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The Economic and Monetary Union (EMU): status quo and way forward

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Christos V. Gortsos**

Table of Contents

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A. Key Design Elements of the Economic and Monetary Union (EMU)

The legal basis for the Economic and Monetary Union (EMU), which started operating on 1 January 1999, is set out in primary EU law: the Treaty on European Union (TEU), in more detail in the Treaty on the Functioning of the European Union (TFEU)[1] (jointly, the Treaties), and several Protocols annexed to them. Participation therein is confined to the Member States meeting specific economic and legal 'convergence criteria'.[2] The EMU is asymmetric by

1 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ C 202, 7 June 2016, pp. 13-45 and 47-200, respectively. The EMU was established by the Treaty of Maastricht of 7 February 1992 (Treaty on European Union, signed at Maastricht on 7 February 1992, OJ C 191, 29 July 1992, pp. 1-112), which was then embedded into the Treaty establishing the European Community (TEC) (Consolidated version, OJ C 321, 29 December 2006, pp. 47-200). For a detailed presentation of the road towards the EMU, see *Bini-Smaghi*, *L./Padoa-Schioppa*, *T./Papadia*, *F.*, The Transition to EMU in the Maastricht Treaty, Essays in International Finance, No 194, Princeton University, 1994 Princeton, N.J.; and *Issing*, O., The Birth of the Euro, Cambridge University Press, 2008 Cambridge.

2 TFEU, Articles 130-131 and 140(1). Those not meeting these criteria are referred to as 'Member States with a derogation'; they also include Denmark, the only (anymore) Member State with an opt-out clause from the monetary union under the conditions laid down in Protocol (No 16) (Consolidated version, OJ C 202, 7 June 2016, p. 287). Applicable to these Member States are Arts 139-144.

design (and remains so): whereas in the context of the monetary union the EU has exclusive competence (*inter alia*) in relation to monetary policy-related issues for the Member States participating therein, the same does not hold true in the context of the economic union, where (the other) economic policies remain national, the EU having a mere coordinating competence.[3]

I. On the Monetary Union

First, in the monetary union, which is undoubtedly the core of the EMU, a European System of Central Banks (ESCB) was established, consisting of the European Central Bank (ECB), which is an EU institution,[4] and the national central banks (NCBs) of all Member States; part of that is the 'Eurosystem', composed of the ECB and the NCBs of the Member States whose currency is the euro.[5] The basic tasks of the (ECB within the) Eurosystem, whose primary objective is to maintain price stability,[6] include the definition and implementation of the single monetary policy;[7] the conduct of foreign-exchange operations (single foreign-exchange policy);[8] the holding and management

3 TFEU, Articles 3(1), point (c) and 5(1), respectively.

4 TEU, Article 13(1), second sub-paragraph, sixth indent.

5 TFEU, Article 282(1). The operation of the ECB, the ESCB and the Eurosystem is governed by the TFEU and the Statute of the ESCB and the ECB (hereinafter the 'ESCB/ECB Statute') (Consolidated version, OJ C 202, 7 June 2016, pp. 230-250). Article 14.3 of that Statute governs the relationship between the ECB and the NCBs of the Member States whose currency is the euro. It is noted that both the ESCB and the Eurosystem do not have legal personality. On the institutional aspects of the ECB, see *Gortsos, Ch.* V., European Central Banking Law – The Role of the European Central Bank and National Central Banks under European Law, Palgrave Macmillan Studies in Banking and Financial Institutions, Palgrave Macmillan, Cham – Switzerland, 2020 (*Gortsos* (2020)), pp. 245-278, with extensive further references; on the role of NCBs in the ESCB and the Eurosystem, see *ibid.*, pp. 188-194.

6 TFEU, Article 127(1), first sentence (*inter alia*).

7 Responsible for its formulation is the ECB Governing Council (GC), which must adopt Guidelines for the implementation of intermediate monetary objectives, key interest rates and the supply of reserves in the Eurosystem (ESCB/ECB Statute, Article 12.1, first sub-paragraph, second sentence).

8 This must be consistent with Article 219 TFEU. If the euro is freely floating in exchange-rate markets (as currently), this task is carried out by the Eurosystem in cooperation with the Council (as composed by the Ministers of the Member States whose currency is the euro, the 'Eurogroup') (Article 219(2)).

of Member States' official foreign reserves; and the promotion of payment systems' smooth operation.[9]

In this respect it is worth noting that price stability maintenance is the primary but not the exclusive objective of the Eurosystem. The TFEU[10] clearly sets out that, without prejudice to this objective, the Eurosystem shall (also) support the "general economic policies in the EU" to contribute to the achievement of the EU objectives as laid down in Article 3 TEU, acting in accordance with the principle of an open market economy with free competition favouring an efficient allocation of resources (a statement of respect for market economics) and in compliance with the principles set out in Article 119(3) TFEU. On the other hand, the Eurosystem does not have a dual primary objective (as is the case with some other central banks, such as the US Federal Reserve System). This hierarchy of objectives implies that it can only pursue its secondary objectives if it has assured the primary one and must, thus, perform its tasks aimed at combatting inflation (or disinflation) and only if this is achieved at influencing growth, employment, environmental and other conditions.

Second, the general regulatory framework governing the monetary policy instruments includes a wide set of legal acts of the ECB, spearheaded by Guideline (EU) 2015/510 of 19 December 2014 "on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) (ECB/2014/60) (recast)", as in force,[11] which, *inter alia*, governs the so-called 'monetary policy operations' (i.e., open market operations and standing facilities). The application of minimum reserves, i.e., the third category of instruments for the implementation of the single monetary policy, is governed by Council Regulation (EC) No 2531/1998 of 23 November 1998 "concerning

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9 TFEU, Article 127(2). On these tasks, see *Gortsos* (2020), pp. 281-320, with extensive further references. In their conduct, the ECB enjoys a high degree of functional, personal, financial, and operational independence, albeit subject to accountability and transparency (ibid., Articles 130, 282(3), third-fourth sentences, 283(2), third sub-paragraph and 284(3)). In respect to personal independence, see also the Judgment of the Court (Grand Chamber) of 26 February 2019 in Joint Cases C-202/18 and 238/18, *Ilmārs Rimšēvičs and European Central Bank v Republic of Latvia* (ECLI:EU:C:2019:139). Similar provisions apply to the NCBs (their institutional independence being a key legal convergence criterion, TFEU, Article 131).

10 TFEU, Article 127(1), second sentence.

11 OJ L 91, 2.4.2015, pp. 3-135; by end-February 2023, this legal act had been amended twelve times; the current consolidated version is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014O0060-20220708>. The power of the ECB to adopt legal acts, in order to carry out the tasks conferred upon the ESCB/Eurosystem, is based on Article 132(1) TFEU and Article 12.1 ESCB/ECB Statute.

the application of minimum reserves by the [ECB]",[12] and ECB Regulation (EU) 2021/378 of 22 January 2021 "on the application of minimum reserve requirements (recast) (ECB/2021/1)",[13] which further specifies the Council Regulation's provisions.

Finally, the ECB has also been endowed with other tasks, such as the issuance of banknotes and coins denominated in euro (the single euro area currency[14]) and the contribution to the smooth conduct of policies pursued by the national authorities relating to the prudential supervision of credit institutions and the financial system's stability.[15] However, it is not acting as a lender of last resort to credit institutions established in the euro area. Such lending to solvent credit institutions exposed to severe liquidity problems is provided by the NCBs of the Member State in which they are incorporated under the conditions governing the Emergency Liquidity Assistance (ELA) Mechanism.[16]

II. On the Economic Union

The concept of the economic union, as defined in the TFEU,[17] refers to the adoption of an economic policy which is based, *inter alia*, on the close coordination of Member States' economic policies. Hence, unlike in the case of the monetary union, where a *single* currency and a *single* monetary and foreign policy have been envisaged, Member States' economic policy (or, more

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12 OJ L 318, 27.11.1998, pp. 1-3; this is in force as amended by Council Regulation (EC) No 134/2002 of 22 January 2002 (OJ L 24, 26.1.2002, p. 1).

13 OJ L 73, 3.3.2021, pp. 1-15. This Regulation, which repealed ECB Regulation (EC) No 1745/2003 of 12 September 2003 (ECB/2003/9) on the same subject (OJ L 250, 2.10.2003, pp. 10-16), is in force as repeatedly amended (most recently by Regulation (EU) 2022/2419 of 6 December 2022 (ECB/2022/43), OJ L 318, 12.12.2022, pp. 7-8). The current consolidated version is available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02021R0378-20221221>.

14 TFEU, Article 128. The euro is the currency of the EMU (TEU, Article 3(4) TEU) and is a single and not a common currency (TFEU, Article 119(2)), which substituted for the (former national) currencies of the Member States participating in the euro area at an *irrevocably* fixed rate (ibid., Article 140(3)). Concurrently, the euro is the national currency of those Member States by virtue of national law.

15 Ibid., Article 127(5); see indicatively *Psaroudakis*, G., The Scope of Financial Stability Considerations in the Fulfilment of the Mandate of the ECB/Eurosystem, Journal of Financial Regulation, Vol. 4, 2018, pp. 155-156.

16 The role of the ECB is delimitated by Article 14.4 ESCB/ECB Statute; see *Gortsos* (2020), pp. 388-399, with extensive further references. On the economics of the monetary union, see *De Grauwe*, P., Economics of Monetary Union, 13th Edition, Oxford University Press, Oxford – New York, 2020.

17 TFEU, Article 119(1); see also Article 120.

precisely, dimensions thereof other than the monetary and foreign exchange policies, such as fiscal policy) was not "europeanised" and no Member State (even if having adopted the euro) lost autonomy in its conduct.[18] However, this autonomy is significantly constrained by the institutional framework of the economic union, which is composed of provisions governing, *on the one hand*, the close coordination of Member States' economic policies and, *on the other hand*, fiscal discipline. The latter consists of a procedure for monitoring excessive government deficits and of the imposition upon Member States of certain prohibitions with respect to the financing of their public expenses.[19]

One of the prohibitions introduced is the "no-bail-out-clause" under which the EU is neither liable for nor assumes the obligations of central governments, regional, local or other public authorities, other bodies governed by public law or public undertakings of Member States; the same applies to the Member States.[20] These provisions are widely considered to constitute the institutional constraint for the issuance of so-called "Eurobonds" or "stability bonds".[21]

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18 A single economic policy, which would become an exclusive EU competence, as the monetary policy, when and if achieved, would mean that Member States would no longer enjoy, in essence, any degree of freedom in the conduct of their macroeconomic policy in general. Therefore, the decision for full economic unification in such form would have to be made along considerations for a genuine EU political integration.

