Christos V. Gortsos

The Eurosystem's Monetary Policy at 25 (1999-2023):

Legal Aspects of the Single Monetary Policy in the Euro Area – From the Establishment of the Eurosystem to the Current Inflation Crisis

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In memory of Αυρήλιος, my best friend ever

Preface

A. The aim of the present study is a comprehensive presentation and thorough analysis of the legal framework governing the definition and implementation of the single monetary policy in the euro area during the first twenty-five years of the Eurosystem's operation. In this historical context, its focus is on the legal aspects pertaining to the definition and implementation of the single monetary policy in the euro area since the establishment of the Eurosystem on 1 January 1999 amidst, and in response to, several financial and non-financial crises which erupted in the course of that period (and in particular since 2007, which marked the onset of the (2007-2009) Global Financial Crisis (GFC)). It also discusses the judgments of the Court of Justice of the European Union (CJEU) relating to the implementation of the single monetary policy, while also addressing the close interaction between monetary policy and financial stability.

The ultimate goal is to highlight the significant contribution and the importance of the legal framework in shaping the single monetary policy of the Eurosystem, in normal times and at times of stress. Undoubtedly, the links between law (including both institutional settings and operational arrangements) and political economy in the field of monetary (and, in general, central banking) policy are traditionally and internationally very close. Financial stability and fiscal policy considerations are also taken into account. From this perspective, and notwithstanding the pivotal role of economic/financial or policy-related decisions (usually taken under the influence of predominant economic perceptions) in shaping policy, these considerations always and duly take into account the limitations set by the legal framework. This also applies within the Eurosystem, where the European Central Bank (ECB) is also a rule-maker, in accordance with the regulatory powers conferred upon it by means of the provisions of the Treaty on the Functioning of the European Union (TFEU) and the Statute of the European System of Central Banks (ESCB) and of the ECB.

Given that the study is based on a manuscript that was the basis of my lectures at the University of Zurich during my Visiting Professorship at the Law Faculty in the winter semester of the academic year 2023-2024, it also contains, to a certain extent, a comparative analysis of the Eurosystem (and in particular of the ECB as its hub) with the Swiss National Bank (SNB) (*see* Box 3).

On the other hand, several highly important aspects relating to the Eurosystem and its central bank members, namely, the ECB and the national central banks

(NCBs) of the Member States whose currency is the euro, are outside the scope of this study. These, indicatively, include their independence and accountability, their liability regime and their immunities, as well as the monetary income (seignorage) and other financial provisions of the Eurosystem. “Green” monetary policy, another typical aspect which is currently at the top of the political and academic agenda, is discussed herein only in broad terms (in particular in the context of the ECB’s new monetary policy strategy within the Eurosystem, which was introduced in July 2021) with due reference to an already vast existing literature.

B. The study is structured in two chapters, under the heading of five sections, followed by an ***Epilogue* (Chapter 3)**.

Chapter 1 is entitled “The Single Monetary Policy in the Euro Area: Definition and Legal Framework” and contains two sections:

> **Section A** deals with the *definition* of the single monetary policy in the Eurosystem after a brief presentation of the notions of monetary system and (conventional and unconventional) monetary policy. Emphasis is given to the definition of price stability in the euro area and to the ECB’s new 2021 monetary policy strategy within the Eurosystem.
>
> The legal framework governing the *implementation* of the (conventional) single monetary policy is discussed in **Section B**. In this respect, the key provisions of primary and secondary EU law are discussed first (under 1), followed by the presentation of the operations for its implementation (i.e., open market operations, standing facilities and minimum reserves), the instruments employed, the procedures followed, as well as the eligible counterparties and the assets eligible as collateral in the Eurosystem (under 2-4).

Chapter 2, which is entitled “Implementation of the Single Monetary Policy in the Euro Area in Periods of Crises”, contains three sections:

> The focus in **Section C** is on the implementation of the single monetary policy following the (2007-2009) GFC and the subsequent fiscal crisis in the euro area, discussing in detail the unconventional monetary policy instruments employed during (and since) that period, namely, the asset purchase programmes (APPs) and the different series of targeted longer-term refinancing operations (TLTROs).
>
> **Section D** reviews the developments relating to the implementation of the single monetary policy since the outbreak of the pandemic crisis,

discussing, *inter alia*, the pandemic emergency longer-term refinancing operations (PELTROs), the Pandemic Emergency Purchase Programme (PEPP) and the amendments applied to other APPs.

Section E focuses, in a comparatively more detailed way, on the implementation of the single monetary policy under the **new monetary policy strategy** of the ECB within the Eurosystem amidst the current "inflation crisis".

Finally, the ***Epilogue* (Chapter 3)**, entitled "Considerations on the Impact of Monetary Policy Decisions on Financial Stability in the Euro Area" discusses the interaction between monetary policy and financial stability, as well as the latest (until April 2024) financial stability conditions in the euro area through the lens of international and EU official reports, taking also into account the (spring 2023) banking turmoil.

C. Four closely related, albeit specific, aspects are briefly discussed under the heading of four ***Special Topics***: the establishment of a central bank digital currency (CBDC) in the euro area, the digital euro (***Special Topic 1*** at the end of Section A); the role of the ECB in the European System of Financial Supervision (ESFS) and in the first pillar of the Banking Union (BU), namely, the Single Supervisory Mechanism (SSM) (***Special Topic 2*** at the end of Section C); the euro short-term rate (€STR) (***Special Topic 3*** at the end of Section D); and the ECB monetary policy decisions taken in early 2024 (i.e., the cut-off period for this study) (***Special Topic 4*** at the end of Section E).

Furthermore, the study contains five (even briefer) *Excursus* on the Eurosystem's "consolidated accounts", the introduction of "green dual interest rates", the amendment of the Stability and Growth Pact (SGP), the establishment of an "Interinstitutional EU ethics body", and the spring 2023 banking turmoil, respectively.

D. Several illustrative boxes and tables (including 2 summary tables), as well as graphs (taken over from ECB documents) have also been included to further clarify (and develop on) some aspects. In particular, **Tables 6** and **8-10** show (respectively) the evolution of the Eurosystem's consolidated financial statements/balance sheet during:

first, the period 2007-2017 (to highlight the impact of the measures taken amidst and after the (2007-2009) GFC and the subsequent euro area fiscal crisis);

second, the period December 2019 – January 2022 (to indicate the impact of the measures taken amidst the pandemic crisis); and

finally, in 2022 and 2023 amidst the current inflation crisis.

The key aspects of these financial statements are briefly analysed as appropriate.

E. The study is based on an exhaustive *corpus* of sources of primary and secondary EU law, which are also separately listed at the end of the study to highlight their significance for the purposes of a book on monetary policy law. This is complemented by a quite extensive (but still selective) list of secondary sources (bibliography), in the expectation that the most relevant books and articles have been duly included therein. Some Sub-sections are based on a previous monograph referred to in the list of secondary sources as Gortsos (2020a) (duly referred to in footnotes). However, developments since then have been of such significance that their updating was rendered indispensable, while some aspects – notably those relating to the pandemic and the inflation crisis – emerged after the publication of that monograph. The same applies in relation to financial stability considerations amidst the high-inflation environment.

F. As noted, the focus is on the Eurosystem's first 25 years, i.e., the period 1999-2023. However, the cut-off date for information included herein is **April 2024**, which allowed the incorporation, as appropriate, of some subsequent developments until its completion and submission to the publisher. This applies, in particular, to the ECB legal acts and instruments published in early 2024 (*see inter alia*, ***Special Topic 4*** at the end of Section E).

G. When I was in the process of completing this study, which is broadly based on previous drafts of a set of university lecture notes, I benefited from challenging discussions with my postgraduate students during my (above-mentioned) Visiting Professorship at the University of Zurich, where I taught a course on *European Central Banking Law*. I have also mostly benefited from comments and suggestions by my dear colleagues and friends *Filippo Annunziata*, *Christina Livada*, *Dimitrios Kyriazis* and *Katerina Lagaria*. I want to thank them all most cordially. I also want to thank *Athina Papadatou* for her valuable administrative support. Any errors or omissions are my sole responsibility.

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ulty of that University, for also having kindly accepted to include this work in the series of publications of the University Research Priority Program (URPP) “Financial Market Regulation” of the University of Zurich. I also wish to cordially thank Dr. *Inke Nyborg* for her valuable support in respect of the latter.

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Athens (Greece), April 2024
Christos V. Gortsos

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List of Abbreviations

ABSs	Asset-Backed Securities
ABSPP	Asset-backed Securities Purchase Programme
ACC	Additional Credit Claims (framework)
AEUV	Vertrag über die Arbeitsweise der Europäischen Union
AMC	Asset Management Company
ANFA	Agreement on Net Financial Assets
APPs	Asset Purchase Programmes
BCBS	Basel Committee on Banking Supervision
BIS	Bank for International Settlements
BoE	Bank of England
BU	Banking Union
BVerfG	BundesVerfassungsGericht *(Germany)*
CBDC	Central Bank Digital Currency
CBPP	Covered Bond Purchase Programme
CCBM	Correspondent Central Banking Model
CCyB	Countercyclical Capital Buffer
CEMAC	Communauté Économique et Monétaire de l'Afrique Centrale
CEPR	Centre for Economic Policy Research
CET1	Common Equity Tier 1 (capital)
CFR	Charter of Fundamental Rights (of the European Union)
CGFS	Committee on the Global Financial System
CJEU	Court of Justice of the European Union
CP	Commercial Paper
CPIA	Currency and Payment Instruments Act *(Switzerland)*
CRD IV	Capital Requirements Directive No IV (2013/36/EU)
CRR	Capital Requirements Regulation (575/2013)
CSDR	Central Securities Depositories Regulation (909/2014)
CSPP	Corporate Sector Purchase Programme
DECC	(non-marketable) Debt (instrument backed by) Eligible Credit Claims
DFR	Deposit Facility Rate

DLT	Distributed Ledger Technology
DVP	Delivery *Versus* Payment
€STR	Euro Short-Term Rate
EBA	European Banking Authority
EBAR	European Banking Authority Regulation (1093/2010)
EBI	European Banking Institute
ECAF	Eurosystem Credit Assessment Framework
ECAIs	External Credit Assessment Institutions
ECB	European Central Bank
ECCU	Eastern Caribbean Currency Union
ECLI	European Case Law Identifier
ECONS	Enhanced Contingency Solution
EDIS	European Deposit Insurance Scheme
EEA	European Economic Area
EEC	European Economic Community
EFSF	European Financial Stability Facility
EFSM	European Financial Stabilisation Mechanism
EFTA	European Free Trade Area
EIOPA	European Insurance and Occupational Pensions Authority
ELA	Emergency Liquidity Assistance
EMI	European Monetary Institute
EMU	Economic and Monetary Union
EONIA	Euro OverNight Index Average
ERM II	Exchange Rate Mechanism No II
ERMS	Eurosystem Reserve Management Services
ESAs	European Supervisory Authorities
ESCB	European System of Central Banks
ESFS	European System of Financial Supervision
ESG	Economic, Social and Environmental (risks)
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
ESRBR	European Systemic Risk Board Regulation (1092/2010)
ESTER	Euro Short-Term Rate

EU	European Union
EUREP	Eurosystem Repo (facility for central banks)
FC	Federal Constitution (of the Swiss Confederation)
FCA	Financial Conduct Authority *(United Kingdom)*
FCC	Federal Constitutional Court *(Germany)*
FDIC	Federal Deposit Insurance Corporation *(United States)*
FINMA	Swiss Financial Market Supervisory Authority
FINMASA	Financial Market Supervision Act *(Switzerland)*
FOMC	Federal Open Market Committee *(United States)*
FSAP	Financial Sector Assessment Program *(IMF and World Bank)*
FSB	Financial Stability Board
FSOC	Financial Stability Oversight Council *(United States)*
GC	Governing Council *(ECB)*
GFC	Global Financial Crisis
GHG	GreenHouse Cas (emissions)
HICP	Harmonised Index of Consumer Prices
IADI	International Association of Deposit Insurers
IFRS	International Financial Accounting Standards
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
IRA	Inflation Reduction Act *(United States)*
ITSs	Implementing Technical Standards
LCR	Liquidity Coverage Ratio
LIBOR	London Inter-Bank Offered Rate
LLR	Lender of Last Resort
LTROs	Longer-Term Refinancing Operations
MAS	Monetary Authority of Singapore
MFIs	Monetary Financial Institutions
MiCAR	Markets in Crypto-Assets Regulation
MID	Market Information Dissemination (platform)
MMFs	Money Market Funds
MoU	Memorandum of Understanding
MROs	Main Refinancing Operations
NBFIs	Non-Bank Financial Intermediation

NBA	National Bank Act *(Switzerland)*
NCAs	National Competent Authorities
NCBs	National Central Banks
NDAs	National Designated Authorities
NPEs	Non-Performing Exposures
NPLs	Non-Performing Loans
NSFR	Net Stable Funding Ratio
OAG	Office of the Attorney General *(Switzerland)*
OECD	Organisation for Economic Co-operation and Development
OJ	Official Journal (of the European Union)
OOH	Owner-occupied housing (cost)
OMTs	Outright Monetary Transactions (Programme)
PCIJ	Permanent Court of International Justice
PD	Probability of Default
PELTROs	Pandemic Emergency Longer-Term Refinancing Operations
PEPP	Pandemic Emergency Purchase Programme
PSP	Payment Service Provider
PSPP	Public Sector Purchase Programme
Q&As	Questions and Answers
QE	Quantitative Easing
QT	Quantitative Tightening
r-CBDC	retail Central Bank Digital Currency
RAQ	Risk Assessment Questionnaire *(EBA)*
RDB	Risk DashBoard *(EBA)*
RMBD	Retail Mortgage-Backed Debt (instrument)
RoE	Return on Equity
RRF	Recovery and Resilience Facility *(under Regulation* (EU) 2021/241)
RTGS	Real-Time Gross Settlement
SDRs	Special Drawing Rights *(IMF)*
SGP	Stability and Growth Pact
SMP	Securities Markets Programme
SNB	Swiss National Bank
SRM	Single Resolution Mechanism
SRMR	Single Resolution Mechanism Regulation (806/2014)

SSM	Single Supervisory Mechanism
SSMR	Single Supervisory Mechanism Regulation (1024/2013)
SSM-FR	SSM Framework Regulation (468/2014)
SSSs	Securities Settlement Systems
SVB	Silicon Valley Bank (*United States*)
T2S	Target2 Securities
TARGET	Trans-European Automated Real-Time Gross Settlement Express Transfer (system)
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TLTROs	Targeted Longer-Term Refinancing Operations
TPI	Transmission Protection Instrument
UEMOA	Union Économique et Monétaire Ouest-Africaine
UK	United Kingdom
UN	United Nations
US	United States (of America)
USD	United States Dollars
w-CBDC	wholesale Central Bank Digital Currency
WFS	Weekly Financial Statement

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CHAPTER 1
THE SINGLE MONETARY POLICY IN THE EURO AREA: DEFINITION AND LEGAL FRAMEWORK

Section A: Definition of the single monetary policy in the euro area

1. Introductory remarks

(1) On 30 December 2023, the Presidents of four European Union ('**EU**') institutions and of the Eurogroup published a Press Release entitled: "Euro at 25: the value of unity in a changing world".[1] They stated, *inter alia*:

> "25 *years ago, on* 1 *January* 1999, *the euro came into force as the single currency for* 11 EU *Member States. It now serves the economy and eases life for* 350 *million people in* 20 *countries.*"
>
> "*There have been tremendous challenges over the years, including questions about the future of the euro itself. But each time we have found the right answers. In response to the global financial crisis and sovereign debt crisis, for example, we established safeguards like the harmonised system of banking supervision and resolution or the European Stability Mechanism. Today, support for the single currency among euro area citizens is close to record levels.*"
>
> "*But our work is not done. Because today we face new challenges that countries cannot address alone – and people are looking to Europe for answers.*"
>
> "*The first* 25 *years of the euro have shown just how successful a dream can be. But as the world changes around us, our action proves that a united Europe provides the answers the Europeans and the world need.*"

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[1] At: https://www.consilium.europa.eu/en/press/press-releases/2023/12/30/euro-at-25-the-value-of-unity-in-a-changing-world. These were the Presidents of the European Council (*Charles Michel*), *the European Central Bank (Christine Lagarde), the European Parliament (Roberta Mestalla), the European Commission (Ursula von der Leyen) and the Eurogroup (Paschal Donohoe).*

(2) Indeed, since the start of Stage Three of the Economic and Monetary Union ('**EMU**') on 1 January 1999,[2] the euro is the single currency in the euro area[3] and the number of EU Member States which have adopted it since then has almost doubled. In parallel, the task has been conferred upon the Eurosystem, within the EU, "*to define and implement the monetary policy of the Union*".[4] This is the first of its basic tasks in accordance with **Article 127(2), first indent** of the Treaty on the Functioning of the European Union[5] ('**TFEU**').

The legal framework governing the definition and implementation of the single monetary policy in the euro area is further discussed below (in **Sub-section 3** and in **Section B**, respectively).[6] This follows a brief presentation of the notions of monetary system and of monetary policy, one of the key macro-economic policies (*see* just below, **under 2.1** and **2.2**, respectively).

2. Monetary system and monetary policy[7]

2.1 The monetary system

(1) A national monetary system contains the unit of account of a state (with reference to its name and any applicable subdivisions thereof), and comprises, at institutional level, a central bank (or similar 'monetary authority', as it is named, e.g., in Singapore and Saudi Arabia, or 'Reserve Bank' as it is named, e.g., in the United States (of America, '**US**'), Australia and India[8]), which enjoys the monopoly of issuing national banknotes (the first item on the liability side of its balance sheet[9]), controls the quantity of coins issued by the government

[2] *See* on this **De Grauwe (2020)**, pp. and 122-131 and **Gortsos (2020a)**, pp. 76-81. Reference to "stages of EMU" has any longer only historical significance, since after 1 January 1999 the term "third stage of EMU" is now synonymous with the term "EMU", and more particularly with the term "monetary union". This is, moreover, the reason why the word "stages" has been abolished anymore under primary EU law.

[3] On the euro as a single and not a common currency, *see* **this Section below, under 3.1.1 (4)**.

[4] *See* **this Section below, under 3.1.2.2**.

[5] Consolidated version, OJ C 202, 7.6.2016, pp. 47-200.

[6] **Sections C-E** discuss then the implementation of the single monetary policy after the various crises to which the euro area was exposed since 2007.

[7] The present Sub-section is based (albeit enhanced and duly adjusted) on **Gortsos (2020a)**, pp. 4-5 and 11-14.

[8] In some states, this function is assigned to Currency Boards; *see* **Proctor (2012)**, pp. 871-876.

[9] On the importance of central banks' balance sheets, *see* **Lovrinović *et al.* (2021)**, pp. 115-121.

(i.e., the Ministry of Finance or a corresponding ministry) and provides liquidity to banks operating within its territory.[10]

(2) According to the **"State Theory of Money"**, a sovereign state is entitled to issue its own money (the money of the state) and create a (national) monetary system. This principle of **"monetary sovereignty"** has been reaffirmed in international law; as noted, *inter alia*, by the Permanent Court of International Justice ('**PCIJ**') in the 1929 *Serbian and Brazilian Loan Case*, "*it is indeed a generally accepted principle that a state is entitled to regulate its own currency*".[11] In certain cases, however, small sovereign states have neither their own money nor a domestic monetary system.[12]

A quite different case is the formation of a monetary union among (more or less equally sizeable) sovereign States, which decide to transfer their (national) monetary sovereignty to supranational entities issuing a single (or common) currency and operating a supranational, regional monetary system. The European monetary union – further discussed in detail below – is the most striking example, the Eastern Caribbean Currency Union ('**ECCU**') being another (albeit less significant) one. Discussions on the creation of a regional monetary union are for years now also taking place among several African States and some Arab States.[13]

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10 *See* **Proctor (2012)**, p. 66. For an analysis of the origin of money as a medium of exchange, *see* the seminal article of **Brunner and Meltzer (1971)**. On a monetary system without a central bank, where the issuing of currency is left to private banks ("free banking" system), and how this has worked historically, specifically in the United Kingdom in the early 19th century), *see* the seminal book of **White (1984)**. *See* also **Issing (1999)** on *Friedrick Hayek's* distinct "currency competition" concept.

11 PCIJ Series A, Nos. 20-21, 44. On the concept of monetary sovereignty, *see* **Zimmermann (2013)**. On monetary sovereignty within the euro area, *see* **van 't Klooster (2023)**; on this dimension of sovereignty in the digital era, *see* **Martino (2023)** and **Zellweger-Gutknecht (2023)** (on central bank digital currencies); on this latter aspect, *see* also further the ***Special Topic 1*** **below**.

12 These states enter into bilateral monetary agreements with another state, according to the terms of which the money and the monetary system of the latter also apply to the former. A typical example outside the euro area is Liechtenstein, which has an (asymmetric) *sui generis* monetary union with Switzerland by virtue of the bilateral monetary agreement of 19 June 1980 (SR 0.951.951.4). On the basis of this agreement, its national currency is the Swiss franc; *see* on this **Vischer (2010)**, pp. 42-43.

13 On the legal aspects of monetary unions and their distinction from other international monetary regimes, *see* **Proctor (2012)**, pp. 667-680 and 861-891 and **Diatta (2007)**, pp. 53-86.

2.2 The monetary policy function of central banks

2.2.1 'Conventional' monetary policy

(1) Monetary policy encompasses all measures adopted by a central bank in order to influence the money supply, as well as, through the latter, certain financial variables (such as loan interest rates of banks). The aim is to achieve specific economic policy objectives and predominantly safeguard price stability in the economy.[14] In some states, however, the main objective of monetary policy does not only consist in maintaining price stability, but also (concurrently) in achieving other macroeconomic goals, such as affecting the exchange rate of the domestic currency and/or contributing to economic growth and development (thus also affecting labour market conditions).[15]

Related to but not identical with monetary policy is the provision by a monetary authority, i.e., a central bank, of lending of last resort ('**LLR**') to individual solvent banks exposed to liquidity risk and on a temporary basis,[16] which is an element of the financial stability-linked 'bank safety net'.[17]

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14 For details, *see* by means of mere indication **Bofinger (2001)**, pp. 127-161, **Mishkin (2007)**, **Rossi (2008)**, pp. 217-300 and **European Central Bank (2011)**, pp. 55-62. On the historically heavy involvement of governments in central banking in general, *see* by means of mere indication **Turner (2018)** (with extensive further references).

15 It is noted, however, that, in accordance with the rule established in the seminal work of **Tinbergen (1952)**, the achievement of a specific set of policy objectives requires an equal number of instruments/policies (thus, monetary policy should focus on price stability and fiscal policy on growth/employment). For a comparative study of the various central bank objectives and mandates (at the time of its publication), *see* **Central Bank Governance Group (2009)**, pp. 21-25 (summarised in Table 1 of that study). International cooperation among central banks takes place at the Bank for International Settlements ('**BIS**'), a Basel-based international organisation established in 1930 by the Hague Convention (at: https://www.bis.org/about/convention-en.pdf) and signed among six states and Switzerland. The Statutes of the BIS are available at: https://www.bis.org/about/charter-en.pdf. For details, *see* **Gortsos (2023a)**, pp. 112-114 and **Bank for International Settlements (2023a)**.

16 This traditional approach is based on the seminal work by **Bagehot**, written already in 1873 (which Tucker calls the "classic" Bagehot view; *see* **Tucker (2014)**, p. 16, who also develops on the other three alternative approaches (at pp. 16-19).

17 *See* further **Gortsos (2023a)**, pp. 48-51, with extensive further references. On the LLR function in the euro area, *see* **this Section below, under 3.1.2.3**.

(2) The definition and implementation of monetary policy is a key task of all central banks,[18] conducted, in several jurisdictions, under conditions guaranteeing its independence *vis-à-vis* the political system. Safeguarding said independence is claimed to be necessary, since it constitutes the means for pursuing maintenance of price stability, allowing for definition and implementation of monetary policy without direct influence by the political system, typically over a period longer than the political cycle.[19]

(3) To implement monetary policy, central banks make use of several operations, instruments and procedures: *First*, a key category of monetary policy operations in today's advanced (at least) economies is open market operations, which are aimed at influencing interest rates, controlling liquidity in the markets, and signalling the path of monetary policy. These operations are executed upon their initiative and under the conditions they set.[20] *Second*, central banks apply two standing facilities to grant and absorb liquidity to and from banks (and other eligible counterparties) outside working hours (marginal lending facility and deposit facility, respectively). *Third*, they usually also impose on eligible counterparties an obligation to hold a percentage of their deposits with central bank accounts to stabilise money market rates.[21] *Furthermore*, they determine specific criteria for the selection of the counterparties eligible for monetary policy operations and the categories of assets eligible as collateral in the conduct of credit transactions.[22]

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18 For a systematic overview of central banks' tasks in advanced economies (relating, *inter alia*, also to financial stability and the oversight of payment and settlement systems), *see* **Gortsos (2020a)**, pp. 14-30.

19 On this aspect, *see* by means of mere indication **Lastra (2018)**. On the accountability and transparency of central banks' policies (established to compensate their independence), *see* the seminal work of **Amtenbrink (1999)**, as well as **Kaufmann and Weber (2018)**.

20 A notable exception is the Monetary Authority of Singapore ('**MAS**'), which manages monetary policy through the exchange rate rather than the interest rate; *see* on this **Gerlach (2021)**.

21 On the theory and policy of monetary policy implementation before the (2007-2009) global financial crisis in advanced economies, *see* by means of mere indication **Bofinger (2001)**, pp. 321-368, **Mishkin (2007)**, pp. 161-252 and **Disyatat (2008)**. These so-called 'conventional' monetary policy instruments are discussed in more detail in **Section B below** in relation to the implementation of the single monetary policy in the euro area. For a simplified central bank balance sheet, which also a sustained reflects the various monetary policy instruments, *see* **Table 1** just below.

22 For more details on central bank collateral frameworks and practices as part of the implementation of monetary policy, *see* **Markets Committee (2013)**.

TABLE 1 A simplified central bank balance sheet	
Assets	**Liabilities**
Gold & claims denominated in foreign currency (foreign reserves)	Banknotes in circulation CBDCs *(upon their introduction)*
Claims on banks related to monetary policy operations (open market operations & "lending facility")	Liabilities to banks related to monetary policy operations (reserve requirements & "deposit facility")
Securities issued by Governments and non-financial corporates	Debt certificates issued
Other claims (in domestic currency)	Other liabilities (in domestic currency)
Other claims (in foreign currencies)	Other liabilities (in foreign currencies)
Other assets	Revaluation accounts Capital and reserves

2.2.2 'Unconventional' monetary policy

(1) Under the extraordinary circumstances arising from the need to bolster the banking (and, more generally, financial) system and the economy following the (2007-2009) global (or 'great') financial crisis ('**GFC**') and, in the European context, the subsequent fiscal crisis in the euro area, central banks all over the world adjusted their monetary policy in a synchronised way.[23] The onset of these crises showed that the key problem was not the risk of **"inflation"** (i.e., a sustained rise in the *general level of prices*).[24] The key concern was the exact opposite: very low inflation (**"disinflation"**) or even negative inflation (**"defla-**

[23] *See* on this **Borio and Nelson (2008)**, **Committee on the Global Financial System (2008)**, **Hannoun (2010)**, the various contributions in **Bank of International Settlements (2011)** and **Committee on the Global Financial System (2019)**. On the actions of the ECB within the Eurosystem, *see* Section C below, under 1.

[24] Inflation should not be confused with "changes in relative prices". According to **Gros and Shamsfakhr (2020)** – with reference to the current inflation crisis (*see* Section E below) – the sharp increase in energy (and then in food) prices has hit poorer households especially hard, thus creating the impression that inflation increases inequality, the real problem is the large changes in relative prices and not the average inflation rate.

tion", i.e., reduction of the general price level in an economy over a specified period of time).[25]

In this respect, the following is noted: **(a)** there is a difference between **"headline inflation"** and **"core inflation"**; the former is the inflation figure reported through a harmonised index (such as, in the euro area the Harmonised Index of Consumer Prices ('**HICP**');[26] core inflation removes the components of that index that may exhibit large short-term volatility (e.g., energy and food prices);[27] and **(b) "stagflation"** is an environment of slow growth ("stagnation", and usually increased unemployment) coupled by inflation.

(2) The fact that the price level remained persistently below the benchmark set for price stability and that central bank (official) interest rates came close to their **"effective lower bound"** (the point at which lowering them further would have little to no effect), required central banks to implement a **"balance sheet policy"** (also labelled as quantitative easing ('**QE**') and/or "ballooning"[28]).[29] The target of this policy, which contained **"unconventional"** monetary policy instruments, was to inject liquidity to the economy in order to contain the effects of the GFC and, thus, *directly affect broader financial conditions* through central bank balance sheets. It is opposed to the (traditional) **"interest rate policy"** aimed at affecting short-term interest rates.

According to **Borio and Disyatat (2009)**,[30] balance sheet policy comprises four categories: exchange rate policy (i.e., the purchase of foreign currency securities); *quasi* debt-management policy (i.e., the purchase of government bonds; bank reserves policy (i.e., setting a target for bank reserves); and "credit policy" to alter financing conditions for the private sector, which contains two pillars:

The *first* includes all measures adopted to influence *interbank market conditions* by means of the following instruments: drastic official interest rate cuts (including the setting of the interest rate on the deposit facility into negative territory), prolongation of certain types of open market operations, broaden-

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25 On all these terms and their importance for the economy, *see* **Blanchard (2017)** (at various sections). It is worth noting though that historically, even in advanced economies, experience with very low inflation was rather rare.

26 *See* **this Section below, under 3.1.3 (2)**.

27 *See* by means of mere indication **Thiele (2021)**, p. 109 and in more detail **Corsetti *et al.* (2023**, editors**)**, pp. 38-42.

28 At: https://www.imf.org/external/pubs/ft/fandd/2012/12/pdf/dataspot.pdf; on this aspect, *see* also by means of mere indication **Borio and Disyatat (2009)**, **Caruana (2011)**, **Durré and Pill (2102)**, **Williamson (2017)** and **Bernanke (2019)**.

29 On the evolution of the size of central banks' balance sheets over the period 1587-2020 across 17 major economies and their substantial variation relative to economic and financial activity, *see* **Ferguson *et al.* (2023)**.

30 *See* **Borio and Disyatat (2009)**, pp. 6-9 and **Table 2** just below (based thereon).

ing the scope of assets eligible as collateral, broadening the range of eligible counterparties, as well as introduction of inter-central bank currency (foreign exchange) swap lines and easing of conditions for securities lending.

In this respect, the following is noted: A **"currency swap line"** is an agreement between two central banks to exchange currencies. This allows a central bank to obtain foreign currency liquidity from the central bank that issues it – usually to provide this to domestic commercial banks. For example, the swap line with the US Federal Reserve System enables the European Central Bank ('**ECB**') and all national central banks ('**NCBs**') in the euro area (Eurosystem)[31] to receive US dollars ('**USD**') from the Federal Reserve System in exchange for an equivalent euro amount provided to it. Currency swap lines through swap agreements have traditionally been part of central banks' set of monetary policy instruments to fund market interventions. However, in recent years they have also become an important tool for preserving financial stability and preventing market tension from affecting the real economy.[32] **"Securities lending"** means the lending of shares, debt securities (bonds), commodities, derivative contracts, or other financial instruments against collateral (in the form of cash or other securities) and the payment of a borrowing fee.

The *second pillar* comprises **"asset purchase programmes"** ('**APPs**'), namely, programmes adopted to influence *non-bank credit markets* through the purchase of short-term certificates of deposit and relevant commercial paper ('**CP**'), asset-backed securities ('**ABSs**') and longer-term debt securities. In particular, APPs are aimed at *directly affecting* the price of the corporate and/or sovereign debt securities through central bank operations on their balance sheets.[33]

TABLE 2 **Central bank balance sheet policies: an overview**	
Target of all central bank balance sheet policies	directly affect broader financial conditions *via* central bank balance sheets – in opposition to the interest rate policy (affecting short-term interest rates)
Exchange rate policy	purchase of foreign currency securities in order to affect the exchange rate, its level and/or its volatility, at any given level of the policy rate

31 *See* **above, under 1**.

32 *See* also **Section C below, under 1 (2)**.

33 For an overview, *see* **Table 2** below.

***Quasi* debt-management policy**	purchase of government bonds in order to alter the yield on government securities and, thereby, influence the cost of funding and asset prices more generally
Credit policy	**1. Influence on interbank market conditions** – cut of official interest rates; – prolongation of (specific types of) open market operations; – broadening of eligible collateral and of eligible counterparties; – inter-central bank foreign exchange swap lines; and – introduction of easing of conditions for securities lending **2. Influence on non-bank credit market (‘asset purchase programmes’)** – purchase of short-term certificates of deposit and relevant commercial paper (CP); – purchase of asset-backed securities (ABSs); and – purchase of longer-term debt securities
Bank reserves policy	setting a target for bank reserves regardless of how this is counter-balanced on the asset side of the central bank’s balance sheet

3. On the definition of the single monetary policy in the euro area

3.1 The “broad picture”

3.1.1 Participation in the EMU and the euro as a single currency of the Member States therein

(1) The rules of primary EU law governing the single currency and the single monetary policy in the euro area (the term “monetary policy” not being defined in the Treaties[34]) are (mainly) set out in the TFEU and (except for the euro-denominated coins) the Statute of the European System of Central Banks (‘**ESCB**’) and of the ECB (hereinafter the ‘**ESCB/ECB Statute**’), which is contained in **Protocol (No 4)** attached to the Treaties.[35] This Statute was adopted on the basis of (and follows very closely) the Draft Statute of the Committee of

34 On this aspect, *see* the case law discussed in Section C below.
35 Consolidated version, OJ C 202, 7.6.2016, pp. 230-250.

