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НАУЧНА КРИТИКА, ПОЛЕМИКА, ОСВРТ

LEGAL-MARKETING ASPECTS OF BUSINESS  
OPERATIONS OF BANKS IN BOSNIA AND  
HERZEGOVINA

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*Abstract: In recent years, the banking sector of Bosnia and Herzegovina has been acting intensively with marketing activities towards all users of financial services in Bosnia and Herzegovina. In the constant competitive struggle for the largest possible participation in the financial market, banks ignore or disrespect main business, legal, ethical and marketing principles and norms for relationships with users of their services. Although all citizens are directly or indirectly clients of the banking sector, there is an oversaturation of the market, which often leads to an inadequate relationship between providers and users of financial services. Declared bank offers lead citizens to reckless and inappropriate borrowing in relation to their economic possibilities, and on the other hand, the banking sector also suffers the consequences of excessive client borrowing. There are legal solutions that regulate the work of banks, but they are not involved in a timely manner and are not even applied to a sufficient extent in order to protect the users of services on the financial market of Bosnia and Herzegovina. The aim of the paper is to point out the main legal and marketing aspects of banks' business operations, i.e. misconceptions and problems that citizens, primarily loan users, are exposed to, because there is an insurmountable gap between the conditions offered and their practical application. There is a violation of the fundamental rights of users of financial services, which is based on the monopolistic behavior of banks and unprincipled application and enforcement of legal regulations by regulatory authorities.*

*Keywords: banking law, lending, financial services, communication*

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## 1. INTRODUCTION

The role of the modern bank is determined, among other factors, by the opportunities to attract temporarily funds of individuals and their effective placement to meet the needs of the real sector and consumer needs.<sup>2</sup> The development of the banking sector, as a part of the financial system of Bosnia and Herzegovina (further: BiH), can be observed in the context of establishing and forming the Bosnian-Herzegovinian social community from the mid-nineties of the last century until today.

The financial system of BiH has intensified its activities in the last twenty-five years, which enabled individuals and legal entities to use financial services after many years of non-functioning of almost all social and economic activities. What we emphasize is that not only the war events affected social and economic relations in BiH, but under the influence of external entities, primarily the international community, it was created a completely new system of social relations, which directly affected the approach to the concept of the financial system. The financial system in BiH consists of insurance companies, micro-credit organizations, leasing companies, banks, funds, the financial market and instruments, and regulatory and control institutions. The services of the banking sector dominate the financial market of BiH. Banks were skillful in diversifying their services, so in a short time they expanded the range of their products by breadth and depth, but fundamentally behind everything is lending to citizens and businesses, i.e. “borrowing” money for a certain period of time, which has been accumulated in BiH. Bosnian-Herzegovinian banks are of a commercial nature, they operate as joint-stock companies, on a profit basis, with a main task, simply said, to generate more income than expenses. In addition, there is a social justification for their existence and work, i.e. legal and ethical business norms that should be respected and implemented. Banks concentrate the money of individuals, business entities and public institutions and decide on its further engagement, which carries certain risks, so the question of their social responsibility is rightly raised. The emergence and beginning of the banking sector, as it exists today, was in 2000. This is a short period of time to analyze the business operation of such an important and complex social segment, such as banking. However, the expansion of their activity, primarily of foreign banks, brought significant changes in the economic and social life of individuals and organizations. Those changes were in a function of socio-economic development, but at the same time they created problems on the financial market

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<sup>2</sup> Viktoriia Vovk, Alina Denysova, Kateryna Rudoi and Tetiana Kyrychenko, „Management and Legal Aspects of the Symbiosis of Banking Institutions and Fintech Companies in the Credit Services Market in the Context of Digitalization“, *Studies of Applied Economics*, 39, 7 (2021): 5.

of BiH. The organization of the banking sector is conditioned by the way BiH is constituted, as a state union, consisting of two entities. The umbrella institution is the Central Bank of Bosnia and Herzegovina, and the Law on Banks of the Republic of Srpska and the Law on Banks of the Federation of Bosnia and Herzegovina (further: FBiH) regulate the establishment, business operation and termination of banks. The banking agencies of the Republic of Srpska (further: RS) and of the FBiH issue licenses for the establishment and operation of banks and supervise their business operations.

The most significant support to the banking sector was given by the reform of internal payment transactions in 2000 in BiH, which abolished the Payment Transaction Service/Payment Transaction Institute, and transferred payment transactions to the jurisdiction of commercial banks. Since 2006, there has been an intensive appearance of foreign banks in the territory of Bosnia and Herzegovina, introducing new operating codes on the financial market, and that is the orientation towards lending and making a profit on that basis. Through aggressive marketing campaigns, banks motivate citizens to borrow beyond their real possibilities. The declared “promises” of banks led to irrational decisions by loan users, excessive borrowing and financial dependence. This raises the question of the ethical relationship of banks towards the social community and trust towards the banking sector of BiH. The aim of the paper is to point out “marketing banking traps” and the practical implementation of the obligations of loan users, which are carried out for a long period of time in a bad economic environment and in the evident absence of legal protection. By passing laws that regulate bank business operations, the state tried to regulate relations on the financial market and thereby protect the users of financial services, but the reaction was late, and, on the other hand, the involvement and application of those legal solutions is not appropriate. There was also a lack of timely reaction by regulatory bodies, the executive and judicial authorities, so we can say that the users of financial services are alone in the fight against the power and strength of banks in BiH. The legal regulation of the banking sector is based on legal norms adopted from the developed countries of the European Union, so it is raised the question of the adequacy of such adopted legal solutions.