19 TFEU, Articles 121 (on economic policy coordination) and 123-126 (fiscal discipline). The rules laid down in Articles 122 and 126 are further specified in Council Regulations (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies and (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure (both of 7 July 1997 (OJ L 209, 2 *August* 1997, *pp.* 1-5 *and* 6-11, *respectively*) and as in force), which constitute the two pillars of the Stability and Growth Pact (SGP); see indicatively *Keppenne*, J.-P., EU Fiscal Governance of the Member States: The Stability and Growth Pact and Beyond, in Amtenbrink, F. and Hermann, Ch. (eds.): Oxford Handbook on the EU Law of Economic and Monetary Union, Oxford University Press, 2020 Oxford, Chapter 28, pp. 813-849.

20 TFEU, Article 125(1), first and second paragraphs, respectively.

21 On the feasibility of introducing "Stability Bonds", based on three alternative scenarios and a cost-benefit analysis, see the European Commission's Green Paper on Stability Bonds of 23 November 2011 (COM(2011) 818 final), available at: <https://ec.europa.eu/economy_finance/articles/governance/2011-11-23-green-paper-stability-bonds_en.htm>. See also the European Parliament's resolution of 15 February 2012 on the feasibility of introducing stability bonds (at: <https://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-46>). Out of an extensive literature on this topic, see, by means of mere indication, *Ubide*, *Án.*, Stability Bonds for the Euro Area, Peterson Institute of International Economics, Policy Brief, Number P B 15-19, October 2015.

This institutional framework also contains provisions on "economic solidarity".[22] However, until the 2010 outbreak of the euro area fiscal/sovereign crisis, it did not govern the management of such crises in extreme-case scenarios as that.[23]

B. The Impact of the Four Major Crises During the Period 2007-2022[24]

I. The Global Financial Crisis (GFC)

1. Recourse by the ECB within the Eurosystem to unconventional monetary policy measures

The onset of the (2007-2009) GFC[25] showed that the key problem of concern to the ECB was not the risk of inflation but that of very low inflation (disinflation). Given that the GC had defined (since the start of the Eurosystem' operation) price stability as a year-on-year increase in the Harmonised Index of Consumer Prices (HICP) for the euro area of below, *but close to*, 2%,[26] the fact that price levels remained persistently below this benchmark rendered necessary for the ECB, like other central banks in advanced (and not only) economies since the monetary policy cycle was synchronised around the world, to adjust its monetary policy to address the risks of low inflation.

In this respect, in order to bolster liquidity in the euro area economy, it gradually cut the rate for its main refinancing operations (MROs); extended the maturity of its longer-term refinancing operations (LTROs); provided liquidity in foreign currency, particularly in US dollars and yen; carried out massive

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22 TFEU, Article 122.

23 See on this further below, under B.II.2.

24 This is a typical manifestation of a 'permacrisis', a term defined in the *Collins English Dictionary* as an extended period of instability and insecurity, especially one resulting from a series of catastrophic events.

25 For an overview of the causes of this crisis, see *Gortsos, Ch.* V., Fundamentals of Public International Financial Law: International Banking Law within the System of Public International Financial Law, Schriften des Europa-Instituts der Universität des Saarlandes – Rechtswissenschaft, Nomos Verlag, 2012 Baden-Baden, pp. 127-130, with extensive further references.

26 Under this quantitative definition, price stability "*shall be maintained over the medium term*" (a precondition for sustained growth). Its publication aims at building credibility for the strategy required to safeguard the efficiency of monetary policy and grant transparency. See also below (under B.III.2.) in relation to the ECB's new monetary policy strategy.

purchases of covered bonds denominated in euro; and markedly broadened the pool of assets eligible by the Eurosystem as collateral in the conduct of its credit transactions in the context of its single monetary policy.[27] In addition, it decided to have recourse to quantitative easing (QE), namely to use 'unconventional' monetary policy instruments and mainly adopt and implement asset purchase programmes (APPs).[28]

Its first APP was the covered bond purchase programme of 2 July 2009 (CBPP).[29] This was then followed, on 14 May 2010, by the Securities Markets Programme (SMP),[30] which was terminated in 2012, and pursuant to which the ECB could, upon a CG Decision purchase, *inter alia*, Member States' sovereign bonds in the secondary market. ECB purchases of such bonds in the primary market (that is, upon their issuance) is prohibited by the TFEU as part of the fiscal discipline framework.[31]

2. The creation of the European System of Financial Supervision (ESFS) and the role of the ECB therein

The scale and intensity of the GCF have also highlighted that price stability is not sufficient for financial stability and, thus the need to enhance the (then) existing EU regulatory and supervisory framework relating to the financial system. In this respect, on 25 February 2009, the High-Level Group on Financial Supervision in the EU, that was set up by the Commission and chaired by the France's former central banker Jacques *de Larosière*, submitted

27 See details in *Tuori, Kl.*, Monetary Policy (Objectives and Instruments), in: Amtenbrink, F./Hermann, Ch. (eds.): The EU Law of Economic and Monetary Union, Oxford University Press, 2020 Oxford, Chapter 22, pp. 615-698, pp. 642-652.

28 For an assessment, see *Smits, R.*, A central bank in times of crisis: the ECB's developing role in the EU's currency union, in: Conti-Brown, P./Lastra, R.M. (eds.): Research Handbook on Central Banking, Research Handbooks in Financial Law, Edward Elgar Publishing, Cheltenham, UK – Northampton, MA, 2018 USA, Chapter 10, pp. 184-207; European Central Bank, The ECB's monetary policy stance during the financial crisis, ECB Monthly Bulletin, January 2010, pp. 63-71; and *Zilioli, Ch./Athanassiou, Ph. L.*, The European Central Bank, in: Schütze, R. and Tridimas, T. (eds.): Oxford Principles European Union Law – Volume I: The European Union Legal Order, Oxford University Press, 2018 Oxford, Part III: Institutional Framework, Chapter 19, pp. 610-650, pp. 633-644.

29 Decision of the ECB of 2 July 2009 on the implementation of the covered bond purchase programme (ECB/2009/16), 2009/522/EC, OJ L175, 4 July 2009, pp. 18-19.

30 Decision of the ECB of 14 May 2010 establishing a securities markets programme (ECB/2010/5), 2010/281/EU, OJ L 124, 20 May 2010, pp. 8-9.

31 TFEU, Article 123(1).

a Report ('*de Larosière* Report'),[32] which included specific recommendations which led to the creation of the 'European System of Financial Supervision' (ESFS) that became operational on 1 January 2011.

The ESFS, which applies to all EU Member States, consists of the three (so-called) European Supervisory Authorities (ESAs) and of the European Systemic Risk Board (ESRB), which has been tasked with the macroprudential oversight of the EU financial system to address systemic vulnerabilities.[33] In respect to the operation of the ESRB it was also decided to activate, for the first time, Article 127(6) TFEU, pursuant to which the Council may, by a unanimous Regulation, confer 'specific tasks' upon the ECB concerning policies relating to the prudential supervision of credit institutions[34] and other financial firms with the exception of insurance undertakings.[35] On the basis of this enabling clause, the ECB has been assigned specific tasks in the field of financial macroprudential oversight by a Council Regulation,[36] taking into account the close links between monetary and macroprudential policies.[37]

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32 Available at: <https://ec.europa.eu/commission_barroso/president/pdf/statement20090225_en.pdf>. For an overview, see *Ferrarini, G./Chiodini, F.*, Regulating cross-border banks in Europe: a comment on the de Larosière report and a modest proposal, Capital Markets Law Journal, Vol. 4, 2009 Oxford University Press, pp. 123-140.

33 Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, OJ L 331, 15 December 2010, pp. 1-11 (as in force). On the ESFS, see indicatively *Gortsos* (2020), pp. 105-140.

34 In EU banking law, 'credit institution' means (in principle) an undertaking the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.

35 For an analysis of this provision, see *Gortsos* (2020), pp. 198-200.

36 Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board, OJ L 331, 15 December 2010, pp. 162-164. On these specific tasks, see *Gortsos* (2020), pp. 371-373.

37 The interaction between monetary policy and financial stability is well established; in the aftermath of the GFC, the aim of monetary policy remained price stability and macroprudential policies were tasked with the preservation of financial stability; see indicatively *Lastra, R.M./Goodhart, Ch.*, Interaction between monetary and bank regulation, Monetary Dialogue Papers, European Parliament, September 2015, available at: <https://op.europa.eu/en/publication-detail/-/publication/3d05d3ec-fcb9-11e6-8a35-01aa75ed71a1/language-en>, pp. 37-54; and *Viñals, J./Blanchard, O./Tiwari, S.*, Monetary Policy and Financial Stability, IMF Policy Paper, IMF, September 2015, available at: <https://www.imf.org/external/np/pp/eng/2015/082815a.pdf>.