Governors of the Central Banks of the European Economic Community ('EEC'), which was submitted on 21 November 1990.[36]

(2) Participation in the EMU, whose single currency is the euro,[37] is confined to the Member States meeting specific economic and legal 'convergence criteria'.[38] Those not meeting these criteria are referred to as 'Member States with a derogation'.[39] The latter also include Denmark which has an opt-out clause from the monetary union, in accordance with the conditions laid down in **Protocol (No 16)**[40] attached to the TEU and the TFEU (jointly the 'Treaties').[41]

(3) In close relation to the previous point (and from a legal point of view), the use of the euro is not restricted to the euro area. By virtue of three Decisions taken by the Council, on 31 December 1998, with respect to the position to be taken by the (then) Community regarding agreements concerning the monetary relations with the Principality of Monaco, the Republic of San Marino and the Vatican City State. Before the transition, these countries were using as their national currency that of a Member State which adopted the euro (namely, France and Italy).[42] It is furthermore noted that in some other Euro-

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36 At: https://www.ecb.europa.eu/ecb/access_to_documents/document/cog_pubaccess/shared/data/ecb.dr.parcg2019_0109draftstatutecommentary19901121.en.pdf. On the influence of this draft on the Statute as adopted, *see* **Smits (1997)**, on a thematic basis.

37 Treaty on European Union ('**TEU**'), Article 3(4) (Consolidated version, OJ C 202, 7.6.2016, pp. 13-45).

38 **TFEU**, Articles 130-131 and 140(1) and **Protocol (No 13)** attached to the Treaties (Consolidated version, OJ C 202, 7.6.2016, pp. 281-282).

39 Applicable to these Member States are Articles 139-144 **TFEU**.

40 Consolidated version, OJ C 202, 7.6.2016, p. 287. On 1 January 2023, Croatia became the 20th member of the euro area. The formal approval of Croatia's accession is legally based on **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). This Decision also determined a Croatian kuna conversion rate of 7.53450 per euro. *Inter alia*, this prompted: *first*, the amendment, on **12 December 2022**, of the Agreement of 16 March 2006 between the ECB and the NCBs of the Member States outside the euro area laying down the operating procedures for an exchange rate mechanism in stage three of EMU ('**ERM II**'), to the effect that the Croatian NCB (Hrvatska Narodna Banka) is no longer party to the ERM II Central Bank Agreement as of 1 January 2023 (OJ C 12, 13.1.2023, pp. 3-6); and *second*, the conclusion of the **Agreement of 30 December 2022** between Hrvatska Narodna Banka and the ECB regarding the claim credited to the former by the latter under Article 30.3 ESCB/ECB Statute (OJ C 18, 19.1.2023, pp. 1-3).

41 This Protocol "on certain provisions relating to Denmark" established Denmark's right to opt-out from participation in the third stage of EMU and provides that in case of exercising this right, its regime equals to the one of the other Member States with a derogation.

42 **Council Decisions 1999/96/EC**, **1999/97/EC**, and **1999/98/EC**, OJ L 30, 4.2.1999, pp. 31-32, 33-34 and 35-36, respectively. On the basis of these Decisions, France and Italy concluded in 2001 the necessary agreements with these micro-states, which were allowed to use, as of 1 January 1999, the euro as their national currency and, as of 1 January 2002,

pean countries outside the euro area (namely, Albania, Bosnia and Herzegovina, Bulgaria, Hungary, North Macedonia, Romania, and Serbia) the use of the euro, albeit not their national currency, is widespread.[43]

(4) The euro is a single and not a "common" currency. It substituted for the (former national) currencies of the Member States participating in the euro area at an *irrevocably* fixed rate.[44] Banknotes and coins in the currencies of these Member States are not anymore in circulation (which would have been the case if it were a common currency). The euro-denominated banknotes and coins are the only means of payment that have a "legal tender status" pursuant to **Article 128(1) TFEU** (for banknotes) and **Articles 10-11** of **Council Regulation 974/98** (for banknotes and coins, respectively).[45]

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to give legal tender status to euro-denominated coins and banknotes. The same was stipulated for the French territorial communities (*collectivités territoriales*) of Saint-Pierre-et-Miquelon and Mayotte, which are part of France but not of the EU (**Council Decision 1999/95/EC**, OJ L 30, 4.2.1999, pp. 29-30). This does not apply to other French overseas territories, such as New Caledonia, French Polynesia and Wallis and Futuna (*see* also **Protocol (No 18)** on France Consolidated version, OJ C 202, 7.6.2016, p. 289), in relation to Italy for its exclave in Switzerland Campione d'Italia (which uses the Swiss franc, while in the case of the German exclave in Switzerland Büssingen am Hochrhein use is made of the euro), as well as for some overseas territories of the Netherlands. It is also noted that, by virtue of **Council Decision 98/683/EC** of 23 November 1998 on exchange rate matters relating to the CFA Franc and the Comorian Franc (OJ L 320, 28.11.1998, pp. 58-59), France was allowed to continue (and did so) the implementation of its monetary agreements with the West African Economic and Monetary Union (consisting of eight countries and well-known after the French acronym **UEMOA**, *see* at https://www.uemoa.int/en), the Economic and Monetary Union of Central Africa (consisting of six countries and also well-known after the French acronym **CEMAC**, *see* at https://cemac.int/cemac) and Comores, which guarantee the convertibility of the CFA and Comorian francs into the French franc at a fixed parity. Similar arrangements were made in relation to the Cape Verde escudo by virtue of **Council Decision 98/744/EC** of 21 December 1998 (OJ L 358, 31.12.1998, pp. 111-112).

43 On the influence of the single monetary policy in the euro area to the shaping of the interest rates of euro-denominated deposits or euro loans in those countries, *see* **Moder (2021)**.

44 **TFEU**, Article 140(3). The secondary legislation governing the euro as the single currency is set out in **Council Regulation (EC) No 974/98** of 3 May 1998 "on the introduction of the euro" (OJ L 139, 11.5.1999, pp. 1-5, as in force) and in **Council Regulation (EC) No 1103/97** of 17 June 1997 "on certain provisions relating to the introduction of the euro" (OJ L 162, 19.6.1997, pp. 1-3, as in force). Concurrently, the euro is the national currency of those Member States by virtue of their national (usually constitutional) law.

45 *See* **Freitag (2020)** and **Gortsos (2020a)**, pp. 320-326. In this respect, the following is further noted: *on the one hand*, the authorisation of the issue of euro-denominated banknotes is an exclusive right of the ECB, performed by the GC; without prejudice to this right, since the TFEU created a system of plurality of euro-denominated banknote issuers in the euro area, such notes may be issued by both the ECB and the NCBs of the Member States whose currency is the euro (**TFEU**, Article 128(1), first and second sentences and **ESCB/ECB Statute**, Article 16, first and second sentences); and *on the other hand*, euro-denom-

(5) In terms of central banks' participation, a significant distinction is that between, *on the one hand*, the (broader) term European System of Central Banks (**ESCB**) and, *on the other hand*, the term **"Eurosystem"**. In particular, while the ESCB comprises the ECB and the NCBs of *all* EU Member States,[46] the Eurosystem comprises the ECB and the NCBs of the Member States whose currency is the euro (i.e., those of the euro area).[47] Thus, the single monetary policy and the other basic tasks (as discussed just below) are not conferred upon the ESCB, but upon the Eurosystem.

Both the ECB, an EU institution,[48] which acts in the ESCB and in the Eurosystem as the "hub", and the NCBs (of all Member States) have legal personality: the ECB under primary EU law[49] and the NCBs under the national law of the Member State where they are incorporated. On the other hand, the ESCB and the Eurosystem do not have legal personality. They are concepts used in EU monetary law as an "overall description" of, or "common name" for, its constitutive elements (ECB and the NCBs of EU Member States).[50]*Inter alia*, the fact that the Eurosystem does not have legal personality means, by effect, that it cannot be "defendant" in a possible action for annulment under **Article 263 TFEU**.[51]

The financial provisions of the ESCB are found in **Chapter VI of the ESCB/ECB Statute** (**Articles 26-33**) and their majority does not apply to the NCBs of Member States with a derogation. They refer to the ECB's capital (a manifestation of its financial independence); the publication and control of financial accounts of the ECB and the NCBs of

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inated coins are issued by the Member States whose currency is the euro, the volume of the issue being subject to approval by the ECB (**TFEU**, Article 128(2), first sentence).In relation to the legal status of euro-denominated banknotes and coins, including of the digital euro to be adopted, *see* further the ***Special Topic 1*** **below**.

46 **TFEU**, Article 282(1), first sentence and Article 1, first sub-paragraph, first sentence **ESCB/ECB Statut**e. The ESCB and the ECB must perform their tasks and carry on their activities in accordance with the provisions of the Treaties and of the Statute (**ESCB/ECB Statut**e, Article 1, second sub-paragraph). On the decentralised structure of the ESCB, *see* **Smits (1997)**, pp. 92-94, **Hadjiemmanuil (2006a)**, pp. 551-554, **Lastra (2006)**, pp. 208-214, **Louis (2009)**, pp. 135-148 and **Zilioli and Selmayr (2001)**.

47 **TFEU**, Article 282(1), second sentence and Article 1, first sub-paragraph, second sentence **ESCB/ECB Statut**e. The TFEU Articles not applying to the Member States with a derogation are listed in **Article 139(2)**. Furthermore, **Article 42** of the Statute refers to its provisions which do not apply to those Member States and their NCBs. On the role of NCBs in the ESCB and the Eurosystem, *see* **Gortsos (2020a)**, pp. 188-194.

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

49 This legal personality means that it enjoys in each Member State the most extensive legal capacity accorded to legal persons under national law, including the capacity to acquire or dispose of movable or immovable property and legal standing (**TFEU**, Article 282(3), first sentence and Article 9.1 **ESCB/ECB Statut**e).

50 *See* indicatively **Smits (1997)**, pp. 92-93, and **Häde (1999)**, **p.** 1164, who refers to "Sammelbezeichnung".

51 On this Article, *see* further **Box 2 below**.

Member States whose currency is the euro;[52] the transfer to the ECB by the latter group of NCBs of (part of) their foreign reserve assets; as well as the allocation of monetary income (seigniorage) of the NCBs of these Member States and the allocation of ECB net profits and losses.

3.1.2 On the objectives and basic tasks of the Eurosystem

3.1.2.1 *The primary and the secondary objective of the Eurosystem*

(1) The "primary" and the "secondary" objectives of the Eurosystem are laid down in **Articles 127(1)** and **282(2), second and third sentences TFEU** (repeated *verbatim* in **Article 2, first sentence ESCB/ECB Statute**[53]). The primary objective is to maintain price stability.[54] The ECB and the NCBs of the Member States whose currency is the euro are, therefore, competent, within the Eurosystem, for defining and implementing monetary (and exchange-rate) mainly to safeguard price stability. The secondary objective is without prejudice to the primary one; thereunder, the Eurosystem must support the general economic policies in the EU to contribute to the achievement of its objectives as laid down in **Article 3 TEU**; and act according to the principle of an open market economy with free competition, favouring an efficient allocation of resources (a "generic" statement on respect for market economics) and in compliance with the principles set out in **Article 119(3) TFEU**.[55]

(2) In this context, the following is further (briefly) noted:

First, the rationale behind this hierarchy of objectives lies within the prevailing view that the Eurosystem can only pursue its secondary objectives if the primary one, i.e., price stability, has been assured. Accordingly, it is expected that

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52 *See* the **Excursus 1 in Section C below**.

53 On the reason why certain TEC Articles are repeated *verbatim* in the Statute, *see* **Smits (1997)**, p. 91.

54 **TFEU**, Article 127(1), first sentence; it is noted that reference to this primary objective is also made in other seven provisions of the Treaties: in Article 3(3) **TEU**, as well as in Articles 119(2)-(3), 219(1)-(2) and 282(2), second sentence **TFEU**. According to the case law of the General Court, Article 127 (1) TFEU is not intended to confer rights on individuals; *see*, e.g., the judgment of the General Court (Third Chamber) of 9 February 2022 in **Case T-868/16**, *QI and Others v European Commission and European Central Bank* (ECLI:EU:T:2022:28), paragraph 100.

55 **TFEU**, Article 127(1), second sentence; on Article 127(1) TFEU (105(1) TEC), *see* **Smits (1997)**, pp. 184-190, **Papathanassiou (2001)**, pp. 13-15, **Scheller (2006)**, pp. 51-54 **Louis (2009)**, pp. 150-151, **Lastra (2015)**, pp. 254-255, **Wutscher (2019)**, pp. 2045-2048, **Adamski (2020)** (on the overall objectives of the EMU) and **Tuori (2020)**, pp. 618-621. On the secondary objective in particular, *see* by means of mere indication **Kılıç (2022)** and **de Boer and van 't Klooster (2023)**.

its basic tasks are performed with the aim to combat inflation (or disinflation) and, only if this is achieved, to influence growth, employment, environmental and other conditions. *On the other hand*, the Eurosystem does not have a "dual primary objective". This is the case with some other central banks, such as the US Federal Reserve System[56] (or "Federal Reserve", "Fed"), i.e., the US central banking system, which has a dual mandate and thus defining and implementing its monetary policy on the dual basis).[57]

Second, the general economic policies in the EU which the Eurosystem must support have recently come to include a high level of protection and improvement of the quality of the environment. In this respect, in accordance with the **2021 "European Climate Law"**,[58] a binding objective of climate neutrality in the EU by 2050 has been set in pursuit of the long-term temperature goal set out in the 2015 Paris Agreement[59] which forms part of the general economic policies in the EU.[60]

56 In relation to the Swiss National Bank (SNB), *see* **Box 3 below**.

57 The Federal Reserve System was created on 23 December 1913, with the enactment by the Congress of the **"Federal Reserve Act"** (in force as repeatedly amended; on the current status, *see* at: https://www.federalreserve.gov/aboutthefed/fract.htm). Pursuant to Section 2A (on monetary policy objectives): "*The Board of Governors of the Federal Reserve System and the Federal Open Market Committee shall maintain long run growth of the monetary and credit aggregates commensurate with the economy's long run potential to increase production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates*". *See* further **Conti-Brown (2018)**.

58 **Regulation (EU) 2021/1119** of the European Parliament and of the Council (hereinafter the "**co-legislators**") of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021, pp. 1-17.

59 This Agreement was adopted in Paris, on 12 December 2015, at the United Nations ('**UN**') "Climate Change Conference (COP21)" and entered into force on 4 November 2016. The aim of this international treaty is to hold the increase in the global average temperature to well below 2 degrees Celsius above pre-industrial levels, and pursue efforts to limit the temperature increase to 1.5 degrees Celsius above pre-industrial levels (*see* at: https://unfccc.int/process-and-meetings/the-paris-agreement). In the EU, it was approved by **Council Decision (EU) 2016/1841** of 5 October 2016 "on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the UN Framework Convention on Climate Change" (OJ L 282, 19.10.2016, pp. 1-3).

60 On this aspect, *see* further **in this Section below, under 3.3.2**.

3.1.2.2 *The basic tasks of the Eurosystem and the ECB's original monetary policy strategy*

(1) Since 1 January 1999, the Eurosystem has been assigned the basic task of defining *and* implementing the single "monetary policy",[61] which is the first of its **"basic tasks"** (pursuant to **Article 127(2), first indent TFEU**, repeated *verbatim* in **Article 3.1. ESCB/ECB Statute**[62]). The basic tasks constitute a ***numerus clausus***. The other basic tasks are: (a) the conduct of foreign exchange operations consistent with **Article 219 TFEU**, which is not applicable to the non-euro area Member States, which do not have voting rights in the Council for the approval of the decisions referred to therein;[63] (b) the (closely related) holding and management of euro area Member States' official foreign reserves; and (c) the promotion of the smooth operation of payment systems.[64]

BOX 1: Specific remarks on the basic tasks – and some related institutional aspects

First, the Eurosystem's monetary policy is also single (like the euro) and not common. The field of monetary policy for the Member States whose currency is the euro is one of the (few) exclusive EU competences.[65]

Second, the provision of euro-denominated means of payments in the form of banknotes and coins is governed by **Article 128 TFEU** and is, thus, not included in the basic tasks of the Eurosystem.

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61 *Währungspolitik* in German, *politique monétaire* in French. Article 282(1), second sentence **TFEU** makes instead use of the term "conduct" of monetary policy.

62 On these TFEU and Statute's Articles, *see* by means of mere indication **Smits (1997)**, pp. 223-288, **European Central Bank (2011)**, **Lastra and Louis (2013)**, pp. 79-80 and **Wutscher (2019)**, pp. 2049-2052. On the evolution of the single monetary policy and its framework, *see* also **Weber (1995)**, **Issing *et al.* (2001)**, **Louis (2005)**, **Issing (2008)** and **De Grauwe (2020)**, pp. 188-217. On monetary and fiscal policy in the euro area after its establishment, *see* **Eijffinger and de Haan (2000)**.

63 **TFEU**, Article 139(4) and **Protocol (No 15)**, paragraphs 4 and 6, respectively

64 **TFEU**, Article 127(2), second – fourth indents, respectively; on these basic tasks, *see* **Gortsos (2020a)**, pp. 302-320. On Article 219 TFEU, *see* **Smits (1997)**, pp. 369-409 and **Wutscher (2019)**, pp. 2054-2055.

65 *Ibid.*, Article 3(1), point (c). This exclusive competence includes all the powers and competences necessary for the creation and proper functioning of the euro. In this context, the following is also noted: *First*, in accordance with **Article 2(1) TFEU**, when the Treaties confer on the EU an exclusive competence, it is only the EU that may legislate and adopt legally binding acts, the Member States being able to do so themselves only if empowered by the EU or for the implementation of EU acts. *Second*, in the field of other (than monetary and foreign exchange) economic policies of the Member States the EU's competence is, according to Article 5(1) TFEU merely supporting, Thus, by design the EMU is asymmetric. On monetary unions without budgetary union (a form of "incomplete" monetary unions), *see* **De Grauwe (2020)**, pp. 111-115.

Third, in institutional terms:

(a) In the conduct of its basic tasks, and primarily in relation to monetary policy, the ECB enjoys a high degree of functional, personal, financial, and operational independence, albeit subject to rules governing its accountability and transparency.[66] Similar provisions apply to the NCBs (the granting of this independence being a legal convergence criterion for joining the EMU).[67]

(b) The ECB enjoys in the territories of the Member States such privileges and immunities as required for the performance of its tasks,[68] their terms being defined in **Protocol (No 7)** "on the privileges and immunities of the European Union".[69]

(c) The acts and/or omissions of the ECB and the NCBs are subject to judicial control. ECB acts or omissions are open to review or interpretation by the CJEU in the cases and under the conditions laid down in **Article 263 TFEU**,[70] while the ECB may also

66 **TFEU**, Articles 130, 282(3), third and fourth sentences, 283(2), third sub-paragraph and 284(3), and **ESCB/ECB Statute**, Articles 7, 11.2 and 11.4, 15, 17-20, 26-27 and 28 (on the ECB capital). The further discussion of this extremely important issue is beyond the scope of this study; *see* by means of mere indication (out of a vast existing literature) **Lastra (2015)**, pp. 247-273, **Zilioli and Athanassiou (2018)**, pp. 613-624, **Zilioli and Riso (2018)**, **Fromage, Tuori and Dermine (2019)**, **De Grauwe (2020)**, pp. 164-187, **Gortsos (2020a)**, pp. 264-274, **Ioannidis (2020)**, **Markakis (2020)**, **Tucker (2021)**, **Markakis and Fromage (2023)**, as well as other related contributions in the Special Issue where the latter is published.The author merely notes in this respect that, since the independence and accountability of the ECB and the NCBs – members of the Eurosystem is set out in the primary EU law (and not in secondary legislation, as for example in the US as noted just above), the current status can only be modified by an amendment of the Treaties which requires unanimity pursuant to **Article 48 TEU**. This also applies to the amendment of the ESCB/ECB Statute, since the relevant provisions are not included in those that can be amended by virtue of its Article 40 on the simplified (amendment) procedure.On societal responsibility and central bank independence, *see* **Vallet (2021)** and **Schnabel (2021)**.

67 **TFEU**, Article 131 and **ESCB/ECB Statute**, Article 14.1-14.2. In relation to this aspect, *see* the Judgment of the Court (Grand Chamber) of 26 February 2019 in **Joint Cases C-202/18** and **C-238/18**, *Ilmārs Rimšēvičs and European Central Bank v Republic of Latvia* (ECLI:EU:C:2019:139). The action was based on infringement of **Article 14.2**, second subparagraph **ESCB/ECB Statute**.

68 **TFEU**, Article 343, second sentence and **ESCB/ECB Statute**, Article 39.

69 Consolidated version, OJ C 202, 7.6.2016, pp. 266-272. This applies to the ECB, the members of its bodies and its staff (**Protocol (No 7)**, Article 22, first sub-paragraph).

70 Pursuant to this Article, the CJEU is competent to review, *inter alia*, the legality of ECB acts, other than Recommendations and Opinions (which are soft law instruments). *see* on this **Lenaerts, Maselis and Gutman (2014)**, pp. 253-417, **Borchardt (2019)**, pp. 2636-2670, **Schwarze und Voet van Vormizeele (2019)**, pp. 2856-2892, and **Craig and de Búrca (2020)**, pp. 609-614. The judicial control of the ECB's legal acts is also governed by **Article 35 ESCB/ECB Statute**.

institute proceedings in such cases and under these conditions upon a GC Decision. Unless jurisdiction has been conferred upon the ECJ, disputes between the ECB and its creditors or debtors are decided by national competent courts.[71]

(d) The ECB is liable according to the regime provided for in **Article 340 TFEU** (the NCBs' liability falling under their respective national legislation).[72] In the case of **'non-contractual liability'**, the ECB must, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.

Finally, in the performance of their tasks within the Eurosystem, NCBs must comply with the provisions of the ECB of 2 November 2021 "laying down the principles of the Eurosystem Ethics Framework (**ECB/2021/49**) (recast)".[73]

(2) Responsible for the definition of the single monetary policy is the ECB Governing Council ('**GC**'). This is the supreme ECB body and comprises the six members of the Executive Board and the Governors of the NCBs of the Member States whose currency is the euro.[74] The GC must adopt the necessary Guidelines and Decisions, including those on intermediate monetary objectives, key interest rates and supply of reserves in the Eurosystem.[75]

(3) The initial ECB strategy for the definition of the single monetary policy was determined (and announced) in late 1998 and has thereafter been specified on an ongoing basis (first in 2003, in light of the experience of the ECB's first four years of full operation and most recently in 2021, as discussed below), taking account of the latest economic developments. This strategy consisted of three pillars:

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71 **ESCB/ECB Statute**, Articles 35.1-2 and 35.5. It is noted that (the entire) Article 35 also applies to the NCBs of the Member States with a derogation (argument *a contrario* from Article 42) (*see* on this **Smits (1997)**, **pp.** 106-110).

72 *Ibid.*, Article 35.3.

73 OJ L 454, 17.12.2021, *pp.* 7-16.

74 **TFEU**, Article 283(1) and **ESCB/ECB Statute**, Article 10.1. The Governors of the NCBs of the Member States with a derogation do not participate in the meetings of the GC (**ESCB/ECB Statute**, Article 42.4 - 42.6, with reference to Articles 10.1 and 10.3). The Executive Board comprises six members: the President (who is concurrently the GC's President), the Vice-President and four other members (**TFEU**, Article 283(2) and **ESCB/ECB Statute**, Articles 11.1-11.2); the President and the Vice-President are appointed *in positionem* and are not elected in these positions by the GC or the Executive Board.It is beyond the scope of this study to discuss the political dynamics between the members of the GC, which (apparently) exert an influence on the decisions taken by this body.

75 **ESCB/ECB Statute**, Article 12.1, first sub-paragraph. On the legal framework governing the implementation of the single monetary policy, *see* **Section B below**.

First, it was based on a "double-key" formulation of the price stability objective, comprising a quantitative definition of price stability as a yearly increase in the HICP of below 2%, *and*, within that definition, the aim of maintaining inflation rates in the euro area "*below, but close to, 2%*".[76]

Second, it had a *medium-term orientation* in view of the time lags in the effects of monetary policy on inflation.[77]

Third, the evaluation by the ECB of information collected on price developments in the EU was premised on two types of analysis ("pillars"): an **economic analysis**, seeking to assess the short-term determinants of price developments, focusing on real economic activity and financial conditions; and a **monetary analysis**, seeking to assess, within a medium to long-term perspective, the indications for monetary policy resulting from the former analysis.[78]

3.1.2.3 *In particular: the role of the ECB as a lender of last resort – the Emergency Liquidity Assistance* (ELA) *mechanism.*

(1) Even though the definition and implementation of the single monetary policy is one of the basic tasks of the Eurosystem, the ECB it is not acting therein (and even at all) as an LLR to credit institutions established in the euro area.[79] In this respect, the following is remarked:

First, the NCBs of the Member States whose currency is the euro may perform other functions on top of the ones provided for by the ESCB/ECB Statute, such as the management of public debt (acting as "fiscal agencies"), management of reserves of pension funds, micro-prudential supervision of insurance compa-

76 *See* further **below in this Section, under 3.1.3**.

77 On these lags, which are inherent in the implementation of monetary policy, *see* **Dupor (2023)**, *inter alia* quoting **Friedman (1960)**: "*There is much evidence that monetary changes have their effect only after a considerable lag and over a long period and that the lag is rather variable*."

78 *See* **this Section below, under 3.2.1 and 3.2.2**, respectively.

79 The term 'credit institution' is defined in **Article 4(1), points (1)(a) and 1(b)**, respectively, **of Regulation (EU) No 575/2013** of the European Parliament and of the Council (hereinafter **"the co-legislators"**) of 26 June 2013 "on prudential requirements for credit institutions (…)" ('**CRR**', OJ L 176, 27.6.2013, pp. 1-337, as in force) to mean both: **(a)** mainly (according to the traditional definition), an undertaking the business of which consists of taking deposits or other repayable funds from the public and granting credits for its own account; and **(b)** an undertaking the business of which consists of carrying out any of the activities referred to in points (3) and (6) of Section A of Annex I to **Directive 2014/65/EU** of the co-legislators of 15 May 2014 "on markets in financial instruments (…)" ('**MiFID II**', OJ L 173, 12.6.2014, pp. 349-496, as in force) under conditions.

nies and granting liquidity assistance to solvent credit institutions facing severe liquidity problems according to the terms of functioning of the so-called Emergency Liquidity Assistance (‘**ELA**’) mechanism.

Second, the role of the ECB is set out in **Article 14.4 ESCB/ECB Statute**, which reads as follows:

> “[NCBs] *may perform functions other than those specified in this Statute unless the [GC] finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the* ESCB. *Such functions shall be performed on the responsibility and liability of* [NCBs] *and shall not be regarded as being part of the functions of the* ESCB.”[80]

Thus, such functions must be performed on the own responsibility of these NCBs and not be regarded as forming part of the ESCB’s functions. An NCB may, however, be required to cease their performance if the GC decides that they interfere with the ESCB’s objectives and tasks. They also have the competence to perform operations for administrative purposes or their staff.[81]

Third, unlike central bank credit these credit institutions can receive through the Eurosystem’s monetary policy operations, last resort lending to solvent euro area credit institutions exposed to (severe albeit temporary) liquidity problems is provided by the NCBs of the Member State in which they are incorporated. This is governed by the provisions on the ELA Mechanism (outside of normal Eurosystem monetary policy operations). The rules and procedural arrangements governing this mechanism are laid down in the Eurosystem’s “Agreement on emergency liquidity assistance” of **9 November 2020**.[82] This amended its Agreement of **May 2017**.[83]

80 This Article is analysed in **Smits (1997)**, pp. 99-101 and 338-339. Due to the importance of the matter, a simple majority vote (which is the rule) is not enough for such a decision of the GC, but rather a majority of two thirds of the votes cast is required.

81 **ESCB/ECB Statute**, Article 24. On the compatibility of the provision of ELA with EU State aid rules, *see* **Lastra (2016)**.

82 At: https://www.ecb.europa.eu/pub/pdf/other/ecb.agreementemergencyliquidityassistance202012~ba7c45c170.en.pdf?dca797da3212289956ac24df607eb168.

83 At: https://www.ecb.europa.eu/mopo/ela/html/index.en.html. For details on the ELA Mechanism, *see* **Gortsos (2023a)**, pp. 362-370, with extensive further references; *see* also at: https://www.ecb.europa.eu/mopo/ela/html/index.en.html; on the author’s proposal to amend this mechanism, *see* **Gortsos (2015)**; *see* also **Dietz (2019)**.

BOX 2: Case law in relation to the ELA Mechanism

In relation to actions for access to ECB documents on the granting of ELA, the General Court of the Court of Justice of the European Union ('**CJEU**' or '**Court**') has delivered three judgments in applications brought pursuant to **Article 263 TFEU**[84] for (mainly) violation of **Article 4 of ECB Decision 2004/258/EC**:[85]

(1) In two of its judgments the General Court (Sixth Chamber) partially annulled the related ECB decisions:

First, in its judgment of 26 April 2018 in **Case T-251/15**, *Espírito Santo Financial (Portugal) v European Central Bank* (ECB),[86] it partially annulled the ECB decision of 1 April 2015 partially refusing to disclose certain documents relating to its decision of 1 August 2014 concerning the appellant, in so far as it refused to disclose the amount of credit indicated in the extracts of the minutes recording the decision of the GC of 28 July 2014 and the information redacted from the proposals of the Executive Board of the ECB of 28 July and 1 August 2014. However, by appeal, in its judgment of 19 December 2019 in **Case C-442/18 P**, *European Central Bank (ECB) v Espírito Santo Financial (Portugal) SGPS, SA*,[87] the CJEU (First Chamber) set aside point 1 of the operative part of the General Court's judgment as far as, by that point, it annulled the above-mentioned ECB decision.

Second, in its judgment of 13 March 2019 in **Case T-730/16**, *Espírito Santo Financial Group SA v European Central Bank* (ECB),[88] it partially annulled the ECB decision of 31 August 2016 partially refusing to disclose certain documents relating to its decision of 1 August 2014 concerning the appellant, in so far as it refused to disclose the amount of credit indicated in the extracts of the minutes recording the decision of the GC of 28 July 2014 and the information redacted from the proposals of the Executive Board of the ECB of 28 July and 1 August 2014. Like in the previous case, by appeal, the CJEU (Sixth Chamber) set aside (*inter alia*) point 1 of the operative part of the General Court's judgment by its judgment of 21 October 2020 in **Case C-396/19 P**, *European Central Bank (ECB) v Insolvent Estate of Espírito Santo Financial Group SA*.[89]

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84 See **Box 1 above**.

85 **ECB Decision 2004/258/EC** of 4 March 2004 "on public access to [ECB] documents **(ECB/2004/3)**", OJ L 80, 18.3.2004, pp. 42-44, as in force.

86 ECLI:EU:T:2018:234.

87 ECLI:EU:C:2019:1117.

88 ECLI:EU:T:2019:161.

89 ECLI:EU:C:2020:845. This was based on its finding that sufficient reasons were given for the decision refusing to disclose the outcome of the proceedings of the GC and, thus, the General Court erred in law by ruling that the ECB had failed to fulfil its obligation to state reasons in support of its decision.

(2) The General Court's (Second Chamber) conclusions in its judgment of 12 March 2019 in **Case T-798/17**, *Fabio De Masi and Yanis Varoufakis v European Central Bank* (ECB)[90] were different. In particular, the action asserted misapplication of the exception relating to the protection of documents for internal use (pursuant to Article 4 of ECB Decision 2004/258/EC) and claimed that there was an overriding public interest in disclosure of a related document, namely, the document of 23 April 2015 entitled "Responses to questions concerning the interpretation of Article 14.4 of the Statute of the ESCB and of the ECB". The action was dismissed in its entirety as unfounded.

In 2020, the CJEU (First Chamber) dismissed (partly as inadmissible and in part as unfounded) the appeal by which the appellants claimed that the CJEU should set aside in its entirety the judgment of the General Court in **Case C-342/19 P**, *Fabio De Masi and Yanis Varoufakis v European Central Bank* (ECB) by its judgment of 17 December.[91] Of particular interest in this case was also the Opinion of Advocate General Pikamäe of 9 July 2020[92] for two key (in the author's view) reasons:

First, the Advocate General considered that "*the Court has given very few judgments in proceedings regarding access to documents held by the ECB, by contrast to proceedings arising from the application of* ***Regulation (EC) No 1049/2001***,[93] *and [thus that case gave it] the opportunity to clarify its case-law in this specific field.*"[94]

Second, by focusing (as requested) on the third ground of appeal, namely, the relationship between exceptions to the right of access provided for in ECB Decision 2004/258/EC and the scope of the exception relating to documents for internal use within the meaning of the first sub-paragraph of Article 4(3) thereof, the Advocate General proposed that the Court should declare the second part of that ground of appeal admissible and well founded and, consequently, uphold the appeal.

(2) In this context, three remarks also deserve attention as regards the (distinct) role of the International Monetary Fund ('**IMF**') (and in the EU context, the European Stability Mechanism ('**ESM**')) and of central banks as (refinancing) lenders of last resort:

90 ECLI:EU:T:2019:154. In this case, the applicants asked the ECB, on the basis of ECB Decision 2004/258/EC, to grant them access to all the external legal advice which the ECB supposedly requested in order to review its decisions of 4 February and 28 June 2015 concerning the ELA granted by the Greek central bank (Bank of Greece) to Greek credit institutions during 2015.

91 ECLI:EU:C:2020:1035.

92 ECLI:EU:C:2020:549.

93 **Regulation (EC) No 1049/2001** of the co-legislators of 30 May 2001 "regarding public access to European Parliament, Council and Commission documents", OJ L 145, 31.5.2001, pp. 43-48, as in force.

94 **Opinion**, paragraph 2.