## 2. BANKING SECTOR OF BOSNIA AND HERZEGOVINA

The banking sector consists of banks, microcredit organizations and leasing societies. “The total number of banks operating on the territory of BiH is twenty-three”.<sup>3</sup> The portfolio of the financial market of BiH is not sufficient for the

<sup>3</sup> Central Bank of Bosnia and Herzegovina, <https://www.cbbh.ba/?lang=bs>, accessed on 10.09.2022.

optimal level of business operations of the banking sector, taking the number of inhabitants and economic entities as relevant data. Increasing the volume of business, income and profit is imperative for all commercial banks. In order to fulfill these goals, banks in the market competition use all marketing tools to gain the attention of clients and make transactions with them. Declared offers contain a lot of “promises” to bank clients, but the question is whether it is achievable in practice. “The bank is a company that is formed in the legal form of a joint-stock company”.<sup>4</sup>

The bank’s activities, among other things, include: receiving and placing deposits, giving and taking credits and loans, issuing guarantees and all forms of assurances, domestic and international payment and money transfer services, financial leasing, buying and selling foreign currency, issuing payment cards and securities, factoring, forfeiting, financial management services, consulting and issuance of safe deposit boxes. “The bank is obliged to conduct its business operations in accordance with the Law, the regulations issued by the Agency, any conditions and restrictions established by the permit, and corresponding business and accounting principles and standards”.<sup>5</sup> The organization of the business operations of banks is established according to the administrative organization of BiH, and hence they can have their headquarters in the RS or the FBiH, while their organizational parts can be in both entities. Users of their services have neither administrative nor territorial restrictions when choosing providers, so we can say that the financial market in BiH is liberal. However, is there really, on this market, a competitive relationship between providers of financial services, the goal of which would primarily be the satisfaction of the needs of citizens and the economy, and then their own, commercial goals? The development of the financial market of BiH is directly dependent on socio-economic relations, political circumstances/difficulties and the development of the economy. “The role of banks in economic and social life is extremely important in economic and legal terms”.<sup>6</sup> Banking services have a dual nature. Some are requested and desired by bank clients, while others are imposed by administrative measures. The former includes lending, guarantees, conversions and deposit operations, while the latter contains mainly payment transactions. It should be noted that the term “product” is often used instead of “service” in the offer of banks.

There are significant differences in theory and practice when consuming services and products. Banks use this when differentiating offers on the financial market. Although intangibility is the basic characteristic of services, banks

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<sup>4</sup> Art. 7. of The Law on Banks, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 27/2017.

<sup>5</sup> Art. 74. item 2. *Ibid.*

<sup>6</sup> Nikolina Vojinović, „Pravna zaštita korisnika finansijskih usluga u Bosni i Hercegovini”, *Bizinfo* (2021): 135-152.

in BiH work intensively on the “packaging” of banking services or products in order to identify them in the minds of consumers. Electronic business has contributed to the effectiveness of bank business operations and created numerous benefits for their clients, but it has also enabled various activities that are contrary to the legal and moral norms of business for both. However, “the fact that part of the banking services does not belong to the group of services that customers really want is significant for the analysis”. They are often “a necessary evil” - a means of obtaining products and services for which users do not have enough money. Obviously, those are lending services that provide companies and individuals with the missing financial resources to finance business activities or purchase products and other services, fundamentally “unsolicited services”.<sup>7</sup>

Citizens, business entities and all those who have obligations created in a debtor-creditor relationship or towards public and commercial institutions, can or rather must make payments exclusively through internal payment channels, which gave banks a monopoly position. There are bills for electricity, telephones, internet, TV, utilities, heating, school fees, tax obligations, taxes, healthcare services, insurance, payment of fines, etc. “Internal payment transaction means all payments in convertible marks among participants in the internal payment transaction through accounts with the authorized organizations for performing internal payment transactions”.<sup>8</sup> Although there is an option for bank clients to choose a service provider, it is still a monopoly relationship because there is a conditionality of using banking services/products when consumers do not want nor use them to satisfy their own needs, but to fulfill obligations. This was mainly contributed by the administrative-legal, normative solutions of state bodies and authorities. Banks use such a privileged position to progressively gain the largest possible profits, without respecting the needs and possibilities of the citizens of BiH. There is no legal or economic regulation, nor the intention of the regulatory bodies, which would limit the price of banking products and services. Clients of banks, i.e. users of financial services, cannot influence the price, quality, method and time of service provision.

The most difficult, and also worrying and alarming, is the situation regarding the indebtedness of citizens and the economy in BiH. According to the model of Directive 2008/48/EC, the legislator passed the Law on the Protection of Users of Financial Services.<sup>9</sup>

<sup>7</sup> Vesna Babić- Hodović, *Marketing u bankarstvu* (Sarajevo: Ekonomski fakultet, 2012), 6.

<sup>8</sup> Art. 2. item 1. of The Law on Internal Payment Transactions, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 48/15.

<sup>9</sup> The purpose of Directive 2008/48EC of the European Parliament and of the Council credit agreements for consumers is to harmonize certain aspects of laws and other regulations of member states on agreements involving consumer loans. In addition to defining the basic terms “consumer, creditor, credit agreement,

Based on the Report for 2021 of the Banking Agency in the RS, in the sectoral structure of deposits, citizens have a participation of 57.1%, and 52.7% in the FBiH, while in the sectoral structure of loans, they participate with 48.1% in the RS and 46.5% in FBiH. There is no doubt that citizens with their deposits represent the most important foundation for the functioning of banks, but they are also the most important basis for bank financing. However, the large growth of microcredits (and loans in general) without a single register of citizens' indebtedness, an adequate legislative framework and with a low degree of financial literacy of citizens in Bosnia and Herzegovina has, among other things, influenced the emergence of risky borrowing, which has caused many individuals and also households to become over-indebted.