II. The fiscal crisis in the euro area

1. Further quantitative easing by the ECB within the Eurosystem

Following the onset of the fiscal crisis in the euro area in the spring of 2010,[38] several of the above-mentioned monetary policy measures were further strengthened: *first*, the rate for the ECB's MROs was further cut to 0% (a level held until July 2022[39]), while the maturity of LTROs was further extended and their use increased exponentially; *second*, the interest rate on the deposit facility entered into negative territory; and *third*, the pool of assets eligible as collateral was further broadened. In addition, the ECB provided foreign currency liquidity to domestic credit institutions by currency swap lines through swap agreements with several third country central banks.[40] The ECB proceeded also to the first increase (duplication) of its capital from 5.76 billion euro to 10.76 billion euro.[41]

Furthermore, on 6 September 2012, the ECB *announced* by a Press Release its Outright Monetary Transactions (OMT) Programme consisting of purchases of

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38 On this crisis and the policy responses thereto, see *Shambaugh, J.C.*, The Euro's Three Crises, Brookings Papers on Economic Activity, Spring, The Brookings Institution, 2012, pp. 157-231, available at: <https://www.brookings.edu/~/media/Projects/BPEA/Spring 2012/2012a_Shambaugh.pdf>; and *Hadjiemmanuil, Ch.*, The Euro Area in Crisis, 2008-18, in: Amtenbrink, F./Hermann, Ch. (eds.): Oxford Handbook on the EU Law of Economic and Monetary Union, Oxford University Press, 2020 Oxford, Chapter 40, pp. 1253-1362 (*Hadjiemmanuil* (2020)) (also published in LSE Law, Society and Economy Working Papers 12/2019, available at: <https://ssrn.com/abstract=3413000>) (both with extensive further references). The author uses the term 'fiscal crisis' instead of the (more commonly used) terms 'debt crisis' and 'sovereign crisis' as more consistent with the fact that the Member States which, for different reasons each, were severely affected by this crisis (Greece, Portugal, Ireland, and Cyprus), were excluded from international interbank and capital markets and resorted to the (sovereign) lending of last resort facilities of the International Monetary Fund (IMF) and the newly built (during this crisis) EU facilities, violated the 'hard limit' (3%) deficit/GDP ratio laid down in primary EU law (TFEU, Article 126(2) and Article 1 of Protocol (No 12) "on the excessive deficit procedure", Consolidated version, OJ C 202, 7 June 2016, pp. 279-80).

39 See below, under B.IV.1.

40 Available at: <https://www.ecb.europa.eu/explainers/tell-me-more/html/currency_swap_lines.en.html>. Such currency swap lines have traditionally been part of central banks' set of monetary policy instruments to fund market interventions, but in recent years have also become an important tool for preserving financial stability.

41 Decision of the European Central Bank of 13 December 2010 on the increase of the European Central Bank's capital (ECB/2010/26), 2011/20/EU, OJ L 11, 15 January 2011, p. 53.

sovereign bonds of individual euro area Member States without access to the markets to address the risks of a prolongation of the low-inflation period in the euro area; this was immediately after ECB President Draghi's statement that he would do "*whatever it takes to save the euro*".[42] The programme has given rise to intense debate, culminating in an *ultra vires* review by the German Federal Constitutional Court (FCC), which rejected constitutional complaints against it, holding that a programme of unlimited bond purchases amidst a fiscal crisis in the euro area does not violate German law.

Even though the OMT programme was never activated (yet), several other corporate and sovereign bond purchase programmes were designed (included in the so-called 'expanded asset purchase programme') to enhance the transmission of monetary policy, facilitate the provision of credit to the economy, and contribute to returning inflation rates to levels below but close to 2% over the medium term, consistent with the ECB's primary objective. *Inter alia*, it included the public sector purchase programme (PSPP),[43] under which the ECB and NCBs purchase eligible marketable debt securities in secondary markets from eligible counterparties albeit under specific conditions. The validity of the related ECB Decision was also contested before the German FCC, which referred for a preliminary ruling to the CJEU.[44]

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42 Available at: <https://www.ecb.europa.eu/press/pr/date/2012/html/pr120906_1.en.html>. On this Programme, see indicatively *Hadjiemmanuil* (2020), pp. 1333-1335 and *Tuori* (2020), pp. 665-675. The FCC's decision was based on the judgement of the Court (Grand Chamber) of 16 June 2015 in Case C-62/14, *Peter Gauweiler and others v Deutscher Bundestag* (ECLI:EU:C:2015:400), which did not raise objections as to the compatibility of OMTs with EU law. It ruled that the ECB may, under exceptional circumstances, support euro area Member States facing acute financing problems by purchasing their sovereign bonds, albeit under specific framework conditions.

43 Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme (ECB/2015/10), OJ L 121, 14 May 2015, pp. 20-24. On this Programme, see *Tuori* (2020), pp. 675-686.

44 The judgment of the Court (Grand Chamber) of 11 December 2018 in Case C-493/17, *Weiss et al.* (ECLI:EU:C:2018:1000), found no factor of such a kind as to affect the validity of the ECB Decision. However, in its judgement of 5 May 2020 (BVerfG, Judgment of the Second Senate, 2 BvR 859/15) the FCC declared the CJEU's judgement in the *Weiss Case* and the contested ECB Decisions *ultra vires* as having violated EU law by failing to correctly apply the proportionality principle, and not applicable in Germany (see on this, out of a vast existing literature, *D'Ambrosio, R./Messineo, D.*, The German Federal Constitutional Court and the Banking Union, Quaderni di Ricerca giuridica, No. 21, March 2021, available at: <https://www.bancaditalia.it/pubblicazioni/quaderni-giuridici/2021-0091/index.html>). On 2 December 2021, the Commission decided to close the infringement procedure against Germany (initiated earlier that year) concerning this FCC judgment.

2. Strengthening the Economic Union – including regarding sovereign crisis management

The euro area fiscal crisis revealed weaknesses in relation to the then existing institutional framework governing the Economic Union, which did not contain any provisions for the management of such crises. In view, however, of the urgency to deal with the Greek fiscal crisis in April 2010 and the need to provide Greece with financial support (as it could longer refinance its debt in capital markets), it became necessary to establish, for the first time, a mechanism for the management of such crises, given also that the 'no-bail-out clause'[45] does not allow the direct refinancing of Member States' debt by the other Member States or the EU. Under these conditions, on 11 May 2010, the Council established a European Financial Stabilisation Mechanism (EFSM), endowed with 60 billion euro.[46]

However, that (last resort) solution was not credible and sustainable; hence, in June 2010, the euro area Member States signed an intergovernmental treaty (agreement) outside the EU framework which established the European Financial Stability Facility (EFSF).[47] The establishment of a permanent mechanism was then the next (necessary) step. Since, however, this required amendment to the TFEU, on 25 March 2011, the European Council adopted a Decision amending Article 136.[48] On that (solid legal) basis, on 2 February 2012,[49] a new intergovernmental treaty was signed establishing the European

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45 TFEU, Article 125(1); see also above, under A.II.

46 Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, OJ L 118, 12 May 2010, pp. 1-4. This legal act was adopted on the basis of Article 122(2) TFEU (on "economic solidarity").

47 Use was immediately made by Greece and then by Ireland (in 2010 as well) and by Portugal (in April 2011).

48 European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro, 2011/199/EU, OJ L 91, 6 April 2011, pp. 1-2.

49 Following the Euro Summit of 26 October 2011, the process of depreciation of the nominal value of the Greek government bonds was initiated. This was based on the restructuring of its debt with the participation of the private sector through the application of collective action clauses (Private Sector Involvement, PSI) and was completed on 14 March 2012. For the key terms of the PSI, see *Hadjiemmanuil* (2020), pp. 1318-1321. In relation to the PSI programme, and in particular on compensation for the damage allegedly suffered by the applicants (holders of Greek government bonds) following its implementation due to the conduct and actions of, in particular, the European Council, the Council, the Commission and the ECB, see the judgment of the General Court of 9 February 2022 in Case T-868/16, QI *and Others v European Commission and European Central Bank* (ECLI:EU:T:2022:28), which dismissed the application. in its entirety.

Stability Mechanism (ESM) as an international financial institution, which succeeded the EFSF; that Treaty became operational in October 2012.[50]

In addition, the fiscal crisis rendered necessary the strengthening of the framework for economic policy coordination and fiscal discipline. In this context, based on the work carried out (in March 2010, even before the onset of the Greek crisis) by the Task Force on Economic Governance, which was chaired by the (then) President of the European Council Herman Van Rompuy, on 29 September of that year the Commission presented a legislative package on a comprehensive strengthening of economic governance in the EU, without amending the TFEU. This package included proposals for five Regulations and one Directive ("six-pack") in two thematic areas: the revision and strengthening of the Stability and Growth Pact (SGP);[51] and the effective prevention and correction of excessive macroeconomic imbalances in the EU and the euro area, as well as repressive measures to correct excessive macroeconomic imbalances in the euro area. These legislative acts were adopted in 2011.

Furthermore, on 1 January 2013, the intergovernmental "Treaty on Stability, Coordination and Governance in the [EMU]" (TSCG) entered into force (also known as the "Fiscal Pact").[52] Its objective is to further enhance the commitment made by the euro area Member States to comply with the TFEU provisions on fiscal discipline by application of a "balanced budget rule" and by anchoring into their legal orders the commitment to support the proposals of the Council and the Commission at every stage of the excessive deficit

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50 The consolidated version of the ESM Treaty, which is currently under revision, is available at: <https://www.esm.europa.eu/legal-documents/esm-treaty>. Cyprus was the first Members State (in 2013) to directly resort to the ESM. On the validity of Decision 2011/199/EU and the right of a Member State to conclude and ratify the ESM Treaty even before the entry into force of that Decision, see the judgement of the Court (Full Court) of 27 November 2012 in Case C-370/12, *Thomas Pringle v Government of Ireland* (ECLI:EU:C:2012:756).

51 See above, under A.II.

52 The text of this Treaty is available at: <https://www.consilium.europa.eu/media/20383/st00tscg26-el-12.pdf>. See in this regard *Craig*, P., The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism, Oxford Legal Studies Research Paper No. 47/2012 (also available at: <https://ssrn.com/abstract=2115538>) and *Hadjiemmanuil* (2020), pp. 1294-1298.

procedure.[53] This was followed, on 21 May 2013, by the adoption of two Regulations of the European Parliament and the Council concerning euro area Member States: Regulation (EU) No 472/2013 "on strengthening economic and fiscal surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability"; and Regulation (EU) No 473/2013 "on common provisions for monitoring and assessing draft budgetary programmes and ensuring the correction of excessive deficit of the Member States in the euro area".[54] Finally, on 21 October 2015, the Commission adopted Decision (EU) 2015/1937 "establishing an independent advisory European Fiscal Board",[55] which is called upon to contribute, in an advisory capacity, to the Commission's tasks regarding multilateral fiscal surveillance (as set out in Articles 121, 126 and 136 TFEU), with specific reference to the euro area.[56]

TABLE 1: **The sources of existing secondary EU law governing the Economic Union**		
Legal act	**Legal basis**	**Object**
A. Coordination of economic policies		
1. Legal acts concerning all Member States		
Regulation 1466/97 – amended by Regulations 1055/2005 and 1175/2011	Article 99(5) TEC (Article 121(6) TFEU)	Strengthening the surveillance of the budgetary situation and the surveillance and coordination of economic policies
Regulation 1176/2011	Article 121(6) TFEU	Prevention and correction of excessive macroeconomic imbalances

53 This procedure is set out in Article 126 TFEU. On the economic union after these developments, see indicatively *Fabbrini*, F., Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges, Oxford Studies in European Law, Oxford University Press, 2016 Oxford; and the relevant contributions in: Amtenbrink, F./ Herrmann, Ch. (eds.): The EU Law of Economic and Monetary Union, Oxford University Press, 2020 Oxford.

