

## THE EU CLIMATE OBJECTIVES AND THE LEGAL MANDATE OF THE EUROPEAN CENTRAL BANK

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### **ABSTRACT**

*The EU ratification of the Paris Agreement initiated extensive political and legislative activities within the EU to reach agreed climate objectives. The declaration of the climate crisis, the publication of the European Green Deal, and the obligation to reduce greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels created the foundations for establishing an ambitious climate legal framework at the EU level. At the center of that legal framework is the European Climate Law, which obliges the EU to achieve climate neutrality by 2050. Completing the set goals requires a strong climate transition, which includes, among other actions, a change to a low-carbon economy.*

*At the EU level, the obligation to fulfill the goals of the Paris Agreement and the related goals of the European Climate Law is primarily on the institutions of executive and legislative power that have the democratic legitimacy to act actively to achieve climate neutrality. However, the international agreements concluded by the EU (including the Paris Agreement) are binding upon all EU institutions, i.e., the European Central Bank, as explicitly prescribed in the TFEU.*

*The European Central Bank, simply put, represents the supranational central bank of the eurozone. With regard to its legal nature, the European Central Bank is often defined as an EU institution sui generis, which reflects its unique position given by the TFEU and the Statute of the ESCB and the ECB. Apart from the fact that the European Central Bank has a legal personality and regulatory powers and that its financial resources are separated from those of the EU, the ECB's unique position derives from the fact that the TFEU strictly limits its legal mandate. The primary mandate of the European Central Bank is to maintain price stability within the eurozone. The secondary mandate of the European Central Bank is to support, without prejudice to its price stability objective, the general economic policies in the EU, with a view to contributing to the achievement of the objectives of the EU, including a high level of protection and improvement of the quality of the environment. Considering its strictly prescribed goals, addressing the climate objectives could contradict the European Central Bank's legal mandate.*

*Even though the European Central Bank has already decided to take into consideration climate-related objectives, there is still an ongoing debate in academic and central banks' circles whether the European Central Bank could or must address climate objectives in its activities*

*or, following the rule of law principle, is precluded in doing so. This paper aims to contribute to this debate by giving the legal perspective of the European Central Bank's price stability mandate and its secondary mandate, as well as their relation to EU climate objectives.*

**Keywords:** *climate objectives, ECB, legal mandate, price stability, secondary mandate*

## 1. INTRODUCTION

Climate change is one of the pressing issues worldwide, with devastating consequences for the environment, the economy, and society. Within the EU, climate change was recognized as a specific environmental issue linked to various EU policies in 1993\*, even before combating climate change was explicitly included in the EU environmental policy framework under the Treaty of Lisbon<sup>1</sup>. Environmental protection, which includes the protection against climate change, is one of the EU's essential objectives<sup>2</sup> and one of the fundamental interests of the EU society<sup>3</sup>."

The recent substantial paradigm shift about climate change led to structural changes in the EU policies, accompanied by intensive legislative activities. In 2019, the European Parliament proclaimed a climate emergency in the Union.<sup>4</sup> This was followed by the adoption of the European Green Deal<sup>5</sup> in the same year and the European Climate Law in 2021, both aiming to achieve a long-termed climate goal of carbon neutrality by 2050.

The crucial impetus for such a course of action was the adoption of the legally binding Paris Agreement<sup>6</sup>, ratified by the EU in 2016.<sup>7</sup> Under the Paris Agreement, the EU has committed to align its policies with the Agreement by reduc-

\* Views expressed herein are personal to the author and not necessarily attributable to the Croatian National Bank.

\*\* This paper is based on the on-going research which will be a part of PhD dissertation. European Community programme of policy and action in relation to the environment and sustainable development [1993] OJ C 138/7, point 5.1.

<sup>1</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C 306, Article 174(1) indent 4.

<sup>2</sup> Case 240/83 *Procureur de la République v Association de défense des brûleurs d'huiles usagées (ADBHU)* [1985] ECLI:EU:C:1985:59, par 13.

<sup>3</sup> Opinion of Advocate General Jacobs delivered on 14 June 2001 in Case C-377/98 *Kingdom of the Netherlands v. European Parliament and Council of the European Union*, par. 109.

<sup>4</sup> European Parliament Resolution on the climate and environment emergency [2019] OJ C 232.

<sup>5</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic And Social Committee and the Committee of the Regions [2019] COM/2019/640 (European Green Deal).

<sup>6</sup> Paris Agreement to the United Nations Framework Convention on Climate Change [2015] Treaty Series, Vol. 315 (Paris Agreement).

<sup>7</sup> Council Decision (EU) 2016/1841 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change [2016] OJ L 282.

ing carbon emissions and increasing the ability to adapt to the adverse impacts of climate change. Moreover, the EU has committed to making financial flows consistent with a pathway towards low carbon emissions and climate-resilient development.

Realization of the Paris Agreement climate goals falls squarely within the competence of the EU political institutions, i.e., the European Parliament and the Council, as they have the legitimacy to create the Union's environmental policy.<sup>8</sup> However, the climate goal of steering the finance to low carbon emissions raised considerations about the possible role of the European central bank (hereinafter: the ECB) in climate transition. Indeed, the mentioned climate goal implicates the need to reallocate investments from carbon-intensive industries to green or carbon-neutral ones. This requires a significant transformation of the EU financial system, and the ECB is at its center.

The considerations about the ECB's role in climate transition were quite a novelty. The ECB was traditionally seen as a technocratic and conservative institution with only one goal – to keep the euro stable. However, while pursuing its price stability mandate, the ECB has created monetary policy measures under which it finances the carbon-intensive sectors, including utilities and energy sectors.<sup>9</sup> Namely, the ECB steers finance to the carbon-intensive sectors either directly (by buying debt instruments of the mentioned sectors under the asset purchase programmes) or indirectly (by accepting the debt instruments of the mentioned sectors in the collateral pool for the purpose of conducting credit operations with banks).<sup>10</sup> For example, between 2016 and 2018, 62.1% of the ECB corporate bond purchases took place in the sectors responsible for 58.5 % of euro area carbon emissions.<sup>11</sup>

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<sup>8</sup> Article 192(1) Consolidated version of the Treaty on the Functioning of the European Union OJ C 326 (TFEU).

<sup>9</sup> See more: Solana, J., *The Power of Eurosystem to Promote Environmental Protection*, European Business Law Review 30, No 4, 2019, pp. 547-576, pp. 556-557.

<sup>10</sup> The ECB can directly finance the carbon-intensive sector through its asset purchase programmes (by buying debt instruments issued by carbon-intensive sector) and indirectly through its credit operations with banks conducted against adequate collateral (as the debt instruments of carbon-intensive sectors could also be eligible for collateral purposes). See more about the ECB's corporate debt instrument purchases under the Corporate Sector Purchase Programme: Solana, J., *op. cit.*, note 10, p. 556. Moreover, the ECB's data on eligible collaterals used for the purpose of performing credit operations with banks shows that the eligible collateral pool still includes debt instruments of companies with high carbon emissions (e.g., Henkel AG & Co. KGaA, Shell International Finance BV, etc.), ECB, Eligible assets: download area [<https://www.ecb.europa.eu/paym/coll/assets/html/list-MID.en.html>] Accessed 23 April 2023.

<sup>11</sup> European Parliament resolution on the European Central Bank Annual Report for 2018 [2020] OJ C 294, point 23.

As the EU institution, the ECB is bound by the Paris Agreement, under the Treaty on Functioning of the European Union (hereinafter: TFEU)<sup>12</sup>. It is, therefore, bound by its goal of making financial flows consistent with a pathway toward low carbon emissions and climate-resilient development. However, the ECB is a creation of the EU primary law, which entrusted it with a specific central-banking legal mandate. The ECB's legal mandate does not explicitly include the duty to pursue climate objectives. This puts the ECB in a quite paradoxical situation: if it pursues the climate objective it could overstretch its legal mandate and act *ultra vires*, but if it disregards the climate objectives, the ECB would be in breach of the commitment undertaken under the Paris Agreement. Nonetheless, in 2021, the ECB declared that it “fully takes into account, in line with the EU's climate goals and objectives, the implications of climate change and the carbon transition for monetary policy and central banking.”<sup>13</sup>

This paper aims to elaborate on why the EU climate objectives fall squarely within the ECB's legal mandate and why the ECB has a legal duty to calibrate its monetary policy measures in the manner which is most supportive to the EU climate objectives, provided that such calibration does not negatively affect its responsibility to maintain stable prices. Special attention will be given to the ECB's secondary objective to support general economic policies in the Union with a view to contributing to the broad EU objectives. The ECB's secondary objective is still insufficiently explored in academic circles; however, as it will be elaborated, it allows the more progressive role of the ECB in supporting the EU climate objectives.

