of Russian Federation. To achieve this goal, the legislature chose a simple process by which removed the term "branches of a foreign bank" (filialov inostrannykh bankov) from the entire text of the Russian Act on Banks. This legislative change represented a relatively simple intervention to the text of the Act on Banks, which, however, had a substantial influence and it is reflected in the different conception of the structure of the banking system in the Russian Federation.

In order to support this legislative steps several Russian authors pointed out that the ability of foreign banks to perform banking activities in the territory of the Russian Federation through its branches may cause a significant imbalance in the banking sector, and distort competition. The reason lies in the fact that branches of foreign banks, unlike subsidiaries did not fall completely under the control of regulatory authorities in the Russian Federation and thus they are not bound by the conditions laid down by Russian legislation concerning the creation of the capital requirements, reports to the Central Bank of the Russian Federation and etc. In light of aforesaid and with reference to the development strategy of the banking sector and its stability, we can find the opinion that "*the establishment of branches of foreign banks in the Russian Federation at the present stage of development of the banking system could be considered as premature*"²³ In terms of the real impact of this amendment, we meet with the opinion that the adopted amendment in fact did not bring major changes in the conduct of foreign banks in the Russian Federation. Several authors have supported this opinion due to the fact that the government of the Russian Federation in agreement with the Central Bank of the Russian Federation had the opportunity to establish allowable quota for participation of foreign capital in the banking system. After exceeding this quota, the Central Bank of the Russian Federation did not issue a banking license. Due to these facts, foreign capital was presented in the banking system of Russian Federation only through subsidiaries.²⁴

The issue of opportunity for foreign banks to carry out their activities in the Russian Federation through branches was highly debated especially when entering the Russian Federation to the World trade organization (hereinafter only „WTO“). In the course of entering the Russian Federation to the WTO as the most important appeared the question of the country's integration into the world economy in terms of achieving a balance between effective use of banking institutions internationally and preserving the sovereignty of the national banking system. Several experts in this field emphasized the advantages and disadvantages of a massive entry of foreign capital to the banking system of the Russian Federation. Arguments for the presence of foreign capital in the Russian banking system consisted in the fact that the influx of foreign capital can be seen as an important

²³ FINMARKET.RU. Senatory zakreplili zapret na otkrytie v Rossi filialov inostrannykh bankov, In: Finmarket-Novosti, 2013, available at < <http://www.finmarket.ru/news/3252415/>>.

²⁴ NOSKOVA, E. Sovet direktorov segodnja odobril pravitelstvennyj zakon, zapreshhajushhij otkryvat filialy inostrannykh bankov v Rossii. In Rossijskaja gazeta, 2013, available at <<https://rg.ru/2013/03/18/filial.html>>.

factor in the development of the banking sector, given the fact that foreign investment provides access of modern technologies and new financial products to the banking market, improve culture of corporate governance in credit institutions, promotes competition between credit institutions and improve modern banking. Ultimately, however, outweighed the disadvantages associated with the entry of foreign capital in the Russian banking system. Between arguments against foreign capital entry belong the risk of high dependence of the development of the Russian economy on international markets, unequal conditions for foreign bank branches which can lead to the reduction of competitiveness of Russian banks, inflation risk, inefficient supervision of foreign banks branches, which could lead to destabilization of the banking system of the Russian Federation.²⁵ Several authors have pointed out the need to maintain control over the activities of foreign providers of financial services in the internal market. One of the main arguments consisted in the statement according which, despite the existence of advantages of functioning of foreign financial institutions in the banking system, the massive income of foreign capital may lead to increased interdependence of national economies in different countries and their higher sensitivity to the global financial crisis, strengthening of capital volatility and final destabilization of the banking system.²⁶ In the course of negotiations on the accession of the Russian Federation to the WTO finally outweighed the negative aspects of an influx of foreign capital to the Russian Federation and the fear of the fact that Russian banks will not be able to cope with competitive pressure. In the light of stated arguments, the exclusion of the possibility to establish branches of foreign banks in the Russian Federation took place. According to the explanatory statement to the Acts on Banks, the Act as amended is in compliance with all requirements stipulated by the WTO for the Russian Federation.

All these changes concerning banking system in the Russian Federation had also support in document called "Strategy for the development of the banking sector of the Russian Federation until 2015" (hereinafter only "Strategy") issued by the Russian government. According to the Strategy "The banking sector during the second half of 2010 after the economic crisis, returned to a gradual development. Although the consequences of the crisis will have impact on banking system for a long time, the state of the banking system is stable. This creates conditions for further increasing the role of credit institutions in improving the efficiency and competitiveness of the Russian economy. The main content of a new stage in the development of the banking sector should be improvement of the quality of bank assets, including the expansion of banking products and services, increase of the long-term efficiency and sustainability of the business of credit institutions."²⁷ One of the main objectives to which the Strategy refers is to ensure financial stability, while at the same time the Strategy declares that the solution to the problems in the banking system will require substantial changes in the conditions of its operation and may lead to a change in its structure. In the part dedicated to licensing and regulation of foreign capital, the strategy pays attention to the issue of the participation of foreign capital in the banking system of the Russian Federation.