54 OJ L 140, 27.5.2013, pp. 1-10 and 11-23, respectively. These Regulations were adopted on the basis of Articles 136 and 121(6) TFEU.

55 OJ L 282, 28.10.2015, pp. 37-40. This Decision, whose legal basis is the Treaties (in general), was amended by Decision (EU) 2016/221 of 12 February 2016 (OJ L 40, 17.2.2016, p. 15).

56 Decision (EU) 2015/1937, Article 2(1). For an overview of the EU law governing the Economic Union, see Table 1 just belowbelow; some of the Regulations referred to therein were adopted by the European Parliament and the Council, while some others (as well as Directive 2011/85/EU) by the Council only.

2. Legal acts concerning only euro area Member States		
Regulation 1173/2011	Articles 136 and 121(6) TFEU	Effective enforcement of budgetary surveillance in the euro area
Regulation 1174/2011		Repressive measures to correct excessive macroeconomic imbalances in the euro area
Regulation 472/2013		Strengthening economic and budgetary surveillance of euro area Member States experiencing or threatened with serious difficulties with respect to their financial stability
Regulation 473/2013		Monitoring and assessing draft budgetary programmes and ensuring the correction of excessive deficits of euro area Member States
B. Fiscal discipline		
1. Legal acts relating to the excessive deficit procedure		
Regulation 1467/97 – amended by Regulations 1056/2005 and 1177/2011	Article 104(14) TEC (Article 126(14) TFEU)	Excessive deficit procedure
Regulation 479/2009	Article 126(14) TFEU	Implementation of Protocol (No 12) on the excessive deficit procedure
Directive 2011/85/EU		Requirements for Member States' budgetary frameworks
2. Legal acts concerning prohibitions in the context of budgetary discipline		
Regulation 3603/93	Article 103(2) TEC	Definition of concepts for the application of Articles 123/125 TFEU
Regulation 3604/93	Article 104(2) TEC (Article 125(2) TFEU)	Definition of concepts for the application of Article 124 TFEU
The Commission published a Compendium, in two volumes, of all the (basic) legal instruments relating to EMU, which in relation to economic union is exhaustive (available at: <https://ec.europa.eu/info/sites/info/files/economyfinance/compendium_part_1_en.pdf>, and <https://ec.europa.eu/info/sites/info/files/economy-finance/compendium_part_2_en_0.pdf>)		

3. The creation of the Banking Union (BU) and its first main pillar involving the ECB

The creation of a European Banking Union (BU) in 2013 was dictated by the policy consideration that it was essential "*to break the vicious circle between banks and sovereigns*" amidst the euro area fiscal crisis.[57] The BU, and in particular its first main pillar, the Single Supervisory Mechanism (SSM), in which the ECB is the hub, is closely linked to the EMU.[58] The legal basis of this Mechanism is (the above-mentioned[59]) Article 127(6) TFEU, which was re-activated in 2013, when the Council adopted the Regulation establishing the SSM (SSMR).[60] By virtue of this legislative act, which applies mainly (but not exclusively) to the euro area Member States,[61] 'specific tasks' were conferred upon the ECB concerning policies relating to the prudential supervision of

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57 Euro Area Summit Statement, 29 June 2012, first para., first sentence (available at: <https://consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/131359.pdf>).

58 On the interaction between monetary policy and banking supervision, see indicatively *Eijffinger, S./Nijskens, R.*, Monetary Policy and Banking Supervision, European Parliament, Directorate General for Internal Policies, 2012, available at: <https://www.europarl.europa.eu/studies>; and *Beck, T./Gros, D.*, Monetary Policy and Banking Supervision: Coordination Instead of Separation, CEPS Policy Brief No. 286, 2013, available at: <https://ssrn.com/abstract=2189364>.

59 See above, under B.I.2.

60 Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29 October 2013, pp. 63-89. It is noted that, like the ESCB and the Eurosystem, the SSM does not have legal personality either. The BU project contains two further main pillars: the Single Resolution Mechanism (SRM), established by Regulation (EU) No 806/2014 of the co-legislators of 15 July 2014 (OJ L 225, 30 July 2014, pp. 1-90 (as in force), SRMR) – in which the hub is the Single Resolution Board (SRB); and the (still missing) European Deposit Insurance Scheme (EDIS), the perspective of which was set out in the 'Five Presidents Report' of 22 June 2015 "Completing Europe's [EMU]" (at: <https://ec.europa.eu/priorities/economic-monetary-union/docs/5-presidents-report_en.pdf>); on this aspect, see also below, under C.III. On the BU as in force, see details, *inter alia*, in the (article-by-article) Commentary of the SSMR and the SRMR by Binder, J.-H./ Gortsos, Ch.V./ Lackhoff, K./Ohler, Ch. (eds.): Brussels Commentary on the Banking Union, C.H. Beck, 2022 München – Hart Publishing, Oxford – Nomos, Baden-Baden.

61 By virtue of Article 7 SSMR, a non-participating Member State can join the SSM as from the date of entry into force of an ECB decision on close cooperation. This was the case for Bulgaria and Croatia, which joined in 2020. It is noted, however, that since 1 January 2023 Croatia has joined the euro area becoming its 20th Member State; see Council Decision (EU) 2022/1211 of 12 July 2022 "on the adoption by Croatia of the euro on 1 January 2023", adopted on the basis of Article 140(2) TFEU (OJ L 187, 14.7.2022, pp. 31-34).

credit institutions (and some other categories of supervised entities) with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system.[62] Since November 2014, these specific tasks are, in principle, carried out for the Member States participating in the BU *directly* by the ECB for significant credit institutions and by national competent authorities (NCAs) for less significant ones (within the SSM).[63]

Taking, thus, into account the significant institutional developments in 2010 and 2013, the role of the ECB has been substantially enhanced. Apart from being a monetary authority within the Eurosystem and exercising the basic and other tasks set out in the TFEU,[64] the ECB has also been assigned specific tasks in relation to financial macroprudential oversight within the ESFS, as well as specific banking supervisory tasks within the SSM.

4. A brief note on two significant soft law instruments of the Commission

Of particular interest in relation to the further deepening of the EMU – including the BU – towards the end of that period was the Commission "Reflection Paper" of 31 May 2017.[65] The conclusions therein were then reinforced in the Commission Communication of 6 December 2017 "Further steps towards completing Europe's [EMU]: A roadmap",[66] which outlined a comprehensive package of proposals to strengthen the EMU – including the BU and – this time as well – the Capital Markets Union (CMU),[67] i.e., the two pillars of a 'Financial Union'.

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62 SSMR, Article 1, first sub-paragraph. This objective is apparently different from the primary objective of the Eurosystem, i.e., maintaining price stability.

63 The determination of supervised entities as significant, is made in accordance with Article 6 SSMR and Articles 39-72 of the SSM 'Framework Regulation' of the ECB of 16 April 2014 (ECB/2014/17, OJ L 141, 14 May 2014, pp. 1-50). See on this also the judgment of the General Court of 16 May 2017 in Case T-122/15, *Landeskreditbank Baden-Württemberg - Förderbank v European Central Bank* (ECLI:EU:T:2017:337). It is noted that the specific tasks relating to the authorisation and the withdrawal of authorisations of credit institutions, as well as the assessment of acquisitions of qualifying holdings therein are carried out by the ECB even for less significant ones ('common procedures').

64 See above, under A.I.

65 At: <https://ec.europa.eu/commission/publications/reflection-paper-deepening-economic-and-monetary-union_en>.

66 COM(2017) 821 final.

67 On the initial stage of the CMU, see, by means of mere indication, the various contributions in *Busch, D., Avgouleas, E. and G. Ferrarini* (editors): *Capital Markets Union in Europe*, Oxford University Press, Oxford 2018.

III. The pandemic crisis

1. Monetary policy developments

At the outbreak of the pandemic crisis, it was reasonably expected that economic activity across the euro area would inevitably suffer a considerable contraction. Under this consideration, the ECB adopted, since early 2020, profound liquidity-supporting measures, aimed at preserving the smooth provision of credit to the economy in order to counter the serious risks to the euro area economic outlook *and* at ensuring that all its sectors would benefit from supportive financing conditions to absorb the implications of the pandemic. They were designed with a view to ensuring the Eurosystem's primary objective of price stability and the proper functioning of the monetary policy transmission mechanism and included: *first*, amendments to some ECB legal acts governing the general monetary policy framework of the Eurosystem and the introduction of the so-called pandemic emergency longer-term refinancing operations (PELTROs); *second*, the introduction of a new and separate Asset Purchase Programme, the Pandemic Emergency Purchase Programme (PEPP) and amendments to some pre-existing APPs; and *third*, introduction of the Eurosystem repo facility for central banks and reactivation of swap lines with several third country central banks.[68]

[68] On all these measures, see, by means of mere indication, *Gortsos, Ch.* V., Legal Aspects of the Single Monetary Policy in the Euro Area: From the establishment of the Eurosystem to the Pandemic Crisis and the Current Inflation Crisis, Fifth fully updated edition, February 2023 (*Gortsos* (2023)), available at: <https://ssrn.com/abstract=3819726>, pp. 57-65 and *Zilioli, C./Riso, A.L.*, The response of central banks to the COVID-19 crisis: legal aspects of the ECB's monetary policy measures, in: Blair, W./ Zilioli, Ch./ Gortsos, Ch. V. (eds.): International Monetary and Banking Law in the post COVID-19 World, Oxford University Press, 2023 Oxford, Chapter 3 (forthcoming).