## 2. THE EU CLIMATE OBJECTIVES AND THE ECB – GENERAL OBSERVATIONS

The EU climate objectives are outlined in the European Climate Law<sup>14</sup>. These objectives include the long-term climate goal of achieving climate neutrality in the Union by 2050 and the intermediate climate goal of reducing the EU greenhouse gas emissions by at least 55 % by 2030, compared to 1990.<sup>15</sup> The European Climate Law does not specify how will the EU precisely meet the set goals. However, the intended path toward meeting these goals can be derived from the European Green Deal, under which the EU has committed to achieve a comprehensive

<sup>12</sup> Article 216(2) TFEU.

<sup>13</sup> ECB, *Monetary policy strategy statement*. 2021.[[https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview\\_monopol\\_strategy\\_statement.en.html](https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monopol_strategy_statement.en.html)], Accessed 23 April 2023.

<sup>14</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 [2021] OJ L 243 (European Climate Law).

<sup>15</sup> Articles 2 and 4 European Climate Law.

transformation of the Union's economy to reach carbon neutrality by 2050. The EU, moreover, declared that the general climate goals of the Paris Agreement must be included in all EU policies, which must aim to meet the specific targets, such as “decarbonizing the energy system,” “achieving a climate neutral and circular economy,” and “pursuing green finance and investment.” Finally, it emphasized that all EU actions and policies must contribute to realizing the European Green Deal.<sup>16</sup>

Should the EU monetary policy also contribute to realizing the European Green Deal, and is the ECB obliged to pursue the EU climate objectives provided in the European Climate Law? The EU monetary policy is specific, as the authority for its creation is not given to the EU political institutions but to the ECB<sup>17</sup>, often defined as the EU institution *sui generis*.<sup>18</sup> The *sui generis* character of the ECB derives from its specific constitutional characteristics. Unlike any other EU institution, the ECB has a legal personality and its own decision-making bodies. This indicates that the ECB does not act as an “extended arm” of the Union, as all of its acts are of its own and not of the EU.<sup>19</sup> The ECB is tasked with meeting the specific central-banking objectives under the EU primary law, by conducting monetary policy. The ECB enjoys broad discretion in setting concrete monetary policy goals and adjusting monetary policy instruments.<sup>20</sup> While doing so, the ECB must be independent of any political influence, which is explicitly guaranteed under Art. 130 TFEU. This indicates that the instructions of the EU political institutions cannot guide the ECB's actions.<sup>21</sup>

<sup>16</sup> European Green Deal, points 2.1.1., 2.1.2., 2.1.3. and 2.1.2.

<sup>17</sup> More precisely, the TFEU entrusted monetary policy to the Eurosystem comprising of the ECB and the euro-area central banks, on the basis of the Art. 127 TFEU in connection with Art. 139(2)(c) TFEU. As the Eurosystem does not have a legal personality, and in order to ensure the singleness of the monetary policy, the monetary policy of the euro area is created exclusively by the ECB. See more: Lastra, R. M., *The Evolution of the European Central Bank*, Fordham International Law Journal, Vol. 35, No. 5, 2012, pp. 1260-1281, p. 1268.

<sup>18</sup> Zilioli, C.; Selmayr, M., *European Central Bank: An Independent Specialized Organization of the Community Law*, The Common Market Law Review, Vol. 37, No. 3, 2000, pp. 591-644, p. 619; Louis, J.V., *Monetary Policy and Central Banking in the Constitution* in: Zamboni Garavelli, P., *The Legal Aspects of the European System of Central Banks*, 2005, pp. 27-42, p. 33 [<https://www.ecb.europa.eu/pub/pdf/other/legalaspectscben.pdf>], Accessed 15 April 2023; Krauskopf, B.; Steven, C., *The Institutional Framework of the European System of Central Banks: Legal Issues in the Practice of the First Ten Years of its Existence*, Common Market Law Review, Vol. 46, Issue 4, 2009, pp. 1143-1175.

<sup>19</sup> The special status of the ECB also arises from the fact that the ECB itself, under Article 340(3) TFEU, must bear liability for damages caused by the ECB or its servants in performing their duties, and not the EU.

<sup>20</sup> Case C-62/14, *Peter Gauweiler and Others* [2015] ECLI:EU:C:2015:400, paras. 68-75; Case C-493/17, *Heinrich Weiss and Others* [2018] ECLI:EU:C:2018:1000, paras. 7, 91 and 92.

<sup>21</sup> Smits, R., *The European Central Bank's Independence and Its Relation with Economic Policy Makers*, *Fordham International Law Journal*, Vol 31, No. 6, 2008, pp. 1614-1636, p. 1627.

The ECB's special status in the EU constitutional order and, more specifically, its guaranteed independence does not, however, have the consequence of exempting it from rules of the EU law outside of the Monetary Union legal framework. The Court of Justice already confirmed this in the judgment rendered in the Case *Commission of the European Communities v. European Central Bank* (OLAF judgment) and pointed out that "the ECB, pursuant to the EC Treaty, falls squarely within the Community framework."<sup>22</sup> In the OLAF judgment, the Court confirmed that even the EU secondary legislation, unrelated to the Monetary Union legal framework, can also apply to the ECB, as long as it does not undermine the ECB's ability to perform independently the central-banking tasks conferred to it by the EU primary law.

The European Climate Law, however, binds member states and the relevant EU institutions. The European Climate Law does not define which EU institutions should be considered the "relevant" ones. The term "relevant" could be interpreted in a way that it encompasses all EU institutions whose activity could be detrimental to the EU climate objectives defined in the Law or which could support those objectives within its competences. Moreover, the omission in the European Climate Law concerning the definition of the relevant institutions could be seen as intentional, as the term "relevant" may vary over time, i.e., at some point in time, different EU institutions could fall within the scope of the European Climate Law. Both approaches position the ECB squarely within the European Climate Law framework. Some authors do not question the ECB's obligation to act pursuant to the European Climate Law,<sup>23</sup> while others oppose such a conclusion. The opponents of such conclusion stress, among others, that the European Climate Law allows the Commission to assess the consistency of the Union's measures, including any draft measures, with the defined EU climate objectives. Any such assessment would contradict the ECB's accountability regime provided in the TFEU, under which the ECB is only accountable to the European Parliament.<sup>24</sup> These concerns

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<sup>22</sup> Case C- 11/00, *Commission of the European Communities v. ECB* (OLAF case) [2003] ECLI:EU:C:2003:395, paras. 92, 135 and 137.

<sup>23</sup> For example, Smits, R., *Elaborating a Climate Change-Friendly Legal Perspective for the ECB*, SSRN, 2021, p. 21 [https://ssrn.com/abstract=3913653] Accessed 15 April 2023: „to this author, it is clear that the ECB, with its balance sheet equal to 60% of the euro area GDP, is among the 'relevant' institutions addressed in this provision.“; Dafermos, Y., et. al., *The Price of Hesitation: How the Climate Crisis Threatens Price Stability and What the ECB Must Do About It*, Greenpeace, the German Institute for Economic Research and the Centre for Sustainable Finance at SOAS, University of London, 2021, p. 18. [https://eprints.soas.ac.uk/35496/1/The%20Price%20of%20Hesitation\_FINAL-New.pdf], Accessed 15 April 2023.

<sup>24</sup> Zilioli, C.; Ioannidis, M., *Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies*, *Common Market Law Review*, 59, 2022, pp. 363-394, p. 383.

are indeed convincing. In addition, it should also be pointed out that any *ex-ante* assessment of the ECB's draft measures concerning monetary policy would also be problematic from the aspect of confidentiality<sup>25</sup>, as such measures contain market-sensitive information. The confidentiality requirements are set to prohibit political actors from actively using or capitalizing on such information.