First, under international law, the IMF can since 1945 provide financial assistance to its member states pursuant to its Articles of Agreement (2016). This assistance is always granted on the basis of the "conditionality principle"; in addition, it is also limited in terms of the quota share of the requesting country in the IMF.[95] The European Stability Mechanism ('**ESM**') now plays the same role in the euro area.[96]

Second, the term "sovereign lender of last resort" should not be confused with the term "bank lender of last resort" (**LLR)**, which refers to the provision of emergency liquidity support to banks, such as the (just above-mentioned) Eurosystem's ELA mechanism.

Third, central banks in general (and as a rule in advanced economies) do not act in the first capacity, but in the second; under EU law, the ECB and NCBs are explicitly bound by the prohibition under **Article 124 TFEU**, which introduced as a rule the prohibition of any measure establishing privileged access of the institutions and entities referred to in **Article 123** to financial institutions established in the EU.[97]

BOX 3: A brief comparison to the Swiss National Bank (SNB)

In this context, the following is briefly noted on the Swiss National Bank ('**SNB**'), the central bank of the Swiss Confederation, in comparison to the ECB within the Eurosystem:

(1) Institutional difference

The ECB, as an EU institution, is a "supranational" central bank operating under the limitations set out by the EU principle of conferral,[98] while the SNB is operating as a national central bank within a federal sovereign state.

(2) Independence

Unlike most Constitutions all over the world, the Federal Constitution of the Swiss Confederation (hereinafter the '**Swiss FC**')[99]) contains specific provisions on the country's *independent* (like the ECB and the NCBs within the Eurosystem) central

95 **Articles of Agreement (2016)**, Article V, Section 3, points (a) and (b)(iii), respectively. *See* further **Gortsos (2023a)**, pp. 122-124.

96 On the ESM, *see* **Box 6 below, under A**.

97 On Article 123, *see* **Section B below, under 1.2.2.3 (2)**.

98 On this principle, *see* by means of mere indication **Craig and de Búrca (2020)**, pp. 142-144 (*inter alia*).

99 SR 101, currently in force as amended and applicable since 22 February 2022.

bank, the SNB, and monetary policy[100] (like the TFEU and the ESCB/ECB Statute for the ECB) In particular, pursuant to **Article 99(2)**:

> "*The SNB, as an independent central bank, shall pursue a monetary policy that serves the overall interests of the country; it shall be administered with the cooperation and under the supervision of the Confederation*".[101]

The institutional independence of the SNB is further stipulated in **Article 6** of the Federal Act on the Swiss National Bank of 3 October 2003[102] ('**National Bank Act**', '**NBA**'). This provides that, in fulfilling its monetary tasks according to Article 5(1)-(2), the SNB, which is a "*joint-stock company incorporated by special act*",[103] and the members of its bodies are not permitted to seek or accept instructions from the Federal Council, the Federal Assembly or any other body.[104] In addition, the NBA also governs the personal independence of the members of the Bank Council in a way similar to that set out in the TFEU and the ESCB/ECB Statute for the ECB.[105] In particular, any member elected by the Federal Council may be removed from office by it (only) if that member no longer fulfils the requirements for exercising the office or has committed a grave offence.[106]

(3) Legal tender status of means of payment

Under EU law, this status is set out in Article 128 TFEU and in Council Regulation 974/98 (as already noted). In Switzerland, this aspect is (also) governed at constitutional level. In particular, in accordance with the Swiss FC, the exclusive right to issue coins and banknotes has been conferred upon the Confederation.[107] Furthermore, the Fed-

100 Another notable exemption is Article 88, first sentence of the Constitution of the Federal Republic of Germany ("basic law, Grundgesetz") of 23 May 1949 (as in force), which provides that "*the Federation shall establish a note-issuing bank and currency bank (Währungs- und Notenbank) as the Federal Bank (Bundesbank)*" but does not explicitly refer to monetary policy. Furthermore, in accordance with the second sentence of said Article, its responsibilities and powers can be transferred to the ECB. *On the other hand*, as already noted, the Federal Reserve System is (legally) based on legislation enacted by the Congress.

101 Furthermore, **Article 99(3)-(4)** stipulates that the SNB shall create sufficient currency reserves from its revenues (part of which shall be held in gold), and that a minimum of two thirds of its net profits shall be allocated to the Cantons. On these provisions of that Article, *see* by means of mere indication **Hettich (2023)**, pp. 2797-2804 (with extensive further references).

102 SR 951.11; currently, it is in force as amended and applicable since 1 September 2023. This Federal Act was adopted on the legal basis of Articles 99-100 and 123 of the Swiss FC.

103 **NBA**, Article 1(1); this Article is analysed in **Senn (2021)**, pp. 10-18. The author notes that neither the Swiss FC nor the NBA contain a legal definition of the SNB but, by application of a functional approach, this is defined on the basis of the objectives and the tasks assigned to it.

104 On this Article, *see* **Senn and Scholl (2021)**.

105 *See* **Box 1 above**.

106 **NBA**, Article 41(3); *see* on this **Plenio (2021)**, pp. 479-480.

107 **Swiss FC**, Article 99(1); *see* **Hettich (2023)**, pp. 2794-2797.

eral Act of 1 May 2000 "on Currency and Payment Instruments" ('**CPIA**'),[108] which lays down the currency unit (Swiss franc), regulates all the characteristic features of currency and money (legal tender). Under Swiss law, in addition to the coins issued by the Confederation and the banknotes issued by the SNB, Swiss franc-denominated sight deposits at the SNB also have legal tender status.[109]

(4) Objectives

In accordance with **Article 5(1) NBA**, on the objective of the SNB, this must:

> "*pursue a monetary policy serving the interests of the country as a whole. It shall ensure price stability. In doing so, it shall take due account of economic developments*"[110]

Thus, the distinction between primary and secondary objective, in the way it is set out (*inter alia*) in Article 127(1) TFEU, is not embedded in Swiss law. Furthermore, the objective of price stability is defined by the SNB as equal to a rise of the Swiss consumer price index of less than 2% on an annual basis, or as absence of deflation, namely, a sustained decrease in the price level, taking into account (the fact) that inflation cannot be steered with absolute accuracy or be precisely measured.[111] These provisions are similar to those applying to the Eurosystem.[112]

(5) Last resort lending

Article 9(1), point (e) NBA provides the following:

> "*In performing its monetary tasks pursuant to Article 5 paragraphs 1 and 2, the National Bank may enter into credit transactions with banks and other financial market participants on condition that sufficient collateral is provided for the loans*".

This provision forms the basis for the SNB to also act as an LLR by providing liquidity assistance to one or more domestic banks if they can no longer refinance their operations on the market.[113] The SNB makes such assistance dependent on the three

108 SR 941.10; currently, it is in force as amended and applicable since 1 January 2020. It is legally based on Articles 99, 122(1) and 123(1) of the Swiss FC.

109 **CPIA**, Article 2; for an (article-by-article) commentary of this Federal Act, *see* the contributions in **Plenio und Senn (2020**, Hrsg.**)**, pp. 609-702

110 The SNB's monetary policy strategy consists of three elements: a definition of price stability, a medium-term inflation forecast and the implementation of its monetary policy; *see* at: https://www.snb.ch/en/iabout/monpol/id/monpol_strat. On Article 5(1), *see* **Kessler (2021)**.

111 At: https://www.snb.ch/en/the-snb/mandates-goals/monetary-policy/strategy.

112 *See* **this Section further below**.

113 *See* **Bertschinger (2021)**, pp. 233-241.

conditions laid down in Section 6 of its "Guidelines on monetary instruments" of 25 March 2004,[114] always under the principle of "constructive ambiguity".[115]

On the other hand, the ECB is not acting as a lender of last resort in the euro area, as just discussed.

(6) Preservation of financial stability

Both the SNB and the ECB are responsible for the preservation of financial stability. In particular, even though the latter does not have a specific related mandate,[116] **Article 5(2) NBA** explicitly provides that, among the tasks assigned to the SNB in pursuing its monetary policy, this must "*contribute to the stability of the financial system*".[117] Accordingly, this Federal Act conferred upon the SNB a precise financial stability task further specified in **Article 16a**.[118] In this field, the SNB is called upon to cooperate with the Swiss Financial Market Supervisory Authority ('**FINMA**').[119] A Memorandum of Understanding ('**MoU**') of 15 May 2017[120] contains a clear division of the two institutions' responsibilities and regulates their cooperation.

In particular: macro-prudential oversight of the financial system

As part of its contribution to the stability of the Swiss financial system, the SNB is also responsible for its macro-prudential oversight, publishing, since 2003, an annual **"Financial Stability Report"**. Its aim is to draw attention to strains or imbalances which could pose a threat to systemic stability in the short or the longer term.[121] Accord-

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114 At: https://www.snb.ch/en/mmr/reference/snb_legal_geldpol_instr2015/source/snb_legal_geldpol_instr2015.en.pdf; standing as of 1 January 2015.

115 On this principle, *see* **Herring and Litan (1995)**, pp. 126-131. On the role of the SNB as lender of last resort, *see* **Koumbarakis (2017)**, **Sester *et al.* (2018)**, pp. 217-269 and **Nobel (2019)**, pp. 429-433; *see* also the ***Excursus* 5 in Chapter 3 below**, when discussing the *Credit Suisse*'s recent (2023) failure and the measures taken as a response to that financial episode. On lending of last resort in the wake of the failure and rescue of *Credit Suisse*, *see* **Tucker (2023)**.

116 On the related **Article 127(5) TFEU**, *see* ***Special Topic* 2 below, under 1 (1)**.

117 **NBA**, Article 5(2), point (e); *see* **Grünewald (2021a)** (with extensive further references, also discussing climate-change related aspects (pp. 130-131)). The other tasks are to provide the Swiss franc money market with liquidity; ensure the supply and distribution of cash; facilitate and secure the operation of cashless payment systems; and manage the currency reserves (*ibid.*, Article 5(2), points (a)-(d)).

118 *See* **Grünewald (2021b)**.

119 The FINMA was established by the Federal Act of 22 June 2007 "on the Swiss Financial Market Supervisory Authority [FINMA]" (SR 956.1). Currently, this Federal Act (Financial Market Supervision Act, '**FINMASA**') is in force as amended and applicable since 1 March 2024; its legal basis are Articles 95 and 98 of the Swiss FC. On the FINMA, *see* **Weber *et al.* (2006)**; on its objectives, tasks, organisation, and powers (as of the time of their publication), *see* by means of mere indication **Abegg *et al.* (2021)**, pp. 110-129, and in more detail **Sester *et al.* (2018)**, pp. 381-687 and **Nobel (2019)**, pp. 501-607.

120 At: https://www.snb.ch/en/mmr/reference/mofu/source/mofu.en.pdf.

121 On this case, *see* details in the ***Excursus* 5 in Chapter 3 below**.

ingly, the Report presents its assessment of the Swiss banking sector's resilience, focusing on trends that are observable at the levels of the banking system, the financial markets, and the macroeconomic environment.

On the other hand, in the EU, the macroprudential oversight of the European financial system (and not only of that in the euro area) is not a task of the ECB but has been assigned to a specific EU body established in 2010, the European Systemic Risk Board ('**ESRB**'). In relation to this function, "specific" tasks have been conferred upon the ECB, pursuant to secondary EU law, namely, a Council Regulation adopted on the basis of Article 127(6) TFEU.[122]

(7) Banking supervision

Finally, unlike the ECB, upon which, as of 4 November 2014, "specific" banking supervisory tasks have been conferred pursuant to another Council Regulation adopted on the basis of Article 127(6) TFEU,[123] the SNB is not a banking supervisory authority. The single supervisory authority for the entire Swiss financial (and not only banking) system is the FINMA, which conducts its supervisory powers in accordance with Federal Act of 8 November 1934 "on Banks and Savings Banks"[124] (the **"Banking Act"**), the FINMASA, as well as the ordinances, circulars and guidance it adopts.

3.1.3 Definition of price stability[125]

(1) Although the 1992 Treaty establishing the European Community ('**TEC**')[126] strongly emphasised the primacy of price stability, it does not provide any precise definition for this concept. Accordingly, in December 1998,[127] the GC adopted the following definition:

> "*Price stability is defined as a year-on-year increase in the Harmonised Index of Consumer Prices* (HICP) *for the euro area of* ***below, but close to, 2%***."

According to this quantitative definition, price stability "*shall be maintained over the medium term*" (a precondition for sustained growth). It is noted, however, that there diverging views on what constituted "below but *close* to 2%". Its publication aimed at building credibility for the strategy required to safeguard the efficiency of monetary policy. Simultaneously, it was expected that

122 *See* **Special Topic 2 below, under 1**.

123 *Ibid.*, **under 2**.

124 SR 952.0; currently, it is in force as amended and applicable since 1 January 2024; its legal basis is **Articles 34ter, 64** and **64bis FC**.

125 The following is based (albeit with the necessary adjustment and updating) on **European Central Bank (2011)**, pp. 55-82.

126 Consolidated version 2002, OJ C 325, 24.12.2002, pp. 33-184.

127 *See* also **this Section above, under 3.1.2.2 (3)**.

the public is provided with a clear indication on the assessment of success of this policy, granting thus transparency to the Eurosystem and the strategy of the monetary policy.[128]

(2) With regard to this definition, the following additional remarks should also be made:

First, it provides a maximum limit for the increase rate of the inflation calculated on the basis of the (above-mentioned) **HICP**. This harmonised index: is compiled by the Eurostat and the national statistical institutes of the Member States in accordance with harmonised statistical methods;[129] was developed by virtue of a Council Regulation[130] for the assessment of price convergence in Stage Two of the EMU; and is a measure of inflation that is comparable across countries; its use is consistent with the public's tendency to focus on consumer prices during assessment of changes in price level. Data are available on a monthly and annual basis, broken down by detailed consumption categories.[131] Currently, it is governed by a Regulation of the co-legislators and a Commission's implementing act.[132]

Second, as all consumer price indexes, HICP for the euro area may be seen as biased in several ways regarding its mode of calculation. This may be due to the change of consumer stereotypes, or the improvement of the quality of goods and services included in the basket used for its definition. This "partiality" cannot be fully corrected and may lead to a slight overestimation of the real inflation rate.[133]

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128 *See* in this respect **this Section below, under 3.3**, in relation to the ECB's strategy review.

129 The Eurostat is the statistical authority of the EU by virtue of **Regulation (EC) No 223/2009** of the co-legislators of 11 March 2009 "on European statistics and repealing (…)", OJ L 87, 31.3.2009, pp. 164-173, as in force. *See* in this respect also the **Opinion** of the ECB of 28 September 2023 "on a proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 223/2009 on European statistics" (OJ C, C/2023/1032, 20.11.2023).

130 **Council Regulation (EC) No 2494/95** of 23 October 1995 "concerning harmonized indices of consumer prices", OJ L 257, 27.10.1995, pp. 1-4.

131 *See* at: https://ec.europa.eu/eurostat/web/hicp/overview.

132 **Regulation (EU) 2016/792** of the co-legislators of 11 May 2016 "on harmonised indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/95" (OJ L 135, 24.5.2016, pp. 11-38) and **Commission Implementing Regulation (EU) 2020/1148** of 31 July 2020 "laying down the methodological and technical specifications in accordance with Regulation (EU) 2016/792 of the co-legislators as regards harmonised indices of consumer prices and the house price index" (OJ L 252, 4.8.2020, p. 12-23).

133 The available empirical data indicate that HICP partiality is possibly lower than that of the respective national indexes.

Third, by choosing the HICP, the GC clarified that the single character of the monetary policy imposes decisions to be adopted on the basis of developments in the entire euro area and not at regional level, since the objective is to maintain price stability in the euro area as a whole. However, there is a risk that, under specific circumstances, some euro area Member States may be in different stages of the economic cycle.

Fourth, the declaration that "*price stability shall be maintained over the medium-term*" reflects the admission that monetary policy should be focused on the future, with medium-term orientation. It recognises the existence of short-term price instability, which is mainly due to non-monetary shocks (e.g., impact from changes in indirect taxation or changes in international product prices). Furthermore, this medium-term orientation allows the ECB to respond gradually and in a calculated manner to unpredictable financial impediments threatening price stability.

Finally, and most importantly, it is not deemed consistent with price stability either, when the HICP remains significantly (and persistently) below the 2% threshold.

3.2 The two pillars of the analysis

3.2.1 The first pillar: economic analysis

(1) Taking into account the experience of other central banks, the ECB chose to assign a prominent role to money as the first pillar of its strategy, a choice that reflects the fact that, as a rule and in the medium term, the origins of inflation are monetary. Two remarks deserve attention in this context:

First, a notable regularity in macroeconomics is the steady long-run relationship between the price level and the money stock, particularly with regard to its measurement through broad **"monetary aggregates"**.[134] Available data for the euro area confirm the existence of such a relationship, as opposed to countries where monetary developments lack normality.[135]

Second, monetary and credit aggregates also play a significant role in the **"transmission mechanism" of monetary policy effects on the level of prices**. This fundamental mechanism in central banking describes the *assumed* process through which monetary policy decisions (e.g., an increase or de-

134 *See* **just below, under (2)**.

135 Monetary and credit aggregates have enough of a precursor for the medium-term development of prices. Along with the benefits that money has in terms of the speed and accuracy of measurement, this explains the prominent role assigned thereto by the ECB.

crease in central bank's interest rates) affect the economy and in particular prices. This process is an assumed one, since the ECB is acting based on the expectation that in the case of, e.g., a decrease of its interest rates this will be followed by a decrease in money market rates, interbank rates, and bank lending rates. However, this is not a given (especially) in the case of bank lending rates (predominantly but not confined to fixed ones). These are being determined by credit institutions themselves according to their business policy and not by dictation from the central bank, which simply signals through its monetary policy operations the direction of interest rates (which obviously has an impact on credit institutions' funding conditions) and considering, *inter alia*, the risk premia relating to their counterparties' credit risk.[136]

(2) The prominent role of money is signalled by the announcement of a reference value for the growth of **"M3"**, the broadest of the Eurosystem's three monetary aggregates. This comprises all the items of liabilities of Monetary Financial Institutions ('**MFIs**'[137]) and central government *vis-à-vis* non-MFI euro area residents (excluding central government), which have (a high degree of) "moneyness". It includes the sum of currency in circulation and overnight deposits (M1),: deposits with an agreed maturity of up to two years and those redeemable at notice of up to three months (the additional elements of M2); as well as repurchase agreements, money market fund shares/units and debt securities with a maturity of up to two years (the additional elements in relation to M2), which are considered close substitutes for deposits due to their (high degree of) liquidity and (price) certainty.[138] The reference value is reviewed on an annual basis and is derived from the standardised relationship between money, prices, real economic activity, and velocity described in the quantity theory of money equation (on the basis of the so-called **"Fischer equation"**).[139]

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136 For a chart depicting the transmission mechanism of monetary policy effects, *see* **European Central Bank (2011)**, in particular p. 59 (**Graph II** just below). *See* also **Tuori (2020)**, pp. 624-626.

137 This term is defined to mean central banks, deposit-taking corporations and money market funds ('**MMFs**'); *see* Article 2, point (1) of **Regulation (EU) 2021/379** of the ECB of 22 January 2021 "on the balance sheet items of credit institutions and of the monetary financial institutions sector (recast) (**ECB/2021/2**)", OJ L 73, 3.3.2021, pp. 16-85.

138 The growth rates, components and counterparts of monetary aggregates are calculated on the basis of transactions from an index obtained (starting from a base period) by dividing transactions by the outstanding amounts at the beginning of the period to which they refer. For more details, *see* at: https://www.ecb.europa.eu/stats/money_credit_banking/monetary_aggregates/html/index.en.html3.

139 This equation shows that the growth rate of money supply (ΔM) is equal to the following: the output growth rate (ΔY) and the inflation rate (ΔP), minus the growth rate of money velocity (ΔV). Therefore, the reference value is illustrated by the formula: $\mathbf{\Delta M = \Delta Y\ \Delta P - \Delta V}$.

3.2.2 The second pillar: monetary analysis

(1) Despite the widespread consensus on the prominent role of money, monetary developments are not the only factor to be considered for the evaluation of risks to price stability. For the GC to take appropriate decisions, it must form a complete picture of the financial situation and the size of financial disruptions threatening price stability. In evaluating risks, information is required on whether they are derived from the supply or the demand side, they may be of internal (i.e., intra-euro area) or external origin, and they may be temporary or permanent. Since such information cannot be derived from an analysis conducted in the context of the first pillar, the information gap is filled by an analysis based on a wide range of economic and financial indicators. This forms the second pillar of the ECB monetary policy strategy.

(2) The analysis focuses on identifying the short-term impact that a series of factors has on price developments, as there is a risk for such developments to become entrenched and jeopardise price stability in the medium term.[140]

(3) Macroeconomic projections for future developments are produced on the assumption of unchanged interest and exchange rates and are constructed by combining econometric model-based projections with non-model-based judgmental assessments. The final projections *first*, seek to organise a large amount of information and be coherent with past experience and with economic theory; and *second*, offer an analytical tool to help the GC define its policy and should not affect the expectations of economic stakeholders, taking into account the GC's commitment in maintaining price stability.[141]

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140 In line with standard models of the business cycle, this analysis is often centred on the effects of the interplay between supply and demand and/or the cost pressures on pricing behaviour in the goods, services and labour markets. In this respect, there is a close monitoring of developments: **(a)** in overall output, demand and labour market conditions, such as those shown in a broad range of price and cost indicators, as well as in the exchange rate and the balance of payments for the euro area; and **(b)** in financial market indicators and asset prices since movements in asset prices may affect price developments through income and wealth effects. Furthermore, asset prices and financial yields can be used to derive information on the expectations of financial markets, including information on expected future price developments.

141 However, projections are not always reliable because they are based on specific assumptions (e.g., level of oil prices and exchange rates), use specific techniques and do not include all relevant information. In its final analysis the GC also uses similar data produced by external economic experts.

3.3 The new (2021) monetary policy strategy

3.3.1 Introductory remarks

On **23 January 2020**, the GC launched a review of the Eurosystem's monetary policy strategy.[142] Even though this review was expected to be concluded by end-2020, the deadline was extended to mid-2021 due to emergency resulting from the pandemic crisis.[143] The review focused on a wide variety of issues and contained five pillars on the following aspects:[144] the precise definition of the target (i.e., price stability, including the inflation rate's target level, and secondary objectives); the way the economic and monetary analyses are conducted and the interaction between fiscal and monetary policies; the relevance of issues such as employment, social inclusion, climate change and financial stability in pursuing the Eurosystem's mandate;[145] the monetary policy operations and instruments used, including interest rates and APPs; and communication practices.[146] It was concluded and published on **8 July 2021**.[147]

3.3.2 The pillars of the new monetary policy strategy

The new strategy sets out the means *first*, to achieve the primary objective of the Eurosystem, which, as laid down in the TFEU (and already discussed), is to maintain price stability in the euro area, with reference to an appropriate set

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142 Its previous strategy review had been conducted in 2003. In 2019, the US Federal Reserve launched its own comprehensive and public review of the monetary policy framework employed to achieve its congressionally mandated goals of maximum employment and price stability and better meet future challenges (at: https://www.federalreserve.gov/monetarypolicy/review-of-monetary-policy-strategy-tools-and-communications.htm). On this, *see* **Clarida (2022)**.

143 *See* at: https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200402~942a1358ee.en.html.

144 *See* at: https://www.ecb.europa.eu/home/search/review/html/questions.en.html.

145 On the interaction between fiscal and monetary policies, *see* **Section E below, under 5**; on the role of the ECB in preserving financial stability under the TFEU, *see* ***Special Topic 2*** **below, under 1 (1)**. On central banks and climate change, *see* **Ramos Muñoz *et al.* (2022)**.

146 On the numerous ECB occasional papers to support the GC's discussions on all these aspects (published in the Occasional Papers Series), *see* at: https://www.ecb.europa.eu/pub/html/strategy_review.en.html. For an overall assessment, *see* **Kronberger Kreis (2021)**. On the improvement, in particular, of the Eurosystem's communication practices, *see* **Demary *et al.* (2020)**; on communication in monetary policy, *see* also **Lastra and Dietz (2022)** and **Wyplosz (2022)**.

147 On the ECB's monetary policy strategy statement (hereinafter "**ECB's monetary policy strategy statement (2021)**"), *see* at: https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_statement.en.html. The related Q&As are available at: https://www.ecb.europa.eu/home/search/review/html/questions.en.html.

of monetary policy instruments, indicators, and intermediate targets; and *second*, to take into account other considerations without prejudice to price stability. It continues to have two pillars, the economic pillar remaining focused on inflation within the ECB's medium-term orientation on consumer prices, and a revised "monetary-financial" pillar setting out the factors that the ECB should consider in deciding how to fight inflation.[148] In this respect, the GC considered the following:

First, price stability should (any longer) best maintained by aiming for a 2% **"symmetric" inflation target** over the medium term.[149] Thus, both negative and positive deviations of inflation from that target and over that term are considered as equally undesirable,[150] even though a temporary deviation of the 2% can be tolerated.[151]

Second, to maintain the symmetry of the inflation target, when the economy is operating (as until 2022) close to the lower bound on nominal interest rates, forceful or persistent monetary policy action is required to avoid negative deviations from the inflation target becoming firmly established and unlikely to change. This may also imply a *transitory* period in which inflation is moderately above target.[152] Thus, short-term inflation deviations from the target, as well as lags and uncertainty in the transmission of monetary policy to the economy and to inflation are inevitable.[153]

Third, even though the setting of key interest rates remains the primary monetary policy instrument,[154] other instruments, including asset purchases and longer-term refinancing operations,[155] will continue be used as appropriate as well.[156] In the author's view, this can lead to the conclusion that the term "unconventional" monetary policy, namely, the monetary policy instruments introduced and applied during the GFC,[157] may any longer be considered as a "misnomer".

148 *See* **van 't Klooster and Grünewald (2022)**, pp. 13-15.

149 **"Inflation targeting"** means the achievement of a low inflation rate, both in the short and the medium term. On this targeting as a framework for monetary policy, *see* by means of mere indication **Debelle *et al.* (1998)**; on the legality of inflation targeting in the Eurosystem, *see* **Siekman (2022)** with extensive further references.

150 **ECB's monetary policy strategy statement (2021)**, point 5.

151 As analytically discussed in **Sections C and D below**, inflation below the 2% target has been the case for a prolonged period of time.

152 **ECB's monetary policy strategy statement (2021)**, point 6; *see* also **Section D below, under 6.1 (3)**.

153 *Ibid.*, point 7.

154 *See* **Section B below**.

155 *See* **Sections C and D below**.

156 **ECB's monetary policy strategy statement (2021)**, point 8.

157 *See* **Section C below**.

Fourth, even though the HICP remains the appropriate measure for assessing price stability,[158] in monetary policy assessments account will be also taken of inflation measures that include initial estimates of the cost of owner-occupied housing (‘**OOH**’) to supplement the set of broader inflation measures.[159]

Fifth, monetary policy decisions, including the evaluation of their proportionality and potential side effects, continue to be based on an integrated assessment of all relevant factors, which builds on two interdependent analyses: the economic analysis and the monetary and financial analysis.[160]

Sixth, since climate change has profound implications for price stability, a comprehensive climate-related action plan, with a concrete roadmap, was considered indispensable to further incorporate climate change considerations into its policy framework.[161] In this respect, as part of the **"Climate Action Plan"** of 8 July 2021[162] and on the basis of a detailed **"Roadmap of climate change-related actions"** annexed thereto, the GC announced on **4 July 2022** its decision to take further steps to include climate change considerations in the monetary policy framework.[163]

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158 *See* **this Section above, under 3.1.3 (2)**.

159 **ECB's monetary policy strategy statement (2021)**, point 3. On this cost, *see* details in **Gros and Shamsfakhr (2020)**.

160 *Ibid.*, point 9.

161 **ECB's monetary policy strategy statement (2021)**, point 10. On the mitigation by central banks of climate and nature-related risks in the pursuit of price stability, *see* by means of mere indication **Brand *et al.* (2023)**; on the role of central banks in relation to climate change, *see* **Cullen (2023)**; on how climate change considerations can be incorporated by the ECB into its implementation of monetary policy, *see* **Schoenmaker (2023)**. On the environmental impact of unconventional monetary policy, based on a multisector growth model with climate externalities and financial frictions, *see* **Papoutsi, Piazzesi and Schneider (2022)**.It is noteworthy that the ECB had already been active on this front under its function as banking supervisor within the SSM; *see*, e.g., its "**Guide** on climate-related and environmental risks: Supervisory expectations relating to risk management and disclosure" of 27 November 2020, which analyses these risks that combine two main risk drivers (i.e., physical and transition risk, *see* just below) (at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.202011finalguideonclimate-relatedandenvironmental-risks~58213f6564.en.pdf).

162 At: https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr210708_1~f104919225.en.html.

163 At: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704~4f48a72462.en.html. In this respect, it is worth noting that the findings of behavioural economics may have a significant influence on the shaping of legislation in (*inter alia*) this field. **Sunstein (2023)**, at p. 20, classifies the US Inflation Reduction Act (‘**IRA**’) of 16 August 2022, which enhanced or created several (over twenty) tax incentives for clean energy and manufacturing, as a typical example of law reform that has been directly informed by behavioural findings.

The concrete measures decided upon can be summarised as follows: (a) They are designed in full accordance with the Eurosystem's primary objective. With reference to the secondary objective,[164] they support the economy's green transition in line with the EU's climate neutrality objectives and provide incentives to companies and financial firms.[165] (b) They aim to better take into account climate-related financial risk in its balance sheet. In this respect, it is noted that **"climate-related financial risks"** are a category of environmental risks,[166] which are included in the (rather heterogeneous) category of economic, social and environmental ('**ESG**'), do not constitute a separate category of financial risks *per se* but are **risk drivers** – physical and transition risks.[167] These translate into financial (e.g., credit, liquidity and market) risks, as well as operational risks through various transmission channels, such as lower profitability, real estate value, household wealth or asset performance or increased compliance and/or legal cost.[168]

These measures, which the ECB committed to regularly review and, if necessary, adapt, relate to corporate bond holdings, the collateral framework, climate-related disclosure requirements for collateral, as well as enhanced risk assessment tools and management.[169]

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164 On the primary and the secondary objectives, *see* **this Section above, under 3.1.2.1 (2)**.

165 In November **2022**, the ECB ranked fourth among the G20 central banks in the **"Green Central Banking Scorecard"**, which scores and ranks the full range of their green policies and initiatives on the basis of several criteria (see at: https://greencentralbanking.com/scorecard). On the "green monetary policy" of the ECB, *see* by means of mere indication **Kyriazis (2022)**, pp. 143-161 (also discussing its primary law limits), May**er and Schürger (2023)**, **Beckmann *et al.* (2023)** and **Wutscher (2024)** (all with extensive further references).

166 *See* **Financial Stability Board (2022)**.

167 These are closely interacting: **(a) physical risks** are those arising from the physical effects of climate change and environmental degradation (and are classified as acute or chronic); they are classified either as **"acute"** – when arising from climate and weather-related events and an acute destruction of the environment, or as **"chronic"** – when arising from progressive shifts in climate and weather patterns or a gradual loss of ecosystem services; **(b) transition risk** typically refers to the uncertainty related to the timing and speed of the process of adjustment to an environmentally sustainable economy that may be affected by three drivers. *See* on this **Gortsos (2023a)**, pp. 31-32, with extensive further references.

168 *See* **European Banking Authority (2022)**, pp. 17-19.

169 This also includes "decarbonisation", namely, a climate change mitigation method to significantly reducing or eliminating from the atmosphere carbon dioxide and other greenhouse gas ('**GHG**') emissions (*see* **Section E below, under 2.2.1 (2)**). *See* also the **"ECB Climate Agenda 2022"** of 4 July 2022 (as well) (at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704_annex~cb39c2dcbb.en.pdf); on this, *see* by means of mere indication **Aubrechtová *et al.* (2023)** and **Tuori (2023)**, pp. 43-48.

Finally, the communication of monetary policy decisions through the Monetary Policy Statement, press conferences, the Economic Bulletin, and the monetary policy accounts will be adapted to reflect the revised monetary policy strategy, complemented by layered and visualised versions of monetary policy communication geared towards the wider public, which is essential for ensuring public understanding of and trust in the actions of the ECB.[170]

Special Topic 1: Towards a central bank digital currency (CBDC) in the euro area

1. The initiatives undertaken by the ECB

(1) The increased use of electronic payments in place of cash has led a growing number of central banks to consider introducing a central bank digital currency ('**CBDC**').[171] A CBDC would allow households and firms to convert their deposits at commercial banks into deposits at a CBDC account, that is, at the central bank. The critical issue is to reconcile security, resilience, and performance with the enabling of innovation and leveraging existing capabilities.

CBDCs should be distinguished from crypto-assets, including asset-referenced and e-money tokens (jointly referred to as **"stablecoins"**[172]). These are also based on distributed ledger technology ('**DLT**'), are digital representations of value or rights but are not issued by central banks.[173]

170 **ECB's monetary policy strategy statement (2021)**, point 11. The next assessment of the appropriateness of the ECB monetary policy strategy is scheduled for 2025 (*ibid.*, point 12). For a detailed presentation of the new strategy, *see* by means of indication **Ioannidis *et al.* (2021)**, **Reichlin *et al.* (2021), Zilioli (2021)**, **van 't Klooster (2022)** and **van 't Klooster and Grünewald (2022)**. On the expectations from the 2025 next assessment, *see* **Wyplosz (2024)**.

171 A CBDC is defined as "*a digital payment instrument, denominated in the national unit of account, that is [like banknotes] a direct liability of the central bank*" (*see* **Bank for International Settlements (2020)**, p. 3). On some considerations, from the point of view of central banking and monetary law, on the legal aspects of CBDCs, *see* **Bossu *et al.* (2020)**.