The key interest rates on the MROs, the marginal lending facility, and the deposit facility, which had been set by the ECB, with effect from 18 September 2019, at 0%, 0.25% and -0.50% respectively, remained unchanged.[69]

2. Key elements of the new (2021) monetary policy strategy of the Eurosystem

In July 2021, amidst the pandemic crisis (but not directly related to it), the GC of the ECB concluded its most recent review of the Eurosystem's monetary policy strategy.[70] The new strategy set out the means to achieve its primary objective to maintain price stability in the euro area, with reference to an appropriate set of monetary policy instruments, indicators, and intermediate targets, while also taking into account other considerations – without prejudice to price stability. In this respect, the GC considered that price stability is still best maintained by aiming for a 2% 'symmetric' inflation target over the medium term ('inflation targeting' meaning the achievement of a specific (usually low) inflation rate both in the short and in the medium term);

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[69] After a prolonged period of persistently low interest rates (a 'liquidity trap' situation in the jargon of Keynes), which lasted even longer due to the pandemic, a major policy challenge was to limit the financial excesses resulting from accommodative monetary policies, by managing the resulting negative financial impact to avoid repeating one of the main causes of the GFC (on the causes and consequences of persistently low interest rates, see indicatively *Blanchard, Ol./Summers, L.H.*, Rethinking Stabilisation Policy: Evolution or Revolution?, in: Blanchard, Ol./Summers, L.H. (2019, eds.): Evolution or Revolution? – Rethinking macroeconomic policy after the great recession, Peterson Institute for International Economics (PIIE), The MIT Press, Cambridge, Massachusetts – London, 2019 England, Introduction, pp. xi-xliii, pp. xxviii-xxvi). *Inter alia*, a territory of negative rates has significant negative impact on credit institutions' profitability usually facing (legal or business-related) limitations on passing on negative rates to their retail (in particular) depositors (see *Schnabel, Is.*, Going negative: the ECB's experience, 26 August 2020, available at: <https://www.ecb.europa.eu/press/key/date/2020/html/ecb.sp200826~77ce66626c.en.html>). In its Report "Lower for longer – macroprudential policy issues arising from the low interest rate environment" of 1 June 2021, the ESRB identified several areas of concern for the euro area owing to this environment and quite interestingly remarked that the pandemic may have increased the likelihood and persistence of a "low for long" scenario, making it "even lower for even longer" (see at: <https://www.esrb.europa.eu/news/pr/date/2021/html/esrb.pr210601~b459ba44ca.en.html>). As a matter of fact, however, this has not been the case (see below, under B.IV.1.).

[70] Available at: <https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_overview.en.html>. The previous strategy review was conducted in 2003. On the 2019 US Federal Reserve's (quite comparable) review of its own monetary policy framework, see at: <https://www.federalreserve.gov/monetarypolicy/review-of-monetary-policy-strategy-tools-and-communications.htm>.

hence, both negative and positive deviations of inflation from that target are considered as equally undesirable. To maintain this symmetry, persistent monetary policy action is required to avoid negative deviations from the inflation target becoming firmly established and unlikely to change, eventually including a *transitory* period in which inflation is moderately above target (since short-term deviations, as well as lags and uncertainty in the transmission of monetary policy to the economy and to inflation are inevitable).

Taking as a given the ECB's commitment to set its monetary policy to ensure that inflation stabilises at its 2% target in the medium term, the set of key ECB interest rates remains the primary monetary policy instrument, but other instruments such as APPs and LTROs will continue to be used, as appropriate, as well. In addition, even though the HICP remains the appropriate measure for assessing price stability, account will be also taken of inflation measures that include initial estimates of the cost of owner-occupied housing to supplement broader inflation measures. Furthermore, monetary policy decisions, as well as the evaluation of their proportionality and potential side effects, will continue to be based on an integrated assessment of all relevant factors, which builds on the interdependent economic and monetary/financial analyses. For the sake of transparency, the communication of these decisions will be adapted to reflect the revised monetary policy strategy, complemented by layered and visualised versions of monetary policy communication[71] towards the wider public to ensure public understanding of and trust in the actions of the ECB.

The decision to incorporate climate change considerations into the policy framework due to the profound implications of this change for price stability[72] was also significant. In this respect, as part of the "Climate Action Plan" of 8 July 2021[73] and on the basis of the detailed "Roadmap of climate change-related actions" annexed thereto, the GC announced on 4 July 2022 its decision

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71 See *Lastra, R.M./Dietz*, S., Communication in monetary policy, Monetary Dialogue Papers, European Parliament, February 2022, available at: <https://www.europarl.europa.eu/cmsdata/244613/1_LASTRA-DIETZ.pdf>.

72 See *Grünewald*, S., The ECB's response to the COVID-19 crisis and its role in the green recovery, in: Gortsos, Ch. V./Ringe, W. G. (eds.): Financial stability amidst the pandemic crisis: on top of the wave, European Banking Institute (EBI), 2021, e-book, Chapter 8, pp. 263-286, available at: <https://ssrn.com/abstract=3877946>.

73 Available at: <https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr210708_1~f104919225.en.html>; see *Zilioli, Ch.*, The New ECB Monetary Policy Strategy and the ECB's Roadmap of Climate Change-related Actions, EU Law Live Weekend Edition No 67, 17 July 2021, pp. 2-6, available at: <https://eulawlive.com/weekend-edition/weekend-edition-no67>.

to take further steps to include climate change considerations in the monetary policy framework.[74] The concrete measures decided are designed in full accordance with the Eurosystem's primary objective, the aim to better take into account climate-related financial risk in its balance sheet and, with reference to the secondary objective, support the green transition of the economy in line with the EU's climate neutrality objectives, and provide incentives to companies and financial firms. These measures, which will be regularly reviewed and, if necessary adapted, relate to corporate bond holdings, the collateral framework, climate-related disclosure requirements for collateral, as well as enhanced risk assessment tools and management.[75]

3. Developments relating to the Economic Union

The basic principles for the measures taken in the EU at the level of budgetary policy implementation during the pandemic were five: *first*, flexibility in the application of financial and EU competition rules,[76] and in the use of the EU budget; *second*, a mix of targeted and horizontal fiscal measures; *third*, differences in time horizon: short-term (during the crisis) *versus medium* and long-term measures and instruments; *fourth*, flexibility in the implementation *and* reactivation of existing mechanisms and measures; and *finally*, the creation of selected new instruments and funds.[77] In this respect, and *inter alia*, the following is worth noting:

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74 Available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704~4f48a72462.en.html>. For an overview of this issue, see *Ramos Muñoz, D. and E. Cerrato Garcia*, Central banks in the Fight against Climate Change: the New Variable in the Equation, EU Law Live Weekend Edition No 128, 28 January 2023, pp. 6-13, available at: <https://eulawlive.com/weekend-edition/weekend-edition-no128>.

75 For a detailed presentation of the new strategy, see indicatively *Reichlin, L./Adam, K./McKibbin, W.J./McMahon, M./Reis, R./Ricco, G./Weder di Mauro, C.*, The ECB strategy: The 2021 review and its future, CEPR, CEPR Press, September 2021 (also available at: <https://voxeu.org/content/ecb-strategy-2021-review-and-its-future>); and *Zilioli* (2021). The next assessment of the appropriateness of the ECB monetary policy strategy is expected in 2025.

76 This is the context of the Commission Communication of 20 March on a Temporary framework for State aid measures to support the economy during the current COVID-19 outbreak (OJ C 91 I, 20.3.2020, pp. 1-9). This Communication has been amended several times.

77 For a detailed analysis of the initial measures taken, see *Hadjiemmanuil, Ch.*, European economic governance and the pandemic: Fiscal crisis management under a flawed policy process, in Gortsos, Ch.V. and W.G. Ringe (2020, editors): *Pandemic Crisis and Financial Stability*, European Banking Institute (EBI), e-book, Chapter 6, pp. 175-243, available at: <https://ssrn.com/abstract=3607930>.

First, immediately after the outbreak of the pandemic crisis, the Commission adopted on 20 March 2020 a Communication "on the activation of the general escape clause of the Stability and Growth Pact",[78] assessing that the conditions for the use of this clause of the EU fiscal framework, namely the existence of a serious economic disturbance in the euro area or the EU as a whole, were fulfilled.[79] In particular, in times of severe economic disturbance in the euro area or in the EU as a whole, with regard to the *preventive arm*, and in accordance with Articles 5(1) and 9(1) of Regulation (EC) 1466/97, Member States may be allowed to deviate from the adjustment path towards the medium-term budgetary objective, provided that this does not jeopardise fiscal sustainability in the medium term. Regarding the *corrective arm*, Articles 3(5) and 5(2) of Regulation (EC) 1467/97 stipulate that the Council is also entitled to decide (upon a Commission recommendation) to adopt a revised "fiscal trajectory". These flexibilities give national budgets the necessary flexibility to support the economy and to respond in a coordinated way to the effects of a crisis such as the current pandemic.[80]

Second, two months later (on 19 May 2020), the Council adopted Regulation (EU) 2020/672 "establishing a European Temporary Instrument for Temporary Support to Mitigate Unemployment Risks in an Emergency (SURE – Support to mitigate Unemployment Risks in an Emergency) due to the epidemic outbreak of COVID-19".[81] This legislative act lays down the conditions and procedures allowing the EU to grant financial assistance to a Member State experiencing or seriously threatened with a serious economic disruption caused by the

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78 Communication from the Commission on the activation of the general escape clause of the Stability and Growth Pact, 20 March 2020, COM(2020) 123 final.

79 "Statement of EU ministers of finance on the [SGP] in light of the COVID-19 crisis", available at: <https://www.consilium.europa.eu/en/press/press-releases/2020/03/23/statement-of-eu-ministers-of-finance-on-the-stability-and-growth-pact-in-light-of-the-covid-19-crisis>. The 'general escape clause', which is laid down in Articles 5(1), 6(3), 9(1) and 10(3) of Council Regulation (EC) 1466/97 and Articles 3(5) and 5(2) of Council Regulation (EC) 1467/97 (namely, as already mentioned, the two pillars of the SGP), facilitates the coordination of budgetary policies in times of severe economic disturbance and allows Member States to take budgetary measures within the general framework of the SGP.

80 Overall fiscal guidance is being provided within this framework and as part of a streamlined "European Semester for economic policy coordination exercise". The European Semester was introduced by Regulation (EU) No 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, OJ L 306, 23 November 2011, pp. 12-24, which amended the first above Regulation.