A thorough analysis of the applicability of the European Climate Law on the ECB extends the limits of this paper. However, even if the European Climate Law indeed does not apply to the ECB, it does not mean that the ECB can disregard it. The EU climate objectives in the European Climate Law merely concretize the Paris Agreement's general climate goals that already bind the ECB under Art. 216(2) TFEU. The EU climate neutrality objective was derived from Art. 4(1) of the Paris Agreement<sup>26</sup>, while the EU climate objective of reducing the net greenhouse gas emissions by at least 55% compared to 1990 levels by 2030 was determined within the EU nationally determined contribution provided under the Paris Agreement already in 2020.<sup>27</sup>

The ECB's obligation to support the EU climate objectives also arises from Art. 11 TFEU, under which environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, particularly to promote sustainable development. Art. 11 TFEU represents the horizontal provision applicable to all EU institutions, including the ECB. The European Climate Law should guide the ECB in fulfilling its obligation from Art 11 TFEU.<sup>28</sup> Moreover, the mentioned obligation to integrate environmental protection requirements in all EU policies is enshrined in Art. 37 of the EU Charter of Fundamental Rights.<sup>29</sup> The ECB, as the EU institution, is obliged under the Art. 51(1) of the Charter to respect the rights, observe the principles, and promote the application of the Charter in accordance with its respective powers. It should be

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<sup>25</sup> Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank [2016] OJ C 202, Article 10(4).

<sup>26</sup> Article 4(1) Paris Agreement: „In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century (...).“

<sup>27</sup> Submission by Germany and the European Commission on behalf of the European Union and its Member States, The update of the nationally determined contribution of the European Union and its Member States, 17 December 2020 [[https://unfccc.int/sites/default/files/NDC/2022-06/EU\\_NDC\\_Submission\\_December%202020.pdf](https://unfccc.int/sites/default/files/NDC/2022-06/EU_NDC_Submission_December%202020.pdf)], Accessed 15 April 2023.

<sup>28</sup> Zilioli, C.; Ioannidis, M., *Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies*, *op. cit.*, note 25, p. 384; see also: Solana, J., *The Power of the Eurosystem to Promote Environmental Protection*, *op. cit.*, note 10.

<sup>29</sup> Charter of Fundamental Rights of the European Union [2016] OJ C 202.

noted that the Court of Justice has already taken an expansive approach concerning the ECB's obligations under the Charter.<sup>30</sup>

All mentioned legal sources indicate that the EU climate objectives bind the ECB. However, the ECB can only support the EU climate objectives if such support falls within the limits of its legal mandate provided in the EU primary law. The ECB's legal mandate does not refer (at least not directly) to climate objectives or environmental protection. Therefore, the ECB can address the EU climate objectives only if and only to the extent that the legal interpretation of its legal mandate allows such a course of action.

### 3. INTERLINKAGE BETWEEN THE ECB'S LEGAL MANDATE AND THE EU CLIMATE OBJECTIVES

The term legal mandate comes from the Latin word *mandare* which means to “order”, or “to command”<sup>31</sup> and it should be understood as the assignment that the government has given to a particular public law entity under the law. The ECB's legal mandate is provided in Chapter 2, Title VIII of the TFEU, which regulates the EU Monetary policy, and in the Statute of the European System of Central Banks and of the ECB (hereinafter: the ECB's Statute)<sup>32</sup>. It encompasses three essential elements: the ECB's objectives (the purpose of the ECB), the ECB's functions (the main tasks of the ECB aiming at the realization of its objectives), and the ECB's instruments (instruments under which the ECB performs its tasks).

The ECB's objectives are defined in Art. 127(1) TFEU and Art. 2 of the ECB's Statute. These objectives are two-fold. While the primary aim of the ECB is maintaining price stability in the Eurozone, i.e., safeguarding the value of the euro, the TFEU and the ECB's Statute also instruct the ECB to support the general economic policies in the Union with a view of contributing to EU objectives laid down in Art. 3 of the Treaty on the European Union (hereinafter: TEU)<sup>33</sup>. Both the TFEU and the ECB's Statute limit the ECB's mandate to support the general economic policies in the Union by stipulating that such support can only be exercised “without prejudice” to the ECB's primary objective of maintaining stable prices. This implies that the ECB's objectives, although two-fold in principle, are not balanced as, for example, the objectives of the USA Federal Reserve (hereinafter: FED), which is entitled to pursue both the economic goals of maximum em-

<sup>30</sup> Case T-107/17 *Frank Steinhoff et. al. v. European Central Bank* [2019] ECLI:EU:T:2019:353.

<sup>31</sup> LatDict Latin Dictionary and Grammar Resources [<https://latin-dictionary.net/search/latin/mandare>], Accessed 15 April 2023.

<sup>32</sup> Protocol (No 4) on the Statute of the European System...*loc. cit.*, note 26.

<sup>33</sup> Consolidated version of the Treaty on European Union [2012] OJ C 326.

ployment and price stability, without a hierarchy between these two objectives.<sup>34</sup> Therefore, while exercising its legal mandate, the ECB, unlike FED, cannot make trade-offs to the detriment of price stability. The ECB must always give priority to safeguarding the value of the euro.<sup>35</sup>

The ECB is tasked with creating a single EU monetary policy to achieve its objectives.<sup>36</sup> TFEU and the ECB's Statute do not define the monetary policy. However, according to the settled case law of the Court of Justice, a policy measure will be treated as monetary policy if it aims to fulfill the monetary policy objectives (e.g., price stability) and if it is executed by the monetary policy instruments provided in the ECB's Statute. Furthermore, any indirect effects of a monetary policy measure on other policies (e.g., economic policy or environmental policy) cannot lead to the conclusion that a measure falls outside the scope of the monetary policy.<sup>37</sup>

Following the principle of conferral provided for in Art. 5(1) and (2) TEU, the ECB must act within the limits of the powers conferred upon it by the EU primary law. The ECB can, therefore, only pursue objectives outlined in its legal mandate and cannot conduct policies other than monetary policy. With regard to EU climate objectives, the ECB can address them only if they fall within the scope of its central-banking objectives.

### 3.1. The ECB's primary objective and climate change

Maintaining price stability is the *raison d'être* of the ECB and the "Grundnorm"<sup>38</sup> of the Monetary Union legal framework. Price stability is indeed at the center of the ECB's area of activity and has precedence over any other objectives that can be attributed to it.

<sup>34</sup> Federal Reserve Act, 12 U.S. Code § 226, Section 2A: "The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates."

<sup>35</sup> Egidy, S., *Proportionality and Procedure of Monetary Policy-Making*, International Journal of Constitutional Law, Vol. 19, Issue 1, 2021, pp. 285–308, p. 291.

<sup>36</sup> Article 127(2) indent 1 TFEU and Article 3(1) indent 1 of the ECB's Statute.

<sup>37</sup> Case C-493/17 *Heinrich Weiss and Others* [2018] ECLI:EU:C:2018:1000, par. 53; Case C-62/14 *Peter Gauweiler and Others* [2015] ECLI:EU:C:2015:400, par. 46; Case C-370/12 *Thomas Pringle v. Government of Ireland* [2012] ECLI:EU:C:2012:756, paras. 53-55.

<sup>38</sup> Zilioli, C.; Selmayr, M., *European Central Bank: An Independent Specialized Organization of Community Law*, *op. cit.*, note 19, pp. 628-629.

TFEU does not define price stability or which criteria must be fulfilled to maintain the euro stable. However, maintaining price stability should be understood as safeguarding purchasing power and the internal value of the euro.<sup>39</sup> The concretization of stable prices falls within the discretion of the ECB's Governing Council, which is only limited by the "manifest error in assessment" test, as confirmed by the Court of Justice.<sup>40</sup> The ECB's Governing Council decided to define stable prices by quantification of the desired inflation target within the euro area. In 2021, the ECB's Governing Council described price stability as a year-on-year increase of the Harmonized Index of Consumer Prices (HICP), i.e., the inflation rate for the euro area of 2%.<sup>41</sup>

The War in Ukraine and the consequent energy crisis in the EU demonstrated how external, unanticipated shocks can disrupt the euro's stability and lead to inflation way above the targeted one.<sup>42</sup> Both climate change and climate policies could have the same effect. Recent empirical studies show that the detrimental effects of climate change are already putting significant pressure on prices in the euro area.<sup>43</sup>

Namely, the extreme weather events caused by anthropogenic climate change, such as high temperatures, floods and droughts, can impair production and disrupt the supply chains in specific industries (e.g., agriculture, fisheries, forestry). Such events could reduce the availability of particular products, consequently leading to price increases. Specific industries could increase production costs by adapting the production infrastructure to severe weather events to mitigate the risk of extreme events. These costs may eventually be passed on to the consumers through higher prices. Moreover, extreme temperatures may increase energy prices as they can impact energy demand and supply. The rise in stranded assets and asset repricing following anticipated climate change policies could impair the value of the bank's balance sheet and disable banks from providing liquidity to the economy, which could eventually affect the smooth transmission of the ECB's monetary policy.