There is an appeal for financial literacy in the same handbook, but the question is whether advising and educating citizens is a sufficient "defense and protection" against over-indebtedness and the promotional, aggressive policies of banks, which have their own commercial interests. In addition, there are legal regulations that tend to regulate the financial market of BiH. The legal regulation of relations on the financial market seeks to regulate the business operations of banks and other financial institutions according to European legal norms, and, on the other hand, the merchandising system tends, after numerous deviations and anomalies, to protect users of financial services. That the business of financial institutions was conducted outside the prescribed frameworks and standards is also indicated by the fact that "on June 30, 2010, twenty banks had a banking license in the FBiH",<sup>10</sup> and that "the banking sector of the RS had 10 banks",<sup>11</sup> which is far more banks than today. There were liquidations and bankruptcies of banks, the main cause of which was an inadequate assessment of borrowers' creditworthiness and, as a consequence, uncollectible loans. "The share of non-performing loans to the total loans at the end of 2016 was 11.8%, and banks wrote off BAM 127.2 million of assets estimated as a loss."<sup>12</sup>

The collapse of the banks, scandals regarding the granting of loans and their bad credit policy mostly affected the citizens of BiH, who paid high interest rates. The greatest scandal was with loans in the "Swiss", where through marketing activities such a banking product was offered to citizens at lower interest rates

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cost, interest rate, total loan costs, special attention is paid to advertising and information related to credit agreements in order for the consumer to make a valid decision before bounding by a loan agreement.

<sup>10</sup> "Information on the banking system of Bosnia and Herzegovina", <https://www.fba.ba/images/documents/Inf30062010.pdf>, accessed on 30.6.2022.

<sup>11</sup> "Report on the situation in the banking sector of the Republic of Srpska", for the period 1.1.2010-31.12.2010. [https://www.abrs.ba/public/data/documents/52/Izvjestaj\\_o\\_stanju\\_bankarskog\\_sistema\\_RS\\_31122010.pdf](https://www.abrs.ba/public/data/documents/52/Izvjestaj_o_stanju_bankarskog_sistema_RS_31122010.pdf), accessed on 17.9.2022.

<sup>12</sup> "Financial Stability Report for 2016", CBBH, file:///C:/Users/VOJINOVIC/Downloads/IOFS%20BOS%20WEB.pdf, accessed on 19.9.2022.



and was promoted as “extremely favorable”, and soon, after the change of the CHF exchange rate, it represented the biggest burden to users. What brought loan users even more into “debt slavery” was non-observance of contractual and legal provisions by the banks, which did not correct the value of the interest rate, and therefore the amount of the annuity, which they were obliged to according to the contractual clauses. Even more strange is the action of the regulatory and judicial authorities who did not sanction such behavior of the banks. Users of loans indexed in “Swiss”, without any support and protection from competent institutions, had to seek “justice” themselves in court cases. Such a relationship, however, is not surprising because the funds for the work of the Banking Agency “are provided from: a) fees for issuing licenses for the work of banks and other subjects of the banking system, b) fees that banks and other subjects of the banking system provide for the supervision of their operations.”<sup>13</sup> With loans indexed in CHF, a variable interest rate was contracted, where the variable rate was the value of Euribor or Libor. When there was, on two occasions, an enormous increase in the value of CHF compared to the convertible mark, the value of the variable rates was significantly reduced (up to 5-6 times, which significantly amortized the increase in the value of CHF). However, banks continued to calculate interest to loan users according to its initial value all the time, although the contract stated that the calculation of interest and annuity is done according to a variable interest rate, i.e. the value of Libor or Euribor on a certain date. As a result, loan users received a double burden. One in the form of the “Swiss jump”, and the other in the unfounded and legally unsupported calculation of banks’ claims, and the banks “justified” their behavior by changes in the region. It is obvious that the banking sector did not respect the declared contractual obligation, and the authorized institutions did not know or did not want to apply legal regulations to protect loan users. It must be stated that this problem is exclusively legal, not economic in nature. Thus the only solution was, and still is, the initiation of proceedings before courts.

It remains an open question whether this is a planned credit policy of banks in order to collect as much profit as possible on the legally unregulated financial market. Why have not the citizens, who are the biggest beneficiaries of such loans, been warned about such possible scenarios by the banks, which is their legal and ethical obligation? Why BiH, which nevertheless “copies” most of the laws of the European Union countries, did not protect its citizens, as a state community? The Constitution of BiH in the Preamble mentions “the international covenants on civil and political rights, i.e. economic, social and cultural rights”.<sup>14</sup>

<sup>13</sup> Art. 43. of The Law on the Banking Agency of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 75/2017.

<sup>14</sup> Constitution of Bosnia and Herzegovina, Preamble.

### 3. MARKETING ACTIVITIES OF BANKS ON THE FINANCIAL MARKET OF BOSNIA AND HERZEGOVINA

Marketing, as a term, is used in everyday activities by individuals and organizations for personal and business purposes. “Marketing is a process of identifying, anticipating and satisfying consumer needs while making a profit. Marketing is a distinctive way of thinking and acting of individuals, business groups, small and medium-sized enterprises, corporations, business and non-profit institutions, which participate in the exchange of any value on the market.”<sup>15</sup> Marketing consists of the activities of communication with the market, personal selling, promotion or advertising, determining demand, managing distribution channels, conducting an adequate price policy, communicating with the market, creating new products, retaining customers and maintaining long-term relationships, using the advantages of modern technologies implemented by individuals and organizations, etc. These activities are the basis of the marketing activities of all economic entities, and therefore of banks, too. The main concept of marketing is to satisfy consumer needs, “so this requests from marketers a high degree of inventiveness, creativity, imagination, innovation, and entrepreneurship in order to meet the set requirements and adapt to new needs and tendencies.”<sup>16</sup> However, in the background of the business strategy of banks towards the environment is the satisfaction of their own, commercial needs. How and in what way to achieve this? In the paper, we started from the main hypothesis that the promotional activities of banks, as part of the marketing concept, are not in accordance with the declared legal and ethical norms and standards that define that area. We base this assumption on the fact that advertising “promises” of the banking sector in BiH cannot be implemented in practice.