172 *See* in this **Financial Stability Board (2020)**.

173 Thus, CBDCs to be issued by the ECB and the NCBs (as well as related services provided by them when acting in their monetary authority capacity) are not covered by the scope of application of the 2023 Regulation on Markets in Crypto-Assets (**Regulation (EU) 2023/1114** of the co-legislators of 31 May 2023 "on markets in crypto-assets (…)", OJ L 150, 9.6.2023, pp. 40-205, '**MiCAR**'); *ibid.*, Article 2(3), point (c) and recital (13). On this legislative act, *see* by means of mere indication **Zetzsche *et al.* (2020)** and **Annunziata (2023)**.

(2) On **2 October 2020**, the ECB published a "Report on a digital euro",[174] which examined the issuance of a **CBDC** – the digital euro – from the perspective of the Eurosystem, taking into account the fact that the use of cash in the euro area is declining. The digital euro would be central bank money offered in digital form for use by citizens and businesses for their retail payments and would complement the current offering of cash (i.e., banknotes and coins) and wholesale central bank deposits.[175] On the basis of this Report, the GC launched on **14 July 2021** the investigation phase for the issuance of the digital euro by virtue of the Eurosystem's **"digital euro project"**.[176] At this point in time, the Eurosystem is addressing key issues regarding its design and distribution.

The objectives set are the following: establishing of a riskless digital euro,[177] which should have a legal tender status, ensuring its wide accessibility – in terms, however, of the possibility of making low-value payments only (**"retail CBDC"**);[178] and ensuring efficiency in terms of non-fundamental intervention in the intermediation (maturity transformation) function of credit institutions which (among other categories of payment service providers, '**PSPs**') shall distribute it.

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174 At: https://www.ecb.europa.eu/pub/pdf/other/Report_on_a_digital_euro~4d7268b458.en.pdf.

175 At: https://www.ecb.europa.eu/paym/digital_euro/report/html/index.en.html. On various aspects of CBDCs, *see* by means of mere indication the various contributions in **Gortsos and Sethe (2023**, editors**)**. On the results of the most recent (2022) BIS survey on central bank digital currencies and crypto in 86 jurisdictions (or areas), see **Kosse and Mattei (2022)**. On the technical requirements for a functional CBDC architecture, *see* **Bank for International Settlements (2023b)**.

176 *See* the ECB Press Release of 14 July 2021 "Eurosystem launches digital euro project" (at: https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr210714~d99198ea23.en.html). The ECB's latest (fourth) progress report on the investigation phase of a digital euro of 14 July 2023 is available at: https://www.ecb.europa.eu/paym/digital_euro/investigation/governance/shared/files/ecb.degov230713-fourth-progress-report-digital-euro-investigation-phase.en.pdf?704b0eee4c20eee4dbe4970f5091a96a. On whether the ECB is empowered to issue a digital euro (and, if so, in what form and under which conditions), *see* by means of mere indication **Grünewald *et al.* (2021)**, with extensive further references. On a critical evaluation, *see* **Monnet and Niepelt (2023)**.

177 This is based on the assumption that the issuer will be the central bank (which presumably does not become insolvent) and not private entities, as in the case of crypto-assets (often referred to (albeit in the author's view inaccurately) as cryptocurrencies).

178 A CBDC can be issued for use either by citizens and businesses for their retail payments (retail CBDC, '**r-CBDC**') or only for wholesale, financial market payments (wholesale CBDC, '**w-CBDC**'). *See* by means of mere indication **Kosse and Mattei (2022)**, p. 2 and **Moser (2023)**.

2. The legal basis for adopting a digital euro and its status as legal tender

(1) As regards the legal basis of a digital euro, it has been argued that the ECB can act for its issuance on the basis of **Articles 127(2) and 128(1) TFEU**, as well as **Articles 17 and 22 ESCB/ECB Statute**.[179] This issue is now addressed by the Commission in its legislative proposal of 28 June 2023 for a Regulation of the co-legislators "on the establishment of the digital euro", to be adopted on the basis of **Article 133 TFEU**.[180] The ECB submitted its Opinion on this proposed legislative act on 31 October.[181] In accordance with this proposed legislative act: *first*, the digital euro will be established as the digital form of the single currency;[182] *second*, the exclusive right to authorise the issue it will be conferred upon the ECB, while the ECB and euro area NCBs may issue it; *third*, the digital euro shall constitute a "direct liability" of the ECB or of NCBs towards its users and shall be governed by the provisions of that Regulation;[183] thus, the amounts of digital euro issued will be reflected on the liabilities side of the Eurosystem's consolidated balance sheet[184] and not on the balance sheet of credit institutions; and *finally*, the digital euro "*shall have legal tender status*", which shall entail its "mandatory acceptance", at full face value, with the power to discharge from a payment obligation; hence, in principle, the payee shall not refuse digital euro tendered in payment to comply with that obliga-

179 *See* on this **Grünewald (2023b)**, claiming (in footnote 40) that, if a digital euro were to be issued on the basis of Article 128(1) TFEU, it would have the status of legal tender under primary law, as well as **Hofmann (2023)** and **Mooij (2023)** (all with extensive bibliographic references, also discussing the first two and/or the first three ECB progress reports on the investigation phase of a digital euro). *See* also **Zilioli (2023)**, pp. 72-75. The author also notes that, according to the (relatively settled) case-law of the CJEU, cumulative recourse to several Articles is permissible.

180 COM/2023/369 final. **Article 133 TFEU** provides that the European Parliament and the Council, deciding with the ordinary legislative procedure laid down in **Article 294**, may adopt measures necessary for "*the use of the euro*" as the single currency, after consultation with and without prejudice to the competences of the ECB. *See* on this **Wutscher (2019)**, pp. 2080-2082.

181 CON/2023/34, at: https://www.ecb.europa.eu/pub/pdf/legal/ecb.leg_con_2023_34.en.pdf?495c419f19a78fd8d5f40e7cffffb331. For a first discussion of this Opinion, see **Spitzer, Loi and Mieskolainen (2023)**, which highlight the ECB's concerns with the legislative proposal, which, as noted, "*chiefly result from perceived intrusions by the legislation into the ECB's monetary policy competences*."

182 **Proposal of digital euro Regulation**, Articles 1 and 3.

183 *Ibid.*, Articles 4 and 5(1).

184 *See* **Excursus 1 below**.

tion and a payer shall be able to discharge himself from a payment obligation by tendering digital euro to the payee.[185]

(2) The above proposed legislative act on the digital euro is part of the Commission's **"central bank money"** legislative package of **28 June 2023**, which also comprises two further legislative proposals. The *first* is a proposal for a Regulation of the co-legislators "on the provision of digital euro services by payment services providers incorporated in Member States whose currency is not the euro [hereinafter the '**non-euro area Member States**'] and amending **Regulation (EU) 2021/1230** of the [co-legislators[186]]".[187] The *second* proposed legislative act is a proposal for a Regulation of the co-legislators "on the legal tender of euro banknotes and coins",[188] to be adopted on the basis of **Article 133 TFEU** as well.[189] This proposed Regulation sets out, for the first time in secondary legislation, a definition and regulation of legal tender for cash, a defining characteristic of central bank money, since the term "legal tender" is currently only defined in the **Commission Recommendation** of 22 March 2010 "on the scope and effects of legal tender of euro banknotes and coins"[190] (which constitutes an instrument of soft law); and in the judgment of the Court (Grand Chamber) of 26 January 2021 in **joined cases C-422/19** and **C-423/19**, *Johannes Dietrich and Norbert Häring v Hessischer Rundfunk*,[191] which (*inter alia*) interprets the notion of legal tender contained in **Article 128(1) TFEU** for euro-denominated banknotes.[192]

185 **Proposal of digital euro Regulation**, Article 7(1)-(3) and (5). **Recital (14)** considers in this respect that, in accordance with the case-law of the CJEU discussed just below, the concept of "legal tender" of a means of payment denominated in a currency unit signifies, in its ordinary sense, that that means of payment cannot generally be refused in settlement of a debt denominated in the same currency unit, at its full-face value, with the effect of discharging the debt. For a systematic analysis of this proposed Regulation, *see* **Gortsos (2024c)** (with extensive further references).

186 **Regulation (EU) 2021/1230** of 14 July 2021 "on cross-border payments in the Union (codification)", *OJ L 274, 30.7.2021, pp. 20-31 (the* **"Cross-border Payments Regulation"**).

187 COM/2023/368 final.

188 COM/2023/364 final.

189 The ECB submitted its Opinion on this proposal on October 2023 (CON/2023/31); at: https://www.ecb.europa.eu/pub/pdf/legal/ecb.leg_con_2023_31.en.pdf?d4dfb3c81ae6b7e01f846aa3f5d7c531.

190 OJ L 83, 30.3.2010, pp. 70-71.

191 ECLI:EU:C:2021:63.

192 In these cases, the requests (received on 31 May 2019) for a preliminary ruling under **Article 267 TFEU** from the German Federal Administrative Court (Bundesverwaltungsgericht) concerned the interpretation of several Articles of the TFEU (namely, Article 2(1), read in conjunction with Article 3(1), point (c) and Article 128(1), third sentence), as well as of Article 16, first paragraph ESCB/ECB Statute and Article 10 of Council Regulation 974/98. On Article 267 TFEU, *see* **Lenaerts, Maselis and Gutman (2014)**, pp. 456-479 and **Craig and de Búrca (2020)**, pp. 497-502.

BOX 4: On the legal tender status of euro banknotes and coins in accordance with the Commission's Recommendation and the judgment of the CJEU (Joined Cases C-422/19 and C-423/19)

(1) Pursuant to paragraph 1 of the Commission's Recommendation on the "common definition of legal tender", where a payment obligation exists, the legal tender of euro banknotes and coins should imply the following:

(a) **mandatory acceptance**: the creditor of a payment obligation cannot refuse euro banknotes and coins unless the parties have agreed on other means of payment;
(b) **acceptance at full face value**: the monetary value of euro banknotes and coins is equal to the amount indicated on the banknotes and coins; and
(c) **power to discharge from payment obligations**: a debtor can discharge himself from a payment obligation by tendering euro banknotes and coins to the creditor.

(2) In its judgment of 26 January 2021, the CJEU:

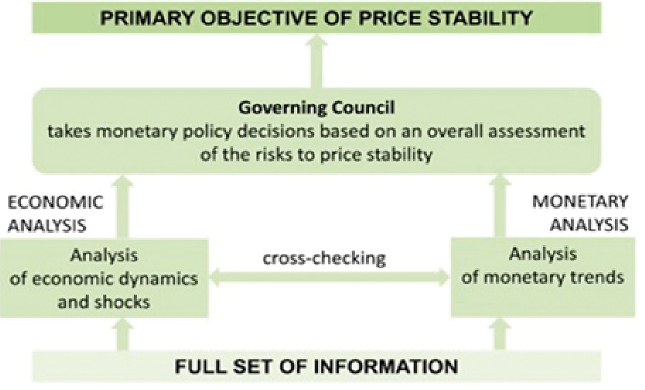
first, clarified that the concept of legal tender mentioned in Article 128(1) TFEU is a concept of EU law that must be given an autonomous and uniform interpretation throughout the EU;

second, held that the concept of legal tender of a means of payment denominated in a currency unit signifies that "*that means of payment cannot generally be refused in settlement of a debt denominated in the same currency unit, at its full-face value, and without surcharges for the payer, with the effect of discharging the debt*"; and

third, stated that an obligation to accept euro banknotes and coins may, in principle, be restricted by the Member States whose currency is the euro for reasons of public interest and pursuant to their competences outside of the area of monetary law and policy and of other exclusive EU competences, provided those restrictions are justified by a public interest objective and proportionate to it.[193]

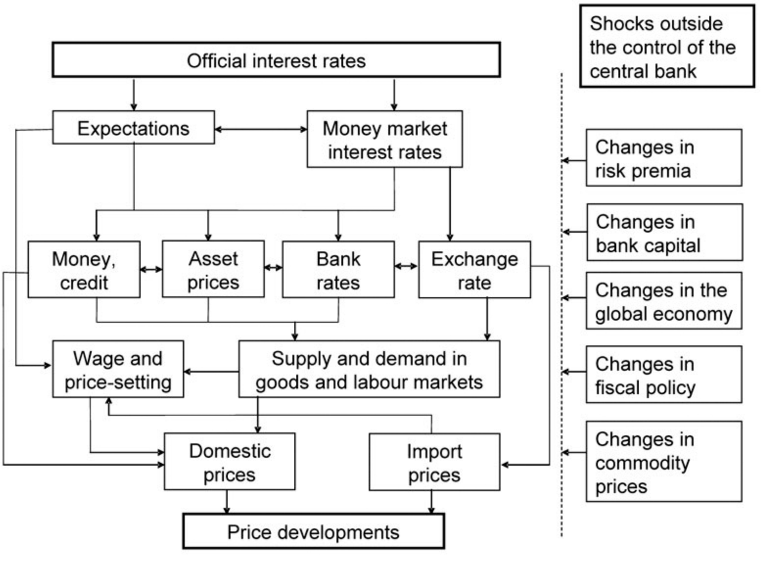
[193] **CJEU judgment**, paragraphs 45, 46, and 67-68, respectively. On this judgment, which also relates to the definition of monetary policy (as further discussed in **Section C below**), *see* **Angelou (2024)**, pp. 143-148 (in Greek, with extensive further references).

GRAPH I:
The Eurosystem's (initial) monetary policy strategy



SOURCE: *European Central Bank*

GRAPH II:
The mechanism for the transmission of monetary policy effects



SOURCE: *European Central Bank*

Section B: The legal framework governing the implementation of the single monetary policy in the euro area[194]

1. Introductory remarks

1.1 Historical overview

The key provisions relating to the general framework on the monetary policy of the Eurosystem are laid down in the Treaties and the ESCB/ECB Statute. In fulfilling the obligation set out in **Article 117(3) TEC**, the European Monetary Institute ('**EMI**')[195] published in January 1997 a Report titled "The Single Monetary Policy in Stage Three: Specification of the operational framework"; its content was further specified in September of the same year in the EMI Report "The Single Monetary Policy in Stage Three: General Documentation on ESCB Monetary Policy Instruments and Procedures". These two Reports set out – within the system of rules established in the ESCB/ECB Statute – the framework governing the definition and implementation of the single monetary policy since 1 January 1999 in a uniform manner throughout the euro area, laying down the following:

(1) They identified the procedure for the definition and implementation by the ECB of the Eurosystem's single monetary policy and, most importantly, the general principles guiding the selection of monetary policy operations instruments and procedures to be used by the Eurosystem. In particular, it was stipulated that, in order to steer interest rates and manage liquidity in the market, the Eurosystem may use certain categories of open market operations, as well as two standing facilities to grant and absorb liquidity to and from credit institutions (and other eligible counterparties) outside working hours; finally, it may impose on counterparties an obligation to hold a percentage of their deposits with ECB or NCB accounts in order to stabilise money market rates (minimum reserve requirements). *In addition*, specific criteria were determined for the selection of counterparties to Eurosystem monetary policy operations, and the categories of assets eligible as collateral in the conduct of its credit transactions.

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194 This Section is a fully updated and extensively extended version of Section 7.1.2 in **Gortsos (2020a)**, pp. 286-297.

195 On this Institute, the forerunner of the ECB, *see* **Gortsos (2020a)**, p. 71.

(2) Moreover, these two Reports set out the accompanying framework that should be put in place to enable the conduct of the single monetary policy. This framework became fully operational with the onset of Stage Three of EMU and comprises provisions on three subject areas: *first*, creating an EU-wide real-time gross settlement ('**RTGS**') system called Trans-European Automated Real-Time Gross Settlement Express Transfer – '**TARGET**');[196] *second*, imposing on counterparties to provide sufficient statistical data to the ECB for the completion of its function in terms of monetary management;[197] and *third*, creating systems and establishing procedures appropriate for the settlement and clearing of security transactions to ensure the efficient settlement of open market operations within the Eurosystem in the conduct of the single monetary policy.[198]

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196 On this system, as adjusted to develop into the **"TARGET2"** system, *see* **Athanassiou (2020)**, pp. 722-726 and **Gortsos (2020a)**, pp. 313-320 (with due references to the then applicable legal framework, namely, **ECB Guideline 2013/47/EU** of 5 December 2012 "on a (…) (TARGET2) (recast) (**ECB/2012/27**)" (OJ L 30, 30.1.2013, pp. 1-93). With effect from 20 March 2023, this framework was repealed by **ECB Guideline (EU) 2022/912** of 24 February 2022 "on a new-generation (…) (TARGET) (…) (**ECB/2022/8**)" (OJ L 163, 17.6.2022, pp. 84-185). This is currently in force as amended:(a) by **ECB Guideline (EU) 2022/2250** of 9 November 2022 "amending Guideline (EU) 2022/912 on a new-generation (…) (TARGET) (ECB/2022/8) **(ECB/2022/39)**" (OJ L 295, 16.11.2022, pp. 50–51) and by **ECB Decision (EU) 2022/2249** of the same date "amending Decision (EU) 2022/911 concerning the terms and conditions of TARGET-ECB (ECB/2022/22) **(ECB/2022/38)**" (OJ L 295, 16.11.2022, pp. 48-49); and(b) in 2023, by **ECB Guideline (EU) 2023/2415** of 7 September "amending Guideline (EU) 2022/912 (…) **(ECB/2023/22)**" (OJ L, 2023/2415, 27.10.2023) and by **ECB Decision (EU) 2023/2532** of the same date "amending Decision (EU) 2022/911 concerning the terms and conditions of TARGET-ECB (ECB/2022/22) **(ECB/2023/27)**" (OJ L, 2023/2532, 16.11.2023).The present study does not further discuss this system *per se*; reference is made to it (as proper) in the context of other aspects.

197 In this context, the Council adopted (as part of its complementary legislation pursuant to **Articles 129(4) TFEU** and **41 ESCB/ECB Statute**) **Regulation (EC) No 2533/98** of 23 November 1998 "concerning the collection of statistical information by the [ECB]" (OJ L 318, 27.11.1998, *pp.* 8-19, *as in force*), and the ECB its **Regulation (EC) No 2819/98** of 1 December 1998 "concerning the consolidated balance sheet of the monetary financial institutions sector (**ECB/1998/16**)" (OJ L 356, 30.12.1998, pp. 7-40). This ECB legal act was repealed by the ECB **Regulation (EC) No 2423/2001** of 22 November 2001 (OJ L 333, 17.12.2001, pp. 1-46), which in turn was as well (implicitly) repealed by its **Regulation (EU) No 1072/2013** of 24 September 2013 "concerning statistics on interest rates applied by monetary financial institutions (recast) (ECB/2013/34)" (OJ L 297, 7.11.2013, pp. 51-72, as in force).

198 Such a system is the **"TARGET2-Securities system"** ('**T2S**') for securities settlement in central bank money; *see* **Gortsos (2020a)**, pp. 312-313.

1.2 The applicable framework

1.2.1 Key provisions of primary EU law

1.2.1.1 *General provisions*

(1) In the context of their operational independence, the ECB and the NCBs – Members of the Eurosystem have at their disposal all the necessary tools and powers for the implementation of the single monetary policy. Responsible for the implementation of this policy is the ECB Executive Board in accordance with the Guidelines and Decisions adopted by the GC, which gives the necessary instructions to NCBs – to which the ECB has recourse to the extent deemed possible and appropriate[199] (pursuant to the above-mentioned[200] principle of decentralisation of operations) and subject to the conditions laid down in **Article 14.3 of the ESCB/ECB Statute**, according to which the NCBs have an obligation to act in accordance with such Guidelines.

(2) For the accomplishment of the tasks conferred upon the ESCB (including the Eurosystem's basic tasks[201]), the ECB has been granted autonomous regulatory powers. More specifically: *first*, pursuant to the TFEU, its bodies can issue four categories of **"legal acts"**: Regulations, Decisions, Recommendations and Opinions (the two latter being acts of "soft law");[202] *furthermore*, the ESCB/ECB Statute has conferred upon the ECB the power to also adopt Guidelines and give Instructions to NCBs;[203] these are internal Eurosystem **"legal instruments"** exclusively addressed to and legally binding for the NCBs – Members of the Eurosystem.[204]

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199 **ESCB/ECB Statute**, Article 12.1, second and third sub-paragraphs.

200 *See* **Section A above, under 3.1.2.2**.

201 *Ibid.*

202 **TFEU**, Article 132(1) and **ESCB/ECB Statute**, Article 34. Thus, the ECB has, in principle, the competence to issue all types of legal acts, except for Directives, which other EU institutions can issue by virtue of **Article 288 TFEU**. *Inter alia*, national authorities of Member States should request an ECB Opinion on any draft legislative provision falling within its field of competence, within the limits and under the terms set out by **Council Decision 98/415/EC** (OJ L 189, 3.7.1998, pp. 42-43) adopted under the complementary legislation (**TFEU**, Articles 127(4), first sub-paragraph and 282(5) and **ESCB/ECB Statute**, Article 4, point (a)).

203 **ESCB/ECB Statute**, Article 12.1, first sub-paragraph and second sub-paragraph, second sentence.

204 All categories of ECB legal acts and instruments are, in principle, not binding for Member States with a derogation and for their NCBs. Their content is further specified by **Article 17 of the ECB Rules of Procedure**, which were adopted in accordance with its **Decision 2004/257/EC** of 19 February 2004 (**ECB/2004/2**) on the basis of Article 12.3 **ESCB/ECB Statute** (OJ L 80, 18.3.2004, pp. 33-41, as in force). For an overview, see **Zilioli and Athanassiou (2018)**,

BOX 5: The key differences between ECB Regulations, Decisions and Guidelines

ECB Regulations: the adoption of these legal acts is required in various fields including, *inter alia*, for the Eurosystem to implement the single monetary policy and impose minimum reserve requirements.[205] Exclusive competence for issuing Regulations lies with the GC, which may delegate its regulatory power to the Executive Board with respect to their implementation, provided that the issues to be implemented as well as the limits and scope of the powers delegated are specified.[206]

ECB Decisions: these legal acts (which constitute the largest categories in terms of numbers) are adopted (like Recommendations) either by the GC or by the Executive Board, depending on their respective field of competence, with the aim of performing the basic tasks conferred upon the Eurosystem under the TFEU and the ESCB/ECB Statute, without prejudice to the competence for issuing Regulations.[207] ECB Decisions imposing sanctions on third parties must be signed by the Secretary of the Governing Council in order to certify them and state the reasons on which they are based.[208]

ECB Guidelines: these internal documents of the Eurosystem contain the general framework and the main rules to be followed by the NCBs at the implementation of the Eurosystem's monetary policy exclusively adopted by the GC. They are addressed to the NCBs of the Member States whose currency is the euro and are notified to them by any appropriate means and must be reasoned. As in the case of Regulations, the GC may transfer to the Executive Board its regulatory power with respect to their implementation, provided that the issues to be implemented as well as the limits and scope of the powers delegated are specified.[209]

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pp. 621-624 and **Gortsos (2020a)**, pp. 252-255.It is noted that, under the ECB Rules of Procedure, Regulations, Decisions, Recommendations and Opinions are also classified as legal instruments. However, the term "legal acts" is also used by the ECB in other documents. In this study, the term "legal instruments" is confined to those adopted by virtues of the provisions of the ESCB/ECB Statute, namely, Guidelines. *See* in this respect also **Bax and Witte (2019)**, which carry out a detailed taxonomy of the ECB instruments available for its banking supervision (further discussed in ***Special Topic 2*** below, under 2), taking into account, *inter alia*, the provisions of primary law (**Article 132(1) TFEU**, which sets out the ECB "legal acts"), and of the Ingle Supervisory Mechanism Regulation (SSMR, which provides for the adoption of "legal acts" and "legal instruments", the latter, either binding or non-binding).

205 These fields, exclusively enumerated (*numerus clausus*) in Article 132(1) TFEU, first indent, are further governed by Articles 3.1, first point, 19.1, 22 and 25.2 **ESCB/ECB Statute**.

206 **ECB Rules of Procedure**, Article 17.1, as well as **ESCB/ECB Statute**, Article 12.1, second sub-paragraph, third sentence and **ECB Rules of Procedure**, Article 17.3, respectively.

207 By April 2024, all ECB Decisions had been issued by the GC.

208 **ECB Rules of Procedure**, Article 17.4. It is noted that the decisions taken by the ECB in setting interesting interest rates (as further discussed below) are not legal acts.

209 *Ibid.*, Article 17.2, as well as **ESCB/ECB Statute**, Article 12.1, second sub-paragraph, third sentence and **ECB Rules of Procedure**, Article 17.3, respectively. As a horizontal provision, in the case of **ECB Regulations** (and of other ECB legal instruments whose publication has

(3) Pursuant to **Chapter IV of the ESCB/ECB Statute** on the achievement of the Eurosystem's objectives, in implementing its monetary policy, the Eurosystem can employ the following monetary policy tools (**"Eurosystem monetary policy implementation framework"**): conduct open market operations, offer standing facilities and require credit institutions to hold minimum reserves on accounts with the Eurosystem.[210] Furthermore, the GC may decide upon the use of other operational methods of monetary control, if it deems that they serve the objective of maintaining monetary stability in the euro area. If such methods impose obligations on third parties, their scope must be defined by the Council under the procedure set out in **Article 129(4) TFEU** and repeated *verbatim* in **Article 41 ESCB/ECB Statute** (on the Council's "complementary legislation"[211]).[212] It is noted, however, that the issuance of banknotes is not included in the monetary policy operations.[213]

1.2.1.2 *In particular: the sanctioning regime*

In accordance with the TFEU and the ESCB/ECB Statute,[214] if an undertaking seated in a Member State whose currency is the euro fails to comply with the obligations arising from the provisions of its Regulations or Decisions, the ECB has the power to impose fines and/or periodic penalty payments. The limits of, and the conditions for their imposition are laid down (from the outset) in **Council Regulation (EC) No 2532/1998** of 23 November 1998 "concerning the powers of the [ECB] to impose sanctions".[215] In order to specify its provisions, the ECB adopted on 23 September 1999 **Regulation (EC) No 2157/1999** "on the powers of the [ECB] to impose sanctions **(ECB/1999/4)**".[216]

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been expressly decided) the responsibility to ensure publication in all EU official languages in the OJ lies with the Executive Board (*ibid.*, Article 17.7).

210 **ESCB/ECB Statute**, Articles 18-19. On the operational framework governing these instruments, *see* **Smits (1997)**, pp. 223-288, **Papathanassiou (2001)**, pp. 73-120 and **European Central Bank (2011)**, pp. 93-116. *See* also further **below, under 1.2.2** on the provisions of EU secondary law.

211 Under these Articles, the European Parliament (still) has a mere opinion-issuing role (as under the simplified amendment procedure set out in **Article 10.2 ESCB/ECB Statute**). On Articles 129(4) TFEU and 41 ESCB/ECB Statute, *see* **Gortsos (2020a)**, pp. 86-89.

212 **ESCB/ECB Statute**, Article 20; to the best of the author's knowledge, by April 2024, this provision had not been activated.

213 It is noted that the **ECB General Documentation Guideline** (discussed just below) does not make a single reference to the term banknotes.

214 **TFEU**, Article 132(3), repeated (almost *verbatim*) in Article 34.3 **ESCB/ECB Statute**. On Article 132 TFEU, *see* **Wutscher (2019)**, pp. 2075-2080.

215 OJ L 318, 27.11.1998, pp. 4-7, as in force; its legal basis are the above-mentioned Articles of the TFEU and of the Statute.

216 OJ L 264, 12.10.1999, pp. 21-26, as in force (upon its four amendments). Its legal basis are also the above Articles of the TFEU and of the Statute, Article 19.1 of the latter (*see* fur-

1.2.2 Key legal acts and instruments of EU secondary law (Council and ECB) – the Eurosystem monetary policy implementation framework

The **"general regulatory framework"** on the implementation of the single monetary policy consists of two pillars, which are specified in various ECB legal acts and instruments: the "Eurosystem monetary policy operations"; and the "minimum reserve system". The former are governed by the ECB's so-called **"General Documentation Guideline"** (*see* just below, **under 1.2.2.1**) and some further ECB acts (**under 1.2.2.3**) and the latter by a Council Regulation and the so-called **"ECB Reserve Requirements Regulation"** (**under 1.2.2.2**).

1.2.2.1 *The General Documentation Guideline*

(I) *General provisions*

(1) The legal instrument governing open market operations and standing facilities is (currently) the **ECB 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[217] (hereinafter the **"General Documentation Guideline"**). Its legal basis are Articles 3.1, first indent, 9.2, 12.1, 14.3, 18.2[218] and 20, first paragraph **ESCB/ECB Statute**.

(2) The **General Documentation Guideline** is addressed to all Eurosystem central banks and repealed, from 1 May 2015, the ECB **Guideline 2011/817/EU** of 20 September 2011 "on monetary policy instruments and procedures of the

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ther **below, under 2.3 (4)**), as well as Article 6(2) of **Council Regulation (EC) No 2532/1998**. This ECB legal act contains, *inter alia*, provisions on the initiation and confidentiality of infringement procedures, the respective powers of the ECB and the NCBs, the notice of objections, the rights and obligations of the undertakings concerned, and specific procedural issues.

217 OJ L 91, 2.4.2015, pp. 3-135; as of end-April 2024, this Guideline had been repeatedly (and extensively) amended to incorporate necessary adjustments relating to certain aspects of monetary policy operations, as further (partly) discussed in this Section and in more detail in **Sections C-E below**; on the current consolidated (albeit not fully updated) version, *see* at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014O0060-20230629 (the usual disclaimer that these consolidated texts do not have legal effect applies). Its detailed Table of Contents (as in force) is set out below as **Appendix I**.

218 On this Article, *see* **this Section below, under 2.1.1 (2)**.

Eurosystem (**ECB/2011/14**)"[219].[220] This legal instrument, which is addressed to all Eurosystem central banks:[221] *first*, sets out the uniform rules for the implementation of the single monetary policy throughout the Member States whose currency is the euro; *second*, requires the Eurosystem to take all appropriate measures for the implementation of its monetary policy operations, pursuant to the principles, tools, instruments, requirements, criteria and procedures laid down therein; except for the principles these may be amended by the GC at any time; and *third*, reserves to the Eurosystem the right to request and obtain any relevant information from "counterparties" that is needed to perform its tasks and achieve its objectives in relation to monetary policy operations, without prejudice to any other relevant existing specific rights to request information relating to monetary policy operations.[222]

(3) As noted, the tools used by the Eurosystem in implementing the single monetary policy consist of open market operations (which are, thus, one pillar of overall monetary policy operations); standing facilities; and minimum reserve requirements.[223] Open market operations and standing facilities are defined in the General Documentation Guideline as **"Eurosystem monetary policy operations"**.[224] In principle, the application of minimum reserves under the Eurosystem's minimum reserve system is not governed by the General Documentation Guideline,[225] but by a separate set of rules.[226]

(II) *In particular: the legal relationship between the Eurosystem central banks and counterparties*

(1) The legal relationship between the Eurosystem central banks and its counterparties is established in appropriate contractual or regulatory arrangements. These are applied by the NCBs – Members of the Eurosystem, which

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219 OJ L 331, 14.12.2011, pp. 1-95. The first related ECB Guideline, adopted in 2020, was **Guideline 2000/776/EC** of 31 August 2000 "on monetary policy instruments and procedures of the Eurosystem **(ECB/2000/7)**" (OJ L 310, 11.12.2000, pp. 1-82).

220 *Ibid.*, Articles 192 and 190(1), respectively. Its provisions apply from 1 May 2015 except those detailed in Article 142 which shall apply from 1 November 2015 (*ibid.*, Articles 191(2)).

221 **General Documentation Guideline**, Article 192.

222 *Ibid.*, Article 1(1)-(2) and (4)-(5). The term **'counterparty'** is defined (*ibid.*, Article 2, point (11)) as an institution fulfilling the eligibility criteria laid down in Part Three entitling it to access the Eurosystem's monetary policy operations (*see* **this Section below, under 3.1**).

223 *Ibid.*, Article 3(1).

224 *Ibid.*, Article 2, point (32).

225 However, for information purposes, certain features of the minimum reserve requirements are illustrated in Annex I of that Guideline (*ibid.*, Article 3(2), second sentence). A few other specific aspects are also governed by that Guideline, as further briefly discussed below, as appropriate.

226 *See* **just below, under 1.2.2.2**.

are also responsible to implement the provisions of General Documentation Guideline in accordance with those arrangements.[227] In this respect, the Guideline provides that the Eurosystem may: *first*, impose on counterparties sanctions, financial penalties or non-financial penalties (suspend their participation in its open market operations or standing facilities) if they fail to comply with certain operational rules pursuant to these arrangements;[228] and *second*, on the grounds of prudence or if there is an event of a counterparty's default, suspend, limit or exclude counterparties' access to these monetary policy operations; and/or, on the grounds of prudence, also reject, limit the use of or apply supplementary haircuts to assets mobilised by specific counterparties as collateral in its credit operations.[229]

(2) Furthermore, all contractual or regulatory arrangements applied by the NCBs with their counterparties should contain minimum common features aimed at ensuring the application of the single monetary policy under terms and conditions which are not materially different among Member States whose currency is the euro. The Eurosystem must ensure that these contractual or regulatory arrangements are in conformity with the provisions of **Articles 161-187**, which contain the additional "minimum common features" in relation to its monetary policy operations.[230]

1.2.2.2 *The framework governing the Eurosystem's minimum reserve system*

(1) The **Eurosystem's minimum reserve system** primarily pursues (within its primary objective under Article 127(1) TFEU) a dual objective: *first*, contributing to the stabilisation of money market interest rates by giving institutions an incentive to temper the effects of temporary liquidity fluctuations due to the averaging provision; and *second*, creating or enlarging a structural liquidity shortage, which improves the ability of the Eurosystem to operate efficiently as a liquidity supplier.[231]

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227 **General Documentation Guideline**, Article 1(3) and recital (6), fourth and fifth sentences.