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<sup>39</sup> Häde, U., AEUV Art. 127, Rn 6, in: Calliess, C.; Ruffert, M., EUV – AEUV, 6 ed., C.H. Beck, München, 2022.

<sup>40</sup> Case C-493/17 *Heinrich Weiss and Others* [2018] ECLI:EU:C:2018:1000, par. 56.

<sup>41</sup> ECB's Press Release, ECB's Governing Council approves its new monetary policy strategy, 2021, [<https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr210708-dc78cc4b0d.en.html>], Accessed 15 April 2023.

<sup>42</sup> The eurozone heavily relied on natural gas imports from Russia and supply chain disruptions led to higher energy prices. This eventually led to high inflation in the eurozone of 6.9% in March 2023. See more: Arce, O; Koester, G., Nickel, C., *One year since Russia's invasion of Ukraine – the effects on euro area inflation*, The ECB blog, 2023 [<https://www.ecb.europa.eu/press/blog/date/2023/html/ecb.blog20230224-3b75362af3.en.html>], Accessed 15 April 2023.

<sup>43</sup> Dafermos, Y., *et. al., op. cit.*, note 24, pp. 9-14.

Finally, in the same manner, the climate change risks could be seen as financial risks for the ECB itself, as their materialization could negatively affect the value of its own balance sheet.<sup>44</sup>

As illustrated above, climate change already adversely affects prices which means that the ECB must consider climate change risks in its monetary policy decision-making process. Otherwise, it will be disabled from delivering its primary objective of maintaining stable prices. The ECB has already taken concrete steps in this direction. In 2022, the ECB amended its Corporate Sector Purchase Programme under which it has been buying corporate sector bonds as of 2016.<sup>45</sup> The amendments of the mentioned programme aim at increasing the share of assets on the Eurosystem's balance sheet issued by companies with a better climate performance than those with a poorer climate performance. The climate performance shall be measured by reference to the carbon emissions of the bond issuers.<sup>46</sup> Furthermore, the ECB decided to amend its collateral framework which serves the purpose of conducting credit operations with banks by limiting the debt instruments of the carbon-intensive sector within its collateral pool.<sup>47</sup> The incentive for implementing both measures mentioned above is primarily to protect the Eurosystem balance sheet from climate-related financial risk (and consequently to ensure stable prices). These measures should positively impact environmental policy and the EU climate objectives as they would reduce financing (direct or indirect) of the carbon-intensive sector.

### 3.2. ECB's secondary objective and climate change

The ECB's secondary objective derives from the second sentence of Art. 127(1) TFEU,<sup>48</sup> according to which the ECB shall support, without prejudice to the ob-

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<sup>44</sup> See more: Dikau, S.; Volz, U., *Central Banking, Climate Change and Green Finance*, ADBI Working Paper 867, Asian Development Bank Institute [<https://www.adb.org/sites/default/files/publication/452676/adbi-wp867.pdf>] Accessed 15 April 2023; Faccia D.; Parker, M.; Stracca, L., *Feeling the heat: extreme temperatures and price stability*, ECB Working Paper Series No. 2626, 2021 [<https://www.ecb.europa.eu/pub/pdf/scpwps/ecb.wp2626-e86e2be2b4.en.pdf>]; Network for Greening the Financial System, *The Macroeconomic and Financial Stability Impacts of Climate Change Research Priorities*, 2020 [[https://www.ngfs.net/sites/default/files/medias/documents/ngfs\\_research\\_priorities\\_final.pdf](https://www.ngfs.net/sites/default/files/medias/documents/ngfs_research_priorities_final.pdf)], Accessed 15 April 2023.

<sup>45</sup> Decision (EU) 2022/1613 of the European Central Bank amending Decision (EU) 2016/948 on the implementation of the corporate sector purchase programme [2022] OJ L 241.

<sup>46</sup> *Ibid.*, Recitals 1 and 4.

<sup>47</sup> ECB Press Release, *ECB takes further steps to incorporate climate change into its monetary policy operations*, 4 July 2022, [<https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704-4f48a72462.en.html>], Accessed 15 April 2023.

<sup>48</sup> The same objective of the ECB is repeated in Article 282(2) TFEU and Article 2 of the ECB's Statute.

jective of price stability, the general economic policies in the Union, with a view to contributing to the achievement of the Union's goals, as laid down in Art. 3 TEU.<sup>49</sup>

TFEU does not refer explicitly to the term “secondary objective”, as opposed to the term “primary objective”. Nonetheless, this term has been widely accepted since the inception of the ECB's legal mandate in the Maastricht Treaty.<sup>50</sup> It aims to emphasize that supporting the general economic policies in the Union represents the ECB's objective alongside the price stability objective. Therefore, the second sentence of Art. 127(1) TFEU is not a mere proclamation but a concrete legal basis stipulating the specific ECB's duty. This indicates that monetary policy is not only intended as a means of ensuring stable prices but also has a broader purpose.<sup>51</sup> Furthermore, the term “secondary objective” emphasizes that the ECB's legal duty to support general economic policies in the Union applies only to the extent that this can be done without compromising the price stability objective.<sup>52</sup>

### 3.2.1. Evolution of the ECB's secondary objective

The ECB's secondary objective was already foreseen in the “Delors Report” from 1989,<sup>53</sup> which outlined the future features of the intended Economic and Monetary Union and served as a guideline during the negotiations of the ECB's legal mandate before the adoption of the Maastricht Treaty.<sup>54</sup> The vision of the second-

<sup>49</sup> Article 3 TEU sets forth the following EU objectives: “security and justice without internal frontiers”, “free movement of persons”, “internal market. that shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment”, “promoting scientific and technological advance”, “combating social exclusion and discrimination”, “social justice and protection”, “equality between women and men”, “solidarity between generations”, “protection of the rights of the child”, “eradication of poverty”; “protection of human rights”, etc.

<sup>50</sup> For example, term “secondary objective” was used by Dr. Willem F. Duisenberg, the first president of the ECB, even before the ECB became operational on 1 June 1998. In his speech given on 16 February 1998, in the capacity of the president of the European Monetary Institute, the predecessor of the ECB, Dr. Duisenberg referred to ECB's obligation of providing support to the general economic policies in the Community as the ECB's secondary objective: Speech delivered by Dr. Willem F. Duisenberg, President of the European Monetary Institute, at the Bankers' Club Annual Banquet in London, 16 February 1998 [<https://www.ecb.europa.eu/press/key/date/1998/html/sp980216.en.html>], Accessed 15 April 2023.

<sup>51</sup> Häde, U., AEUV Art. 127, Rn 5, *op. cit.*, note 40.

<sup>52</sup> Häde, U., AEUV Art. 127, Rn 6, *op. cit.*, note 40.

<sup>53</sup> Delors, J., Report on the Economic and Monetary Union in the European Community [1989] (Delors Report) presented by the Committee for the Study of Economic and Monetary Union. [EU Commission - Working Document], par. 32, [<http://aei.pitt.edu/1007/>], Accessed 15 April 2023.