81 OJ L 159, 20.5.2020, *pp.* 1-7.

pandemic crisis. The legal basis of this Regulation are the two paragraphs of Article 122 TFEU;[82] in particular, while the design of the "guarantee scheme/ envelope", based on contributions from Member States provided in the form of irrevocable and unconditional guarantees from Member States to the EU (i.e., with counter-guarantee for the risk assumed by the latter),[83] is based on Article 122(1), reflecting the response of Member States to the (unexpected and widespread) financial crisis resulting from the pandemic, the organisation and management of the "lending system/envelopes"[84] is based on Article 122(2), where the conditionality principle applies.[85]

Finally, other significant initiatives that have been undertaken, and whose legal basis is not any TFEU article on Economic Union, include the "Pandemic Crisis Support" instrument, a credit line of the ESM available from 15 May 2020,[86] and the NextGenerationEU recovery programme,[87] whose main pillar is the "Recovery and Resilience Facility" (RRF), established on the basis of Regulation (EU) 2021/241 of the European Parliament and the Council of 12 February 2021.[88] To finance the NextGenerationEU recovery instrument (up to 800 billion euro), the Commission resorts to the issuance of bonds pursuant to Article 311 TFEU,[89] including the "NextGenerationEU green bonds".[90]

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82 *See above, under* A.II.

83 Regulation (EU) 2020/672, *Article* 11.

84 Ibid., *Articles* 7-10.

85 *For the use made by Member States of this instrument, see*: <https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/financial-assistance-eu/funding-mechanisms-and-facilities/sure_en>.

86 See at: <https://www.esm.europa.eu/content/europe-response-corona-crisis>.

87 See at: <https://ec.europa.eu/info/strategy/eu-budget/eu-borrower-investor-relations/nextgenerationeu_en>. For this programme, see, by means of mere indication, *Bosque, C., Ramos Muñoz, D. and M. Lamandini*, Next Generation EU: its meaning, challenges, and link to sustainability, in Gortsos, Ch.V. and W.G. Ringe (2021, editors): Financial stability amidst the pandemic crisis: on top of the wave, European Banking Institute (EBI), e-book, Chapter 10, pp. 325-354, available at: <https://ssrn.com/abstract=3877946>.

88 *OJ L 57*, 18.2.2021, *pp.* 17-75; *the legal basis of this legislative act is Article* 175, *third sub-paragraph* TFEU *on Economic, Social and Territorial Cohesion*.

89 It is noted that the Commission has been issuing bonds on the markets since the 1970ies.

90 See at: <https://ec.europa.eu/info/strategy/eu-budget/eu-borrower-investor-relations/nextgenerationeu-green-bonds_en>. Of equal importance is the ongoing long-term budget of the EU (also known as the Multiannual Financial Framework, MFF) for the period 2021-2027 (at: <https://ec.europa.eu/info/strategy/eu-budget/long-term-eu-budget/2021-2027_e>).

4. The role of the ECB within the SSM

Just before the outbreak of the pandemic, the EU banking system was quite robust. EU credit institutions were (on average) well capitalised and benefited from having implemented macroprudential buffers and liquidity ratios, which were introduced as international financial standards by the 2010 'Basel III regulatory framework' of the Basel Committee on Banking Supervision (the so-called "Basel III impact").[91] Furthermore, the accumulated stock of non-performing loans (NPLs, impaired assets), built up in the wake of the GFC and the subsequent fiscal (sovereign) crisis in the euro area (the so-called 'legacy NPLs'), had been significantly reduced and, overall, financial stability had been enhanced compared to the decade before.[92]

During the pandemic, given that the prudential banking regulatory framework contains certain elements of flexibility, and considering that making full use thereof was essential to overcome the financing pressures faced by firms and households, the ECB, as a banking supervisory authority within the SSM and complemented by the European Banking Authority (EBA),[93] adopted specific supervisory measures to ensure that credit institutions have the capacity to foster credit flows to households and businesses in a flexible way during (at least the initial phase of) the pandemic. It also adopted specific macroprudential measures, which were complemented and reinforced by similar measures

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91 On this framework, see *Gortsos, Ch.* V., Historical Evolution of Bank Capital Requirements in the European Union, in: Joosen, B./Lamandini, M./Tröger, T. (eds.): Capital and Liquidity Requirements for European Banks: CRRII and CRDV, Oxford EU Financial Regulation Series, Oxford University Press, 2022 Oxford, Part I, Chapter 1, pp. 3-42, pp. 18-28.

92 On the obstacles to NPL resolution in the EU and proposals for a comprehensive related strategy, see indicatively *Montanaro, E.*, Non-Performing Loans and the European Union Legal Framework, in: Chiti, M.P./Santoro, V. (eds.): The Palgrave Handbook of European Banking Union Law, Palgrave – Macmillan, 2019 USA, Chapter 10, pp. 213-246; and *Gortsos, Ch.* V., Non-performing Loans – New risks and policies? What factors drive the performance of national asset management companies?, In-Depth Analysis, ECON Committee, European Parliament, March 2021, available at: <https://www.europarl.europa.eu/RegData/etudes/IDAN/2021/659647/IPOL_IDA(2021)659647_E.pdf> (with extensive further references).

93 The EBA, an inherent part of the ESFS, was established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) (...), OJ L 331, 15 December 2010, pp. 12-47 (as in force).

swiftly taken by several euro area national macroprudential authorities to facilitate the absorption of credit losses, and support lending to the real sector of the economy.[94]

IV. The current 'inflation crisis'

1. The initial monetary policy decisions (July 2022)

After the prolonged period of very low inflation and even, for some quarters, negative inflation (deflation), the inflation rate started increasing in the euro area in 2021 (due to the rise in energy and commodity prices and supply chain bottlenecks) and then even more significantly in 2022, especially after Russia's invasion of Ukraine in February of that year.[95] Under these conditions, and in view of the fact that the monetary policy cycle was yet again increasingly synchronised around the world,[96] the GC decided in its meeting of 21 July 2022 to raise, for the first time since September 2019, the three key ECB interest rates, with effect from 27 July, by 50 basis points, committed to reducing support for demand and guarding against the risk of a persistent upward shift in inflation expectations, in order to ensure that the 2% 'symmetric' inflation target over the medium term under the new monetary policy strategy is granted. The interest rate on MROs was set at 0.5%; the interest rate on the marginal lending facility at 0.75%; and the deposit facility rate at 0% (hence, exit from the era of negative interest rates).[97]

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94 ECB: "Macroprudential measures taken by national authorities since the outbreak of the coronavirus pandemic", 26 May 2020 (available at: <https://www.ecb.europa.eu/pub/financial-stability/macroprudential-measures/html/index.en.html>). For details on all these measures, see *Gortsos, Ch.* V., Threats to EU financial stability amidst the pandemic crisis, in Utrilla, D./Shabbir, An. (2021, eds.): EU Law in Times of Pandemic: The EU's Legal Response to COVID-19, EU Law Live Press, 2021, Chapter 24, pp. 311-321, with extensive further references.

95 The development within a very short period was remarkable: -0.3% in September 2020; 0.9% in January 2021; 5.1% in January 2022; 7.4% in March; and 8.9% in July (see at: <https://sdw.ecb.europa.eu>).

96 See also above, under B.I.1.

97 See at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp220721~53e5bdd317.en.html>. *Inter alia*, the US Federal Open Market Committee (FOMC) also repeatedly raised the Funds Rate since June 2022 (see at: <https://www.federalreserve.gov/data.htm>); the same applies to the Bank of England (BoE), the Bank of Canada, and the Swiss National Bank (SNB), even though inflation pressures are milder in Switzerland and inflation is forecasted to remain at comparatively lower levels (see at: <https://www.snb.ch/de/iabout/monpol/id/monpol_current#t2>).

Furthermore, and apart from its decision to continue (under modified conditions) the APP and the PEPP, during that meeting the GC approved its new "Transmission Protection Instrument" (TPI) for the effective transmission of monetary policy across all euro area Member States. This new instrument will be activated "*to counter unwarranted, disorderly market dynamics that pose a serious threat to the transmission of monetary policy across the euro area*", the scale of purchases thereunder not being *ex-ante* restricted; this will depend on the severity of the risks facing policy transmission. Under the conditionality attached to the TSI, the GC will comprehensively assess whether the euro area Member State in which purchases may be conducted under that program pursue sound and sustainable fiscal and macroeconomic policies based on a cumulative list of adjustable eligibility criteria. A judgement on whether the activation of purchases under the TPI is proportionate to the achievement of the Eurosystem's primary objective will also have to be made. If there is a durable improvement in transmission or an assessment has been made, that persistent tensions are due to fundamentals in a particular euro area Member State, purchases will be terminated.[98]

2. Consequent monetary policy decisions

In its meetings of 8 September and 27 October 2022, the GC decided to further tighten its monetary policy and raised the ECB key interest rates, by 75 basis points each time.[99] Two further developments of that period deserve specific attention:[100] *first*, by virtue of an ECB Decision of 9 September,[101] climate change considerations were incorporated into the benchmark allocation, while maturity limits for the bonds of issuers with a poorer climate

98 Available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220721~973e6e7273.en.html>. For a first assessment of the TPI, see *Nicolaides, Ph.*, The ECB's new "Transmission Protection Instrument": Discretion & Proportionality VS Transparency, EU Law Live Weekend Edition No 110, 30 July 2022, pp. 2-7, available at: <https://eulawlive.com/weekend-edition/weekend-edition-no67>.

99 See at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp220908~c1b6839378.en.html>, and <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp221027~df1d778b84.en.html>, respectively.

100 On further decisions taken during these two meetings, see *Gortsos* (2023), pp. 75-77.

101 Decision (EU) 2022/1613 of 9 September amending Decision (EU) 2016/948 on the implementation of the corporate sector purchase programme (ECB/2016/16) (ECB/2022/29), OJ L 241, 19.9.2022, pp. 13-15.

performance were introduced;[102] and *second*, on 10 October, the ECB and the People's Bank of China decided to extend their bilateral euro-renminbi currency swap arrangement, established in October 2013, and subsequently extended twice (each, for a further 3-year period) for another three years until 8 October 2025.[103] Noteworthy is also the ECB Opinion of 2 December 2022 on a proposal for a Council Regulation establishing a market correction mechanism to protect citizens and the economy against excessively high prices.[104]

These monetary policy decisions were followed by that of 15 December 2022, whereby the GC raised for the fourth time the three key ECB interest rates in 2022, by 50 basis points this time.[105] In addition, monetary tightening continued in early-2023. In view of the persisting underlying inflation pressures and to ensure a timely return of inflation to its 2% medium-term target by dampening demand, as well as to guard against the risk of a persistent upward shift in inflation expectations, in its meeting of 2 February 2023 the GC decided to further raise the three key ECB interest rates by another 50 basis points.[106] Hence, with effect from 8 February 2023, the interest rate on MROs was set at 3.00%; the interest rate on the marginal lending facility was set at 3.25%; and the deposit facility rate was set at 2.50%.[107]

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[102] In this respect, *see* also the ECB Press Release of 19 September, which provides details on its strategy relating to the decarbonisation of its corporate bond holdings (available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220919~fae53c59bd.en.html>).