228 *Ibid.*, Articles 154-156 and recitals (24)-(25); **Article 157** governs the application of non-financial penalties to branches for non-compliance with certain operational rules.

229 *Ibid.*, Articles 158-159.

230 *Ibid.*, Article 160 (governing the legal relationship between the Eurosystem central banks and counterparties) and recital (26). Articles 161-171 refer to the additional minimum common features applicable to all arrangements for Eurosystem monetary policy operations, Articles 172-175 to those applicable to repurchase and collateralised loan agreements, and Articles 176-180, 181-182 and 183-187 exclusively govern additional minimum common features to repurchase agreements, collateralised loan arrangements, and foreign exchange swaps for monetary policy purposes, respectively.

231 *Ibid.*, recital (11), first sentence.

(2) As just noted, the application of minimum reserves under the Eurosystem's minimum reserve system is not governed by the General Documentation Guideline but by a separate framework adopted on the basis of **Article 19 of the ESCB/ECB Statute**.[232] Currently, this framework consists of:[233] **Council Regulation (EC) No 2531/1998** of 23 November 1998 "concerning the application of minimum reserves by the [ECB]",[234] which was adopted on the basis of Article 19.2; and (currently) **ECB Regulation (EU) 2021/378** of 22 January 2021 "on the application of minimum reserve requirements (recast) (**ECB/2021/1**)"[235] (hereinafter the **"ECB Reserve Requirements Regulation"**), which was adopted on the basis of Article 19.1. These acts lay down rules for the holding of minimum reserves by EU credit institutions and the branches of non-EU credit institutions established in the euro area.[236]

1.2.2.3 *Other key legal acts and instruments*

Several other legal acts and instruments govern specific aspects. In particular:

(1) A quite significant element of the Eurosystem monetary policy implementation framework relates to the valuation haircuts[237] applied therein. This is governed by the so-called **"Valuation Haircut Guideline"**.[238] The objective of this legal instrument is to ensure that eligible assets mobilised as collateral for Eurosystem credit operations are subject to risk control measures (as laid down

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232 *See* **this Section above, under 1.2.1**.

233 **General Documentation Guideline**, Article 3(2), first sentence.

234 OJ L 318, 27.11.1998, pp. 1-3. This legislative act is in force as (slightly) amended by **Council Regulation (EC) No 134/2002** of 22 January 2002 (OJ L 24, 26.1.2002, p. 1).

235 OJ L 73, 3.3.2021, pp. 1-15. With effect from **26 June 2021**, this Regulation 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) (**ECB Regulation (EU) 2021/378**, Article 15). It is in force as amended on 6 December 2022 by **Regulation (EU) 2022/2419** (**ECB/2022/43**) (OJ L 318, 12.12.2022, pp. 7-8) and on 25 August 2023 by **Regulation (EU) 2023/1679 (ECB/2023/21)** (OJ L 216, 1.9.2023, pp. 96-97). The current consolidated version is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02021R0378-20230920.

236 For more details, *see* **this Section below, under 2.3**.

237 This term is defined in Article 2, point (97) of the **General Documentation Guideline**, as a percentage decrease applied to the market value of an asset mobilised as collateral in Eurosystem credit operations.

238 **ECB Guideline (EU) 2016/65** of 18 November 2015 "on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework (**ECB/2015/35**)", OJ L 14, 21.1.2016, pp. 30-35, as in force (on the (multiple) subsequent amendments to this instrument, *see* **Sections C-E below**; the current (incomplete) consolidated version is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02015O0035-20230629). The legal basis of this legal instrument is the same (multiple) ESCB/ECB Statute Articles as in the General Documentation Guideline (*see* **this Section above, under 1.2.2.1 (I) (1)**).

in Title VI of Part Four of the General Documentation Guideline) to protect the Eurosystem against the risk of financial losses in the event of a counterparty's default.[239]

(2) The domestic asset and liability management operations undertaken by NCBs – Members of the Eurosystem is governed by the **ECB Guideline (EU) 2019/671** of 9 April 2019.[240] The aim of this legal instrument is threefold:

First, it specifies the general principles to be followed by the NCBs when conducting, on their own initiative, operations in assets and liabilities, which should not interfere with the single monetary policy to obtain its successful implementation.

Second, it sets out limitations on the remuneration of government deposits held with NCBs as "fiscal agents" in accordance with **Article 21.2 ESCB/ECB Statute**, pursuant to which the ECB and NCBs may act as "fiscal agents" for the public entities referred to in **Article 21.1**; the objective is to preserve the integrity of the single monetary policy and provide incentives for government deposits to be placed in the market, so as to facilitate the Eurosystem's liquidity management and monetary policy implementation. Government deposits are non-monetary policy deposits accepted by the Eurosystem from any public entities of a Member State or any EU public entities referred to in **Article 123 TFEU**, except for publicly owned credit institutions, as laid down in **ECB Guideline (EU) 2019/671** and in **ECB Decision (EU) 2019/1743** of 15 October 2019.[241]

Third, by introducing a ceiling on such remuneration based on money market rates, it facilitates the monitoring by NCBs of their compliance with the pro-

239 **Valuation Haircut Guideline**, recital (2).

240 **ECB Guideline (EU) 2019/671** "on domestic asset and liability management operations by the [NCBs] (recast) **(ECB/2019/7)**" (OJ L 113, 29.4.2019, pp. 11-17, as in force). The legal basis of this legal instrument, which repealed **ECB Guideline 2014/304/EU** of 20 February 2014 (**ECB/2014/9**) (OJ L 159, 28.5.2014, pp. 56-65), is Articles 12.1 and 14.3 ESCB/ECB Statute. On the circumstances that led to its amendment in 2023, *see* **Section E below, under 3.2.2**. It was also further amended in April 2024 (*see* **Special Topic 4 below**, under (6)).

241 **ECB Decision (EU) 2019/1743** (...) (recast) (**ECB/2019/31**)" (OJ L 267, 21.10.2019, pp. 12-14, as in force), which repealed **ECB Decision 2014/337/EU** of 5 June 2014 (**ECB/2014/23**) (OJ L 168, 5.6.2014, pp. 115-116). Its legal basis is Articles 3.1, first indent and 17-19 ESCB/ECB Statute. On the multiple amendments to this Decision, *see* **Section D below, under 6.2.1 and Section E, under 2.2.4 (3) and 3.2.2**.

hibition on monetary financing (pursuant to **Article 123(1) TFEU**[242]) carried out by the ECB in accordance with **Article 271, point (d)**.[243]

The scope of application of this legal instrument covers[244] euro-denominated transactions involving NCBs and non-monetary policy deposits, provided that these are recorded in the balance sheet and are not: (a) transactions executed by them in the course of the implementation of the single monetary policy; (b) regulated by Guidelines established on the basis of (the just above-mentioned) **Article 21.2 ESCB/ECB Statute**; (c) transactions executed and deposits taken in the context of the **"Eurosystem reserve management services"** ('**ERMS**') as set out in the **ECB Guideline (EU) 2021/564** of 17 March 2021[245];[246] and (d) operations related to the provision of ELA pursuant to the Agreement governing the ELA mechanism.[247]

(3) The remuneration of deposits, balances, and holdings of excess reserves in made in accordance with (the just above-mentioned) **ECB Decision (EU) 2019/1743**. In accordance with **recitals (2)-(3)** of this legal act, the GC, which may adjust the remuneration on all or part of institutions' holdings of excess reserves, decided on 12 September 2019 to introduce **a "two-tier system"** for excess reserve remuneration, which exempts reserve holdings in excess of required reserves from negative remuneration at the rate applicable on the deposit facility. The introduction of this system aims to support the bank-based transmission of monetary policy, while preserving the positive contribution of

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242 *See* on this by means of mere indication **European Central Bank (2007)**, p. 80 and **Thiele (2021)**, pp. 117-120.

243 **ECB Guideline (EU) 2019/671**, recitals (2)-(3). On this TFEU Article, which extends the judicial review by the CJEU also to NCBs in relation to the fulfilment of their obligations under the TFEU and the ESCB/ECB Statute, *see* **Schwarze und Wunderlich (2019)**, p. 2953.

244 *Ibid.*, Article 1.

245 **ECB Guideline (EU) 2021/564** "on the Eurosystem's provision of reserve management services in euro to central banks and countries located outside the euro area and to international organisations and repealing Guideline (EU) 2020/1284 (...) (recast) (**ECB/2021/9**)", OJ L 119, 7.4.2021, pp. 121-127.

246 The ERMS is a single framework governing the harmonised terms and conditions under which "reserve management services" in euro are offered by the Eurosystem to central banks, monetary authorities and countries located outside the euro area and to international organisations in accordance with the above Guideline. These reserve management services are a range of banking and custody services offered by the Eurosystem to the above-mentioned entities to enable them to manage their euro-denominated reserve assets comprehensively, efficiently and in a safe, confidential and reliable environment. They are provided by certain national central banks of the Eurosystem (**"ERMS providers"**) within the ERMS under the coordination of the ECB; *see* at: https://www.ecb.europa.eu/paym/erms/html/index.en.html#:~:text=Eurosystem reserve management services (ERMS) are a range,and in a safe, confidential and reliable environment.

247 *See* **Section A above, under 3.1.2.3**.

negative interest rates to the accommodative stance of monetary policy,[248] ensuring that the costs of negative rates to institutions do not interfere with the smooth, predominantly bank-based transmission of monetary policy throughout the euro area.[249]

(4) Furthermore. the rules on the management of the foreign reserve assets of the ECB by the NCBs and the legal documentation for operations involving such assets are set out in the **ECB Guideline 2008/596/EC** of 20 June 2008.[250]

(5) Finally, of particular importance is also the framework governing statistical information requirements. Until 2021, this was governed by **ECB Guideline 2014/810/EU** of 4 April 2014 "on monetary and financial statistics (recast) (**ECB/2014/15**)".[251] This has been substantially amended several times and then, in March 2021, was recast in the interest of clarity by **Guideline (EU) 2021/835** of 26 March 2021 "repealing Guideline ECB/2014/15 on monetary and financial statistics (**ECB/2021/16**)"[252] and split into five new Guidelines of the same date, which are currently in force.[253] Of relevance is also the **Agree-**

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248 On negative interest rate policies, *see* by means of mere indication **Swoboda (2017)**.

249 Reserve holdings and excess reserves are also governed by **Article 54(1) of the General Documentation Guideline**; *see* on this **this Section below, under 2.3 (3)**.

250 **ECB Guideline 2008/596/EC** (**ECB/2008/05**), *OJ L 192, 19.7.2008, pp.* 63-83. *The legal basis of this legal instrument is* Articles 3.1, third indent, 12.1 and 30.6 (on the transfer of foreign reserves to the ECB) ESCB/ECB Statute. It is in force as amended, on 28 July, by **ECB Guideline (EU) 2022/1378 (ECB/2022/28)**", OJ L 206, 8.8.2022, pp. 55-58. *See* also **Decision (EU) 2023/2818** of the ECB of 7 December 2023 "laying down the measures necessary for the contribution to the [ECB's] accumulated equity value and for adjusting the [NCB's] claims equivalent to the transferred foreign reserve assets and repealing **Decision (EU) 2020/140 (ECB/2020/6)** (ECB/2023/34)" (OJ L, 2023/2818, 18.12.2023).

251 OJ L 340, 26.11.2014, pp. 1-209. This repealed **Guideline 2007/830/EC** of 1 August 2007 "on monetary, financial institutions and markets statistics (recast) (**ECB/2007/9**)" (OJ L 341, 27.12.2007, pp. 1-232), which in turn repealed the first ECB Guideline in this field, namely, **Guideline 2003/652/EC** of 6 February 2003 "concerning certain statistical reporting requirements of the ECB and the procedures for reporting by the [NCBs] of statistical information in the field of money and banking statistics (**ECB/2003/2**)" (OJ L 241, 26.09.2003, pp. 1-460).

252 OJ L 208, 11.6.2021, p. 335–344. This was induced by amendments to **ECB Regulation (EU) No 1071/2013** of 24 September 2013 "concerning the balance sheet of the monetary financial institutions sector (recast) (**ECB/2013/33**)" (OJ L 297, 7.11.2013, pp. 1-50), which led to its repeal by **ECB Regulation (EU) 2021/379** of 22 January 2021 (see **Section A above, under 3.1.2 (2)**), as well as to **Regulation (EU) No 1409/2013** of the ECB of 28 November 2013 "on payments statistics (ECB/2013/43)" (OJ L 352, 24.12.2013, pp. 18-44).

253 These are: **Guideline (EU) 2021/830** "on balance sheet item statistics and interest rate statistics of monetary financial institutions (**ECB/2021/11**)"; **Guideline (EU) 2021/831** "on statistical information to be reported on financial intermediaries other than monetary financial institutions (**ECB/2021/12**)"; **Guideline (EU) 2021/832** "on reporting requirements on payments statistics (**ECB/2021/13**)"; **Guideline (EU) 2021/833** "on statistical information to be reported on consolidated banking data (**ECB/2021/14**)"; and **Guideline (EU)**

ment "on net financial assets" ('**ANFA**') between the NCBs – Members of the Eurosystem, by virtue of which these undertake the general obligation to ensure that, in each year, the average value of their net financial assets shall not exceed their net financial asset ceiling for that year.[254]

TABLE 3 **A summary of the key ECB legal acts and instruments governing the Eurosystem monetary policy implementation framework**	
Legal act/instrument	**Aspects addressed**
Eurosystem monetary policy operations	
General Documentation Guideline	general aspects of the implementation framework
Valuation Haircut Guideline	valuation haircuts applied to the implementation framework
Guideline (EU) 2019/671	domestic asset and liability management operations by NCBs
Decision (EU) 2019/1743	remuneration of deposits, balances, and holdings of excess reserves
Guideline 2007/830/EC	monetary and financial statistics
Guideline 2008/596/EC	management of the foreign reserve assets of the ECB by NCBs
Minimum reserve system	
Reserve Requirements Regulation	application of minimum reserve requirements

2021/834 "on statistical information to be reported on securities issues (**ECB/2021/15**)", OJ L208, 11.6.2021, pp. 1-58, 59-97, 98-108, 109-310 and 311-334, respectively (all as in force). For an overview of all ECB legal acts and instruments pertaining to its monetary policy "general framework" (a term used to distinguish them from those that form part of the ECB's "unconventional" monetary policy and were known under the term "temporary framework" – *see* **Section C below, under 2**), *see* the ECB's website at: https://www.ecb.europa.eu/ecb/legal/html/index.en.html (constantly updated).

254 The first ANFA was signed on **19 November 2014**. Further amendments were approved by the GC on 19 December 2022 to increase the efficiency of related processes, while leaving the agreement's substance largely unchanged (at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=IMMC:AGR/2022/12191).

2. Operations, instruments and procedures for implementation of the single monetary policy

2.1 Open market operations

2.1.1 The provisions of the ESCB/ECB Statute

(1) The legal basis for the conduct of open market operations is **Article 18.1 ESCB/ECB Statute**, which reads as follows:

> "*In order to achieve the objectives of the* ESCB *and to carry out its tasks, the* ECB *and the* [NCBs] *may:*
>
> – *operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments whether in euro or other currencies, as well as precious metals; [and]*
>
> – *conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.*"

Accordingly, the first indent of Article 18.1 allows the Eurosystem to operate, in a variety of ways, in financial markets, while the second allows it to conduct credit operations with credit institutions and other market participants. The general conditions under which the ECB and the NCBs stand ready to enter into credit operations, including the criteria determining the eligibility of collateral for the purposes of Eurosystem credit operations, are laid down in the General Documentation Guideline.

(2) Furthermore, **Article 18.2** provides that the general principles for open market (and credit) operations carried out by the ECB and the NCBs within the Eurosystem, including the announcement of conditions for entering into such operations, are established by the ECB.[255]

In this respect it is noted that, in his contribution referred to in the secondary sources as **Gortsos (2015)**,[256] the author has supported the view that **Article 18.1, second indent** could serve as a solid legal basis for the provision of ELA by the ECB, also referring to **Smits (1997)** who had noted several years before: "*The absence of lender-of-last-resort (LOLR) support from the text of the* ESCB *Statute does not make the authority of the* ECB *to grant it, or to authorize the provision of such support by* NCBs, *questionable. It is submitted that, under* Article 18.1, *second indent, the capacity of the* ECB *and the* NCBs *to act*

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255 On Article 18 ESCB/ECB Statute, *see* details in **Smits (1997)**, pp. 264-269 and 272-274.

256 *See* **Section A above, under 3.1.2.3 (1)**.

as lenders of last resort is subsumed."[257] As a matter of fact, the conditions for application of this Article are fulfilled in the case of ELA: the provision of ELA constitutes a credit operation with credit institutions; lending by NCBs under the ELA is currently provided under adequate collateral; and the eligibility of the assets to be used as collateral, the valuation of, and any haircuts applied to, the collateral provided, and (where applicable) details on the guarantee to be provided and the terms of any contractual safeguards could be adapted accordingly.[258]

2.1.2 The key aspects laid down in the General Documentation Guideline

(1) The operational framework governing the conduct of open market operations by the Eurosystem, as specified in the **General Documentation Guideline**, is quite detailed; their aim is to steer interest rates, manage the liquidity situation in the financial market and signal the stance of monetary policy.[259] Pursuant to the Guideline, a distinction is made between the categories of the Eurosystem's open market operations, the instruments for their conduct, and the procedures for their execution:

First, with regard to their specific purpose, regularity and procedures, open market operations are classified in four categories:[260] main refinancing operations ('**MROs**', governed by Article 6 of the General Documentation Guideline); longer-term refinancing operations ('**LTROs**', Article 7); fine-tuning operations (Article 8); and structural operations (Article 9).

Second, for the conduct of these operations and in order to achieve its objectives, the Eurosystem has at its disposal five instruments: reverse transactions (which are used in all categories of open market operations, as well as when providing access to the marginal lending facility); foreign exchange swaps for monetary policy purposes; the collection of fixed-term deposits; the issuance of ECB debt certificates; and outright transactions:[261]

➢ under a reserve transaction, an NCB buys or sells eligible assets under a repurchase agreement or conducts credit operations in the form of collateralised loans;[262]

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257 **Smits (1997)**, p. 269 (under (I)), with reference to **Louis (1995)**, p. 59; see also **Lastra (2015)**, p. 378.

258 *See* also **Box 3 above (under (5)**, on the provisions to that effect of Swiss law in accordance with Article 9(1), point (e) of the Swiss NBA.

259 **General Documentation Guideline**, Article 5(1).

260 *Ibid.*, Article 5(2) and recital (12).

261 *Ibid.*, Article 5(3). These five instruments are defined in Article (2), points (80), (40), (9), (47) and (72) (as discussed below) and further analysed in **Articles 10-14**, respectively.

- under the instrument of foreign exchange swaps for monetary policy purposes, the Eurosystem buys or sells euro spot against a foreign currency and, concurrently, sells or buys it back in a forward transaction on a specified repurchase date;
- under the instrument of the collection of fixed-term deposits, the Eurosystem invites counterparties to place fixed-term deposits on accounts with their "home NCBs" to absorb liquidity from the market;[263]
- under the instrument of the issuance of ECB debt certificates, the debt certificates issued by the ECB represent its debt obligation in relation to the certificate holders;[264] and
- under the instrument of outright transactions, the Eurosystem buys or sells eligible marketable assets outright in the market (spot or forward), resulting in a full transfer of ownership from the seller to the buyer with no connected reverse transfer of ownership.

In this context and in terms of (further) definitions:[265]

> **'repurchase agreement'** means an arrangement whereby an eligible asset is sold to a buyer without any retention of ownership on the part of the seller, while the seller simultaneously obtains the right and the obligation to repurchase an equivalent asset at a specific price on a future date or on demand;
>
> **'collateralised loan'** means an arrangement between an NCB and a counterparty whereby liquidity is provided to a counterparty by way of a loan that is secured by an enforceable security interest granted by that counterparty to the NCB in the form of e.g. a pledge, assignment or charge granted over assets;

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262 This term is defined in Article 2, point (8) as an arrangement between an NCB and a counterparty whereby liquidity is provided to the latter by way of a loan that is secured by an enforceable security interest granted by that counterparty to the NCB in the form of, e.g., a pledge, assignment or charge granted over assets.

263 In this case, thus, it is the Eurosystem calling upon eligible counterparties to make deposits of a fixed-term to the relevant NCBs (*ibid.*, Article 12(1)). The term 'home NCB' is defined (*ibid.*, Article 2, point (41)) as the NCB of the Member State whose currency is the euro in which the counterparty is established.It is noted that the interest rates applied to fixed-term deposits may be positive; be set at zero per cent; or be negative (*ibid.*, Article 12(3)). The application of a negative interest rate is rather the exception under the General Documentation Guideline; it can also be applied (only) in the case of the deposit facility (*see* **this Section below, under 2.2.3 (4)**).

264 On the issue whether the ECB would have the power to issue debt certificates ("central bank paper") in view of the fact that Article 18.1 ESCB/ECB Statute does not explicitly provide for that, see **Smits (1997)**, pp. 265-266. In any case, as shown in **Tables 6 and 8-10 below**, until the end of 2013 the ECB has not made use of this instrument (**liabilities item 4**).

265 **General Documentation Guideline**, Article 2, points (77), (8), (78) and (59), respectively.

'repurchase date' means the date on which the buyer is obliged to sell back equivalent assets to the seller in relation to a transaction under a repurchase agreement; and

'marketable assets' means debt instruments that are admitted to trading on a market and that fulfil the eligibility criteria laid down in Part Four of the Guideline.

The instruments for the conduct of open market operations aim to ensure an orderly functioning of the money market and to help credit institutions meet their liquidity needs in a smooth and well-organised manner. The instruments applicable to each category of them[266] are discussed just below.

Third, open market operations are executed through tender procedures,[267] which are performed in six operational steps and are conducted in the form of either standard or quick tender procedures: 'standard tender' procedures are normally conducted within a time frame of 24 hours from the announcement of the tender to the certification of the allotment result; while 'quick tender' procedures are normally executed within a time frame of 105 minutes from the announcement of the tender to the certification of the allotment result; they can be restricted to a limited set of counterparties.[268] On the other hand, the retention of "bilateral procedures" for Eurosystem open market operations has, in principle, no longer been considered as necessary since May 2022,[269] "*as experience has shown that tender procedures for money market transactions are effective and provide eligible counterparties equal access to Eurosystem monetary policy operations.*"[270]

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266 *Ibid.*, Article 5(4).

267 'Tender procedure' means (*ibid.*, Article 2, point (92)) a procedure, whereby the Eurosystem provides liquidity to, or withdraws liquidity from, the market whereby the NCB enters into transactions by accepting bids submitted by counterparties after a public announcement. The indicative calendar for the Eurosystem's regular tender operations is prepared by the GC and indicates the timing of the reserve maintenance period, as well as the announcement, allotment and maturity of MROs and regular LTROs (*ibid.*, Article 2, point (42)).

268 *Ibid.*, Article 2, points (86) and (76). The six operational steps are specified in **Table 4 of the Guideline**; the operational features of standard and quick tender procedures are identical, except for the time frame (Tables 5 and 6) and the range of counterparties (*ibid.*, Articles 24-25). Further details are set out in Articles 26-43.

269 This was effected by deleting **Articles 44-48** by virtue of **ECB Guideline (EU) 2022/987** of 2 May 2022 **(ECB/2022/17)**, which amended the General Documentation Guideline (OJ L 167, 24.6.2022, pp. 113-130).

270 **ECB Guideline (EU) 2022/987**, recital (3). In this respect: (a) point (4) in Article 2 of the General Documentation Guideline has been replaced to the effect that 'bilateral procedure' means a procedure whereby the NCBs or, if appropriate (and not anymore in exceptional circumstances), the ECB conduct outright transactions (and not anymore also fine-tuning operations) directly with one or more counterparties, or through stock exchanges

Finally, the settlement procedures for Eurosystem monetary policy operations are governed by Articles 49-53 of the **General Documentation Guideline**.[271] In this context, it is merely noted that: **(a)** payment orders relating to the participation in open market operations (or use of the standing facilities) are settled on the counterparties' accounts with an NCB or on the accounts of a settlement bank participating in TARGET2; and **(b)** payment orders relating to the participation in open market liquidity-providing operations or use of the marginal lending facility are only settled at the moment of or after the 'final transfer'[272] of the eligible assets as collateral to the operation; in this case, counterparties must pre-deposit the eligible assets at an NCB *or* settle them with it on a delivery *versus* payment ('**DVP**') basis.[273]

(2) There are some common features in all categories of open market operations: *first*, they are all initiated by the ECB, which also decides on the terms and conditions for their execution and on the instrument to be used;[274] and *second*, in relation to some of their operational features: they are all executed in a decentralised manner by the NCBs;[275] are subject to specific eligibility criteria for counterparties;[276] and are based on eligible assets as collateral.[277] The further individual operational and other features of the four categories of open market operations are further discussed in more detail **just below**.[278]

or market agents, without making use of tender procedures; and (b) in Article 4, when discussing procedures for 'structural operations', Table 1 contains a footnote clarifying that: "*Procedures for bilateral outright transactions are communicated when needed.*"

271 **General Documentation Guideline**, Article 49(1) and (2), respectively.

272 This term is defined (*ibid.*, Article 2, point (34)) as an irrevocable and unconditional transfer which effects the discharge of the obligation to make the transfer.

273 This term is defined (*ibid.*, Article 2, point (20)) as a mechanism in an exchange-for-value settlement system which ensures that the final transfer, i.e. the delivery, of assets occurs only upon the occurrence of a corresponding final transfer of other assets, i.e. the payment.

274 *Ibid.*, Article 5(5).

275 *Ibid.*, Articles 6(2), 7(2), 8(2) and 9(2), respectively, points (d). In the case, however, of fine-tuning operations, this applies without prejudice to **Article 45(3)** on bilateral procedures (Article 8(2), point (d)). The author considers that this point should have been deleted after the deletion of Article 45 (as just noted).

276 In the case of MROs and LTROs, the eligibility criteria must be fulfilled by all counterparties submitting bids for such operations (*ibid.*, Articles 6(2) and 7(2), points (f)); in the case of fine-tuning and structural operations, they depend on (i) the specific type of instrument for conducting them and (ii) the applicable procedure (*ibid.*, Articles 8(2) and 9(2), points (e)).

277 *Ibid.*, Articles 6(2) and 7(2), points (g); in the case of fine-tuning operations this applies when they are conducted by means of reverse transactions and in the case of structural operations when they are liquidity-providing, with the exception of outright purchases (*ibid.*, Articles 8(2) and 9(2), points (f)).

278 For an overview of the characteristics of open market operations, *see* Table I of the **General Documentation Guideline**. Their main features are also summarised in **Table 5** below.

2.1.3 Individual features of the four categories of open market operations

2.1.3.1 MROs

MROs are a category of "regular" open market operations, which play a pivotal role in pursuing the aims of steering interest rates, managing market liquidity and signalling the stance of monetary policy.[279] They are exclusively executed (conducted) by the Eurosystem by means of **reverse transactions**.[280] These open market operations:

First, as regards their (further) operational features, are **liquidity-providing operations**, are normally conducted on a weekly basis, have a maturity of one week (in accordance with the indicative calendar for the Eurosystem's regular tender operations, even though the maturity may differ on the grounds of varying bank holidays in Member States whose currency is the euro) and are executed by means of fixed-rate tender or variable-rate tender procedures.[281]

Second, the ECB decision on the interest rates for MROs, which is the benchmark ECB rate (among its key rates), is made on a regular basis. The revised interest becomes effective from the beginning of the new "**reserve maintenance period**" as defined in **Article 8(1) of the ECB Reserve Requirements Regulation**.[282] However, the GC may decide to change the interest rate at any point in time, such a decision becoming effective at the earliest from the following Eurosystem business day.[283]

279 *Ibid.*, recital (13) and Article 2, point (52).

280 *Ibid.*, Article 6(1).

281 *Ibid.*, Article 6(2), points (a)-(c) and (e), (3) and (6). In this respect: under a **'fixed-rate tender procedure'**, it is the ECB which specifies the interest rate, price, swap point or spread in advance of the tender procedure and participating counterparties bid the amount they want to transact at that fixed interest rate, price, swap point or spread; while under a **'variable rate tender procedure'**, participating counterparties bid both the amount they want to transact and the interest rate, swap point or price at which they want to enter into transactions with the Eurosystem in competition with each other; the most competitive bids are satisfied first until the total amount offered is exhausted (*ibid.*, Article 2, points (38) and (99).

282 A reserve maintenance period begins on the settlement day of the main refinancing operation following the meeting of the GC at which the assessment of the monetary policy stance is pre-scheduled and ends the day before the start of the following maintenance period, unless otherwise specified by the GC. The ECB publishes a calendar of the reserve maintenance periods at least three months before the start of each calendar year.

283 **General Documentation Guideline**, Article 6(4)-(5). **'Eurosystem business day'** means any day on which the ECB and at least one NCB are open for the purpose of conducting Eurosystem monetary policy operations (*ibid.*, Article 2, point (30)).

2.1.3.2 *LTROs*

LTROs are a category of open market operations aimed at providing to the financial sector (counterparties) liquidity with a maturity longer than that of the MROs; with those operations, the Eurosystem does not, as a rule, intend to send signals to the market and therefore normally acts as a rate taker. They are exclusively conducted by means of reverse transactions as well.[284] As regards their (further) operational features:

First, they are liquidity-providing reverse operations and are, in principle, executed by means of variable-rate standard tender procedures; if the Eurosystem decides to execute them by means of a fixed-rate tender procedure, the rate applicable may be indexed to an underlying reference rate (e.g., the average MRO rate) over the life of the operation.[285]

Second, they are regularly conducted each month and normally have a maturity of three months (in accordance with the indicative calendar for the Eurosystem's regular tender operations). By means of exception, however, their maturity may differ on the grounds of varying bank holidays in Member States whose currency is the euro.[286]

Furthermore, the Eurosystem may conduct, on a non-regular basis, LTROs with a maturity other than three months (which are not specified in the indicative calendar); such operations may have an **"early repayment clause"** representing either an option or a mandatory obligation for counterparties to repay all or part of the amounts they were allotted in a given operation. In this respect: (a) mandatory early repayment clauses shall be based on explicit and predefined conditions; (b) the dates on which the early repayments become effective shall be announced by the Eurosystem at the time of the announcement of the operations; and (c) the Eurosystem may decide in exceptional circumstances to suspend early repayments on specific dates on the grounds of, *inter alia*, bank holidays in Member States whose currency is the euro.[287]

2.1.3.3 *Fine-tuning operations*

(1) These are a category of open market operations executed by the Eurosystem on an *ad hoc* basis with the aim of managing the liquidity situation in the market and steering interest rates, in particular in order to smooth the effects on interest rates caused by unexpected liquidity fluctuations in the market.

[284] *Ibid.*, Articles 2, point (51) and 7(1) and recital (14).
[285] *Ibid.*, Article 7(2), points (a) and (e), and (6).
[286] *Ibid.*, Article 7(3).
[287] *Ibid.*, Article 7(4)-(5).

They are adapted to the types of transactions and the specific objectives pursued.[288] They may be conducted by means of reverse transactions; foreign exchange swaps for monetary policy purposes; or the collection of fixed-term deposits.[289]

(2) As regards their (further) operational features, fine-tuning operations may be conducted either as liquidity-providing or as liquidity-absorbing, have a (normally) non-standardised frequency and maturity and are normally executed by means of a quick tender procedures.[290] In this respect, the ECB may in principle conduct such operations on any Eurosystem business day to counter liquidity imbalances in the reserve maintenance period. However, if the trade, settlement and reimbursement days are not NCB business days,[291] the relevant NCB is not required to conduct such operations.[292]

2.1.3.4 *Structural operations*

These are a category of open market operations executed by the Eurosystem whenever its structural position needs to be adjusted *vis-à-vis* the financial system or to pursue other monetary policy implementation purposes.[293] The instruments that may be used for their conduct are reverse transactions; the issuance of ECB debt certificates; or outright transactions.[294] As regards their (further) operational features, like fine-tuning operations, they are liquidity-providing or liquidity-absorbing, have a non-standardised frequency and maturity; they are executed by means of tender or bilateral procedures, depending on the specific type of instrument used for their conduct.[295]

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288 *Ibid.*, Articles 2, point (36) and 8(1) and recital (15).

289 *Ibid.*, Article 8(1).

290 Exceptionally, the Eurosystem may decide to conduct specific fine-tuning operation by means of a standard tender procedure in light of specific monetary policy considerations or in order to react to market conditions (*ibid.*, Article 8(2), points (a)-(c)).

291 This term is defined (*ibid.*, Article 2, point (67)) as any day on which an NCB is open for the purpose of conducting Eurosystem monetary policy operations, including days when branches of such an NCB may be closed due to local or regional bank holidays.

292 *Ibid.*, Article 8(3). The Eurosystem has a high degree of flexibility as regards its choice of procedures and operational features in the conduct of these operations in order to react to market conditions (*ibid.*, Article 8(4)).

293 *Ibid.*, Articles 2, point (87) and 9(1) and recital (16).

294 *Ibid.*, Article 9(1).

295 *Ibid.*, Article 9(2), points (a)-(c). The Eurosystem retains a high degree of flexibility as regards its choice of procedures and operational features in the conduct of structural operations in order to react to market conditions and other structural developments (*ibid.*, Article 9(3)).