<sup>54</sup> Van den Berg, C. C. A., *The Making of the Statute of the European System of Central Banks, An Application of Checks and Balances*, Dutch University Press, 2004, p. 60-66.

ary objective from the “Delors Report” was strongly influenced by the legal mandate of the German Bundesbank stipulated in Art. 12 of the German Bundesbank Act from 1957 that tasked the Bundesbank with supporting the general economic policies of the Federal Government.<sup>55</sup> Namely, the proposal from the Delors Report provided that “subject to the preceding (i.e., price stability objective), the System should support the general economic policy set at the Community level by the competent bodies.”<sup>56</sup>

The final content of the ECB’s secondary objective, eventually stipulated in the Maastricht Treaty, contained two minor but significant additions. The first referred to supporting “general economic policies in the Community” and not “the general economic policy set at the Community level.”<sup>57</sup> Even more important, the “last minute” revision made by the Dutch government during the negotiation before adopting the Maastricht Treaty explicitly linked the ECB’s obligation to support general economic policies in the Community with the broad Community objectives.<sup>58</sup> This addition is not negligible and should be interpreted as the clear intention of the member states to integrate the ECB more firmly into the Community constitutional order.<sup>59</sup>

Community goals linked with the ECB’s secondary objective under the Maastricht Treaty included “promotion of a harmonious and balanced development of economic activities,” “sustainable and non-inflationary growth respecting the environment,” “a high degree of convergence of economic performance,” “a high level of employment and social protection,” “the raising of the standard of living and quality of life,” “economic and social cohesion” and “solidarity among Member States.”<sup>60</sup>

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<sup>55</sup> The Bundesbank and its back-then president Karl Otto Pöhl had a decisive role in defining the ECB’s objectives within the Delors Committee. The Bundesbank presented the first draft of the future ECB’s legal mandate which, besides the price stability objective, included the objective of supporting, without prejudice to its primary objective, the general economic policy at the Community. This proposal was influenced by the Bundesbank’s legal mandate stipulated in Article 12 of the German Bundesbank Act from 1957. Gesetz über die Deutsche Bundesbank, 26 July 1957 (Bundesgesetzblatt, Teil I, Nr. 33): “Die Deutsche Bundesbank ist verpflichtet, unter Wahrung ihrer Aufgabe die allgemeine Wirtschaftspolitik der Bundesregierung zu unterstützen.” See more: Van den Berg, C. C. A., *The Making of the Statute of the European System of Central Banks, An Application of Checks and Balances*, *op. cit.*, note 55, pp. 60-61.

<sup>56</sup> Delors, J., *Report on economic and monetary union in the European Community*, *op. cit.*, note 54., par. 32.

<sup>57</sup> Article 105(1) Treaty on European Union [1992] OJ C 191 (Maastricht Treaty).

<sup>58</sup> Van den Berg, C. C. A., *op. cit.*, note 55, p. 70.

<sup>59</sup> See also: Case C- 11/00, *Commission of the European Communities v. ECB* (OLAF case) [2003] ECLI:EU:C:2003:395, paras. 91-92; cf. Dietz, S., *Green Monetary Policy Between Market Neutrality and Market Efficiency*, *Common Market Law Review*, 59, 2022, pp. 395-432, pp. 423-424.

<sup>60</sup> Article 105(1) in connection with Article 2 Maastricht Treaty.

The content of the ECB's secondary objective was eventually broadened in 2007 by adopting the Lisbon Treaties. While the wording of the ECB's secondary objective remained the same, the EU goals linked to this objective were significantly broadened. As of the adoption of TEU, they include, e.g., "high level of protection and improvement of the quality of the environment," "technological advances," "equality between women and men," "protection of the rights of the child," "contribution to the sustainable development of the Earth," etc.

It is clear from the evolution of the ECB's secondary objective that it includes, from the very beginning, at least indirectly, the protection of the environment. As the EU climate objectives are an integral part of environmental protection, they are also indirectly included in the ECB's secondary objective of supporting general economic policies in the Union.

### **3.2.2. Legal interpretation of the ECB's secondary objective in the context of the EU climate objectives**

As explained above, the ECB's secondary objective, from the legal point of view, represents the ECB's legal duty as it stipulates that the ECB "shall" support general economic policies in the Union.<sup>61</sup> Moreover, it is clear that this legal duty is only limited by the ECB's primary objective of maintaining price stability, as the provision stipulates that the ECB shall support the general economic policies in the Union "without prejudice to its primary objective."

However, the remaining part of the provision is ambiguous, as the EU primary law does not define what would be "general economic policies in the Union" and what is the scope of the ECB's supporting role in this regard. Finally, the provision links the ECB's supporting role regarding the general economic policies in the Union with numerous EU goals provided in Art. 3 TEU. It is, therefore, unclear which general economic policies the ECB should support in the Union (those that aim, e.g., to a high level of protection and improvement of the quality of the environment or those that aim to full employment or technical advances). The latter ambiguity complicates the ECB's role within its secondary objective even

<sup>61</sup> The explicit legal duty derives also from the French text of the second sentence of Article 127(1) TFEU: "le SEBC apporte son soutien aux politiques économiques générales dans l'Union", the German text: "unterstützt das ESZB die allgemeine Wirtschaftspolitik in der Union" and the Italian text: "il SEBC sostiene le politiche economiche generali nell'Unione". See also: Zilioli, C.; Ioannidis, M., *Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies*, *op. cit.*, note 25, p. 369; Steinbach, A., *The Greening of the Economic and Monetary Union*, *Common Market Law Review*, 59, pp. 329-362, p. 345; van 't Klooster; J., De Boer, N., *What to do with the ECB's Secondary Mandate*, *Journal of Common Market Studies*, 2022, pp. 730-746, p. 738; Solana, J., *The Power of the Eurosystem to Promote Environmental Protection*, *op. cit.*, note 10, p. 557.

more if the EU goals from Art. 3 TEU are mutually incompatible (e.g., supporting general economic policies in the Union with a view to a high level of protection and improvement of the quality of the environment could be incompatible with the general economic policies that aim to full employment).<sup>62</sup>

The described ambiguity of the ECB's secondary objective poses significant legal and reputational risks for the ECB if it intends to address the EU climate objectives through its secondary objective. This calls for careful legal analysis of the Art. 127(1) TFEU in the context of Art 3 TEU.

### ***3.2.2.1. General economic policies in the Union and the EU climate objectives***

While establishing the Economic and Monetary Union, member states intentionally decided to retain sovereignty with regard to their national economic policies.<sup>63</sup> The Economic and Monetary Union was, therefore, established as an asymmetric union that does not comprise a single economic policy of the EU, as opposed to a single monetary policy.<sup>64</sup>

The term “general economic policies in the Union” is contained in TFEU provisions defining the ECB's secondary objective and in Art. 119 TFEU, defining guiding principles of the Economic and Monetary Union. The latter provision refers both to the term “general economic policies in the Union” and also to the term “economic policies of the member states.”<sup>65</sup> This indicates that these two terms are not identical and that the content of the former term is broader.

Member states should not necessarily pursue the same economic policies. However, they do not enjoy complete autonomy in creating and conducting their economic policies. According to Art. 121(1) TFEU, national economic policies are a matter of common concern and must be coordinated within the Council. For this purpose, the Council adopts broad guidelines for the economic policies of the member states and of the EU.<sup>66</sup> Such broad guidelines aim to “enable the Member States’ economic policies to be coordinated in order to achieve joint objectives.”<sup>67</sup>

<sup>62</sup> For example, general economic policies that aim to address the EU climate objectives (i.e., environmental protection policies with an economic dimension) could pose significant limitations to the businesses of the carbon-intensive sector that could lead to the loss of jobs in the mentioned sectors.

<sup>63</sup> Cf. Häde, U., AEUV Art. 119, Rn 15, *op. cit.*, note 40.

<sup>64</sup> This is also evident from the wording of Article 127(1) TFEU referring to the general economic policies „in“ the Union and not „of“ the Union.

<sup>65</sup> Cf. Häde, U., AEUV Art. 119, Rn 4, *op. cit.*, note 40.

<sup>66</sup> Article 121(2) TFEU.

<sup>67</sup> See: Publications Office of the European Union, Summaries of EU legislation: Broad guidelines for economic policies [<https://eur-lex.europa.eu/EN/legal-content/summary/broad-guidelines-for-economic-policies.html>], Accessed 15 April 2023.

Having all this in mind, the general economic policies in the Union should be understood as a common tendency of both national governments and the EU to encourage and develop, in a harmonious manner, those economic phenomena that are considered as socially desirable.<sup>68</sup> They should not, therefore, be understood as a mere sum of the national economic policies of the member states.

The question arises whether the EU climate policies that address the EU climate objectives and which are not the economic policies *stricto sensu* (e.g., fiscal policies, policies that strictly aim at economic growth) fall within the scope of the general economic policies in the Union.