By dispersing products and services, banks have expanded their assortment and adapted it to current socio-economic conditions. Information technologies played a special role in the process of marketing communication between banks and users of their services. Electronic banking and electronic money as the greatest innovation of bank business operations, which, despite numerous advantages regarding supply and demand, is still a kind of “trap” of the virtual financial order. Electronic money, as a form of non-cash payment, replaces cash or cash substitutes and thus creates the impression among consumers that they have not spent “their money”. Banks create their aggressive offers towards the market using the advantages of electronic business, speed, simplicity, reliability, cost reduction, while they do not declare the risks of doing business in this way. E-business is an excellent base for the emergence of various frauds, abus-

<sup>15</sup> Mia Mikić, i dr., *Ekonomski leksikon* (Zagreb: Masmedia, 2011), 477.

<sup>16</sup> Stevan Vasiljev, Dragan Vojinović, *Upravljanje marketingom* (Pale: Ekonomski fakultet, 2016), 12.



es and criminal acts. The legal regulation is an open question and its application in BiH, and above all, the training, skills and material abilities of citizens to adequately use electronic banking are questionable, too. Banks do not warn their clients about possible, certain risks that may occur.

Marketing has been created as a product of commercial efforts of the supply sector to bring its products closer to the customer, but with the development of socio-economic relations, it is involved in all spheres of life of human beings, so the social responsibility of marketing can be considered. Thus there is a social component, too. The question is whether certain activities should create profit for individuals or certain organizations at the expense of social equality. The merciless struggle on the financial market of BiH and economic difficulties have led to the fact that loans become a necessity and a reality, so we can even say a lifestyle. The banking sector skillfully uses such circumstances and continues to focus on lending to over-indebted citizens, with an increase in prices/interest rates, only disguised through the costs of maintaining a credit account, loan insurance, processing costs, calculation of intercalary interest, etc.

### 3.1. Informing users of banking services

Promotional activities on the financial market of BiH represent the strongest and most frequently used marketing weapon. Promotion can also be identified as communication, which “represents the exchange of ideas, information, signs, desires, emotions, attitudes, beliefs by verbal or non-verbal means”. Both for the banking sector and for the users of their services, communication is not only required, but essential so that the relevant information, on the basis of which business decisions are made, is available. Exposing information about its range of products and services, as well as the manner and conditions of working with bank clients, is done for two reasons.

One is commercial (commercial advertising), by which they try to gain the attention of clients and make a transaction with them. The second reason is of an imperative nature because the legal norms provide that “the conditions of using financial services must be advertised”.<sup>17</sup> Advertising, sales promotion, personal selling, mobile marketing, electronic and Internet marketing are promotion tools used by banks. “The advertising of financial institutions is motivated by the achievement of business results, while searching for information by clients is conditioned, not only by economic, but also by socio-psychological reasons.”<sup>18</sup>

<sup>17</sup> Art. 6. of The Law on the Protection of Users of Financial Services, *Official Gazette of Federation of Bosnia and Herzegovina*, no. 75/2017.

<sup>18</sup> Nikolina Vojinović, „Pravna zaštita korisnika finansijskih usluga u Bosni i Hercegovini”, 135-152.

The foundations of banks' propaganda campaigns are lending and caring for clients and their needs. Is it really like that? "Advertising is any presentation, in any form, that is given within performing a business activity or a free profession and that is aimed at promotion in order to promote the sale of goods or services, including real estate, rights and obligations."<sup>19</sup> "Misleading advertising and impermissible comparative advertising" are not allowed.<sup>20</sup> Banks are prohibited from using "inaccurate and untrue data, as well as data and information that may mislead the average user in advertising".<sup>21</sup> Banks present accurate data in their offers.

A special problem is to protect the interest of banking consumers in the field of electronic banking.<sup>22</sup> However, it is about the most favorable conditions (extremely low interest rate and others) that can be met only by some service users, while for the majority it is just a "bait" to approach the bank and request a loan offer. Nevertheless, despite extremely tempting offers, for bank clients, after the loan approval procedures have been carried out, the only choice that remains is "take it or leave it", because they do not have any impact on the conditions offered to them. Marketing activities of banks should be harmonized with legal regulations, but banks do not do so, nor do they have legal consequences due to the inadequate application of the Laws that treat their operations.

#### 4. THE LEGAL FRAMEWORK FOR THE BUSINESS OPERATION OF BANKS IN BOSNIA AND HERZEGOVINA

To ensure the financial market development, as an important sector of the economy, it is necessary to create an effective mechanism for its regulating.<sup>23</sup> Better legal systems and institutions are associated with larger and more successful financial markets.<sup>24</sup>

Bosnia and Herzegovina has been created by the Dayton Peace Agreement and "consists of two entities: the Federation of Bosnia and Herzegovina and

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<sup>19</sup> Art. 2. item a) of The Law on Prohibited Advertising, *Official Gazette of Federation of Bosnia and Herzegovina*, no. 101/2016.

<sup>20</sup> Art. 3. *Ibid.*

<sup>21</sup> Art. 137. of The Law on Banks of the Republic of Srpska, *Official Gazette of the Republic of Srpska*, no. 3/2016.