[103] See at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr221010~29cab889cf.en.html>. The conditions of the swap arrangement remained essentially unchanged.

[104] OJ C 41, 3.2.2023, pp. 14-16.

[105] See at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp221215~f3461d7b6e.en.html>. Inflation continued to remain "far too high": 9.1% in August, 9.9% in September, 10.0% in November.

[106] See at: <https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp230202~08a972ac76.en.html>.

[107] It is interesting to note that due to the significant rise of the interest rate on the deposit facility to 2.5% from -0.50% only some months ago, resort by credit institutions to this facility (liability item 2.2) has exponentially increased (from 776 billion euro by end-January 2022 to 4.6 trillion euro on 21 October 2022 and then has slightly retreated to 4.09 trillion euro on 27 January 2023), amounting by end-January 2023 to 51.8% of the total liabilities of Eurosystem's consolidated balance sheet. On the evolution of this balance sheet during the crises since 2007, see (mainly) Tables 5-7 in *Gortsos* (2023).

TABLE 2: **Key policy responses of the ECB to the four crises since 2007**		
Type of crisis	**Period**	**Policy measures**
Global Financial Crisis (GFC)	2007-2009	(1) gradual cut of the rate for MROs from 4.5% to 1% (2) extension of the maturity of LTROs from 3 months to 1 year (3) provision of liquidity in foreign currency (4) massive purchases of euro-denominated covered bonds (5) marked broadening of the pool of assets eligible by the Eurosystem as collateral in the conduct of credit transactions in the context of the single monetary policy
Euro area fiscal crisis	2010-2017 (?)	(1) immediately following the onset of the fiscal crisis: *first*, the rate for MROs was further cut to 0.5% (and then to 0%, a level held until July 2022); *second*, the maturity of LTROs was further extended and their use increased exponentially; *third*, the interest rate on the deposit facility entered into negative territory (since September 2019 (and until recently), at -0.50%); and *fourth*, the pool of assets eligible by the Eurosystem as collateral in the conduct of its credit transactions was further broadened. (2) establishment of currency swap lines through ECB swap agreements with several third country central banks for the provision of foreign currency liquidity to domestic credit institutions (3) recourse to quantitative easing (QE), containing 'unconventional' monetary policy instruments and mainly asset purchase programmes (APPs) (including – initially – the (first) covered bond purchase programme of 2 July 2009 (CBPP), replaced by the second CBPP of 3 November 2011 (CBPP2) and the Securities Markets Programme (SMP) of 14 May 2010) (4) announcement of the Outright Monetary Transactions (OMT) Programme (5) adoption and implementation of the 'expanded' asset purchase programme, including: *first*, the *third* covered bond purchase programme (CBPP3); *second*, the asset-backed securities purchase programme (ABSPP); *third*, the (secondary markets) public sector purchase programme (PSPP); And *fourth*, the corporate sector purchase programme (CSPP). (6) adoption and implementation of the programme for targeted longer-term refinancing operations (TLTROs) – there were three series of TLTROs

Pandemic crisis	2020 (on-going)	(1) amendment to some of the ECB legal acts governing the general monetary policy framework of the Eurosystem (including (but not confined to) the General Documentation Guideline and Guideline (EU) 2016/65 of 18 November 2015 “on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework”) (2) introduction of the pandemic emergency longer-term refinancing operations (PELTROs) (3) adoption of a new (and separate) APP, the Pandemic Emergency Purchase Programme (PEPP) (4) amendments to some pre-existing APPs (5) introduction of the Eurosystem repo facility for central banks and the reactivation of swap lines with several third country central banks
Inflation crisis	since 2022	(1) consecutive raising (during the period July 2022 – February 2023) of the three key ECB interest rates; with effect from 8 February 2023: ➜ interest rate on MROs: 3.00% (from 0%); ➜ interest rate on the marginal lending facility: 3.25% (from 0.25%); and ➜ deposit facility rate: 2.50% (from -0.50%) (2) introduction of the Transmission Protection Instrument (TPI) (3) extension by the ECB and the People’s Bank of China of their bilateral euro-renminbi currency swap arrangement until 8 October 2025

C. The Way Forward

I. On the Monetary Union

1. Expected developments in relation to the monetary policy stance

Monetary tightening is expected to continue. It is interesting to note, that in its meeting of February 2022 it was the first time that the GC announced its intention “*to raise interest rates by another 50 basis points at its next* *monetary policy meeting in March and (...) then evaluate the subsequent path of its monetary policy*", also noting that its "*future policy rate decisions will continue to be data-dependent and follow a meeting-by-meeting approach.*"[108]

Furthermore, a gradual exit strategy relating to APPs and the PEPP has started being implemented. In particular, due to the lasting vulnerabilities caused by the pandemic, which still pose a risk to the smooth transmission of monetary policy, the GC expressed in its (above-mentioned[109]) September, October and December 2022 meetings its intention to continue reinvesting, in full, the principal payments from maturing securities purchased under the APP until end-February 2023;[110] reinvest the principal payments from maturing securities purchased under the PEPP until at least the end of 2024; and continue applying flexibility in reinvesting redemptions coming due in the PEPP portfolio. In consistency with (and as a specification of) these decisions, the GC decided, in its February 2023 meeting, on detailed modalities for reducing the Eurosystem's holdings of securities under the APP,[111] while continuing to be applying flexibility in reinvesting redemptions coming due in the PEPP portfolio. Furthermore, the decision was taken that, as credit institutions are repaying the amounts borrowed under the TLTROs, a regular assessment will be carried out how these lending operations contribute to the ECB monetary policy stance.

2. Towards a central bank digital currency (CBDC) in the euro area

A significant novel element in euro area central banking is the prospect of the Eurosystem issuing a central bank digital currency (CBDC).[112] In accordance

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108 On current developments in relation to inflation in the euro area and the EU, see the Commission's Technical Note of 13 February 2023 prepared for the Eurogroup Working Group meeting of 2 March (available at: <https://www.consilium.europa.eu/media/62958/inflation-note.pdf>).

109 See just above, under B.IV.2.

110 In the December meeting, it was decided that, from the beginning of March until the end of June 2023, the APP portfolio will decline by 15 billion euro per month on average, and the subsequent pace of portfolio reduction will be determined over time.

111 For details, *see* at: <https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.pr230202~1a4ecbe398.en.html>.

112 CBDCs should be distinguished from crypto-assets, including asset-referenced and e-money tokens (jointly referred to as 'stablecoins'). *See* in this respect the final Report of the Financial Stability Board (FSB) of 13 October 2020: "Regulation, Supervision and Oversight of "Global Stablecoin" Arrangements", available at: <https://www.fsb.org/2020/10/regulation-supervision-and-oversight-of-global-stablecoin-arrangements>.

with the ECB "Report on a digital euro" of 2 October 2020,[113] this central bank money would be offered in digital form for use by citizens and businesses for retail payments (r-CBDC) and complement the current offering of cash and wholesale central bank deposits. In this respect, on 14 July 2021, the GC launched the Eurosystem's 'digital euro project';[114] during the current investigation phase of that project, which will last until October 2023, the Eurosystem will address key issues regarding the design and distribution of the digital euro, the objectives of which are a riskless, accessible, and efficient form of a CBDC.[115]

II. On the Economic Union and fiscal policies in general

1. Reform considerations

During the pandemic, discussions have been initiated on the need for further institutional initiatives and even transformations – including, albeit in the medium term, on the application more flexible fiscal rules and policies to facilitate appropriate structural changes and support the transition to a "green economy" (an aspect currently of primary importance). These considerations were set out, *inter alia*, in the Commission Communication of 19 October 2021 "The EU economy after COVID-19: implications for economic governance".[116] After assessing the impact of the changed conditions for economic gover-

113 Available at: <https://www.ecb.europa.eu/paym/digital_euro/report/html/index.en.html>.

114 See the ECB Press Release of 14 July 2021 "Eurosystem launches digital euro project", available at: <https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr210714~d99198ea23.en.html>. The most recent Progress Report on the investigation phase of a digital euro, of 29 September 2022, is available at: <https://www.ecb.europa.eu/paym/digital_euro/investigation/governance/shared/files/ecb.degov220929.en.pdf?8eec0678b57e98372a7ae6b590476O4b>.

115 On the Eurosystem's power to issue a digital euro (and, if so, in what form) and whether this would and should possess legal tender status, see *Grünewald, S./Zellweger-Gutknecht, C./Geva*, B., Digital Euro and ECB Powers, Common Market Law Review, 2021, 58, pp. 1029-1056, with extensive further references.

116 Communication from the Commission, The EU economy after COVID-19: implications for economic governance, 19 October 2021, COM(2021) 662 final. This was a re-launch of the public consultation on the EU economic governance framework, which had been launched in February 2020 (Commission Communication of 5 February 2020, Economic governance review, COM(2020) 55 final) and was suspended to focus on the pandemic crisis.

nance after the crisis,[117] the Commission raises in this Communication specific issues/questions for the public debate on the framework that (should) govern economic governance based on the weaknesses identified and the challenges highlighted by the pandemic crisis.