The EU climate objectives could be an integral part of the general economic policies in the Union if they indeed affect the economy and if they represent the joint objectives of coordinated economic policies of the member states. As mentioned, the joint objectives of the member states' economic policies are articulated in the Council's broad guidelines of economic policies of the member states and of the EU (hereinafter: BGEPs). The EU has only adopted two BGEPs (in 2010 and in 2015). These BGEPs are the cornerstone of the national economic policies coordination in the yearly European semester project, which has been a part of the Union's economic governance framework since 2010.<sup>69</sup> The BGEPs 2010 explicitly instructed the member states to promote sustainable growth and implement necessary reforms to reduce greenhouse gas emissions.<sup>70</sup> The BEGPs 2015 stressed the importance of removing critical barriers to sustainable development and instructed the member states to pursue a transition to a competitive, resource-efficient low-carbon economy.<sup>71</sup>

For the purpose of monitoring whether member states are indeed coordinating their economic policies around the joint objectives, they submit to the Commission, under Art 121(3) TFEU, their national reform programmes. It should be stressed that national reform programmes of all member states that were submitted during the European semester 2022 contained, without exception, the objectives of meeting the climate goals and achieving the green transition.<sup>72</sup> This

<sup>68</sup> Cf. Smits, R., *Elaborating a Climate Change-Friendly Legal Perspective for the ECB*, *op. cit.*, note 24.

<sup>69</sup> See more: Verdun, A.; Zeitlin, J., *Introduction: the European Semester as a new architecture of EU socioeconomic governance in theory and practice*, *Journal of European Public Policy*, Vol. 2, No. 2, 2018, pp. 137-148.

<sup>70</sup> Council Recommendation on broad guidelines for the economic policies of the Member States and of the Union [2010] OJ L 191, Recital 9 of the Preamble.

<sup>71</sup> Council Recommendation (EU) 2015/1184 on broad guidelines for the economic policies of the Member States and of the European Union [2015] OJ L 192, Guideline 3.

<sup>72</sup> European Commission, 2022 European Semester: National Reform Programmes and Stability/Convergence Programmes [[https://commission.europa.eu/content/2022-european-semester-national-reform-programmes-and-stabilityconvergence-programmes\\_en](https://commission.europa.eu/content/2022-european-semester-national-reform-programmes-and-stabilityconvergence-programmes_en)] Accessed 15 April 2023.

is in line with the European Climate Law under which it was declared that “all sectors of the economy – including energy, industry, transport, heating and cooling and buildings, agriculture, waste and land use, land-use change and forestry (...) should play a role in contributing to the achievement of climate neutrality within the Union by 2050”<sup>73</sup> and that “the transition to climate neutrality requires changes across the entire policy spectrum and a collective effort of all sectors of the economy and society, as highlighted in the European Green Deal.”<sup>74</sup> The mentioned declarations are already transposed in the recent EU climate legislation, e.g., the Taxonomy Regulation,<sup>75</sup> Directive on corporate responsibility reporting,<sup>76</sup> and in the intended proposal for Regulation on European Green Bonds<sup>77, 78</sup>.

It follows that the duty to meet the EU climate objectives affects the economy and influences the direction of general economic policies in the Union. Currently, the general economic policies in the Union are indeed coordinated, among others, around the EU climate objectives. Therefore, the general economic policies in the Union should encompass not only economic policies *stricto sensu*, but also all other policies, including the environmental and climate change policies that directly affect the economy.<sup>79</sup> The ECB took the same stance in its Opinion as of 19 March 2021 on the Magyar Nemzeti Bank’s mandate and tasks relating to environmental sustainability.<sup>80</sup> This view is also supported by the wording of Art 119 (1) TFEU, which stipulates that the coordination of national economic policies serves the purpose of fulfilling the broad EU goals from Art. 3 TFEU, including, therefore, a high level of protection and improvement of the quality of the environment.

<sup>73</sup> Regulation (EU) 2021/1119 of the European Parliament and... *loc. cit.*, note 15, Recital 7 of the Preamble.

<sup>74</sup> *Ibid.*, Recital 25 of the Preamble.

<sup>75</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance) [2020] OJ L 198.

<sup>76</sup> Directive (EU) 2022/2464 of the European Parliament and of the Council amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (Text with EEA relevance) [2022] OJ L 322.

<sup>77</sup> Proposal for a Regulation of the European Parliament and of the Council on European green bonds [2021] (COM/2021/391 final).

<sup>78</sup> Zilioli, C.; Ioannidis, M., *Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies*, op. cit., note 35, pp. 373-374.

<sup>79</sup> *Ibid.*

<sup>80</sup> Opinion of the European Central Bank of 19 March 2021 on the mandate and tasks of the Magyar Nemzeti Bank relating to environmental sustainability (CON/2021/12): “The ECB notes that supporting the general economic policies of the government, without prejudice to its primary objective of achieving and maintaining price stability, is already part of the mandate of the MNB. Policies contributing to a high level of environmental protection that have an economic dimension or qualify as general economic policies of the government are implicitly covered by the current mandate of the MNB.”

EU climate objectives are, therefore, integral part of the general economic policies in the Union.

### ***3.2.2.2. ECB's supporting role with regard to climate-oriented general economic policies in the Union***

TFEU does not explain the ECB's supporting role within the meaning of its secondary objective. There is, however, a common understanding that the ECB's supporting role excludes the ECB's authority to create its own economic policy based on its secondary objective.<sup>81</sup> The ECB is, namely, a policymaker solely with regard to monetary policy.

Although the scope of the ECB's supporting role is unclear, its potential could be determined through the lens of the consistency principle outlined in Art. 7 TFEU. The consistency principle is a constitutional, horizontal clause applicable to all EU institutions and bodies, including the ECB. The consistency principle requires the EU to ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.

The principle of consistency is twofold, as it has both intra-institution and inter-institutions dimension. The former can be seen as a duty of an EU institution to align all its actions with its own policies<sup>82</sup>, while the latter implies that an EU institution's actions and policies, which are adopted within the bounds of its competences, cannot contradict the actions and policies of other EU institutions. The described inter-institutions dimension of the consistency principle is in line with the narrow understanding of the notion of "consistency," which should be understood as a requirement for the absence of contradictions between policies and actions of the EU institutions.<sup>83</sup> The requirement of consistency from Art. 7 TFEU is complementary to Art. 13(1) TEU, under which the EU institutional framework must ensure the consistency, effectiveness, and continuity of the EU policies and actions. The principle of consistency should also be read together with the principle of sincere cooperation between EU institutions enshrined in Art. 13(2) TEU. As stated by Advocate General Sharpston, the principle of sincere cooperation obliges the EU institutions to cooperate in achieving Union's objectives,

<sup>81</sup> Van 't Klooster J.; De Boer, N., *What to do with the ECB's Secondary Mandate*, op. cit., note 62, p. 731.; Zilioli, C., Ioannidis, M., *Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies*, op. cit., note 35, pp. 369 -370.

<sup>82</sup> Cf. Case T-512/12 *Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (Polisario Front) v. Council of the European Union* [2010] ECLI:EU:T:2015:953, par. 153.

<sup>83</sup> Franklin, C. N. K., *The Burgeoning Principle of Consistency in EU Law*, Yearbook of European Law, Vol. 30, No. 1, 2011, pp. 42–85, p. 46.

to abstain from undermining such action, and to ensure consistency between the Union's different policies.<sup>84</sup>

The European Climate Law that set forth EU climate objectives also enshrined the consistency principle. Namely, under the mentioned Act, “improving climate resilience and adaptive capacities to climate change requires shared efforts by all sectors of the economy and society, as well as policy coherence and consistency in all relevant legislation and policies.”<sup>85</sup>

Regardless of whether the European Climate Law applies to the ECB, it evidently stresses the necessity of concerted actions within the Union to meet the EU climate objectives. Even if the European Climate Law does not encompass the monetary policy, the ECB is still bound by the principle of consistency. The ECB should, therefore, refrain from any action that would contradict other EU institutions' climate-oriented actions and policies. At the very least, it needs to ensure that its monetary policy does not undermine climate-oriented general economic policies.<sup>86</sup> However, it should be borne in mind that the described ECB's duty can be performed only to the extent that it does not jeopardize the ECB's primary objective of maintaining price stability.<sup>87</sup>

### ***3.2.2.3. Prioritization of supporting climate-oriented general economic policies in the EU***

The most remarkable ambiguity of the ECB's secondary objective lies in the fact that the ECB should support the general economic policies in the Union with a view to contributing to the numerous EU goals laid down in Art. 3 TEU. The goal of “a high level of protection and improvement of the quality of the environment” is only one of them.