<sup>22</sup> See Marinela Vrincianu, Liana Anica Popa, „Considerations Regarding the Security and Protection of e-banking Services Consumers' Interests“, *Amfiteatru Economic*, 12, 28 (2010): 391.

<sup>23</sup> Borys Yaslyuk, Anatoliy Guley, Ruslan Brukhanskyi, Hanna Shovkoplaias and Tetiana Shvydka, „Basic Principles of Financial Markets Regulation and Legal Aspects of the Legislative Requirements“, *Investment Management and Financial Innovations*, 15, 1 (2018): 338.

<sup>24</sup> Rainer Haselmann, Paul Wachtel, "Institutions and Bank Behavior: Legal Environment, Legal Perception, and the Composition of Bank Lending", *Journal of Money Credit and Banking*, 42, 5 (2010): 967.

the Republic of Srpska”.<sup>25</sup> It functions as a democratic state in which there is “freedom of movement of persons, goods, services and capital throughout BiH”.<sup>26</sup> The complexity of the socio-political system has also conditioned the development of legal regulations in BiH that define and regulate relations in the financial market.

Territorial, entity division was the basis for passing laws on the business operation of banks and other laws related to the financial market in different parts of BiH. Thus there are: Law on Banks in the Federation of BiH, Law on Banks of the Republic of Srpska, Law on Microcredit Organizations of FBiH, Law on Microcredit Organizations of the Republic of Srpska, Law on Protection of Users of Financial Services of FBiH, Law on Bills of Exchange of FBiH, Law on Banking Agency of FBiH, Law on the Banking Agency of the Republic of Srpska, Law on Leasing of FBiH, Law on Leasing of the Republic of Srpska, Law on Internal Payment Transactions of FBiH, Law on Internal Payment Transactions of the Republic of Srpska, Law on Savings-Credit Organizations of the Republic of Srpska, Law on Deposit Insurance in Banks of Bosnia and Herzegovina and the Law on Prevention of Money Laundering and Financing of Terrorist Activities. “The legal environment does not only influence credit market development but also has an important impact on the customers banks lend to”<sup>27</sup>.

Although the laws related to the work of banks are terminologically different, there is significant compatibility of their regulations. Financial institutions, and certainly also banks, must coordinate and determine their organization and headquarters according to entity laws, while their clients, users of banking services, can meet their needs without territorial restrictions. “Users of financial services-clients on the financial market satisfy their profit- or non-profit-oriented needs, while service providers or creditors achieve their business goals.”<sup>28</sup> In the contractual relationship between service providers, banks and users, whether they are individuals, natural persons or organizations, there is diversity of interests. Those relations should take place according to the provisions of the Law on Obligations. The Law on Obligations of the FBiH and the RS is a “legacy” of the Law on Obligations, which was adopted by the “Federal Council of the Assembly of the former SFRY at the session held on March 30, 1978.”<sup>29</sup>

<sup>25</sup> Art. 3. of The Constitution of Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, no. 25/2009.

<sup>26</sup> Art. 4. *Ibid.*

<sup>27</sup> Rainer Haselmann, Paul Wachtel, „Institutions and Bank Behavior: Legal Environment, Legal Perception, and the Composition of Bank Lending“, 965-984.

<sup>28</sup> Nikolina Vojinović, “Pravna zaštita korisnika finansijskih usluga u Bosni i Hercegovini”, 135-152.

<sup>29</sup> Law on Obligations of the Federation of Bosnia and Herzegovina, *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 29/2003, 42/2011.

Amendments to the original Law on Obligations were published in the *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 13/1994 and *Official Gazette of Republic of Srpska*, no. 17/1993 and 3/1996.”<sup>30</sup>

The next question is whether bank clients have financial literacy. “Financial literacy is defined as the ability to understand basic financial concepts in making decisions about saving, investing and borrowing.”<sup>31</sup> Financial transactions, and especially borrowing in an unstable socio-economic environment and for a long period of time, carry risks for lenders and borrowers at the same time and at the level of Bosnia and Herzegovina. Is there a legal culture in Bosnian society? “Legal consciousness or culture is the consciousness formed by positive law news and attitudes about it.”<sup>32</sup> It is certain that it is necessary to regulate the financial sector of BiH with legal norms. On the one hand, we have an exclusively profit-oriented banking sector and bank clients who, however, we must emphasize, live and work in an unfavorable economic environment. “A client is any person who uses or has used the bank’s services or a person who has approached the bank to use the services and who has been identified by the bank as such.”<sup>33</sup> The necessity of legal regulation does not stem only from the need for legal regulation of social relations, but also from the importance of risks that arise and may arise from the aspect of financial transactions. There is also an unequal relationship between banks and their clients, because banks have a greater influence on the environment, personnel, attractive goods-money, while on the other hand, the users of their services are in an inferior position.

A certain legal solutions are adopted at the level of the state of BiH, and as far as the financial sector is concerned, most of them are under the jurisdiction of the entities, so there are situations where when expressing the effective interest rate for credit arrangements, one value is for the FBiH and the other for the RS. Thus, the control of banks’ business operation is carried out at the entity level by the banking agency of FBiH and RS. “Banking Agency of the Republic of Srpska was established to regulate and control the banking system and achieve the goal of preserving and strengthening the stability of the banking system, as well as improving its safe, quality and legal operations in accordance with the Law on the Banking Agency of the Republic of Srpska and other laws.”<sup>34</sup>

“The Banking Agency of the Federation of Bosnia and Herzegovina was established for the purpose of regulation, control and supervision of banks, bank-

<sup>30</sup> *Ibid.*

<sup>31</sup> “Mobilni bankar”, [https://moj-bankar.ba/view-more/finansijska-pismenost-u-nbsp-Bosnia and Herzegovina/93](https://moj-bankar.ba/view-more/finansijska-pismenost-u-nbsp-Bosnia%20and%20Herzegovina/93), accessed on 12.10.2022.