Participation of foreign capital in the banking system of the Russian Federation is closely connected with quotas set by legislation. The issue of quotas for the participation of foreign capital in

²⁵ ZAVALNYJ, P. N., IGOREVIČ, R. I. Rol i mesto inostrannyh bankov v bankovskoj sisteme Rossijskoj Federacii. In Science forum, 2015, available at <<http://www.scienceforum.ru/2015/pdf/10056.pdf>>.

²⁶ ANATOLEVNA, I. J. Rol inostrannogo kapitala v razvitii nacionalnoj bankovskoj sistemy RF In: Elektonnyj nauchnyj zhurnal- Sovremennye problemy nauki i obrazovanija, 2014, available at <<http://www.science-education.ru/ru/article/view?id=13938>>.

²⁷ Zajavlenie Pravitelstva Rossijskoj Federacii i Centralnogo banka Rossijskoj Federacii o Strategii razvitiya bankovskogo sektora Rossijskoj Federacii na period do 2015 goda

the Russian Federation is another aspect which has a significant impact on the openness of the Russian banking system. As mentioned above, the current legislation does not allow the establishment of branches of foreign banks in the Russian Federation. The possibility for entry of foreign capital to the Russian banking system in form of subsidiaries was limited by additional conditions for and also by the quota fixed for allowable amount of foreign investments in the banking system.²⁸ This quota was calculated as the ratio of total capital that belonged to foreign investors in credit institutions with a total share capital of credit institutions incorporated in the Russian Federation. The Central Bank of the Russian Federation after reaching the quota stopped issuing banking licenses for credit institutions with foreign investments. Similarly, in case of quota had been overrun, the Central bank of the Russian Federation had the right to veto the transfer of shares, interests of existing credit institutions in favor of foreign parties. As well as removal of the possibility of foreign banks to carry out its activities in the Russian Federation through its branches, determination of the quota for foreign capital in the Russian banking system was discussed already at the entrance of the Russian Federation to the WTO. The Russian Federation persisted on the need to determinate the quota for foreign capital. On the other hand, the Russian Federation had promised to eliminate some discriminatory requirements to subsidiaries of foreign banks.²⁹

A major shift in the Russian legislation occurred in 2015, when the quota regulating the amount of foreign capital in the banking system Russian Federation was directly specified in the Act on Banks. The Central Bank of the Russian Federation declares that the changes were made in accordance with the agreements made in the course of accession of the Russian Federation to the WTO.³⁰ Likewise, pursuant to the explanatory statement to the Act on Banks, explicit incorporation of the quota in the law is in accordance with the Russian negotiations on the accession of the Russian Federation to the Organization for Economic Co-operation and Development (hereinafter only "OECD"). OECD requires that legislation of the Russian Federation is characterized by transparency. The requirement for legislation transparency was main reason why the quota needed to be explicitly incorporated in legislation. Under the current legislation, the maximum size of foreign capital in the total capital of credit institutions licensed to conduct banking operations is set at 50%. If the quota is exceeded, the Central Bank does not issue banking license to bank or reject to give permission for increment of basic capital of bank. The methodology of calculating the amount of foreign capital in the Russian banking system is regulated by the Central Bank of the Russian Federation in the form of announcement. The Russian Central Bank shall publish by 15 February of the current year an information what is the amount of foreign capital in the Russian banking system.³¹ Despite the fact that one of the arguments in favor of reduction of impacts of foreign capital in the banking system was that foreign capital might have negative consequences for the competitiveness of Russian banks, according to several experts the low competitiveness of Russian banks is mainly caused by the presence of state ownership in the banking system. Banks continue to make up a disproportionate share of Russian financial system. Although the Russia Federation had 827 banks with a valid license on March 1, 2015, the sector is dominated by state-owned banks, particularly Sber-

²⁸ ZALOGIN, V.I. *Bankovskoje pravo*, p. 87.

²⁹ SEREJEVICH, M.L. *Bankovskaja sistema Rossii pri vstupenii v VTO: problemy i perspektivy*. In: *Politematicheskij setevoj elektronnyj nauchnyj zhurnal Kubanskogo gosudarstvennogo agrarnogo universiteta*, 2012.

³⁰ BANKI.RU :CB: *Dolja inostrannogo kapitala v bankovskom sektore RF, raschitannaja po novym pravilam*, — 13,44%, Banki.ru, 2015, available at <http://www.banki.ru/news/lenta/?id=8685519>.