As already explained, the EU climate objectives are an integral part of the general economic policies in the Union. But the EU goals of full employment and technological advances are also reflected in the general economic policies in the Union. Moreover, the secondary objective obliges the ECB to support the general

<sup>84</sup> Opinion of Advocate General Sharpston delivered on 26 November 2015 in Case C-660/13, *Council of the European Union v. European Commission*.

<sup>85</sup> Regulation (EU) 2021/1119 of the European Parliament and... *loc. cit.*, note 15, Recital 31 of the Preamble.

<sup>86</sup> Ioannidis, M; Murphy, S.J; Zilioli, C., The mandate of the ECB: Legal considerations in the ECB's monetary policy strategy review, ECB's Occasional Paper Series, No 276/September 2021, p. 14 [<https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op276-3c53a6755d.en.pdf>], Accessed 15 April 2023.

<sup>87</sup> Häde, U., AEUV Art. 119, Rn 7, *op. cit.*, note 40.

economic policies in the Union with a view to contributing, among others, to the equality of women and men and the protection of human rights. Why should the ECB prioritize calibrating its monetary policy in a manner consistent only with the EU climate objectives? The ECB should, for example, calibrate its relevant monetary policy measure to steer the finances to the IT sector or to those corporations that demonstrate that its management functions reflect the equality between women and men.

The second sentence of Art. 127(1) TFEU does not provide criteria to which, among all EU goals, the ECB should give priority while supporting the general economic policies in the Union. Although this makes it hard for the ECB to act according to its secondary objective, this ambiguity could be justified because the importance of a particular EU goal may change over time. Indeed, climate neutrality and green transition became a top priority of the EU policies only recently.

Some authors have already pointed out numerous recent EU strategies and legislations aiming to address the EU climate objectives, indicating that tackling climate change is currently at the center of EU actions. Therefore, this should be one of the reasons why the ECB should prioritize supporting general economic policies to contribute to the EU climate objectives within its secondary mandate.<sup>88</sup>

Apart from the abovementioned reason, one powerful instrument can also justify the prioritization of climate-oriented general economic policies in the Union within the ECB's secondary mandate. Namely, the ECB is accountable to the European Parliament. This accountability manifests itself through the ECB's obligation to submit to the Parliament its annual reports and the Parliament's authority not only to review and assess the ECB's annual reports but also to raise its concerns and give proposals concerning the ECB's activities.<sup>89</sup> This is done through the Parliament's resolutions on the ECB's annual reports.

The European Parliament's resolutions strongly indicate that the ECB should, at least at the moment, align its monetary policy with the EU climate objectives. Namely, as of 2020, the Parliament continuously signals that the EU climate objectives must be integrated into the ECB's monetary policy because the Paris Agreement binds the ECB. All these Parliament's resolutions paid particular attention to climate change considerations within the monetary policy. Namely, the Parliament singled out "actions against climate change" as a special point of these resolutions. The Parliament called on the ECB, e.g., "to implement the environ-

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<sup>88</sup> Zilioli, C.; Ioannidis, M., *Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies*, *op. cit.*, note. 35, pp. 387-388.

<sup>89</sup> Article 284(3) TFEU.

mental, social and governance principles (ESG principles) into its policies”, “to make the question of how central banking and bank supervision can contribute to a sustainable economy and the fight against climate change one of its research priorities” and “to conduct a study investigating the impact of the asset purchase programmes on climate change and, in particular, the corporate sector purchase programme as a preliminary step towards redesigning the CSPP in a socially and environmentally sustainable manner”. Moreover, it called on the ECB for “a proactive and qualitative risk management approach which integrates climate change-related systemic risks”, emphasised that “tackling the climate and biodiversity emergency requires the ECB to take an integrated approach that should be reflected in all its policies, decisions and operations, together with adhering to its mandate of supporting the general economic policies of the Union, specifically, in this case, the achievement of a climate-neutral economy by 2050 at the latest, as outlined in the European Climate Law” and considered that “the ECB needs to use all the tools at its disposal to fight and mitigate climate-related risks.”

The described dialogue between the Parliament and the ECB could be seen as similar to the Bank of England’s monetary policy decision-making process under which the Treasury instructs the Bank of England on the government’s current economic policy that it must support within its legal mandate.<sup>90</sup> This resemblance may raise concerns about whether the guide provided by the Parliament jeopardizes the ECB’s independence guaranteed by Article 130 TFEU. Namely, as opposed to the Bank of England, the ECB enjoys broad independence, including goal independence. The goal independence implies that the central bank has full discretion to set the final goals of its monetary policy<sup>91</sup>, i.e., to specify its primary mandate (by determining the desired inflation target) and to decide how to act upon its secondary mandate. Considering its secondary objective, this indicates that the ECB could not rely upon instructions given by political bodies, including the Parliament, on what general economic policies in the Union to support and to which EU objective to indirectly contribute. On the contrary, the Bank of

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<sup>90</sup> Bank of England Act, UK Public General Acts, 1998 c.11, Part II, Section 12: (1)The Treasury may by notice in writing to the Bank specify for the purposes of section (a) what price stability is to be taken to consist of, or (b)what the economic policy of Her Majesty’s Government is to be taken to be. (2) The Treasury shall specify under subsection (1) both of the matters mentioned there (a) before the end of the period of 7 days beginning with the day on which this Act comes into force, and (b) at least once in every period of 12 months beginning on the anniversary of the day on which this Act comes into force.

<sup>91</sup> Debelle, G.; Fischer, S., *How Independent Should a Central Bank Be?:* in Goals, Guidelines, and Constraints Facing Monetary Policymakers, proceedings of a conference held in North Falmouth, Massachusetts, Federal Reserve Bank of Boston, pp. 195-221., p. 197.

England is legally obliged to follow the UK Treasury's instructions on what price stability consists of and what the government's economic policy is to be taken.<sup>92</sup>

The Parliaments' resolutions should not be seen as instructions that would contradict the guarantee of the ECB's independence. Namely, the Parliament's resolutions are not legally binding (as opposed to instructions of the UK Treasury with regard to the Bank of England), which means that the ECB is not obliged to follow them. However, as the ECB's obligation under its secondary mandate is indeterminate, and given the strong democratic legitimacy of the Parliament, its resolutions should serve as an instrument for bridging the mentioned gap.<sup>93</sup>

### **3.2.3. ECB's secondary objective: a mere consequence of maintaining stable prices or a standalone legal basis for conducting monetary policy?**

Until very recently, the sole focus of the ECB was on its primary objective of maintaining stable prices. The ECB's secondary objective was utterly neglected. The ECB's obligation to support the general economic policies in the Union was only occasionally mentioned in the speeches of the Governing Council members<sup>94</sup>, but only as a logical consequence of maintaining price stability<sup>95</sup> or as a "general wish"<sup>96</sup> that low interests shall eventually support economic growth and contribute to other EU objectives.<sup>97</sup> This point of view indicated that the secondary objective could only be pursued passively by maintaining stable prices without any concrete action aiming to fulfill the secondary objective directly.<sup>98</sup> Namely, there is a still prevailing view that only by assuring stable prices would the ECB success-

<sup>92</sup> Bank of England Act, *op. cit.*, note 91.

<sup>93</sup> Cf. Smits, R., *The European Central Bank's Independence and Its Relation with Economic Policy Makers*, *Fordham International Law Journal*, *op. cit.*, note 22., pp. 1626-1627.

<sup>94</sup> Van 't Klooster J.; De Boer, N., *What to do with the ECB's Secondary Mandate*, *op. cit.*, note 62, p. 733.

<sup>95</sup> *Ibid.*, p. 734.

<sup>96</sup> Van den Berg, C. C. A., *op. cit.*, note 55, p. 55.

<sup>97</sup> Speech delivered by Dr. Willem F. Duisenberg, President of the European Monetary Institute, at the Bankers' Club Annual Banquet in London, 16 February 1998: "Sustainable growth of income and employment – the best way to pursue them is to pursue price stability (...) price stability is a pre-condition for their achievement", [<https://www.ecb.europa.eu/press/key/date/1998/html/sp980216.en.html>] Accessed 15 April 2023.