<sup>32</sup> Miroslav Krleža, *Pravni leksikon* (Zagreb: Leksikografski zavod, 2007), 1199.

<sup>33</sup> Art. 2. item g) of The Law on Banks.

<sup>34</sup> “Statute of the Banking Agency of the Republic of Srpska”, [http://www.podaci.net/\\_gBosnia and Herzegovina/propis/Statut\\_Agencije\\_za/S-abanks03v1395.html](http://www.podaci.net/_gBosnia%20and%20Herzegovina/propis/Statut_Agencije_za/S-abanks03v1395.html), accessed on 13.10.2022.

ing groups, development banks, microcredit organizations, leasing companies, factoring companies and other financial organizations operating under the supervision of the Agency (hereinafter: banking system entities), with the main objective of preserving and strengthening the stability of the banking system entities and protecting depositors, in the interest of improving their safe, high-quality and legal business operations, and to conduct the resolution and recovery process of banks as the bank resolution authority, in accordance with the Law on the Banking Agency of the Federation of Bosnia and Herzegovina.”<sup>35</sup> It is obvious that there is a different form, but identical essence of business objectives and competences.

As a result of work and activities of the Banking Agency in Bosnia and Herzegovina, there are the following laws: Law on Banks of the Republic of Srpska, Law on Leasing, Law on Interbank Fees for Payment Transactions Based on Payment Cards, Law on Microcredit Organizations, Law on Deposit Insurance in Banks of Bosnia and Herzegovina, Law on Prevention of Money Laundering and Financing of Terrorist Activities, Law on Internal Payment Transactions, Law on Savings and Credit Organizations, Law on Foreign Exchange Operations, Law on FBiH Factoring, Law on Protection of Users of Financial Services and Law on Guarantor Protection in FBiH. The legal regulation, which treats all areas of the financial market of Bosnia and Herzegovina, defines the rights of all subjects. Legal solutions are partly inherited, such as the Law on Obligations, and partly “rewritten”, such as the Law on the Protection of Users of Financial Services, derived from Directive 2008/48/EC. There are also the Law on Consumer Protection in Bosnia and Herzegovina, the Law on the Ombudsman of Bosnia and Herzegovina, the Law on Bills of Exchange of FBiH, the Law on Prohibited Advertising, etc.

There are a number of questions that arise. Are only legislative solutions in BiH sufficient, so that users of banking services are adequately protected in transactional relationships? Are they familiar with all these legal norms that treat the field of finance in BiH? Are the institutions of BiH and/or entities ready to practically apply legal solutions? There is, as we emphasize again, the problem of financial literacy of the citizens of BiH. “It is obvious that citizens have lost trust in financial institutions, and in order to regain it, we must open communication channels, i.e. ensure that their financial rights are respected.”<sup>36</sup>

<sup>35</sup> “Statute of the Banking Agency of the Federation of Bosnia and Herzegovina”, [https://www.fba.ba/images/zakoni\\_FBA/statut\\_fba\\_27122017\\_bos.pdf](https://www.fba.ba/images/zakoni_FBA/statut_fba_27122017_bos.pdf), accessed on 14.10.2022.

<sup>36</sup> Lejla Smajlović, *Priručnik za savjetovanje zaduženih građana*, [http://cms.optimus.ba/Avanti\\_ApplicationFiles/88/Documents/Pricunik%20o%20savjetovanju%20zaduzenih%20gradjana%20u%20Bosnia%20and%20Herzegovina.pdf](http://cms.optimus.ba/Avanti_ApplicationFiles/88/Documents/Pricunik%20o%20savjetovanju%20zaduzenih%20gradjana%20u%20Bosnia%20and%20Herzegovina.pdf), accessed on 14.10.2022.

Transactional relations between banks and clients, regardless of whether it is about lending, payment transactions, conversion, issuing guarantees, etc. take place on a commercial basis, i.e. costs for the client and income for the bidder. Banks generate the most income from lending to citizens and businesses, which is simultaneously a source of risk for both. This process can be divided into three phases: pre-contractual, contractual and post-contractual.

The pre-contractual phase, which is marked by the marketing activities of banks, is “burdened” with unfounded promises by banks that initiate borrowing by citizens, all for the sake of achieving the highest possible profit of the banking sector. Banks cannot advertise “data and information that can create a wrong idea about the terms of use of the service and lead users to make a decision that they would not have made under other circumstances.”<sup>37</sup> In their advertising/propaganda messages, banks emphasize the advantages of doing business with the bank, mainly borrowing, where they generate more income, while possible consequences are not mentioned. In their business activities, from a legal point of view, banks do not violate legal norms, but their ethics and business morals are questionable. Appeals in propaganda messages encourage citizens to take on debt, even irrationally.

In addition to providing commercial information to borrowers, banks are obliged to present to clients all the elements on the basis of which they borrow, in the pre-contractual and contractual stages, so “the user has the right to withdraw from the concluded loan agreement within 14 days of signing the contract without giving the reason for the withdrawal.”<sup>38</sup> Banks are obliged to inform clients in a written form, through the “Information Sheet”. The Information Sheet is an offer that is presented to the service user before the transaction has been concluded. “In good time before the consumer is bound by any credit agreement or offer, the creditor and, where applicable, the credit intermediary shall, on the basis of the credit terms and conditions offered by the creditor and, if applicable, the preferences expressed and information supplied by the consumer, provide the consumer with the information needed to compare different offers in order to take an informed decision on whether to conclude a credit agreement.”<sup>39</sup> The bank is obliged, before user’s bounding by a loan agreement in a written form (signing the contract) to “make available to them all the essential terms and elements of the contract based on which the rights and obligations of the contracting parties are clearly visible, and at the request of the user, without charge, submit the draft of the contract for consideration outside the bank premises, in the period speci-

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<sup>37</sup> Art. 137. of The Law on Banks of the Republic of Srpska.