³¹ The size of participation of foreign capital in the Russian banking system on January 1, 2016 was estimated by the Central Bank of Russian Federation in the size of 13.44%.

bank and VTB Group. Six out of the eight largest banks in terms of assets in the Russian Federation are state-controlled, and the top five held 53.7 percent of all bank assets in the Russian Federation as of March 1, 2015. The role of the state in the banking sector continues to distort the competitive environment, impeding the Russian financial sector development.³²

5 CONCLUSION

The financial crisis and its impact on the banking system of the countries pointed out to the problems of the existence of foreign capital in the national banking systems and the close connection of these systems. At the point of bank systems analysis in the Slovak Republic, under the European Union influence on one side and from the other side the Russian banking system we are witnesses of opposite solutions. The European Union in order to solve these problems and prevent future crises has decided for the way of deeper integration and strengthening of the internal market. The banking union was created, which builds on a joint supervision mechanism as one of the solutions to eliminate the possible cause of a future financial crisis. On the other hand, the Russian Federation has decided to limit the presence of foreign capital in the Russian banking system. In terms of transparency, we can positively judge the explicit enshrining of quotas into the law of the Russian Federation, which can help to increase legal certainty. On the other side, according to several critics, the Russian Federation must face outflow of foreign capital and stated quota rather reduces the competitiveness of Russian banks. The author agrees with the premise according to which the open banking system can contribute to the stability of the banking system at the global level. This premise must be supported by assumptions that lie i) in the same or similarly set conditions to banks³³ ii) the stability of national banking systems, and iii) the effective exercise of supervision over the activities of banks. Due to the short period of time it is not possible to assess whether the more effective direction is the one chosen by the European Union or by the Russian Federation. The author is of the opinion that the analysis of these contradictory tendencies in selected banking systems and their impact on the stability of the banking system in the longer term could lead to important conclusions that may help in resolving the issue of stability of the banking system at the global level.

Bibliography:

ANATOLEVNA, I.J. Rol' innostrannogo kapitala v razvitii nacionalnoj bankovskoj sistemy RF In: Elektronnyj nauchnyj zhurnal – Sovremennye problemy nauki i obrazovanija, 2014, available at <<http://www.science-education.ru/ru/article/view?id=13938>>.

CARNEY, M. The future of financial reform. Bank of England, Speeches and articles. 2014. available at <<http://www.bankofengland.co.uk/publications/Documents/speeches/2014/speech775.pdf>>.

ČUNDERLÍK, L. Financial Implications of Mandatory Contributions of Bank Entities in Times of Financial Crisis in the Context of Banking Union Anticipation. In: Legal and Economic Aspects of the Business in V4 Countries – Conference Proceedings, 2014, pp. 31–50.

³² U.S. DEPARTMENT OF STATE. Russia Investment Climate Statement 2015, U.S. Department of State publications, 2015, available at <http://www.state.gov/documents/organization/241925.pdf>.

³³ Mainly in the case of countries which are not members of the European Union.

- JURČA, P., RYCHTÁRIK, Š. Slovenský bankový sektor z makroprudenciálnej perspektívy. In *Biatec 2011*, Vol. 5 no. 19. pp 2–8.
- MARINIELLO, M., SAPIR, A., TERZI, A. The long road towards the European single market. Bruegel publications, 2015, available at <<http://bruegel.org/2015/03/the-long-road-towards-the-european-single-market/>>.
- MARTINRZ-DIAZ, L. Banking Sector Opening: Policy Questions And Lessons For Developing Countries. Brookings. 2007. available at <<https://www.brookings.edu/research/banking-sector-opening-policy-questions-and-lessons-for-developing-countries/>>.
- MENDEL, J. Rozhovor s guvernérom NBS Jozefom Makúchom: Prípravy únie odhalili nové riziko. In: *Hospodárske noviny*, 2014, p. 3.
- NOSKOVA, E. Sovet direktorov segodnja odobril pravitelstvennyj zakon, zapreshhajushhij otkryvat filialy inostrannykh bankov v Rossii. In: *Rossijskaja gazeta*, 2013, available at <<https://rg.ru/2013/03/18/filial.html>>.
- PENZEŠ, P.: Banková únia z pohľadu hostiteľského štátu. In *Collection of the Papers from the international scholastic conference „Bratislava Legal Forum 2013“*, 2013, p. 179-185.
- POLOUČEK, S. Peniaze, banky, finančné trhy. Bratislava: Iura edition, 2010. SEREJEJEVICH, M.L. Bankovskaja sistema Rossii pri vstupenii v VTO: problemy i perspektivy. In: *Politematicheskij setevoy elektronnyj nauchnyj zhurnal Kubanskogo gosudarstvennogo agrarnogo universiteta*, 2012.
- SHESTAKOV, A.V. Bankovskaja sistema RF. Moscow: Mgiu, 2007.
- VERON, N. Europe's radical banking union. Bruegel publications, 2015, available at <<http://bruegel.org/2015/05/europes-radical-banking-union/>>.
- THE WORLD BANK IN THE RUSSIAN FEDERATION: Russia economic report, World Bank org., 2015, available at <<http://www.worldbank.org/en/country/russia>>
- ZALOGIN, V.I. Bankovskoje pravo. Moscow: Wolters Kluwer, Moscow, 2010.
- ZAVALNYJ, P. N., IGOREVIČ, R. I. Rol i mesto inostrannykh bankov v bankovskoj sisteme Rossijskoj Federacii. In: *Science forum*, 2015, available at <<http://www.scienceforum.ru/2015/pdf/10056.pdf>>.

Contact information:

JUDr. Simona Heseková, PhD.
simona.hesekova@flaw.uniba.sk
Comenius University in Bratislava, Faculty of Law
Šafárikovo nám. č. 6
P. O. BOX 313
810 00 Bratislava
Slovak Republic