<sup>98</sup> Speech delivered by Eugenio Domingo Sanso at the Wilton Park conference on "EMU: Economic and Political Implications for the "ins", "outs" and European Business" at Wiston House, West Sussex, on 24 May 1999: "There is clearly no greater fertilizer for economic growth than price stability, and nothing is more refractory to the economic growth than inflation (...) Provided that stability exists in connection with the implicit secondary objective of supporting the general economic policies of the European Union, the monetary policy of the Eurosystem contributes to creating the economic conditions which are essential for exploiting the growth potential of the euro area. However, let me stress that it does so in a passive way, without any activism: like the air we breathe, rather than air from an

fully, and only indirectly, fulfill its secondary objective.<sup>99</sup> Moreover, the possible proactive role of the ECB in supporting general economic policies was sometimes even considered detrimental to its primary objective of price stability.<sup>100</sup>

Indeed, the ECB referred to its secondary objective for the first time in 2022<sup>101</sup>, when it amended its Decision on implementing the corporate sector purchase programme.<sup>102</sup> The secondary objective was mentioned in the context of climate change, as amendments to the said decision reflected the ECB's intention to incorporate climate consideration into its monetary policy framework.<sup>103</sup> Therefore, it was climate change that very recently shifted focus to the ECB's secondary objective as it was seen as a remit to address climate change considerations in its monetary policy by supporting general economic policies in the Union with a view of contributing to a high level of protection and improvement of the quality of the environment.<sup>104</sup>

The mentioned Decision, however, is not based solely on the ECB's secondary objective. The Decision's primary goal is to reduce the climate-related financial risk to the Eurosystem's balance sheet by reducing the carbon intensity of the Eu-

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oxygen tank.”, [<https://www.ecb.europa.eu/press/key/date/1999/html/sp990524.en.html>], Accessed 15 April 2023.

<sup>99</sup> Gortsos, C.V., *European Central Banking Law, The role of the European Central Bank and National Central Banks under European Law*, Palgrave MacMillan, 2020.

<sup>100</sup> See more: Clarifying the nature of ECB support for general economic policies in the Community, European Central Bank, Directorate General Economics, SEC/GovC/X/02/32, 29 January 2002 [[https://www.ecb.europa.eu/ecb/access\\_to\\_documents/document/pa\\_document/shared/data/ecb.dr.par2021\\_0007\\_clarifyingmonpol2002.en.pdf](https://www.ecb.europa.eu/ecb/access_to_documents/document/pa_document/shared/data/ecb.dr.par2021_0007_clarifyingmonpol2002.en.pdf)], Accessed 15 April 2023.

<sup>101</sup> By searching the terms “general economic policies”, “general economic policies in the Union” and “secondary objective” in the database containing ECB documents, it was determined that not a single decision of the ECB on implementing monetary policy contained any reference to the secondary objective of supporting the general economic policies in the Union, except the Decision (EU) 2022/1613 of the European Central Bank amending Decision (EU) 2016/948 on the implementation of the corporate sector purchase programme [2022] OJ L 241, [<https://eur-lex.europa.eu/browse/institutions/bank.html>] Accessed 15 April 2023.

<sup>102</sup> Decision (EU) 2022/1613 of the European Central Bank... *loc. cit.*, note 46.

<sup>103</sup> *Ibid.*, recital 3 of the Preamble: “As the European Climate Law affects every conceivable aspect of economic policy in the Union, it forms part of the general economic policies in the Union, which the ECB is required to support. In light of the above, when adjusting its monetary policy instruments, the Governing Council will choose the configuration that best supports the general economic policies in the Union, provided that two configurations of the instrument set are equally conducive and not prejudicial to price stability.”

<sup>104</sup> *Ibid.*, recital 3 of the Preamble: “(...) without prejudice to the objective of price stability, the Eurosystem shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union, as laid down in Article 3 of the Treaty on European Union. These objectives include a high level of protection and improvement of the quality of the environment.”

rosystem's corporate holdings and, by this, to maintain price stability. The measure addressed in the Decision "also serves to support the general economic policies in the Union."<sup>105</sup> This indicates that the ECB's secondary objective was, again, even in practice, seen as a mere consequence of maintaining price stability, or, more precisely, of protecting the Eurosystem's balance sheet from climate-related financial risks.

However, it should be stressed that nothing in the wording of Art. 127(1) implies that the ECB's supporting role with regard to general economic policies should only be incidental. On the contrary, TFEU sets forth the legal duty of the ECB to support the general economic policies in the Union, the same as it sets forth the ECB's legal duty to maintain stable prices. TFEU only limits the ECB's supporting role by the primacy of the price stability objective. And as *per* Advocate General Wathelet's Opinion in *Weiss* case, stable prices are "the only limitation on that support."<sup>106</sup>

The underlying reason for the recent ECB's amendments to the Corporate Sector Purchase Programme and the intended amendments of its collateral framework is the protection of the ECB's balance sheet from climate-related financial risks connected to its price stability objective. This indicates that the extent to which the ECB will contribute by those measures to the EU climate objective could be relatively small. For example, concerning the intended amendments of the ECB's collateral framework, the ECB could decide to put minimal constraints regarding the debt instruments issued by the carbon-intensive sector if that would be enough to protect its balance sheet from climate-related financial risks (e.g. it could only apply additional value haircuts and not limit the portion of such instruments that could serve as the collateral). But the ECB is bound by the EU climate objectives and should use all possible venues to contribute more to address them. The ECB's secondary objective could and should serve as a standalone legal basis for creating specific climate-oriented monetary policy measures as long as such measures do not impair stable prices (e.g., as already proposed by van 't Klooster and Rens van Tilburg, the ECB could adopt Green Targeted longer-term refinancing operations under which the ECB could apply lower or even negative interest rate on credit operations with banks if their lending contributes to the EU climate objectives).<sup>107</sup> By adopting such measures, the ECB would more strongly align its monetary

<sup>105</sup> *Ibid.*, recitals 2 and 3 of the Preamble.

<sup>106</sup> Opinion of Advocate General Wathelet, delivered on 4 October 2018 in Case C-493/17, *Heinrich Weiss and Others* [2018] ECLI:EU:C:2018:1000, para. 113.

<sup>107</sup> Van't Klooster, J.; van Tilburg, R., *Targeting a sustainable recovery with Green TLTROs*, Positive Money Europe & Sustainable Finance Lab, 2020 [<https://www.positivemoney.eu/wp-content/uploads/2020/09/Green-TLTROs.pdf>], Accessed 2023.

policy with the climate objective of steering the financial flows toward low carbon emissions and climate-resilient development. The ECB should, therefore, take a more proactive role and even bolder steps to address the EU climate objectives beyond merely protecting its balance sheet from climate-related financial risks.

#### 4. CONCLUSION

The ECB is bound by the Paris Agreement and the EU climate objectives. The ECB's monetary policy should serve for supporting the EU climate objectives, as they fall squarely within the ECB's legal mandate. The detrimental effects of climate change are already affecting the ECB's primary objective of maintaining stable prices. This leads to the conclusion that the ECB must take into account climate risks while calibrating its monetary policy measures aiming at stable prices. But the ECB's role in the climate change arena goes beyond merely considering climate risks while maintaining the value of the euro. Within its secondary objective, the ECB has a legal duty to support climate-oriented general economic policies in the Union, i.e., policies aiming at a high level of protection and improvement of the quality of the environment. This duty arises not only from the legal interpretation of the EU primary law regulating its secondary mandate but also from the recent resolutions of the European Parliament on the ECB's annual reports. The ECB's secondary objective implies that the ECB should take a more proactive role in supporting the EU climate objectives, for example, by creating specific monetary policy measures that would foster steering the financial flows towards green sectors. The only limit to such a course of action is the ECB's primary objective of maintaining price stability. As stated by David Cobham in his paper "The past, present, and future of central banking": "while a world in which central banks need to address only one objective with only one instrument would be neat and tidy, and largely ruled-based, monetary policy strategy needs to be designed for a world in which there may be (known and unknown) unknowns around the corner, and central banks need both the alertness and the discretion to confront them."<sup>108</sup>

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<sup>108</sup> Cobham, D., *The past, present, and future of central banking*, Oxford Review of Economic Policy, Vol. 28, No. 4, 2012, pp. 729–749, pp. 734–735.

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