2.2 Standing facilities

2.2.1 Common features

2.2.1.1 *General aspects*

(1) The second set of monetary policy operations used by the Eurosystem when implementing the single monetary policy is the granting by NCBs of access to standing facilities to credit institutions and other eligible counterparties of the Eurosystem:[296] a marginal lending facility and a deposit facility. These are available to eligible counterparties at their own initiative and discretion;[297] they are aimed at providing and absorbing overnight liquidity respectively, signalling the stance of monetary policy and bounding overnight money market interest rates.[298]

(2) In view of the fact that standing facilities are part of a "single" monetary policy, their terms and conditions are identical in all Member States whose currency is the euro; the ECB may, however, adapt their conditions or suspend them at any time.[299] NCBs are allowed to grant access to these facilities in line with the Eurosystem's objectives and general monetary policy considerations.[300] Notwithstanding this constraint, standing facilities are administered overnight by the NCB of the Member State in which the requesting counterparty is established. Even though there are no limits on the amount of the liquidity provided or absorbed by the Eurosystem, a counterparty requiring recourse to the marginal lending facility must present sufficient underlying assets as collateral.[301]

2.2.1.2 *In particular: setting interest rates for standing facilities*

The decision on the interest rates for the standing facilities is made by GC on a regular basis;[302] the revised interest rates become effective from the beginning of the new reserve maintenance period. Notwithstanding this, the GC may decide to change the interest rate for the standing facilities at any point in time; such a decision becomes effective at the earliest from the following Eurosys-

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296 On eligible counterparties, *see* **this Section below, under 3.1**.
297 **General Documentation Guideline**, Article 17(1)-(2).
298 *Ibid.*, recital (10).
299 *Ibid.*, Article 17(3) and (5).
300 *Ibid.*, Article 17(4).
301 *See* just **below, under 2.2.2 (1)**.
302 Standing facilities provide a corridor around the MRO rate; *see* **Tuori (2020)**, p. 634, at 22.51.

tem business day.[303] It is noted that the interest rate remunerating the marginal lending facility has constantly been higher than that for MROs, and the deposit facility rate ('**DFR**') lower.[304]

2.2.2 The marginal lending facility: characteristics, access conditions, maturity and interest rate

(1) The marginal lending facility is a **"liquidity providing facility"**, at a pre-specified interest rate.[305] Eligible counterparties may use it (at their discretion[306]) to obtain overnight deposits from the Eurosystem through a reverse transaction with their home NCB.[307] Liquidity under this facility is provided by NCBs by means of repurchase agreements or collateralised loans under the NCBs' applicable contractual or regulatory arrangements.[308] Even though, in principle, no limit is applied on the amount of liquidity that can be provided under this facility, eligible counterparties are required to present sufficient eligible assets as collateral[309] prior to using it; these assets should be either pre-deposited with the relevant NCB or be delivered with the request for access to the facility.[310]

(2) Access to the marginal lending facility is granted to eligible institutions, namely, those fulfilling the eligibility criteria set out in **Article 55** of the **General Documentation Guideline**,[311] which have access to an account with the NCB where the transaction can be settled (notably in TARGET2). Access is granted only on TARGET2 business days. On days when the securities settlement systems ('**SSSs**'[312]) are not operational, access is granted based on eligible assets which have already been pre-deposited with the NCBs. Access can

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303 **General Documentation Guideline**, Article 17(6)-(7).

304 At: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/key_ecb_interest_rates/html/index.en.html.

305 *See* just **below, under (4)**.

306 *See* just **above, under 2.2.1.1 (1)**.

307 Thus, the amounts of this facility appear on the liability side of eligible counterparties' balance sheets.

308 **General Documentation Guideline**, Article 18(1)-(2).

309 On the eligibility of assets, *see* **this Section below, under 3.2**.

310 **General Documentation Guideline**, Article 18(3)-(4).

311 *See* **this Section below, under 3.1**.

312 This term is defined (*ibid*., Article 2, point (82)) with reference to Article 2(1), point (10) of **Regulation (EU) No 909/2014** of the co-legislators of 23 July 2014 "on improving securities settlement in the [EU] and on central securities depositories (...)" (OJ L 257, 28.08.2014, pp. 1-72, as in force, **'CSDR'**), which allows the transfer of securities, either free of payment, or against a DVP.

be granted either based on a specific request of the counterparty or automatically under the (detailed) provisions set out in **Article 21(5)-(6)**.[313]

(3) The maturity of credit extended under this facility is overnight. For eligible counterparties directly participating in TARGET2, the credit is repaid on the next day on which both TARGET2 and the relevant SSSs are operational, at the time at which those systems open.[314]

(4) The pre-specified interest rate remunerating the facility (the "marginal lending facility rate"), is announced in advance by the Eurosystem; it is calculated as a simple interest rate based on the actual/360 day-count convention.[315] Interest is payable together with the credit's repayment.[316]

2.2.3 The deposit facility: characteristics, access conditions, maturity and interest rate

(1) The deposit facility is a **liquidity absorbing facility**, to which a pre-specified interest rate is applied as well,[317] and which eligible counterparties may use (at their discretion as well) to make overnight deposits with the Eurosystem through their home NCB.[318] Like in the case of the marginal lending facility, no limit is applied on the amount an eligible counterparty may deposit under this facility, but, unlike in the case of the marginal lending facility, the NCBs do not give to eligible counterparties any collateral in exchange for the deposits.[319]

(2) Access to this facility is also granted to eligible institutions (i.e., those fulfilling the eligibility criteria set out in under **Article 55** which have access to an account with the NCB where the transaction can be settled (in TARGET2) and only on TARGET2 business days.[320] Due to the existence of different account structures across the NCBs, these may apply different access conditions subject to the ECB's prior approval and providing information to the counterparties on any such deviations.[321]

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313 **General Documentation Guideline**, Article 19(1)-(2) and (4). Paragraphs (3) and (5)-(6) govern specific operational issues.

314 *Ibid.*, Article 20(1)-(2).

315 This is defined (*ibid.*, Article 2, point (1)) as the convention applied in Eurosystem monetary policy operations which determines the actual number of calendar days included in the calculation of interest by using a 360-day year as the basis.

316 *Ibid.*, Article 20(3).

317 *See* just **below, under (4)**.

318 Thus, the amounts of this facility appear on the asset side of eligible counterparties' balance sheets.

319 **General Documentation Guideline**, Article 21(1)-(2) and (4).

320 *Ibid.*, Article 22(1); paragraph (2) governs specific operational issues.

321 *Ibid.*, Article 22(3).

(3) The maturity of deposits under the deposit facility is overnight as well. For eligible counterparties directly participating in TARGET2, deposits held under this facility mature on the next day on which TARGET2 is operational, at the time at which this system opens.[322]

(4) The interest rate applied to this facility (**DFR**) may be positive; be set at 0%; or **be negative**.[323] On the contrary, the application of negative interest rates is not provided either for MROs and LTROs or for the marginal lending facility.[324] Like in the case of the marginal lending facility rate, the applicable DFR is announced in advance by the Eurosystem and is calculated as a simple interest rate based on the actual/360 day-count convention. Interest on the deposits is payable on maturity. In cases of negative interest rates, the application of the DFR entails a payment obligation of the deposit holder to the home NCB, including its right to debit the counterparty' account accordingly.[325]

2.3 Minimum reserves

(1) In accordance with **Article 19 ESCB/ECB Statute** and subject to its Article 2 (on the objectives of the Eurosystem), in pursuance of monetary policy objectives:

> "*the* ECB *may require credit institutions established in Member States to hold minimum reserve on accounts with the* ECB *and* [NCBs] *(…).*"[326]

As already noted,[327] the aim is the stabilisation of money market interest rates and the creation (or enlargement) of a structural liquidity shortage and help control monetary expansion. In this respect, the **ESCB/ECB Statute** further provides that: *first*, the definition of the basis for minimum reserves, as well as the maximum permissible ratios between those reserves and their basis ("**reserve ratios**") must be legally based on a Council Regulation issued in accordance with the procedure of **Article 41 ESCB/ECB Statute** on the complementary legislation;[328] and *second*, the option is given to the GC to establish

322 *Ibid.*, Article 23(1).
323 *Ibid.*, Article 21(3).
324 *Ibid.*, Articles 6 and 18. As already noted (*see* **above, under 2.1.2 (1)**), the interest rates applied to fixed-term deposits for the purpose of fine-tuning operations may also be negative (*ibid.*, Article 12(3)).
325 *Ibid.*, Article 23(2)-(3).
326 **ESCB/ECB Statute**, Article 19.1, first sentence.
327 *See* **this Section above, under 1.2.2.2 (1)**.
328 On this Article, *see* **Section B above, under 1.2.1.1 (3)**.

ECB Regulations concerning the calculation and determination of the required minimum reserves.[329]

In terms of definitions and in accordance with the (above-mentioned[330]) **ECB Reserve Requirements Regulation** (as in force):[331]

> **'minimum reserves'** means the amount of funds that an institution is required to hold as reserves in its reserve accounts with the relevant national central bank;
>
> **'minimum reserve requirements'** means all the requirements that institutions are required to comply with pursuant to that Regulation in relation to minimum reserves as regards the calculation, notification, acknowledgement, and maintenance of minimum reserves, and reporting and verification;
>
> **'reserve accounts'** means the accounts in which an institution holds its reserves with the relevant NCB;
>
> **'reserve base'** means the sum of the eligible liabilities used for calculating the minimum reserves of an institution; and
>
> **'reserve ratio'** means the percentage applied to items of the reserve base for calculating an institution's minimum reserves.

(2) The Council Regulation referred to above is **Council Regulation (EC) No 2531/1998**,[332] pursuant to which the ECB can impose, as of 1 January 1999, on institutions (namely, any entity in Members States whose currency is the euro which, under the terms of Article 19.1 of the ESCB/ECB Statute[333]) to hold minimum reserves.[334] This legislative act sets out: *first*, the basis for minimum reserves, which include liabilities of institutions resulting from both on-balance-sheet and off-balance-sheet items; *second*, the reserve ratios, which the ECB may specify according to Article 19.1 of the ESCB/ECB Statute, and which may not exceed 10% of any relevant liabilities forming part of the basis for minimum reserves (the minimum set at 0%); and *third*, the ECB's right to collect and verify the necessary information, as well as the sanctions to be imposed by the ECB in cases of non-compliance.[335]

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329 **ESCB/ECB Statute**, Article 19.2 and 19.1, second sentence, respectively. On Article 19 ESCB/ECB Statute, *see* details in **Smits (1997)**, pp. 275-283.

330 *See* **this Section above, under 1.2.2.2 (1)**.

331 **Regulation ECB/2021/1**, Article 2, points (1)-(2) and (7)-(9), respectively.

332 *See* **this Section above, under 1.2.2.2 (1)**.

333 **Council Regulation (EC) No 2531/1998**, Article 3, point (3).

334 Pursuant to Article 2, the ECB may, on a non-discriminatory basis, exempt institutions from minimum reserves, in accordance with its own criteria.

335 *Ibid.*, Articles 3, 4 and 6-7, respectively.

(3) The ECB Regulation referred to above is the **Reserve Requirements Regulation**, which further specifies the Council Regulation's provisions, stipulating, *inter alia*, the following:

First, subject to reserve requirements are both credit institutions in an EU Member State which has adopted the euro *and* branches of credit institutions, including those established in such a Member State of credit institutions with neither their registered office nor their head office located therein (but excluding branches established outside of a euro area Member State of credit institutions which are established in a euro area Member State).[336]

Second, institutions must hold minimum reserves, calculated in accordance with Article 6, subject to specific rules; the mandatory and optional (at the discretion of the ECB) exemptions from minimum reserve requirements are set out as a *numerus clausus*.[337]

Third, the reserve ratio is set at **1% of all liabilities included in the reserve base**;[338] however, the following categories of liabilities are exempted (by application of a reserve ratio of 0%): deposits with an agreed maturity over two years or redeemable at notice over two years; deposits which are repurchase agreements; and debt securities issued with an agreed maturity over two years.[339]

Finally, detailed rules govern the following additional aspects: notification of minimum reserves; the reserve maintenance period (under **Article 8**[340]); the remuneration of minimum reserves; their indirect holding through an intermediary; the aggregated reporting of the reserve base; mergers and divisions; the delegation of powers in the event of adoption of the euro; and the verification by the relevant NCBs of the accuracy and quality of the information provided by institutions on the reserve base.[341]

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336 **ECB Reserve Requirements Regulation**, Article 1.

337 *Ibid.*, Articles 3-4.

338 The reserve base is governed by Article 5. Pursuant to Article 5(1), institutions must calculate their reserve base using the appropriate statistical information on deposits and debt securities issued.

339 *Ibid.*, Article 6(1). Pursuant to Article 6(2), NCBs or the institution shall deduct a lump sum allowance 100,000 euro from the calculation of minimum reserves, subject to the requirements of Articles 10-12. Furthermore, NCBs shall use the minimum reserves calculated in accordance with this Article *first*, to remunerate holdings of minimum reserves; and *second*, to assess whether Article 3(1), point (a) is fulfilled, namely, that the average end-of-day balance on one or more reserve accounts over the maintenance period must be equal to or shall exceed the amount calculated for that period pursuant to Article 6 (*ibid.*, Article 6(3).

340 *See* **this Section above, under 2.1.3.1**.

341 **ECB Reserve Requirements Regulation**, Articles 7 and 9-13, respectively.

Furthermore, in accordance with **Article 54(1) of the General Documentation Guideline** (on reserve holdings and excess reserves), a counterparty's settlement accounts with an NCB may be used as reserve accounts (as defined in the ECB Reserve Requirements Regulation) and reserve holdings on settlement accounts may be used for intraday settlement purposes. A counterparty's daily reserve holdings are calculated as the sum of the end-of-day balances on its reserve accounts.[342] On the remuneration of reserve holdings, the following distinction applies: (a) those complying with minimum reserve requirements pursuant to **Council Regulation (EC) No 2531/98** and the **ECB Reserve Requirements Regulation** are remunerated in accordance with the latter; (b) those exceeding the above minimum reserves are remunerated in accordance with (the above-mentioned[343]) **ECB Decision (EU) 2019/1743**.[344]

(4) Pursuant to **Article 19 ESCB/ECB Statute**, in cases of a credit institution's non-compliance with the required minimum reserves, the ECB is entitled to levy penalty interest and to impose other sanctions with comparable effect.[345] In specifying this rule, **Article 153 of the General Documentation Guideline** sets out the following: *first*, the ECB has the power to impose sanctions (pursuant to, *inter alia*, Council Regulation (EC) No 2532/98 and ECB Regulation No 2157/1999 (ECB/1999/4)[346] as well as Council Regulation (EC) No 2531/98 and the ECB Reserve Requirements Regulation) on institutions which do not comply with obligations arising from its Regulations and Decisions relating to the application of minimum reserves, in accordance with the procedural rules specified in these legal acts; and *second*, in the event of a serious infringement of the minimum reserve requirements, the Eurosystem may suspend a counterparty's participation in open market operations.[347]

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342 This applies pursuant to Article 3(1), points (b)-(c) of that ECB Regulation. The term 'end-of-day' is defined in Article 2, point (26) of the **General Documentation Guideline** as the time of the business day following closure of TARGET2 at which the payments processed in TARGET2 are finalised for the day.

343 *See* **this Section above, under 1.2.2.3**.

344 **General Documentation Guideline**, Article 54(2)-(3).

345 **ESCB/ECB Statute**, Article 19.1, third sentence. This is a *lex specialis* to the general clause of Article 34.3 of the Statute (*see* **this Section above, under 1.2.1.2**).

346 *Ibid.*, **under 1.2.1.1 (3)**.

347 **General Documentation Guideline**, Article 153(1) and **recital (23)**, and 153(2), respectively.

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– deposit facility</td><td>Imposition on institutions of minimum reserve requirements</td></tr>
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3. Eligible counterparties and assets eligible as collateral in Eurosystem credit operations

3.1 Eligible counterparties

The implementation of the Eurosystem's monetary policy framework should ensure that a broad range of counterparties participate under uniform eligibility criteria. These criteria are specified to ensure the equal treatment of counterparties across the Member States whose currency is the euro and to ensure that counterparties fulfil certain prudential and operational requirements.[348] Thus, even though the purpose is the provision of access to its monetary policy operations to the broadest possible range of institutions, the Eurosystem only allows, in principle (subject to Article 57), participation to them, by institutions cumulative fulfilling the following eligibility criteria ("eligible counterparties"):[349]

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348 *Ibid.*, recital (17).
349 *Ibid.*, Article 55, points (a)-(d), respectively.

First, they are subject to the Eurosystem's minimum reserve system pursuant to Article 19.1 ESCB/ECB Statute and have not been granted an exemption from their obligations thereunder pursuant to Council Regulation (EC) No 2531/98 and the ECB Reserve Requirements Regulation.[350]

Second, they meet *any* of the following criteria: they are subject to at least one form of harmonised Union/EEA micro-prudential supervision by competent authorities (i.e., national competent authorities ('**NCAs**') or the ECB) in accordance with two legislative acts of the co-legislators of 26 June 2013, namely, the Capital Requirements Directive No IV ('**CRD IV**')[351] and the **CRR**; they are publicly owned credit institutions, within the meaning of **Article 123(2) TFEU**,[352] subject to micro-prudential supervision of comparable standards; *or* they are subject to non-harmonised micro-prudential supervision by competent authorities of a standard comparable to harmonised Union/EEA micro-prudential supervision under the CRD IV and the CRR, such as branches established in Member States whose currency is the euro of institutions incorporated outside the European Economic Area ('**EEA**'), provided that the home country has implemented the **"Basel III framework"** adopted by the Basel Committee on Banking Supervision ('**BCBS**').[353]

Third, they are financially sound within the meaning of **Article 55a**, which sets out the criteria for the related assessment.[354]

Finally, they fulfil the operational requirements specified in the contractual or regulatory arrangements applied by the home NCB or the ECB with regard to the specific instrument or operation.[355]

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350 *See* just **above, under 2.3**.

351 **Directive 2013/36/EU** "on access to the activity of credit institutions and the prudential supervision of credit institutions (…)", OJ L 176, 27.6.2013, pp. 338-436 (as in force).

352 Under this Article, publicly owned credit institutions shall be given, in the context of the supply of reserves by central banks, the same treatment by NCBs and the ECB as private credit institutions.

353 On this framework and its implementation in EU banking law, *see* **Gortsos (2012)**, pp. 248-281 and **(2022a)**.

354 Specific transitional rules applied until 31 December 2021 in relation to wind-down entities (as defined in Article 2, point (99a)); these are no longer eligible at all to access Eurosystem monetary policy operations (*ibid.*, Article 55a (5)).

355 Specific rules govern access to open market operations executed by means of standard tender procedures and to standing facilities and the selection of counterparties for access to open market operations executed by means of quick tender procedures or bilateral procedures (*ibid.*, Articles 56-57).

3.2 Assets eligible as collateral in Eurosystem credit operations

3.2.1 General overview

As already discussed,[356] pursuant to **Article 18.1 ESCB/ECB Statute**, the ECB and the NCBs may operate in financial markets by buying and selling assets either outright or under repurchase agreements, provided that these operations are based on adequate collateral in order to protect the Eurosystem from counterparty risk. As a result, since 1999, all Eurosystem liquidity-providing operations are based on underlying assets provided by counterparties, either in the form of the transfer of ownership of assets or in the form of a pledge, assignment or charge granted over relevant assets.[357]

3.2.2 Eligible assets and accepted collateralisation techniques used for Eurosystem credit operations

(1) Under the Eurosystem monetary policy operations framework (i.e., the General Documentation Guideline), **"Eurosystem credit operations"** are governed by a single framework for eligible assets. To participate in such operations counterparties must provide the Eurosystem with assets that are eligible as collateral for such operations.[358] Without prejudice to this obligation, the Eurosystem may, upon request, provide counterparties with advice regarding the eligibility of either marketable assets already issued or of 'non-marketable assets', which have already been requested for submission.

In terms of definitions:[359]

> **'Eurosystem credit operation'** means liquidity-providing reverse transactions, i.e., liquidity-providing monetary policy operations, excluding foreign exchange

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356 *See* **this Section above, under 2.1.1 (1)**.

357 Initially, assets were divided into two tiers: *Tier 1 assets* were specified by the ECB as marketable assets fulfilling certain uniform euro area-wide eligibility criteria; *Tier 2 assets* consisted of marketable or non-marketable assets, which were of particular importance for national financial markets and banking systems of euro area Member States. Eligibility criteria for Tier 2 assets (which were normally not used by the Eurosystem in outright transactions) were established by the NCBs, subject to the ECB approval.

358 The Eurosystem provides intraday credit to even out mismatches in payment settlements (*ibid.*, recital (21)). Pursuant to Article 11 of **ECB Guideline (EU) 2022/912**, intraday credit shall be based on eligible collateral, which shall consist of the same assets as eligible for use in Eurosystem monetary policy operations, and shall be subject to the same valuation and risk control rules as those laid down in the General Documentation Guideline.

359 *Ibid.*, Article 2, points (31), (25) and (70), respectively.

swaps for monetary policy purposes and outright purchases; 'intraday credit'; and 'enhanced contingency solution ('**ECONS**') credit';[360]

'eligible assets' means assets that fulfil the criteria laid down in Part Four of the Guideline and are accordingly eligible as collateral for Eurosystem credit operations; and

'non-marketable assets' means any of the following assets: fixed-term deposits, credit claims, retail mortgage-backed debt instruments ('**RMBDs**'), and non-marketable debt instruments backed by eligible credit claims ('**DECCs**').[361]

(2) Eligible assets must be provided by counterparties either by ownership transfer in the form of a repurchase agreement or by the creation of a security interest in the form of a collateralised loan (in all cases pursuant to the national contractual or regulatory arrangements established and documented by the home NCB). Furthermore: *first*, in relation to the accepted collateralisation techniques, where counterparties provide eligible assets as collateral, the home NCB may require either their earmarking or their pooling, depending on the type of collateral management system it uses;[362] and *second*, no distinction is made between marketable and non-marketable assets regarding the quality of the assets and their eligibility for the various types of Eurosystem credit operations.[363]

3.2.3 The "Eurosystem credit assessment framework" (ECAF)

(1) In order to be eligible as collateral for Eurosystem credit operations, and for the sake of ensuring the equal treatment of counterparties, as well as to enhance operational efficiency and transparency, assets must fulfil certain uni-

360 The definition of the term 'intraday credit' is made in Article 2, point (46) with reference to Article 2, point (35) of **ECB Guideline (EU) 2022/912**, namely, credit extended for a period of less than one business day. The term 'ECONS credit' is defined (*ibid.*, Article 2, point (24-a)) as credit provided within contingency processing. On the (most recently available) ECONS II User Handbook of 7 September 2021, *see* at: https://www.ecb.europa.eu/paym/target/consolidation/profuse/shared/pdf/2021-05-19_uhb_econs2_v2-0.pdf.

361 The latter term is defined in Article 2, point (70a).

362 **'Earmarking system'** means (*ibid.*, Article 2, point (24)) a system for NCBs' collateral management, whereby liquidity is provided against specified, identifiable assets earmarked as collateral for specified Eurosystem credit operations; the substitution of these assets with other specific eligible assets may be permitted by the home NCB provided that they are earmarked as collateral and are adequate for the specific operation. *On the other hand*, **'pooling system'** means (*ibid.*, Article 2, point (73)) a system for NCBs' collateral management as well, whereby a counterparty maintains a pool account with an NCB to deposit assets collateralising its related Eurosystem credit operations, and the assets are recorded in such a way that an individual eligible asset is not linked to a specific Eurosystem credit operation and the counterparty may substitute eligible assets on a continuous basis.

363 *Ibid.*, Article 58.

form criteria across the Member States whose currency is the euro.[364] All such eligible assets are subject to specific risk control measures to protect the Eurosystem against financial losses in circumstances where its collateral has to be realised due to an event of a counterparty's default. They are thus required to meet the Eurosystem's high credit quality standards specified in the "Eurosystem credit assessment framework" ('**ECAF**').[365]

(2) This framework lays down procedures, rules and techniques to ensure that, *first*, the requirement of the Eurosystem for such standards is maintained and, *second*, these assets comply with the **credit quality requirements** defined by the Eurosystem. The definition of these requirements is in the form of **"credit quality steps"** by application of threshold values for the probability of default ('**PD**') over a one-year horizon.[366]

Credit quality steps are standardised indicators of credit risk, which are recognised in the CRR and are based on numbers: "1" denotes the highest quality and "6" the lowest. By virtue of **Article 136(3) CRR** and on the basis of the draft Implementing Technical Standards ('**ITS**') developed by the Joint Committee of the so-called 'European Supervisory Authorities' ('**ESAs**'),[367] the Commission adopted on 7 October 2016 its **Implementing Regulation (EU) 2016/1799** "laying down [ITSs] with regard to the mapping of credit assessments of [ECAIs] for credit risk (...)".[368]

(3) When assessing credit quality requirements, the Eurosystem takes into account credit assessment information from credit assessment systems in accordance with **Articles 119-136**. As part of its assessment of the credit standard of a specific asset, the Eurosystem: *first*, may take into account institutional criteria and features ensuring similar protection for the asset holder (such as guaran-

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364 *Ibid.*, recital (19).

365 *Ibid.*, recital (22). Pursuant to the considerations in recital (20), the Eurosystem has developed a single framework for assets eligible as collateral so that all Eurosystem credit operations are carried out in a harmonised manner by means of implementing this Guideline in all Member States whose currency is the euro. This single framework covers both marketable and non-marketable assets that fulfil uniform eligibility criteria specified by the Eurosystem. Most eligible assets may be used on a cross-border basis *via* the correspondent central banking model ('**CCBM**') and, in the case of marketable assets, through eligible links between either eligible EEA SSSs or eligible EEA SSSs combined with the CCBM. The terms 'eligible links' and 'eligible SSS' are defined in Article 2, points (25a) and (25b), respectively. The ECAF follows the definition of **'default'** as laid down in the **CRD IV** and the **CRR** (*ibid.*, Article 59(7)).

366 *Ibid.*, Articles 59(1)-(3). Information on credit quality steps is published on the ECB's website in the form of the Eurosystem's harmonised rating scale, including the mapping of credit assessments, provided by the accepted external credit assessment institutions ('**ECAIs**'), to credit quality steps (*ibid.*, Article 59(4)).

367 *See* the ***Special Topic 2*** **in** **Section C below, under 1 (3)**.

368 OJ L 275, 12.10.2016, pp. 3-18.

tees); and *second*, has the right to determine whether an issue, issuer, debtor or guarantor fulfils its credit quality requirements on the basis of any information that it may consider relevant for ensuring adequate risk protection.[369]

GRAPH III:
Overview of open market operations and standing facilities of the Eurosystem

Type of monetary policy operation	Type of instruments		Maturity	Frequency	Procedure
	Liquidity-providing	Liquidity-absorbing			
Open market operations					
1. Main refinancing operations (MROs)	Reverse transactions	–	One week	Weekly	Standard tender procedures
2. Longer-term refinancing operations (LTROs)	Reverse transactions	–	Three months	Monthly	Standard tender procedures
3. Fine-tuning operations	Reverse transactions	Reverse transactions	Non-standardised	Non-standardised	Tender procedures Bilateral procedures
	Foreign exchange swaps	Foreign exchange swaps			

369 **General Documentation Guideline**, Article 59(5)-(6). The above rules of Articles 58-59 are included in **Title I of Part Four** of the Guideline on the eligible assets (this Part being the largest in its system). The following Titles (II-VI and VIII-IX) contain additional credit quality requirements for marketable and non-marketable assets. In particular, they govern the following aspects, the further discussion of which is (in principle) beyond the reach of this study: *first*, eligibility criteria and credit quality requirements for marketable assets (**Articles 60-88**); *second*, eligibility criteria and credit quality requirements for non-marketable assets (**Articles 89-112**); *third*, guarantees for marketable and non-marketable assets (**Articles 113-118**); *fourth*, the ECAF for eligible assets (**Articles 119-126**); *fifth*, risk control and valuation framework of marketable and non-marketable assets (**Articles 127-136**); *sixth*, rules for the use of eligible assets (**Articles 138-147**); and *finally*, cross-border use of eligible assets (**Articles 148-152**).Part VII (Article 137 on the acceptance of non-euro-denominated collateral in contingencies) was deleted by virtue of (the above-mentioned) **Guideline (EU) 2022/987** of 2 May 2022.

	–	Collection of fixed-term deposits			
4. Structural operations	Reverse transactions	Reverse transactions	Non-standardised	Non-standardised	Standard tender procedures
	–	Issuance of ECB debt certificates	Less than 12 months		
	Outright purchases	Outrightsales	–		Bilateral procedures Tender procedures
Standing facilities					
Marginal lending facility	Reverse transactions	–	Overnight	Access at the discretion of counterparties	
Deposit facility	–	Deposits	Overnight	Access at the discretion of counterparties	

SOURCE: European Central Bank, General Documentation Guideline, Article 4, Table 1.

TABLE 5 **A summary of the main features of the Eurosystem's open market operations**	
Main refinancing operations (MROs)	
Purpose	Provision of liquidity
Instrument(s) used for conduct	Reverse transactions
Maturity	One week
Other operational features	Conducted each week – execution by means of fixed-rate or variable-rate tender procedures

Longer-term refinancing operations (LTROs)	
Purpose	Provision of liquidity in the longer term
Instrument(s) used for conduct	Reverse transactions
Maturity	Normally, three months
Other operational features	Regularly conducted on a monthly basis – execution (usually) by means of variable-rate tender procedures
Fine-tuning operations	
Purpose	Dealing with liquidity fluctuations in the market – liquidity-providing or liquidity-absorbing operations
Instrument(s) used for conduct	Reverse transactions; foreign exchange swaps for monetary policy purposes; collection of fixed-term deposits
Maturity	Non-standardised
Other operational features	Non-standardised frequency of conduct – execution (normally) by means of quick tender procedures
Structural operations	
Purpose	Adjustment of the structural position of the Eurosystem *vis-à-vis* the financial system or pursue of other monetary policy implementation purposes – liquidity-providing or liquidity-absorbing operations
Instrument(s) used for conduct	Reverse transactions; issuance of ECB debt certificates; outright transactions
Maturity	Non-standardised
Other operational features	Non-standardised frequency of conduct – execution by means of tender or bilateral procedures
Common features	
– initiation by the ECB (also deciding on the execution' terms and conditions and the instrument to be used); – execution in a decentralised manner by NCBs; – specific eligibility criteria for counterparties; – eligible assets as collateral (conditionally for fine-tuning and structural operations)	

APPENDIX I: Contents of the ECB "General Documentation Guideline"	
PART ONE	**SUBJECT MATTER, SCOPE AND DEFINITIONS**
PART TWO	**THE EUROSYSTEM MONETARY POLICY TOOLS, OPERATIONS, INSTRUMENTS AND PROCEDURES**
TITLE I	Open market operations
Chapter 1	Overview of open market operations
Chapter 2	Categories of open market operations
Chapter 3	Instruments for open market operations
TITLE II	Standing facilities
Chapter 1	Marginal lending facility
Chapter 2	Deposit facility
TITLE III	Procedures for Eurosystem monetary policy operations
Chapter 1	Tender procedures for Eurosystem open market operations
Section 1	Tender procedures
Section 2	Operational steps for tender procedures
Subsection 1	Announcement of tender procedures
Subsection 2	Preparation and submission of bids by counterparties
Subsection 3	Tender allotment
Subsection 4	Announcement of tender results
Chapter 2	Settlement procedures for Eurosystem monetary policy operations
PART THREE	**ELIGIBLE COUNTERPARTIES**
PART FOUR	**ELIGIBLE ASSETS**
TITLE I	General principles
TITLE II	Eligibility criteria and credit quality requirements for marketable assets
Chapter 1	Eligibility criteria for marketable assets

ANNEX VIII	Loan-level data reporting requirements for asset-backed securities and the requirements for loan-level data repositories
ANNEX IX	Eurosystem credit assessment framework performance monitoring process
ANNEX IXa	Minimum coverage requirements for external credit assessment institutions in the Eurosystem credit assessment framework
ANNEX IXb	Minimum requirements in the Eurosystem credit assessment framework for new issue and surveillance reports on covered bond programmes
ANNEX IXc	ECAI acceptance criteria and application process
ANNEX XI	Security forms
ANNEX XII	Examples of Eurosystem monetary policy operations and procedure
ANNEX XIIa	Quantitative criteria to be fulfilled by an entity considered an agency as defined in Article 2, point (2)
ANNEX XIII	Correlation table
ANNEX XIV	Repealed Guideline with list of its successive amendments

CHAPTER 2
IMPLEMENTATION OF THE SINGLE MONETARY POLICY IN THE EURO AREA IN PERIODS OF CRISES

Section C: Implementation of the single monetary policy amidst and following the (2007-2009) global financial crisis (GFC) and the fiscal crisis in the euro area[370]

1. Introductory remarks

From 2008 up to our dates, the euro area has been exposed to multiple (and to a certain extent consecutive) crises, as further discussed in this and the following two Sections of this study;[371] it all started with the (2007-2009) global financial crisis ('**GFC**').[372] Under the extraordinary circumstances which arose from it and the subsequent fiscal crisis in the euro area (which became manifest in 2010 and was triggered by the exceptionally severe fiscal imbalances in Greece, which were then transmitted to other EU Member States of the euro area 'periphery'[373]), the ECB (in synchronisation with (at least) all central banks in the G-10 Member States) adjusted its monetary policy to address the risks of low inflation by resorting to balance sheet policy.[374] In particular:

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370 This Section is a fully updated and extended version of Section 7.1.3 in **Gortsos (2020a)**, pp. 297-300.

371 The *Collins English Dictionary* defines an extended period of instability and insecurity, especially one resulting from a series of catastrophic events, as **"permacrisis"**.

372 *See* by means of mere indication **Gortsos (2012)**, pp. 127-130, with extensive further references.