Some of the most important among the issues raised are the following: *first*, how to improve the framework in order to ensure the sustainability of public finances in all Member States and to facilitate the elimination of existing macroeconomic imbalances and the avoidance of new ones; *second*, how the framework can ensure responsible fiscal policies to safeguard long-term sustainability while allowing for short-term macroeconomic stabilisation; *third*, how the framework can provide incentives for Member States to undertake the key reforms and investments needed to implement the Green Deal under the Commission Communication of 11 December 2019,[118] *and to* contribute to addressing current and future economic, social and environmental challenges, while maintaining safeguards against debt sustainability risks; and *fourth*, how the design, governance and operation of the RRF can inform the discussion on economic governance through improved ownership, mutual trust, the imposition of sanctions in case of infringements, as well as the interaction between the economic, labour and fiscal dimensions.[119] The current political debate on reforming the economic governance framework

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117 For various interesting positions on the future of EU economic governance in the field of fiscal policy (even before the pandemic), see *Buti, M.*, Fiscal Policy in the European Economic and Monetary Union: An Evolving View, in: Blanchard, Ol./Summers, L.H. (eds.): Evolution or Revolution? – Rethinking macroeconomic policy after the great recession, Peterson Institute for International Economics (PIIE), The MIT Press, Cambridge, 2019 Massachusetts – London, England, Chapter 8, pp. 109-120; *Fabbrini, F.*, Fiscal capacity, in: Fabbrini, F./Ventoruzzo, M. (eds.): Research Handbook of EU Economic Law, Edward Elgar Publishing, 2019 Cheltenham, UK – Northampton, MA, USA, Chapter 5, pp. 107-135; *Schlosser, P.*, Europe's New Fiscal Union, Palgrave Macmillan Springer, 2019 Cham – Switzerland; *Drossos, Y.*, The Flight of Icarus: European Legal Responses Resulting from the Financial Crisis, Hart Publishing, 2020 Oxford, Chapter 6; *Craig, P./Markakis, M.*, EMU Reform, in: Amtenbrink, F./ Hermann, Ch. (eds.): Oxford Handbook on the EU Law of Economic and Monetary Union, Oxford University Press, 2020 Oxford, Chapter 42, pp. 1400-1448; pp. 1406-1428, as well as *Blanchard, Ol./Leandro, Ál./Zettelmeyer, J.*, Ditch the EU's fiscal rules; develop fiscal standards instead, VOX EU Debate, VOX EU/CEPR, 22 April 2021, available at: <https://new.cepr.org/voxeu/columns/ditch-eus-fiscal-rules-develop-fiscal-standards-instead>, proposing the migration from fiscal rules to fiscal standards.

118 COM(2019) 640 final.

119 See European Commission (2021): "Questions and Answers: The Commission relaunches the review of its economic governance", 19 October, available at: <https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5322>.

is centered on the follow-up Commission's Communication of 9 November 2022.[120] This soft law instrument sets out orientations for such a reform and addresses the key issues that should shape the future economic policy coordination and surveillance in the EU (and which will require legislative changes) in view of current and forthcoming challenges, by integrating three dimensions for an effective new economic governance framework: fiscal prudence, reforms and investment, as well as macroeconomic balance.

2. In particular: the link between monetary and fiscal policies under the current high inflation conditions

An aspect requiring close attention under the current circumstances of high inflation is the extent to which the effects of monetary policy tightening could be neutralised by unwarranted expansive fiscal policy measures (especially as regards the exit strategy when the negative conditions on the inflation front will have been tamed).[121] In accordance with the IMF "Fiscal Monitor" of October 2022:[122] "*Governments face increasingly difficult trade-offs in tackling the spikes in food and energy prices when policy buffers are largely exhausted after two years of pandemic. They should prioritize protecting vulnerable groups through targeted support while keeping a tight fiscal stance to help reduce inflation. (…) Several fiscal tools, such as job-retention schemes, have proven useful to preserve jobs and income for workers. Social safety nets should be made more readily scalable and better targeted, leveraging digital technologies. Exceptional support to firms should be reserved for severe situations and requires sound fiscal risk management.*"[123]

In the same vein also Christine Lagarde, President of the ECB, in the press conference following the GC meeting of 2 February 2023:[124] "*Government support measures to shield the economy from the impact of high energy prices*

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120 COM(2022) 583 final.

121 Apparently, due consideration must be given in this respect to the different time horizons of action for (independent) central banks when defining and implementing their monetary policy, and governments when exercising their fiscal policies.

122 Available at: <https://www.imf.org/en/Publications/FM/Issues/2022/10/09/fiscal-monitor-october-22>.

123 On the outlook for the euro area, see International Monetary Fund: "Regional Economic Outlook, Europe: The Fog of War Clouds the European Outlook", October 2022, available at: <https://www.imf.org/en/Publications/REO/EU/Issues/2022/10/12/regional-economic-outlook-for-europe-october-2022?utm_medium=email&utm_source=govdelivery#Overview>.

124 See at: <https://www.ecb.europa.eu/press/pressconf/shared/pdf/ecb.ds230202~40a069a7b4.en.pdf>, pp. 5-6.

should be temporary, targeted and tailored to preserving incentives to consume less energy. In particular, as the energy crisis becomes less acute, it is important to now start rolling these measures back promptly in line with the fall in energy prices and in a concerted manner. Any such measures falling short of these principles are likely to drive up medium-term inflationary pressures, which would call for a stronger monetary policy response. Moreover, in line with the EU's economic governance framework, fiscal policies should be oriented towards making our economy more productive and gradually bringing down high public debt. Policies to enhance the euro area's supply capacity, especially in the energy sector, can help reduce price pressures in the medium term. To that end, governments should swiftly implement their investment and structural reform plans under the Next Generation EU programme.[125] *The reform of the EU's economic governance framework should be concluded rapidly*."

III. On the Banking Union: the 'unfinished' agenda

Even though the first two main pillars of the BU (namely the SSM and the SRM) are in place for a longer period now (close to a decade) and their contribution in preserving financial stability in the euro area[126] is broadly considered positive,[127] there are still some elements which constitute its 'unfinished

125 *See above, under* B.III.3.

126 On the threats to financial stability in the current macro-financial environment, see *Gortsos* (2023), pp. 90-92, discussing the key elements and findings of the ESRB Warning of 22 September 2022 "on vulnerabilities in the Union financial system" (ESRB/2022/7) (OJ C 423, 7.11.2022, pp. 1-6.); the October 2022 IMF "Global Financial Stability Report" (available at: <https://www.imf.org/en/Publications/GFSR/Issues/2022/10/11/global-financial-stability-report-october-2022?utm_medium=email&utm_source=govdelivery>) and the ECB's most recent (November 2022) "Financial Stability Review" (at: <https://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr202211~6383d08c21.en.html#toc2>).

127 *This remark holds notwithstanding the fact that a growing number of Decisions of the ECB within the SSM and of the SRB within the SRM have been challenged before the Court of Justice of the EU.* A related judgment of the General Court of 16 May 2017 in Case T-122/15 (*Landeskreditbank Baden-Württemberg - Förderbank v European Central Bank*) has been briefly presented above (under B.II.3.); however, a further discussion of this very important aspect (including reference to other judgments of the Court and to an already vast existing bibliography) is beyond the scope of this study. For a regularly updated inventory of actions against ECB and SRB Decisions, see the website of the European Banking Institute (EBI) at: <https://ebi-europa.eu/publications/eu-cases-or-jurisprudence>.

agenda' and some of which are closely linked to the (so-called) 'medium-sized banks' resolution problem.[128] These include (mainly) the following:

> *First*, the progress on adopting the Regulation establishing the EDIS on the basis of the (above-mentioned[129]) 2015 Commission's proposal has been slow. Although a roadmap for beginning political negotiations on the EDIS has been set up and a High-level working group to focus on the next steps has been set up,[130] even in its meeting of 24 June 2022, the Euro Summit, which was mainly preoccupied with the economic implications of Russia's invasion of Ukraine, simply welcomed the commitment of the Eurogroup in inclusive format to subsequently identify in a consensual manner possible further measures with regard to the other outstanding elements to strengthen and complete the BU, including the EDIS.[131] Accordingly, in realistic terms and in the best-case scenario, its establishment is not envisaged before 2025.
>
> *Second*, the harmonisation at EU level of the rules on credit institutions' winding up proceedings is also of primary concern. In this respect it noted that, under the framework in force governing the resolution of credit institution, if the third resolution condition (i.e., the public interest criterion) is not met,[132] the winding-up is conducted pursuant to the national legislation in the Member State where it is established since the relevant rules have not yet been harmonised.
>
> *Third*, another important aspect is the delay in the adoption of EU rules relating to sovereign bond-backed securities (SBBSs)[133] to contain

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128 See on this indicatively *König, E.*, A European solution to deal with failures of medium-sized banks in the Banking Union, Eurofi, 14 April 2021, available at: <https://www.srb.europa.eu/en/content/eurofi-article-elke-konig-european-solution-deal-failures-medium-sized-banks-banking-union>. It is outside the reach of this study to discuss forthcoming and/or expected amendments to the single rulebook underlying the BU.

129 See above, under B.II.3.

130 See "Eurogroup Report to Leaders on EMU deepening", of 4 December 2018, available at: <https://www.consilium.europa.eu/en/press/press-releases/2018/12/04/eurogroup-report-to-leaders-on-emu-deepening/pdf>.

131 Euro Summit meeting (24 June 2022), Statement, point 3(b). The text of this Statement is available at: <https://www.consilium.europa.eu/media/57443/20220624-euro-summit-statement-en.pdf>.

132 SRMR, Article 18(1), point (c) and 18(5).

133 See European Systemic Risk Board, "Survey on sovereign bond-backed securities", Background document, European Systemic Risk Board High-Level Task Force on Safe Assets, 22 December 2016, available at: <https://www.esrb.europa.eu/pub/pdf/surveys/161222_survey_background_document.en.pdf>.

systemic risk, mitigate financial fragmentation and, ultimately, reduce the 'bank-sovereign loop'. On 24 May 2018, the Commission submitted a related Proposal for a Regulation, whose objective would be to lay down an EU "general framework" for SBBSs in the EU,[134] whose finalisation is, however, still pending.

Finally, this author considers that an amendment to the ELA Mechanism,[135] which would allow the ECB to become a lender of last resort at least for the significant credit institutions it directly supervises within the SSM is a "missing fourth pillar" of the BU.[136]

The absence of a clear financial stability mandate in the TFEU (for the ECB in cooperation with another or other EU institutions) is also a major concern. This aspect, nevertheless, is part of a longer-term agenda, since its implementation would require an amendment of the Treaties.

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134 COM(2018) 839 final.

135 See above, under A.I.

136 See on this *Gortsos* (2020), pp. 441-445 (also with reference to *Lastra and Goodhart* (2015), p. 50).

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