<sup>38</sup> Art. 26. item 2. of The Law on Protection of Users of Financial Services of Federation of Bosnia and Herzegovina.

<sup>39</sup> Art. 5. of The Directive 2008/48EC.



fied in the standard information sheet”.<sup>40</sup> It is obvious that the legislators “copied” the laws, but they were not applied. Several questions can be asked. Do citizens know that such a document exists? Do they understand its content and purpose? Is the need for credit funds primary compared to the risks that arise? However, special attention should be paid to this issue because credit debts of citizens in Bosnia and Herzegovina are on average for the period of ten years or more. In such a long period of time, there can be and is a disturbance in citizens’ ability to pay and the level of their standard of living, which will inevitably make it impossible to repay the loan in an orderly manner, and thus lead the banking sector into serious problems. For a long period of time, citizens mostly use non-purpose consumer loans. Neither legislators nor regulatory bodies pay enough attention to this issue, even though we have the official statement of the umbrella financial institution that banking is “one of the strongest sectors in BiH”.<sup>41</sup>

Banks have their own business policy, their own business goals, and unfortunately, monopoly power, knowledge and skills, so they continue with their “many promises, little fulfillment” tactics. BiH as a state community from its establishment in the current form to today is full of contradictions, but what is evident is that when it comes to the commercial interest of financial institutions and their unethical attitude towards citizens, then there is a homogeneous attitude of financial institutions, regardless of entity affiliation, capital origin and form of ownership.

## 5. CONCLUSION

The banking sector of BiH in a short period of time from 2000 to the present has experienced a significant transformation in quantitative and qualitative terms, so we can say that it has become a dominant element of socio-economic relations. The complexity of the constitutional structure of BiH inevitably imposed the structure of the organization of the banking sector and determined its way of work. On one side, we have commercially oriented banks “hungry” for profit, and on the other, citizens and businessmen without capital/money. The spontaneous development of the financial market caused numerous problems, so the state community tried to regulate this area by passing or rather rewriting and adopting foreign laws. What marked the development of the banking sector in BiH was the introduction of payment transactions into the banking system, and since 2006, the intensification of the activities of foreign banks.

<sup>40</sup> Art. 139. item 2. of The Law on Banks of the Republic of Srpska.

<sup>41</sup> Agency for the promotion of foreign investments in Bosnia and Herzegovina, [http://www.fipa.gov.ba/atraktivni\\_sektori/bankarski\\_sektor/default.aspx?id=46&langTag=hr-HR](http://www.fipa.gov.ba/atraktivni_sektori/bankarski_sektor/default.aspx?id=46&langTag=hr-HR), accessed on 15.10.2022.

The banking agencies of RS and FBiH control the business operation of banks. The effect of the laws they passed moves in two directions. One is to regulate the financial market, and the other is to protect users of banking services and products. Anyway, despite adequate and even extensive legal solutions, there are deviations in the relations of banks with their clients. This is reflected in the unethical behavior of banks and non-compliance with established legal norms. It is obvious that the banking sector uses marketing tricks to attract clients, and at the same time violates legal regulations, without an adequate response from regulatory and control authorities. The burden of the bad socio-economic situation has been borne by the citizens of BiH, while the banking sector continues to enjoy all the benefits of its privileged position and the unorganized financial market. Prices and the way of providing services and banking products are determined by banks, while citizens and the economy have no impact.

#### REFERENCES:

- Babić-Hodović, Vesna. *Marketing u bankarstvu*. Sarajevo: Ekonomski fakultet, 2012.
- Yaslyuk, Borys, Anatolij Guley, Ruslan Brukhanskyi, Hanna Shovkoplias and Tetiana Shvydka. „Basic Principles of Financial Markets Regulation and Legal Aspects of the Legislative Requirements”, *Investment Management and Financial Innovations*, 15, 1 (2018): 337-349.
- Haselmann, Rainer, Wachtel Paul. „Institutions and Bank Behavior: Legal Environment, Legal Perception, and the Composition of Bank Lending“, *Journal of Money, Credit and Banking* (2010): 965-984.
- Krleža, Miroslav. *Pravni leksikon*. Zagreb: Leksikografski zavod, 2007.
- Smajlović, Lejla, *Priručnik za savjetovanje zaduženih građana*, [http://cms.optimus.ba/Avanti\\_ApplicationFiles/88/Documents/Pricunik%20o%20savjetovanju%20zaduzenih%20gradjana%20u%20Bosnia and Herzegovina.pdf](http://cms.optimus.ba/Avanti_ApplicationFiles/88/Documents/Pricunik%20o%20savjetovanju%20zaduzenih%20gradjana%20u%20Bosnia%20and%20Herzegovina.pdf), accessed on 14.10.2022.
- Vrincianu, Marinela, Liana Anica Popa. „Considerations Regarding the Security and Protection of e-banking Services Consumers’ Interests“, *Amfiteatru Economic*, 12, 28 (2010): 388-403.
- Mikić, Mia, Silvije Orsag, Nina Pološki Vokić, Sandra Švaljek and Goran Sunajko, edit. *Ekonomski leksikon*. Zagreb: Masmedia, 2011.
- Haselmann, Rainer, Paul Wachtel. „Institutions and Bank Behavior: Legal Environment, Legal Perception, and the Composition of Bank Lending”, *Journal of Money Credit and Banking*, 42, 5 (2010): 965-984.
- Vasiljev, Stevan, Dragan Vojinović. *Upravljanje marketingom*. Pale: Ekonomski fakultet, 2016.