373 For an analysis of this crisis and the policy responses thereto, *see* **Eichengreen, Feldmann, Liebman, von Jürgen and Wyplosz (2011)**, pp. 47-64, **Aizenman (2012)**, **Shambaugh (2012)**, **de Grauwe (2013)**, **Zimmermann (2015)**, **Hadjiemmanuil (2020)** and **Piantelli (2021)**, pp. 1-84 (all with extensive further references). On the role of the IMF during the crisis, *see* by means of indication **Christopherson and Bergthaler (2020)**. On its role, since its establishment, in shaping (and transforming) central banking in general, *see* by means of indication Bagchi **(2024)**.
The author uses the term **"fiscal crisis"** instead of the (commonly used) terms **"debt crisis"** or **"sovereign crisis"** as more precise and consistent with the fact that the Member States which, each for different reasons, 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 **IMF** and the newly built (during this crisis) EU facilities and mechanisms (*see* **Box 6 below, under A**), violated the 'hard limit' (3%) deficit/GDP ratio laid down in EU law (**TFEU**, Article 126(2) and **Protocol (No 12)** "on the excessive deficit procedure" attached to the Treaties (Consolidated version, OJ C 202, 7.6.2016, pp. 279-280), Article 1). On Article 126 TFEU and the secondary legislation adopted on its basis, *see* by means of mere indication **Hattenberger (2019)**, pp. 2010-2041 and **Keppenne (2020)**.

374 *See* **Section A above, under 2.2.2**.

(1) Immediately following the onset of the GFC, and mainly after 2008, in order to bolster liquidity in the euro area economy, the ECB acted promptly by taking the following measures: gradually cut the rate for its MROs from 4.5% to 1%;[375] extended the maturity of LTROs from 3 months to 1 year; provided liquidity in foreign currency, particularly in USD and yen; carried out massive purchases of covered bonds denominated in euro;[376] 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.[377]

(2) Furthermore, in 2010, due to the emergency circumstances arisen from the need to support the European banking system following the GFC (and also in view of the upcoming fiscal crisis in the euro area), the ECB proceeded to the first increase (duplication) of its capital, by virtue of **Decision 2011/20/EU** of 13 December 2010 (**ECB/2010/26**),[378] from 5.76 to **10.76 billion euro**.[379] Then, immediately following the onset of the fiscal crisis in the euro area in the spring of 2010, several of the (just) above-mentioned measures were further strengthened:

first, the rate for MROs was further cut to 0.5% (and then to 0%, a level held until July 2022[380]);

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375 It is noted that the initial key rate was set (on 1 January 1999) at 3% and then was gradually increased to 4.5% on 9 October of that year, a level that was maintained until 15 October 2008; *see* at: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/key_ecb_interest_rates/html/index.en.html.
It is also noted that, in accordance with the OECD's most recent Global Debt Report on "Bond Markets in a High-Debt Environment" (**OECD (2024)**), the low interest rate environment after the GFC allowed a wider range of issuers, including lower-rated governments and companies, to a wider have access to bond markets, expanding the riskier market segments.

376 The term **'covered bond'** is defined in Article 2, point (12) of the General Documentation Guideline as a debt instrument that is dual recourse: (a) directly or indirectly to a credit institution; and (b) to a dynamic cover pool of underlying assets, and for which there is no "tranching" of risk.

377 *See* details in **Tuori (2020)**, pp. 642-652. For a comparative presentation of the balance sheet policies pursued by seven major central banks in advanced economies, including the ECB and the SNB, during the GFC and the varying emphasis put by them due (partly) to differences in financial structures, *see* **Borio and Disyatat (2009)**, pp. 9-13.

378 OJ L 11, 15.1.2011, p. 53.

379 For the increase of the ECB's capital a Decision of the GC is required, to be adopted by qualified majority, on the basis of the principle of the weighted vote and within the limits and conditions set by the Council in accordance with the procedure for the adoption of complementary legislation (**ESCB/ECB Statute**, Article 28.1, second sub-paragraph). **Article 48 ESCB/ECB Statute** governs the deferred payment of capital when a Member State's derogation has been abrogated (like in the recent case of Croatia).

380 *See* **Section E below, under 1.1 (2)**.

second, the maturity of LTROs was further extended and their use increased exponentially (*see* **Table 6** below, assets item 5.2);

third, the interest rate on the deposit facility entered into negative territory (since September 2019 (and until very recently), at -0.50%); it is noted that when this rate entered in negative territory for the first time in June 2014 (-0.10%), the interest rate for MROs was (still) positive (0.15%);[381] the amounts involved steadily increased (*see* **Table 6** below, liabilities item 2.2); and

fourth, the pool of assets eligible by the Eurosystem as collateral in the conduct of its credit transactions was further broadened.[382]

Currency swap lines through ECB swap agreements with several third country central banks also became an important tool for the provision of foreign currency liquidity to domestic credit institutions.[383]

(3) On the evolution of the Eurosystem's consolidated weekly financial statement and annual consolidated balance sheet[384] during the period March 2007 – April 2017, reflecting (*inter alia*) the ECB's 'unconventional' monetary policy, *see* **Table 6** below. Overall, the balance sheet exponentially increased during that period from **1.18** to **4.14 trillion euro**.

Excursus 1: the Eurosystem's "consolidated accounts"

Pursuant to the **ESCB/ECB Statute**, the ECB is subject to specific reporting requirements for the sake of accountability (**Article 15**), while **Article 26** governs the financial accounts. In this respect, the following is briefly noted for the purposes of this study:

381 At: https://www.ecb.europa.eu/stats/policy_and_exchange_rates/key_ecb_interest_rates/html/index.en.html.

382 On the collateral framework of the Eurosystem throughout these two crises, also from a comparative point of view, *see* **European Central Bank (2013a)** and **(2013b)**.

383 When, during the GFC, funding markets dried up because of an extreme risk aversion and it became difficult for euro area credit institutions to obtain USD to fund their USD-denominated assets, and in order to prevent disruptions, the ECB and the US Federal Reserve System set up a currency swap line, allowing the Eurosystem to provide USD to credit institutions located in the euro area. *See* at: https://www.ecb.europa.eu/explainers/tell-me-more/html/currency_swap_lines.en.html.

384 On these consolidated accounts, see the ***Excursus 1*** **just below**.

The provisions of Article 15 ESCB/ECB Statute

Among the other reporting requirements imposed on the ECB by that Article, **Article 15.2** and **15.4** requires the publication by the ECB, on a *weekly basis*, of a **"consolidated financial statement"** of the Eurosystem, which must be made available to interested parties free of charge. This shows the Eurosystem's assets and liabilities held *vis-à-vis* third parties as they arise in the accounts of the euro area NCBs and the ECB.[385]

The provisions of Article 26 ESCB/ECB Statute

(1) Furthermore, in accordance with **Article 26.2-26.3**, respectively, the Executive Board must also draw up:

First, the **"annual accounts"** of the ECB[386] in accordance with principles established by the GC, which also approves them. These accounts, which shall be published upon their approval, contain the **"balance sheet"** of the ECB (assets and liabilities), as well as the **"profit and loss account"**.[387]

Second, for analytical and operational purposes, an **"annual consolidated balance sheet"** of the Eurosystem must also be drawn up. This comprises those assets and liabilities of the NCBs that fall within the Eurosystem.

On the basis of (*inter alia*) **Article 26.4**, the GC should establish (and has done so) the necessary rules for standardising the accounting and reporting of operations undertaken by the NCBs. Currently, applicable is **ECB Guideline (EU) 2016/2249** of 3 November 2016 "on the legal framework for accounting and financial reporting in the [ESCB] (recast) (**ECB/2016/34**)".[388] This legal instrument applies to the ECB and to the NCBs for Eurosystem accounting and financial reporting purposes and its scope is limited to the Eurosystem accounting and financial reporting regime laid down in the above-mentioned provisions of the Statute. Thus, it does not cover NCBs' national reports and financial accounts.[389]

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385 For details, *see* at: https://www.ecb.europa.eu/press/pr/wfs/html/index.en.html.

386 Pursuant to Article 26.1, the financial year of the ECB and NCBs begins on the first day of January and ends on the last day of December.

387 The allocation of the net profits and losses of the ECB is governed by **Article 33 ESCB/ECB Statute**.

388 OJ L 347, 20.12.2016, pp. 37-86. The legal basis of this legal instrument, which repealed from 31 December 2016 Guideline ECB/2010/20, are Articles 12.1, 14.3 and 26.4 **ESCB/ECB Statute**; it is in force as amended twice by **Guideline (EU) 2019/2217** of 28 November 2019 (OJ L 332, 23.12.2019, pp. 184-203) and by **Guideline (EU) 2021/2041** of 11 November 2021 (**ECB/2021/51**) (OJ L 419, 24.11.2021, pp. 14-33).

389 **ECB Guideline (EU) 2016/2249**, Article 2.

(2) It is finally noted that, since 2015, the annual accounts of the ECB and the Eurosystem's annual consolidated balance sheet are published together with the ECB Annual Report on the activities of the Eurosystem and on the monetary policy of both the previous and the current year, which is addressed to the European Parliament, the Council, the Commission and the European Council (pursuant to **Articles 284(3) TFEU** and **15.3 ESCB/ECB Statute**).[390]

Tables 6 and **8-10 below** set out, for various periods (up to end-2023), the data of the weekly consolidated financial statement of the Eurosystem, unless the date of reference is 31 December, in which case the data are available from the Eurosystem's annual consolidated balance sheet (jointly referred to herein as the **"Eurosystem's consolidated accounts"**). The ECB annual accounts are not further discussed.

2. The ECB asset purchase programmes (APPs)

2.1 The initial stage

(1) The onset of the above-mentioned crises showed that the key problem of concern to the ECB (and all major central banks globally) was not the risk of inflation, but the exact opposite: very low inflation. As already noted,[391] the GC had defined price stability as a year-on-year increase in the HICP for the euro area of below, *but close to*, 2%, but price levels remained persistently below this benchmark. This development rendered, thus, necessary for the ECB, like other central banks around the world, to have recourse to quantitative easing (**QE**), by means of unconventional monetary policy instruments and mainly APPs.[392]

(2) The ECB's first APP was the (first) covered bond purchase programme of 2 July 2009 ('**CBPP**'), which was then replaced by the second CBPP of 3 Novem-

390 The ECB Annual Report for 2023 is available at: https://www.ecb.europa.eu/pub/pdf/annrep/ecb.ar2023~d033c21ac2.en.pdf. Unlike previous years, in 2023 the ECB made a loss, which, after the full release of the provision for financial risks, was 1.266 million euro. Pursuant to **Article 33.2 ESCB/ECB Statute**, following a decision by the GC, this loss has been carried forward on the ECB's balance sheet and offset against future profits (*ibid.*, annual accounts, p. 86).

391 *See* **Section A above, under 3.1.3**.

392 For an overview of all ECB legal acts and instruments pertaining to this framework, *see* also the (above-mentioned) ECB website at: https://www.ecb.europa.eu/ecb/legal/html/index.en.html (constantly updated). For a general assessment, *see* **European Central Bank (2010)**, **Claeys (2014), European Parliament (2014), Ross, Wiggins and Metrick (2015a)** and **(2015b)**, **Claeys and Leandro (2016)**, **Zilioli and Athanassiou (2018)**, pp. 633-644, **Smits (2018)**, **Draghi (2019)** and **Wutscher (2019)**, pp. 2052-2054.

ber 2011 ('**CBPP2**').[393] In the meantime, in 2010, the ECB adopted the Securities Markets Programme ('**SMP**'), established by its Decision of 14 May 2010,[394] as a necessary means for the achievement of its monetary policy objectives. In accordance with the latter Programme, which was terminated in 2012 (*see* just below), the ECB could, upon a GC Decision, purchase bonds, including Member States' sovereign bonds, in the secondary market.[395]

2.2 The Outright Monetary Transactions (OMT) Programme

(1) On 26 July 2012, the (then) ECB President Draghi's made a statement (in a conference in London) that he would do "*whatever it takes to preserve the euro*".[396] This was followed by the announcement, on 6 September, of the ECB's Outright Monetary Transactions ('**OMTs**') Programme, which terminated the SMP and, as a crisis management measure, would consist in purchases of sovereign bonds of *individual* euro area Member States without access to markets. The announcement was made by a Press Release of the Eurosystem, according to which OMTs would be conducted within a specific framework governing the following aspects: conditionality, coverage, creditor treatment, sterilisation and transparency.

(2) This announcement would be followed, if necessary, by a second phase, namely, its implementation, which would be dependent upon an in-depth assessment of the requirements of monetary policy.[397] The OMTs Programme *as such* has never been implemented.

393 **Decisions 2009/522/EC** (**ECB/2009/16**) (OJ L 175, 4.7.2009, pp. 18-19) and **2011/744/EU** (**ECB/2011/17**) (OJ L 297, 16.11.2011, pp. 70-71), respectively. In both cases, the legal bases were Article 127(2), first indent **TFEU** and Article 12.1, second sub-paragraph (in conjunction with the first indent of Article 3.1 and Article 18.1) **ESCB/ECB Statute**.

394 **Decision 2010/281/EU** (**ECB/2010/5**) (OJ L 124, 20.5.2010, pp. 8-9), adopted on the same legal bases as its above-mentioned Decisions on the CBPP and the CBPP2.

395 ECB purchases of Member States' sovereign bonds in the primary market (that is, upon their issuance) is prohibited pursuant to (the above-mentioned) **Article 123(1) TFEU** setting out the prohibition of monetary financing. On the SMP, *see* details in **Tuori (2020)**, pp. 655-665.

396 At: https://www.ecb.europa.eu/press/key/date/2012/html/sp120726.en.html.

397 At: https://www.ecb.europa.eu/press/pr/date/2012/html/pr120906_1.en.html. On this Programme, *see* by means of mere indication **Hadjiemmanuil (2020)**, pp. 1333-1335 and **Tuori (2020)**, pp. 665-675.

BOX 6: The CJEU judgments in the "*Pringle* case" and the "*Gauweiler* case"

The announcement of the OMTs Programme has given rise to intense debate culminating in an *ultra vires* review by the German Federal Constitutional Court ('**FCC**', Bundesverfassungsgericht). In this respect, the FCC submitted to the CJEU, in 2014, a request by for a preliminary ruling under **Article 267 TFEU**, the judgment of which is discussed **under B below**. This follows the discussion (**under A**) of a previous Courts's judgment (of 2012), which involved a not directly relevant issue but some of its considerations informed those in the 2014 judgment.

A. The "*Pringle* case"

(1) In order to restore confidence in the euro area on the international capital markets amidst the Greek fiscal crisis and given that the response to the crisis needed to be wrapped in an institutional cloak, the Ecofin Council decided on 9 May to create a 60 billion euro "European Financial Stabilisation Mechanism" ('**EFSM**'), which was established by **Council Regulation (EU) No 407/2010** of 11 May 2010,[398] adopted on the basis of Article **122(2) TFEU**.[399] Recourse to this TFEU Article was clearly an emergency solution. Accordingly, immediately after the adoption of **Regulation (EU) No 407/2010**, the euro area Member States concluded an intergovernmental agreement, outside the EU framework, establishing the "European Financial Stability Facility" ('**EFSF**'). In addition to Greece, Ireland (2010) and Portugal (April 2011) have also invoked this mechanism.[400]

(2) Amidst the euro area fiscal crisis, the establishment of a permanent stability mechanism by the euro area Member States was then a reasonable and absolutely necessary step, which, however, required an amendment of the TFEU. As **Craig (2010)** (rightly) pointed out:

> "*The Greek economic crisis has (…) revealed that the Treaty rules concerning budgetary discipline may well need to be strengthened considerably if such problems are not to recur in the future*".[401]

398 OJ L 118, 12.5.2010, pp. 1-4.

399 On the need to establish this mechanism, *see* **Council Regulation (EU) No 407/2010**, recitals (3)-(5); on the resort to Article 122 TFEU, *see* **Chamon (2023)**.

400 On the support programmes for Greece and Portugal (respectively), *see* **Drossos (2020)**, Chapter 4, Section IV and V, **Hadjiemmanuil (2020)**, pp. 1281-1286 and 1305-1311 and **Piantelli (2021)**, pp. 70-72 and 67-70.

401 **Craig (2010)**, pp. 321.

In this context, by virtue of the **European Council Decision 2011/199/EU**,[402] **Article 136 TFEU**[403] was amended (for the first and only time during that crisis) by introducing a **new paragraph (3)**, which reads as follows:

> "*Member States whose currency is the euro may establish a stability mechanism which will be activated if necessary to ensure the stability of the euro area as a whole. The provision of any required financial assistance under the mechanism will be subject to strict* conditionality."

This paved the way for the establishment of a permanent stability mechanism for Member States whose currency is the euro, the European Stability Mechanism ('**ESM**'), by virtue of an intergovernmental Treaty of 2 February 2012,[404] outside the EU framework.[405]

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402 **European Council Decision 2011/199/EU** of 25 March 2011 "amending Article 136 of the [TFEU] with regard to a stability mechanism for Member States whose currency is the euro", OJ L 91, 6.4.2011, pp. 1-2. Its legal basis is Article 48(6) TEU, as well as the proposal for revising Article 136 TFEU submitted on 16 December 2010. On Article 48(6), *see* by means of mere indication **Herrnfeld (2019)**, p. 413.

403 On the use of Article 136 TFEU to adopt EU measures of surveillance and coordination during the fiscal crisis, *see* **Hinarejos (2020)**, pp. 1388-1390.

404 The consolidated version of the ESM Treaty, which is currently under revision, is available at: https://www.esm.europa.eu/legal-documents/esm-treaty. On this mechanism, *see* by means of mere indication **Martucci (2020)**, pp. 301-317. The key mandate of the ESM, in operation since October 2012, is to preserve financial stability in the euro area by providing financial assistance to Member States with severe financing problems (resembling thus to the IMF at global level). Cyprus was the first Member State to approach the ESM; on the Cypriot crisis and its impact of financial stability, *see* **Gortsos (2022e)**.In respect to the Cypriot case, of relevance is also (*inter alia*) the Judgment of the Court (Grand Chamber) of 20 September 2016 in **Joined Cases C-8/15 P, C-10/15 P**, *Ledra Advertising Ltd and Others v European Commission and European Central Bank* (ECB), ECLI:EU:C:2016:701. It its judgment, the Court clarified the responsibilities of the Commission and the ECB regarding the MoU which outlined economic policy conditions imposed on Cyprus as part of the stability support program and should be consistent with EU law. In this and other judgments on related cases (*see* at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2016-09/cp160102en.pdf), the Court confirmed the dismissal of the actions for annulment (since the MoU was based on a non-EU Treaty, namely, the ESM Treaty) and dismissed on the merits the actions for compensation concerning the restructuring of the Cypriot banking sector.

405 It is merely noted the ESM allocated to the ECB the tasks of (*inter alia*) assessing the urgency of requests for stability support, and, in liaison with the Commission, assessing requests for stability support, negotiating an MoU and monitoring compliance with the conditionality attached to the financial assistance (Articles 4(4), 13(1), 13(3) and 13(7), respectively).

(3) Within this context, in **Case C-370/12**, *Thomas Pringle v Government of Ireland* (widely referred to as the **"*Pringle* Case"**), the CJEU gave judgment on three questions referred to it for a preliminary ruling under Article 267 TFEU by the Irish Supreme Court:[406]

First, whether Council Decision 2011/199/EU is valid to the extent that it amended Article 136 TFEU, by providing for the insertion of the new paragraph (3), on the basis of the simplified revision procedure under **Article 48(6) TEU**.

Second, whether a Member State whose currency is the euro has the right to conclude and ratify an international agreement such as the ESM Treaty, taking into account: the provisions of Articles 2-3 TEU and Articles 119-123 and 125-127 TFEU; the exclusive competence of the EU in monetary policy matters (Article 3(1), point (c) TFEU), as well as for the conclusion of international agreements falling within the scope of Article 3(2) TFEU; the EU's competence to coordinate economic policy, in accordance with Article 2(3) TFEU and Title VIII of Part Three TFEU; the powers and mission of EU institutions pursuant to the principles set out in Article 13 TEU; and the principle of sincere cooperation in accordance with Article 4(3) TEU and the general principles of EU law (including the general principle of effective judicial protection and the right to an effective remedy under **Article 47 of the Charter** of Fundamental Rights of the European Union, '**CFR**')[407] and legal certainty.

Third, in the event of recognition of the validity of Decision 2011/199/EU, whether the establishment of the right of a Member State to conclude and ratify an international agreement such as the Treaty establishing the ESM depends on the entry into force of that Decision.

(3) In its judgment of 27 November 2012,[408] the Court held in relation to these three questions that: *first*, nothing is capable of affecting the validity of Decision 2011/199/EU; *second*, the conclusion of an agreement between Member States whose currency is the euro, such as the ESM Treaty, or is ratification by those Member States are not

406 The reference has been made in proceedings brought by a member of the Irish Parliament (Mr *Pringle*) against the Government of Ireland, Ireland and the Attorney General, seeking a declaration that the amendment of Article 136 TFEU by Article 1 of Decision 2011/199 constitutes an unlawful amendment of that Treaty and, further, an injunction preventing Ireland from ratifying, approving or accepting the EMS Treaty.

407 Consolidated version, OJ C 202, 7.6.2016, pp. 389-405; on the CFR, *see* by means of mere indication **Craig and de Búrca (2020)**, pp. 141-142.

408 ECLI:EU:C:2012:756. The view of Advocate General Kokott was delivered on 26 October 2012 (ECLI:EU:C:2012:675). Taking into account that, in accordance with the decision of the Court's President, the case should be dealt with under the **"accelerated procedure"** set out in Article 23a of the Statute of the CJEU (contained in **Protocol (No 3)** attached to the Treaties, Consolidated version, OJ C 202, 7.6.2016, pp. 210-229) and Article 105(1) of the Rules of Procedure of the Court (at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2012-10/rp_en.pdf), the Advocate General did not have to submit an Opinion but should be heard (Rules of Procedure of the Court, Article 105(5)).

contrary to the above TEU and TFEU Articles and general principles; and *third*, *the* right of a Member State to conclude and ratify the ESM Treaty is not subject to the entry into force of Decision 2011/199/EU.[409]

(4) Of particular interest in the context of this study (on monetary policy) are two considerations of the Court in relation to the first question above and in particular on whether, in order to determine if Decision 2011/199, in so far as it amends Article 136 TFEU, grants to Member States a competence in the area of monetary policy for the Member States whose currency is the euro (in which case the amendment could be made only by using the ordinary revision procedure provided for in Article 48(2) to (5) TEU):

First, it observed that the TFEU does not contain a definition of the Eurosystem's monetary policy. Thus, on the basis of a functional approach, the TFEU provisions related to this policy refer to its objectives (pursuant to Articles 127(1) and 282(2), namely, to maintain price stability) rather than its instruments.

Second, and as a consequence, it must be examined whether or not the objectives to be attained by the ESM (as envisaged by Article 1 of Decision 2011/199) and the instruments provided to that end fall within monetary policy for the purposes of Articles 3(1), point (c) TFEU and 127 TFEU.[410] In that respect, the Court's judgment considers and concludes as follows:

> "*As regards, on the one hand, the objective pursued by this mechanism, which is to safeguard the stability of the euro area as a whole, it is clearly distinct from the objective of maintaining price stability, which is the primary objective of the monetary policy of the Union. In particular, although the stability of the euro area may have an impact on the stability of the currency used in that area, an economic policy measure cannot be equated with a monetary policy measure merely because it may have indirect consequences for the stability of the euro.*"
>
> "*As regards, on the other hand, the means envisaged to achieve this objective, Decision 2011/199 merely stipulates that the stability mechanism will provide any financial assistance required, without providing anything else on the functioning of this mechanism. The provision of financial assistance to a Member State, however, does not obviously fall within the scope of monetary policy.*"
>
> "*In the light of the objectives to be attained by the stability mechanism the establishment of which is envisaged by Article 1 of Decision 2011/199, the instruments provided in order to achieve those objectives and the close link between that mechanism, the provisions of the [TFEU] relating to economic policy and the regulatory framework for strengthened economic governance of the Union, it must be concluded that the establishment of that mechanism falls within the area of economic policy.*"

409 **CJEU judgment**, paragraphs 29-76, 77-182 and 183-185, respectively.
410 *Ibid.*, paragraphs 53-55.

> *"Consequently, Article 1 of Decision 2011/199 (...) is not capable of affecting the exclusive competence held by the Union under Article 3(1)(c) TFEU in the area of monetary policy for the Member States whose currency is the euro."*[411]

(5) The author finally notes that the term "economic policy" is also not defined in the Treaties. It is used in the TFEU Articles on the economic union in a broad sense, encompassing all the policies to which Member States have recourse to influence the economic situation, such as fiscal policy,[412] employment policy, and structural policies. Excluded, of course – although these are also economic, and (in fact) macro-economic policies as well – are monetary and exchange rate policies. For the Member States that have adopted the euro, these have, as already noted, been "Europeanised" since 1 January 1999 in the context of macro-economic integration[413] and interact with the other economic policies. In this respect it is the division of competences between the ECB and Member States in the asymmetric (by design) EMU that raises the problems underlying judicial disputes.

B. The "*Gauweiler* case"

(1) As noted above, upon the announcement of the OMTs Programme, a series of constitutional actions by several groups of individuals and a political party were brought before the (German) FCC concerning the participation of the German central bank (Deutsche Bundesbank) in the implementation of the OMTs decisions and the alleged failure of the Federal Government (Bundesregierung) and the Lower House of the German Federal Parliament (Deutscher Bundestag) to act with regard to those decisions. The FCC held, in its judgment of 21 June 2016, that a programme of unlimited bond purchases amidst the fiscal crisis in the euro area neither constitutes an *ultra vires* act nor violates the German constitution (if interpreted in accordance with the judgment of the CJEU, see just below) and, thus, rejected these complaints.[414]

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411 *Ibid.*, paragraphs 56-57, 60 and 63. On the Court's judgment in this case, *see* further, by means of mere indication, **Hadjiemmanuil (2020)**, pp. 1293-1294, **Hinarejos (2020)**, pp. 1380-1383 and **Angelou (2024)**, pp. 122-124.

412 For the meaning of the term fiscal policy, *see* by means of mere indication **Auerbach (2019)**.

413 **"Macroeconomic integration"** means the harmonisation of the conditions for the conduct of the macroeconomic policies of the participating countries, with the aim of forming uniform macroeconomic policies. This is contrasted with **"microeconomic integration"**, i.e., the integration of the markets (for the supply of goods and services and the supply of factors of production) of the states participating in the integration process in the context of the operation of a single economic area.

414 BVerfG, Judgment of the Second Senate of 21 June 2016, 2 BvR 2728/13 (at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2016/06/rs20160621_2bvr272813en.html).

(2) As just indicated, the decision of the FCC was based on the judgment of the Court (Grand Chamber) of 16 June 2015 in **Case C-62/14** *Peter Gauweiler and Others v Deutscher Bundestag*[415] (widely referred to as the **"*Gauweiler* Case"**. That was the first out of a series of cases relating to the judicial review of ECB monetary policy decisions.[416] The related request by the FCC (also for the first time[417]) for a preliminary ruling under **Article 267 TFEU** concerned the validity of the decisions of the GC of 6 September 2012 on a number of technical features regarding the OMTs Programme, as well as the interpretation of **Articles 119**, **123** and **127 TFEU** and of **Articles 17-24 ESCB/ECB Statute**.

(3) The Court did not raise any objections as to the compatibility of OMTs with EU law, ruling that the above Articles of the TFEU and the ESCB/ECB Statute

> "*must be interpreted as permitting the [Eurosystem] to adopt a programme for the purchase of government bonds on secondary markets, such as the programme announced in the press release.*"[418]

In this respect, the Court considered the following:

First, the aim of the OMTs Programme (in accordance with the press release) is the safeguarding of both "*an appropriate monetary policy transmission and the singleness of the monetary policy*".[419]

Second, it extensively dealt the question whether such a bond-buying programme may be validly adopted and implemented as part of the single monetary policy. In relation to this aspect, it considered that this is the case only in so far as the measures it entails are proportionate to the objectives of that policy (pursuant to in Articles 119(2) and 127(1) TFEU, read in conjunction with Article 5(4) TEU), coming to the conclusion that such a programme does not infringe the principle of proportionality.[420]

Third, as regards Article 123(1) TFEU (on the prohibition of monetary financing), the Court noted, *inter alia*, that the OMTs programme:[421]

415 ECLI:EU:C:2015:400. The Opinion of Advocate General Cruz Villalón was delivered on 14 January 2015 (ECLI:EU:C:2015:7).

416 On a related case, *see* also **Box 8** in this Section below. For an overall review, *see* **Baroncelli (2019)**, **Markakis (2020)**, Chapter 8 and **Thiele (2021)**, pp. 128-130. On the judicial review of ECB acts in relation to the implementation of the Eurosystem's monetary policy as "administrative acts of broad discretion", the evolution of the judicial review carried out over time respectively, and the marginal assessment made by the Court, *see* **Angelou (2024)**. It is noted that the judicial review in respect to these acts should be distinguished from that in cases where the ECB acts as a supervisory authority within the Single Supervisory Mechanism ('**SSM**'); on this aspect, ***see Special Topic 2*** **below, under 2**.

417 *See* the Press Release of the Court No 2/15 of 14 January 2015, fifth paragraph (at: https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-01/cp150002en.pdf).

418 **CJEU judgment**, paragraph 127.

419 *Ibid.*, paragraph 47.

420 *Ibid.*, paragraphs 66-92.

(a) provides for the purchase of government bonds only as far as is necessary for safeguarding the monetary policy transmission mechanism and the singleness of monetary policy and that those purchases will cease as soon as those objectives are achieved; and

(b) is accompanied by a series of guarantees intended to limit its impact on the impetus to follow a sound budgetary policy, and thus not to circumvent the objective pursued by the prohibition of monetary financing of the Member States.[422]

Thus, Article 123(1) TFEU does not prevent the Eurosystem from adopting such a programme and implementing it under conditions which do not result in its intervention having an effect equivalent to that of a direct purchase of government bonds from the public authorities and bodies of the Member States.[423]

(4) It is interesting to note that this judgment makes frequent references to the Court's previous judgment in the *Pringle* case when discussing the delimitation of monetary policy. In particular:

First, it refers to the observation in its previous judgment that, since the TFEU does not contain a precise definition of monetary policy, in order to determine whether a measure falls within the area of monetary policy, reference should principally be made to its objectives, while the instruments employed to attain them are also of relevance.[424]

Second, the fact that a programme such as the OMTs Programme, thus, a monetary policy measure, might also be capable of contributing to the stability of the euro area, which is a matter of economic policy, cannot lead to conclusion that it is equivalent to an economic policy measure merely because it may have *indirect* effects on the stability of the euro area.[425]

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421 Article 123, along with Articles 124-125 TFEU, establish a series of prohibitions seeking to abolish practices that the public sector of (some) Member States had followed for decades to ensure the financing of its expenditure under conditions incompatible with the principle of the open market economy. On these Articles, *see* **Hattenberger (2019)**, pp. 1998-2010.

422 *See* **this Section above, under 2.1 (2)**.

423 **CJEU judgment**, paragraphs 93-124 (in particular, paragraphs 112, 115 and 121). It is noted that, according to the German FCC, although the OMTs Programme *formally* complied with the condition expressly set out in Article 123(1) TFEU, it might circumvent the prohibition concerned, since the ECB's interventions on the secondary market, just like purchases on the primary market, in fact represent financial assistance by means of monetary policy, referring to its technical features, which were all clear indications that the effect is to circumvent the prohibition laid down in Article 123(1) TFEU (*see* **Advocate General Opinion**, paragraph 205).

424 **CJEU judgment**, paragraph 46 with reference to paragraph 53 and 55 of the *Pringle* case judgment.

425 *Ibid.*, paragraphs 51-52 with reference (to the same effect and by analogy) to paragraph 56 of the *Pringle* case judgment.

Third, the fact that the purchase of government bonds on the secondary market subject to a condition of compliance with a macroeconomic adjustment programme could be regarded as falling within economic policy, when the purchase is undertaken by the ESM, does not mean that this should equally be the case when that instrument is used by the Eurosystem in the framework of a programme such as the OMTs Programme.

In that regard, raising the decisive difference between the objectives of the ESM and those of the Eurosystem, the Court notes that, even though a programme such as the OMTs Programme may be implemented only in so far as is necessary for the maintenance of price stability, the ESM's intervention is intended to safeguard the stability of the euro area, that objective not falling within monetary policy.[426]

2.3 The 'expanded' asset purchase programme

(1) Even though (as already mentioned) the OMTs programme was not activated, several other (corporate and sovereign) bond purchase programmes were underway (included in the so-called **"expanded asset purchase programme"**) to address the risks of a prolongation of the low-inflation period in the euro area.[427] Under this programme, the ECB bought a range of assets including government bonds, securities issued by European supranational institutions, corporate bonds, 'asset-backed securities' (ABSs)[428] and covered bonds at a pace ranging from 15 to 80 billion euro per month. Such asset purchases influence broader financial conditions and, eventually, economic growth and inflation, through three main channels (see **Box 7** just below).[429]

426 *Ibid.*, paragraphs 63-64 with reference (to the same effect) to paragraphs 60 and 56, respectively, of the *Pringle* case judgment. On the Court's judgment in this case, *see* further **Smits (2015)** (in relation to the Advocate General's Opinion), **Fabbrini (2015)**, **Lastra (2015)**, pp. 261-264, **Borger (2016)**, **Zilioli (2016)**, **Zilioli and Athanassiou (2018)**, pp. 640-642, **Chiti (2019)**, pp. 120-123, **Hinarejos (2020)**, pp. 1370-1376, **Thiele (2021)**, pp. 128-132, **Lamandini and Ramos Muñoz (2023)**, pp. 121-124 and **Angelou (2024)**, pp. 125-136.

427 *See* **European Central Bank (2015)**.

428 This term means (General Documentation Guideline, Article 2, point (13), first and second sentences) debt instruments backed by a pool of "ring-fenced" financial assets (fixed or revolving), that convert into cash within a finite time period; in addition, rights or other assets may exist that ensure the servicing or timely distribution of proceeds to the holders of the security.