- Vovk, Viktoriia, Alina Denysova, Kateryna Rudoi and Tetiana Kyrychenko. „Management and Legal Aspects of the Symbiosis of Banking Institutions and Fintech Companies in the Credit Services Market in the Context of Digitalization“, *Studies of Applied Economics*, 39, 7 (2021): 1-14.
- Vojinović, Nikolina. „Pravna zaštita korisnika finansijskih usluga u Bosni i Hercegovini“, *Bizinfo* (2021): 135-152.
- Constitution of Bosnia and Herzegovina, *Official Gazette of Bosnia and Herzegovina*, no. 25/2009.
- Law on Banks of the Republic of Srpska, *Official Gazette of the Republic of Srpska*, no. 3/2016.
- Law on Internal Payment Transactions, *Official Gazette of Federation of Bosnia and Herzegovina*, no. 48/2015.
- Law on the Protection of Users of Financial Services, *Official Gazette of Federation of Bosnia and Herzegovina*, no. 75/17, 2013.
- Law on Prohibited Advertising, *Official Gazette of Federation of Bosnia and Herzegovina*, no. 101/2016.
- Law on Banks, *Official Gazette of Federation of Bosnia and Herzegovina*, no. 27/2017.
- Law on Obligations of the Federation of Bosnia and Herzegovina, *Official Gazette of Federation of Bosnia and Herzegovina*, no. 29/2003, 42/2011.
- Law on the Banking Agency of the Federation of Bosnia and Herzegovina, *Official Gazette of Federation of Bosnia and Herzegovina*, no. 75/2017.
- Directive 2008/48EC
- Agency for the Promotion of Foreign Investments in Bosnia and Herzegovina, [http://www.fipa.gov.ba/atraktivni\\_sektori/bankarski\\_sektor/default.aspx?id=46&langTag=hr-HR](http://www.fipa.gov.ba/atraktivni_sektori/bankarski_sektor/default.aspx?id=46&langTag=hr-HR), accessed on 15.10.2022.
- “Report on the situation in the banking sector of the Republic of Srpska”, for the period 1.1.2010-31.12.2010, [https://www.abrs.ba/public/data/documents/52/Izvjestaj\\_o\\_stanju\\_bankarskog\\_sistema\\_RS\\_31122010.pdf](https://www.abrs.ba/public/data/documents/52/Izvjestaj_o_stanju_bankarskog_sistema_RS_31122010.pdf), accessed on 17.9.2022.
- Report on financial stability for 2016, CBBH, file:///C:/Users/VOJINOVIC/Downloads/IOFS%20BOS%20WEB.pdf, accessed on 19.9.2022.
- Central Bank of Bosnia and Herzegovina, <https://www.cbbh.ba/?lang=bs>, accessed on 10.9.2022.
- Information on the Banking System of Bosnia and Herzegovina, <https://www.fba.ba/images/documents/Inf30062010.pdf>, accessed on 30.6.2010.
- Mobilni bankar, <https://moj-bankar.ba/view-more/finansijska-pismenost-u-nbsp-bih/93>, accessed on 12.10.2022.
- Statute of the Banking Agency of the Republic of Srpska, [http://www.podaci.net/\\_gBiH/propis/Statut\\_Agencije\\_za/S-abanks03v1395.html](http://www.podaci.net/_gBiH/propis/Statut_Agencije_za/S-abanks03v1395.html), accessed on 13.10.2022.
- Statute of the Banking Agency of the Federation of Bosnia and Herzegovina, [https://www.fba.ba/images/zakoni\\_FBA/statut\\_fba\\_27122017\\_bos.pdf](https://www.fba.ba/images/zakoni_FBA/statut_fba_27122017_bos.pdf), accessed on 14.10.2022.

## PRAVNI I MARKETINŠKI ASPEKTI POSLOVANJA BANAKA U BOSNI I HERCEGOVINI

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*Apstrakt: Bankarski sektor Bosne i Hercegovine posljednjih godina marketinškim aktivnostima ofanzivno djeluje prema svim korisnicima finansijskih usluga u Bosni i Hercegovini. U konstantnoj konkurentskoj borbi za što veće učešće na finansijskom tržištu banke zanemaruju ili ne poštuju osnovne poslovne, pravne, etičke i marketinške principe i načela odnosa prema korisnicima njihovih usluga. Iako su svi građani direktno ili indirektno klijenti bankarskog sektora, postoji prezasićenost tržišta, što često dovodi do neadekvatnog odnosa pružaoca i korisnika finansijskih usluga. Deklarisane ponude banaka navode građane na nepromišljeno i neadekvatno zaduživanje u odnosu na njihove ekonomske mogućnosti, a sa druge strane i bankarski sektor trpi posljedice prekomjernog zaduživanja klijenata. Postoje zakonska rješenja kojima se uređuje rad banaka, ali ona nisu pravovremeno involvirana i čak se ne primjenjuju u dovoljnoj mjeri kako bi se zaštitili korisnici usluga na finansijskom tržištu Bosne i Hercegovine. Cilj rada je da ukaže na osnovne pravne i marketinške aspekte u poslovanju banaka, odnosno zablude i probleme kojima su izloženi građani, prvenstveno korisnici kredita, jer postoji nepremostiv raskorak između ponuđenih uslova i njihove praktične primjene. Dolazi do narušavanja temeljnih prava korisnika finansijskih usluga koje se zasniva na monopolskom ponašanju banaka i neprincipijelne primjene i sprovođenja zakonske regulative od strane regulatornih organa.*

*Ključne riječi: bankarsko pravo, kreditiranje, finansijske usluge, komuniciranje.*

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