429 On the issue whether the ECB's government bond purchases programmes induced moral hazard and the reasons underlying its decision to keep them under the new monetary policy strategy, *see* **Chang *et al.* (2024)**.

BOX 7: The three channels through which APPs influence (*inter alia*) broader financial conditions

"Direct pass-through" channel: when the ECB buys private sector assets (e.g., asset-backed securities and covered bonds), which are linked to loans granted by credit institutions to households and non-financial firms, the increased demand for these assets drives up their prices. This encourages credit institutions to grant more loans, which they can then use to create and sell more asset-backed securities or covered bonds. The increased supply of loans tends to lower credit institutions' lending rates for companies and households, improving thus broader financing conditions.

"Portfolio rebalancing" channel: when the ECB purchases private and public sector assets from investors (e.g., pension funds, credit institutions and households), these may choose to take the funds received in exchange for assets sold to the ECB and invest them in other assets. By increasing demand for assets more broadly, this portfolio rebalancing mechanism pushes prices up and yields down, even for assets that are not directly targeted by the APP. This results in reduced costs (the "effective market interest rate") for companies seeking to obtain financing in capital markets, while the compression of yields on securities encourages credit institutions to lend to households and non-financial firms which tends to lower their cost of borrowing. If, on the other hand, investors use the additional funds to buy higher-yielding assets outside the euro area, this may also lead to a lower euro exchange rate, which tends to put upward pressure on inflation.

Both the direct pass-through and the portfolio rebalancing channels improve broader financial conditions for households and non-financial firms in the euro area. By lowering funding costs, asset purchases can stimulate investment and consumption, while dynamic demand from firms and consumers could eventually contribute to returning inflation to the levels targeted.

"Signalling effect" channel: finally, asset purchases signal to the market that the central bank will keep its key interest rates low for an extended period. This effect reduces volatility and uncertainty in the market regarding future interest rate developments, guiding various investment decisions. It thus expected that interest rates charged on long-term loans will remain lower as credit institutions anticipate a protracted period of low interest rates.[430]

(2) The expanded asset purchase programme aimed at enhancing the transmission of monetary policy, facilitate the provision of credit to the euro area economy, ease borrowing conditions for households and firms and contribute

430 For further details, *see* at: https://www.ecb.europa.eu/explainers/tell-me-more/html/app.en.html.

to returning inflation rates to levels close to 2% over the medium term, consistent with the ECB's primary objective of maintaining price stability. It included:[431]

> *first*, the *third* covered bond purchase programme ('**CBPP3**'),[432] under which the ECB and NCBs could purchase eligible covered bonds (within the meaning of Article 2) from eligible counterparties in primary and secondary markets in accordance with the eligibility criteria set out in Article 3;
>
> *second*, the asset-backed securities purchase programme ('**ABSPP**'),[433] under which the ECB could purchase eligible asset-backed securities ('**ABS**') (within the meaning of Article 2) and instruct its agents to purchase such eligible securities on its behalf in primary and secondary markets from eligible counterparties (within the meaning of Article 4);
>
> *third*, the (secondary markets) public sector purchase programme ('**PSPP**'),[434] under which the ECB and NCBs could purchase euro-denominated marketable debt securities issued (*inter alia*) by central governments of a Member State whose currency is the euro (pursuant to Article 3) on secondary markets from eligible counterparties (as defined in Article 7), albeit under specific conditions; and
>
> *fourth*, the corporate sector purchase programme ('**CSPP**'),[435] under which specified Eurosystem central banks could purchase eligible corporate bonds from eligible counterparties in primary and secondary mar-

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431 On a new APP programme (**PEPP**) adopted during the pandemic crisis, *see* **Section D below, under 3.1**. It is noted that the first two of the programmes discussed below were credit easing and not quantitative easing ones.

432 **Decision** 2014/828/EU of the ECB of 15 October 2014 "on the implementation of the third covered bond purchase programme" (**ECB/2014/40**), OJ L 335, 22.10.2014, pp. 22-24.

433 **Decision (EU) 2015/5** of the ECB of 19 November 2014 "on the implementation of the asset-backed securities purchase programme" (**ECB/2014/45**), OJ L 1, 6.1.2015, pp. 4-7.

434 **Decision (EU) 2015/774** of the ECB of 4 March 2015 "on a secondary markets public sector asset purchase programme" (**ECB/2015/10**), OJ L 121, 14.5.2015, pp. 20-24; this had been repeatedly amended (*inter alia*, by **Decisions (EU) 2015/2464** of 16 December 2015 ((ECB/2015/48), OJ L 344, 30.12.2015, pp. 1-4), **(EU) 2016/702** of 18 April 2016 ((ECB/2016/8), OJ L 121, 11.5.2016, pp. 24-26) and **(EU) 2017/100** of 11 January 2017 ((ECB/2017/1), OJ L 16, 20.12017, pp. 51-52), and was then repealed in 2020; see **Section D below, under 3.1 (1)**). On this Decision, *see* **Tuori (2020)**, pp. 675-686.

435 **Decision (EU) 2016/948** of the ECB of 1 June 2016 "on the implementation of the corporate sector purchase programme" (**ECB/2016/16**), OJ L 157, 15.6.2016, pp. 28-32. The legal basis of all these Decisions (as in force) are Article 127(2), first indent **TFEU** and Article 12.1, second sub-paragraph (in conjunction with the first indent of Article 3.1 and Article 18.1) **ESCB/ECB Statute**.

kets; while public sector corporate bonds (as defined in Article 3(1)) could only be purchased in secondary markets, under specific conditions as well.[436]

On the exponential increase of the amounts involved, *see* **Table 6** below, assets item 7.

BOX 8: The CJEU judgment in the "*Weiss* case" – and a *postscript*

(1) In relation to the ECB Decision on the PSPP it is noted that four constitutional actions were brought in 2017 before the German FCC as to the applicability of (*inter alia*) this Decision (as in force at that time) in Germany, the participation of the Deutsche Bundesbank in its implementation or its alleged failure to act with regard to this Decision, and the alleged failure of the Deutscher Bundestag to act in respect of that participation and this Decision. The FCC referred the case to the CJEU for a preliminary ruling, under **Article 267 TFEU**.

(2) The first four questions related the validity of the PSPP Decision (as in force at that time) in light of **Article 119**, (the just above-mentioned, under 2.1) **Article 123(1)** on the prohibition of monetary financing, **Article 127(1)-(2)** and **Article 296**, second paragraph **TFEU** (on the obligation to state reasons) and of **Articles 17-24 ESCB/ECB Statute** (questions (1)-(4)). In its judgment of **11 December 2018** in **Case C-493/17**, *Weiss and Others*[437] (widely referred to as the **"*Weiss* Case"**), the Court (Grand Chamber) found that "*consideration of those questions has disclosed no factor of such a kind as to affect the validity of [the ECB] Decision (…)*".[438] In particular, it considered that the Decision: *first*, was not vitiated by any defect in the statement of reasons such as to render it invalid; *second*, taking into account its objective and the means provided for achieving that, it falls within the sphere of monetary policy; *third*, did not infringe the principle of proportionality (in view, in particular, of the successive extensions of the period of its application); and *finally*, is compatible with Article 127(1) TFEU.[439]

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436 In this respect, it is noted that, unlike in the US, which traditionally have deeper and more liquid financial markets (**'market-based' system**), in the euro corporates rely more on financing by banks (**'bank-based' systems**) is more extensive than direct financing. Thus, the relative significance of public sector bonds is higher in the euro area than in the US and this is also reflected in the purchase programmes by the ECB and the Federal Reserve. On an assessment whether the purchases by the Federal Reserve of Treasury bonds (albeit for the period 2020-2022) were tailored to accomplish the dual objective of restoring market functioning and providing stimulus, *see* **D'Amico *et al.* (2024)**.

437 ECLI:EU:C:2018:1000. The Opinion of Advocate General Wathelet was delivered on 4 October 2018 (ECLI:EU:C:2018:815).

438 **CJEU judgment**, paragraphs 158.

439 *Ibid.*, paragraphs 29-44, 45-70, 71-100 and 101-158, respectively, with frequent references, as appropriate, to the Court' judgments in the *Pringle* and *Gauweiler* cases, including the (above-mentioned) remark that the TFEU does contain a precise definition of monetary policy but defines, in the provisions relating to that policy, both the objectives of monetary policy and the instruments which are available to the Eurosystem for the purpose of

(3) The fifth question related to the compatibility of the ECB Decision with **Article 4(2) TEU**, and **Articles 123** and **125 TFEU** (the latter, on the so-called **'no-bail-out clause'**) as regards its provisions that the entirety of the losses that might be sustained by one of the central banks following a potential default by a Member State would be shared between the central banks of the Member States, in a context in which the scale of those losses would make it necessary to recapitalise that central bank. The Court found this question as inadmissible, considering that it was of a hypothetical nature.[440]

(4) However, in its ruling of **5 May 2020**,[441] the FCC declared the Court's judgment in this case and the contested ECB Decisions *ultra vires*, as having violated EU law by failing to correctly apply the principle of proportionality, and thus not applicable in Germany.[442] On **9 June 2021**, the Commission decided in this respect to send a letter of formal notice to Germany for violation of fundamental principles of EU law, in particular the principles of autonomy, primacy, effectiveness and uniform application of EU law, as well as the respect of the CJEU's jurisdiction under **Article 267 TFEU**.[443] The Commission observed that, because of its 2020 Decision, the FCC deprived a judgment of the CJEU of its legal effect in Germany, breaching the principle of the primacy of EU law, which justifies the starting of the infringement procedure. Even though, by order of 29 April 2021, the FCC rejected two requests seeking an order of execution for the judgment of 5 May 2020, this order "*does not reverse the breaches concerning the principle of primacy of Union law.*" The Commission considered that the FCC judgment constitutes a serious precedent, both for the future practice of the FCC itself, and for the supreme and constitutional courts and tribunals of other Member States.[444]

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implementing it; thus, in order to determine whether a measure falls within the area of monetary policy, reference should principally be made to its objectives, while the instruments employed to attain them are also relevant (*ibid.*, paragraphs 50 and 53).

440 *Ibid.*, paragraphs 159-167 (with reference to its judgments of 10 November 2016 (Fourth Chamber) in **Case C-156/15**, *Private Equity Insurance Group SIA v Swedbank AS* (EU:C:2016:851), paragraph 56, and of 28 March 2017 (Grand Chamber) in **Case C72/15**, *PJSC Rosneft Oil Company v Her Majesty's Treasury, Secretary of State for Business, Innovation and Skills, and The Financial Conduct Authority* (EU:C:2017:236), paragraph 194).On the Court's judgment in the *Weiss* case, *see* further, by means of mere indication, **Hinarejos (2020)**, pp. 1376-1377, **Kyriazis (2020)**, **Ioannidis (2021)**, pp. 144-145, **Lamandini and Ramos Muñoz (2023)**, pp. 124-127 and **Angelou (2024)**, pp. 136-143.

441 **BVerfG**, Judgment of the Second Senate, 2 BvR 859/15, at: https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-032.html.

442 On this ruling, *see* by means of mere indication (out of a vast existing literature) **Amtenbrink and Repasi (2020)**, **Bini Smaghi (2020)**, **Dermine (2020)**, **Engel *et al.* (2020)**, **Feld and Wieland (2020)**, **Sarmiento (2020)** and **D'Ambrosio and Messineo (2021)**.

443 *See* at: https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743.

444 On **2 December 2021**, the Commission decided to close the infringement procedure against Germany concerning the judgment of the German FCC on the basis of the following: *first*, Germany provided very strong commitments; *second*, it explicitly recognised the authority of the CJEU, whose decisions are final and binding, and considered that the

A *postscript* on the Court's judgment in joined cases C-422/19 and C-423/19 (*Johannes Dietrich and Norbert Häring v Hessischer Rundfunk*)

As noted above,[445] in its judgment of 26 January 2021 in these joined cases, the Court (*inter alia*) interprets the notion of legal tender contained in **Article 128(1) TFEU** for euro banknotes. Within this context, it further makes specific considerations, which relate to the interpretation of the concept of "monetary policy" and go beyond those in its previous as judgments discussed above.[446] In this respect, the following is briefly noted:

(1) The Court considers that the concept of monetary policy is not limited to its "operational implementation", which, under Article 127(2) TFEU, first indent is one of the basic tasks of the Eurosystem; it also entails a "regulatory dimension" intended to guarantee the status of the euro as the single currency. According to the Court, this interpretation is supported: *first*, by the primary objective of monetary policy, namely, to maintain price stability; and *second*, by the wording of Articles 128 and 133 TFEU, which may be regarded as "monetary law provisions" linked to the status of the euro as the single currency, underpin its singleness and "*are a precondition for the effective conduct of the European Union's monetary policy*".[447]

(2) These consideration are heavily based on the Opinion of Advocate General Pitruzzella of 29 September 2020.[448] *Inter alia*, the Advocate General notes the following:

First, in the Treaties there are of two different concepts linked to the term monetary policy, confirmed by the fact that in the German version these are identified with different terms: the first 'monetary policy in the broad sense' ('Währungspolitik'), pursuant to Article 3(1), point (c) TFEU (and the title of Chapter 2), and a second 'monetary policy in the strict sense' ('Geldpolitik'), pursuant to Article 127(2), first indent, which is included in the first. On that basis, he comes to the conclusion that, from a textual, systematic and teleological analysis of the relevant provisions of the Treaties, the concept of monetary policy (as *Währungspolitik*), which under Article 3(1), point (c) TFEU falls within the exclusive EU competence for the Member States whose currency is the euro, "*must be understood to mean that it is not limited to the definition and conduct of monetary policy in operational terms (monetary policy in the strict*

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legality of acts of EU institutions cannot be made subject to the examination of constitutional complaints before German courts but can only be reviewed by the CJEU; and *third*, the German government, explicitly referring to its duty of loyal cooperation enshrined in the Treaties, committed to use all the means at its disposal to avoid, in the future, a repetition of an *ultra vires* finding, and take an active role in that regard (at: https://ec.europa.eu/commission/presscorner/detail/en/inf_21_6201). On a proposal for a new mixed Chamber of the Court in the aftermath of this case, see **Weiler and Sarmiento (2020a)** and **(2020b)**.

445 See **Box 4** in *Special Topic* 1 above.

446 **CJEU judgment**, paragraphs 34.

447 *Ibid.*, paragraphs 38-40 and 43.

448 ECLI:EU:C:2020:756.

sense; Geldpolitik), within the meaning of Article 127(2), first indent (…) [but] must be understood in the broad sense, in that it also includes a regulatory dimension relating to the single currency, which includes provisions of monetary law".[449]

Second, if the status of the euro as the single currency could be governed by different rules in the Member States whose currency is the euro, its singleness would be called into question and the objective of maintaining price stability would, thereby, be seriously jeopardised.[450]

3. The programme for targeted longer-term refinancing operations (TLTROs)

In **2014**, the ECB also introduced the so-called targeted longer-term refinancing operations ('**TLTROs**') to reinforce the ECB's accommodative monetary policy stance and strengthen the transmission of monetary policy. These are considered as "non-standard" operations through which the Eurosystem provides long-term funding to credit institutions under attractive conditions to preserve favourable borrowing conditions and stimulate bank lending to the real economy.[451] There were three series of TLTROs:

the *first* series (TLTRO-I) was governed by ECB **Decision 2014/541/EU** of 29 July 2014 "on measures relating to targeted longer-term refinancing operations (**ECB/2014/34**)";[452]

the *second* series (TLTRO-II), which consisted of a series of four TLTROs, each with a maturity of four years, starting in June 2016 at a quarterly frequency, was governed by **Decision (EU) 2016/810** of 28 April 2016 "on a second series of [TLTROs] (**ECB/2016/10**)";[453] and

449 **Opinion**, paragraph 57.

450 *Ibid.*, paragraph 66.

451 In that respect, the TLTROs embedded an innovative, for ECB standards, "dual rate".It is worth noting that the setting of different interest rates for different purposes is used by some central banks. A typical example is the Federal Reserve's "discount rate", namely, the interest rate at which the Federal Reserve lends money to depository institutions, and the "Federal funds rate", namely, the target interest rate for overnight interbank lending to meet reserve requirements, which is set by the central bank (the actual rate being determined by market supply and demand) and is usually lower than the discount rate. On the proposals to introduce in the euro area a **"green dual interest rate"**, *see* **Section E below, under 2.2.1 (3)**.

452 OJ L 258, 29.8.2014, pp. 11-29 (further amended).

453 OJ L 132, 3.5.2016, pp. 107-128 (further amended).

the *third* series (TLTRO-III), which consists of a series of seven TLTROs, each with a maturity of 3 years, starting in September 2019 at a quarterly frequency, is governed by **Decision (EU) 2019/1311** of 22 July 2019 "on a third series of targeted longer-term refinancing operations (**ECB/2019/21**)",[454] as in force after its amendment during the pandemic crisis and most recently in October 2022.[455]

TABLE 6
Evolution of the Eurosystem's consolidated accounts (2007-2017, in million euro):
The impact of the GFC and the euro area fiscal crisis

Assets				Liabilities			
	IV. 2017	**V. 2010**	**V. 2007**		**IV. 2017**	**V. 2010**	**V. 2007**
1. Gold and gold receivables	**404,188**	**286,696**	180,024	1. Banknotes in circulation	**1,121,618**	**804,587**	623,383
2. Claims on non-euro area residents denominated in foreign currency	**321,595**	**211,749**	142,506	2. Liabilities to euro area credit institutions related to **monetary policy operations** denominated in euro	**1,681,994**	**516,213**	187,400
				2.1 Current account (minimum reserve system)	**1,123,014**	**246,239**	187,221
				2.2 Deposit facility	**558,962**	**253,469**	178
				2.3 Fixed term deposits	**0↓**	**16,500**	0

454 OJ L 204, 2.8.2019, pp. 100-122.

455 *See* **Section D below, under 2.1**. Before the outbreak of the pandemic crisis, this Decision was also amended by **Decision (EU) 2019/1558** (**ECB/2019/28**, OJ L 238, 16.9.2019, pp. 2-5). For more details on all three series of TLTROs, *see* at: https://www.ecb.europa.eu/mopo/implement/omo/tltro/html/index.en.html.

Assets				Liabilities			
	IV. 2017	**V. 2010**	**V. 2007**		**IV. 2017**	**V. 2010**	**V. 2007**
				2.4 Deposits related to margin calls	**18**	**5**	1
3. Claims on euro area residents denominated in foreign currency	31,382	29,798	25,006	3. Other liabilities to euro area credit institutions denominated in euro	**10,722**	**390**	201
4. Claims on non-euro area residents denominated in euro	18,974↓	19,267	14,941	4. Debt certificates issued	0	0	0
5. Lending to euro area credit institutions related to **monetary policy operations** denominated in euro	**784,153**↓	**811,688**	445,739	5. Liabilities to other euro area residents denominated in euro (general government – other liabilities)	**344,246**	**126,471**	68,777
5.1 MROs	**14.750**↓	**104.752**↓	295.503				
5.2 LTROs	**769,185**	**706,881**	150,000				
5.3 Marginal lending facility	**218**	13↓	235				
5.4 Credits related to margin calls	**0**↓	**42**	1				

Assets				Liabilities			
	IV. 2017	**V. 2010**	**V. 2007**		**IV. 2017**	**V. 2010**	**V. 2007**
6. Other claims on euro area credit institutions denominated in euro	**82,027**	**39,861**	14,135	6. Liabilities to non-euro area residents denominated in euro	**169,136**	**59,248**	20,135
7. **Securities of euro area residents** denominated in euro	**2,236,213**	**387,114**	94,505	7. Liabilities to euro area residents denominated in foreign currency	**3,012**	**2,383**	155
8. General government debt denominated in euro	26,372↓	35,582↓	37,657	8. Liabilities to non-euro area residents denominated in foreign currency	10,494↓	12,619	15,474
9. Other assets	234,494↓	248,214	232,539	9. Counterpart of SDR allocated by the IMF	59,048	**53,033**	5,578
				10. Other liabilities	**225,723**	**169,162**	72,098
				11. Revaluation accounts	**412,030**	**249,205**	125,521
				12. Capital and reserves	**101,374**	76,657	68,330
TOTAL	**4,139,398**	**2,069,968**	**1,187,052**	**TOTAL**	**4,139,398**	**2,069,968**	**1,187,052**

Some explanatory notes and a definition:[456]

Explanatory notes on specific items in the consolidated accounts

(1) The holdings in gold and gold receivables (assets item 1) do not have to correspond to the amount of banknotes in circulation (liabilities item 1) (and are, indeed, substantially lower) since we are not in a "gold standard" international monetary environment.[457]

(2) The **"Net position of the Eurosystem in foreign currency"**(assets items 2 and 3 *minus* liabilities items 7, 8 and 9) includes holdings resulting from all customer and portfolio transactions in foreign currency (including special drawing rights – '**SDRs**') with both euro and non-euro area residents, as well as foreign exchange liquidity-providing operations conducted for the benefit of euro area residents. This category contains the foreign currency part of the **Eurosystem's official reserves** which is primarily needed to support possible interventions in the foreign exchange market.

(3) Under assets item 2, item 2.1 **Receivables from the IMF**represents the Member States' claims resulting from their IMF subscription, their holdings of SDRs and their participation in the IMF's programmes. A related balance sheet item is liabilities item 9 **Counterpart of special drawing rights allocated by the IMF**, which represents the amount of SDRs that were originally allocated to the respective Member States.

(4) The Eurosystem's **"Net lending to credit institutions"** (assets item 5 *minus* liabilities items 2.2, 2.3, 2.4, 2.5 and 4) shows the use of the Eurosystem's liquidity-providing lending operations by counterparties net of liquidity-absorbing instruments.

(5) The ELA features on the 'assets' side, under **item 6** "Other claims on euro area credit institutions".

(6) **Base money** consists of three items:

- ➢ liabilities item 1 **Banknotes in circulation**, which represents the nominal value of euro banknotes put into circulation by the Eurosystem central banks;
- ➢ liabilities item 2.1 **Current accounts (covering the minimum reserve system)**, which consists primarily of holdings related to the requirement on credit institutions to hold deposits on accounts with their NCBs; and
- ➢ liabilities item 2.2 **Deposit facility**.

The format and content of weekly financial statements ('**WFS**') are specified in the (above-mentioned[458]) **ECB Guideline 2016/2249**, which also governs the valuation of the Eurosystem's assets and liabilities.

A definition: the term 'margin call' (appearing twice in Table 6 but not discussed in Section B before) is defined in **Article 2, point (54) of the General Documentation Guideline** as a procedure relating to the application of variation margins, implying that if the value of the assets mobilised as collateral by a counterparty, as regularly measured, falls

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456 *See* at: https://www.ecb.europa.eu/pub/pdf/other/wfs-userguide.en.html.

457 On this standard, *see* by means of mere indication **Proctor (2012)**, pp. 66-71.

458 *See* the ***Excursus 1*** **above**.

below a certain level, the Eurosystem requires the counterparty to supply additional eligible assets or cash. In this respect:

first, for pooling systems, a margin call is performed only in cases of under-collateralisation; and

second, for earmarking systems, symmetric margin calls are performed, each method as further specified in the national documentation of the home NCB.[459]

Special Topic 2: The role of the ECB in the European System of Financial Supervision (ESFS) and its specific tasks in the first pillar of the Banking Union (BU)

1. On the European System of Financial Supervision (ESFS)

(1) Apart from its basic tasks as a monetary authority, within the Eurosystem, by virtue of **Article 127(2) TFEU** as already (extensively) discussed, the ECB also plays a significant role in terms of safeguarding financial stability even though it does not have a related clear mandate.[460] In particular, pursuant to **Article 127(5) TFEU**, the task has been conferred upon the Eurosystem to contribute to the smooth conduct of policies pursued by the NCAs relating to the prudential supervision of credit institutions and the stability of the financial system.[461] Even though this Article has a major shortcoming, since (literally) it only refers to the division of relevant competences between the ECB (mainly submission of opinions) and the NCAs,[462] it has been the basis for ECB action during the GFC and the euro area fiscal crisis.

(2) However, the scale and intensity of the GCF have, *inter alia*, highlighted the need to enhance the (then) existing EU regulatory and supervisory frame-

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459 On the definition of pooling and earmarking systems, *see* **Section B above, under 3.2.2 (2)**.

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

461 Article 127(5) TFEU (repeated almost *verbatim* in **Article 3.3 ESCB/ECB Statute**) does not apply to Member States with a derogation (Article 139(2), point (c) TFEU, and ESCB/ECB Statute, Article 42.1, respectively), On its provisions, *see* **Smits (1997)**, pp. 338-355, **Lastra and Louis (2013)**, p. 95, **Psaroudakis (2018)**, pp. 134-137, as well as **Smolenska and Beukers (2022)**.

462 *See* **Lastra and Louis (2013)**, p. 79, and **Lastra (2015)**, p. 254.

work relating to the financial system. In this respect, the High-Level Group on Financial Supervision in the EU, which was set up by the Commission and chaired by the France's former central banker *Jacques de Larosière*, submitted on 25 February 2009 a Report (the '*de Larosière* Report'),[463] which included specific recommendations which led to the creation of the 'European System of Financial Supervision' ('**ESFS**') that became operational on 1 January 2011.

(3) The ESFS, which applies to all EU Member States, consists of the European Systemic Risk Board (**ESRB**),[464] the three 'European Supervisory Authorities' (**ESAs**),[465] the Joint Committee of the ESAs for the purposes of carrying out the tasks specified in Articles 54-57 of the ESAs' Regulations, and the competent or supervisory authorities in the Member States as specified in the legislative acts referred to in Article 1(2) of these Regulations.[466]

Its main objective is to "*ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.*"[467] In this respect, the following is further noted:

First, the ESRB became operational (along with the ESAs) on 1 January 2011, has its seat in Frankfurt, is a specific, independent body responsible for macroprudential oversight across the EU financial system, and, unlike the ESAs, does not have legal personality.[468] It has been tasked with the macroprudential oversight of the EU financial system in order to contribute to the prevention or mitigation of systemic risks to financial stability in the EU that arise from developments within the financial system and taking into account macroeconomic developments, so as to avoid periods of widespread financial distress.[469]

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463 At: https://ec.europa.eu/commission_barroso/president/pdf/statement_20090225_en.pdf. For an overview, *see* **Ferrarini and Chiodini (2009)**.

464 Its founding legislative act is **Regulation (EU) No 1092/2010** of the co-legislators of 24 November 2010, OJ L 331, 15.12.2010, pp. 1-11, as in force ('**ESRBR**').

465 These include the European Banking Authority ('**EBA**'), which was established by virtue of **Regulation** of the co-legislators of 24 November 2010 **(EU) No 1093/2010**, OJ L 331, 15.12.2010, pp. 12-47, hereinafter '**EBAR**'); the European Insurance and Occupational Pensions Authority ('**EIOPA**', established by virtue of **Regulation (EU) No 1094/2010**, OJ L 331, 15.12.2010, pp. 48-83); and the European Securities and Markets Authority ('**ESMA**', established by virtue of **Regulation (EU) 1095/2010**, OJ L 331, 15.12.2010, pp. 84-119). All these Regulations are in force as repeatedly amended.

466 **ESAs Regulations**, Article 2(2) and Article 1(3) **ESRBR**. On the ESFS and its components, *see* by means of mere indication **Gortsos (2020a)**, pp. 105-140 (with extensive further references).

467 **ESAs Regulations**, Article 2(1), second sentence.

468 **ESRBR**, Article 1(1)-(2) and recital (15), last sentence.

469 *Ibid.*, Article 3(1), first sentence.

Second, in respect to its establishment it was decided to activate, for the first time, **Article 127(6) TFEU**, pursuant to which the Council may confer **"specific tasks"** upon the ECB concerning policies relating to the prudential supervision of credit institutions and other financial firms, with the exception of insurance undertakings. This requires the unanimous adoption of a Council Regulation,[470] which also involves the non-euro area Member States.[471] On the basis of this enabling clause, the ECB has been assigned by a Council Regulation[472] specific tasks in the field of financial macroprudential oversight, taking into account the close links between monetary and macroprudential policies.[473] In this respect, the ECB President and Vice-President are Members of the General Board of the ESRB; the ECB ensures a Secretariat, whose mission is set out in **Article 4(4) ESRBR**, and thereby provides analytical, statistical, logistical, and administrative support to the ESRB; the ECB provides sufficient human and financial resources for the fulfilment of above task of ensuring the Secretariat, whose head is appointed by the ECB, in consultation with the General Board of the ESRB.[474]

Furthermore, the ESRB is (currently) chaired by the President of the ECB, who presides at the General Board's and Steering Committee's meetings and represents the ESRB externally.[475]

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470 Thus, the legislative acts, which are legally based on Article 127(6), are adopted in accordance with the "special" legislative procedure set out in Article 289(2) **TFEU**.

471 Pursuant to Article 139(2), point (c) **TFEU**, Article 127(6) is not included in those which do not apply to those Member States. It is further noted, that despite the (conceptually misleading) embedment of this paragraph in Article 127, which, along with other Articles, is included in Chapter 2 of Title VIII in Part Three of the TFEU entitled "Monetary Policy", the specific banking supervisory tasks conferred on the ECB do not constitute an exclusive EU competence under the Treaties.For an analysis of this provision (repeated in **Article 25.2 ESCB/ECB Statute**), *see* **Smits (1997)**, pp. 355-359, **Hadjiemmanuil (2006)**, pp. 824-825, **Louis (2009)**, pp. 166-168, **Lastra and Louis (2013)**, pp. 82-94, **Lastra and Psaroudakis (2020)** and **Gortsos (2023a)**, pp. 328-330.

472 **Council Regulation (EU) No 1096/2010** of 24 November 2010 (as well), OJ L 331, 15.12.2010, pp. 162-164.

473 On this aspect, *see* further **Chapter 3 below, under 1**.

474 **Council Regulation (EU) No 1096/2010**, Articles 1-3; on these specific tasks, *see* details in **Gortsos (2020a)**, pp. 371-373. In this respect, the author considers that the embedment of Article 127 (6) (and (5)) in Chapter 2 of Title VIII in Part Three of the TFEU entitled "Monetary Policy", is conceptually misleading, since it is more than apparent that these paragraphs do not literally relate to monetary policy, but to financial stability and banking supervisory issues (notwithstanding the close links between these policies and the fact that they all refer to tasks assigned to the ECB, albeit in the case of Article 127(6) not within the Eurosystem).

475 **ESRBR**, Article 5(1). The ECB President would chair the Board for a term of five years; for the subsequent terms, the ESRB Chair would be designated in accordance with the modalities determined on the basis of the review provided for in **Article 20**. Nevertheless, the ECB President still is the Chair.

Third, the ESAs' statutory objective is to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the EU economy, its citizens and businesses.[476] The ECB participates in the EBA's Board of Supervisors as non-voting member.[477]

2. On the Single Supervisory Mechanism (SSM)

(1) The Banking Union ('**BU**') was established in 2013 amidst the euro area fiscal crisis.[478] This was dictated by the policy consideration that it was essential "*to break the vicious circle between banks and sovereigns*". The BU, and in particular its first main pillar, the Single Supervisory Mechanism (**SSM**), is closely linked to the EMU.[479] This was established by a Council Regulation ('**SSMR**'),[480] which was adopted (unanimously) on the legal basis of (the just above-mentioned) **Article 127(6) TFEU**, which was re-activated in 2013. In accordance with the SSMR,[481] unlike in the case of the Eurosystem, the SSM is composed of the ECB (still the "hub"), which is responsible for its effective and consistent functioning, and the NCAs designated as such by the Member States participating in the BU[482] in accordance with the CRR and the CRD IV[483] (the "spokes"), which may be the central banks of those Member States but not necessarily. Pursuant to the SSMR, the ECB is accountable to the European Parliament and to the Council for its implementation as well,[484] and notably in an enhanced way if compared to the provisions of the Treaty and the ESSCB/ECB Statute.[485]

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476 **ESAs Regulations**, Article 1(5), first sentence.

477 **EBAR**, Article 40(1), points (b) and (d), respectively. On this Board, *see* **Gortsos (2023a)**, pp. 391-394.

478 On the BU, *see* details in **Gortsos (2023a)**, pp. 241-253, 269-281, 299-301 and 437-543.

479 On the interaction between monetary policy and banking supervision, *see* **Chapter 3 below, under 1.3**.

480 **Council Regulation (EU) No 1024/2013** of 15 October 2013, OJ L 287, 29.10.2013, pp. 63-89. 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, 30.7.2014, pp. 1-90, '**SRMR**'); 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). For a detailed analysis of the SSMR and the SRMR, *see* the Commentary by **Binder, Gortsos, Lackhoff and Ohler (2022**, editors**)**. On the EDIS, *see* **Gortsos (2024a)**, pp. 101-110 (with extensive further references).

481 **SSMR**, Article 6.

482 See **just below, under (2)**.

483 **SSMR**, Article 2, point (2).

484 *Ibid.*, Article 20(1) and recital (55). For an assessment of the BU's accountability system in practice, *see* **Lamandini and Ramos Muñoz (2022a)**.

485 See **Box 1 above**.

(2) The objective of the SSM is the contribution to the safety and soundness of credit institutions and the stability of the financial system.[486] The SSMR introduced for the first time in the EU banking sector the principle of "supervisory centralisation" mainly (but not exclusively) for the Member States whose currency is the euro.[487] By virtue of this legislative act, specific tasks (a *numerus clausus* as in the case of the Eurosystem's basic tasks under Article 127(2) TFEU,[488] albeit in a different context), were (once again) conferred upon the ECB, this time within the SSM, concerning policies relating to the prudential supervision of specific categories of supervised entities, namely, credit institutions established in a participating Member State, as well as financial holding companies and mixed financial holding companies also established in a participating Member State.[489] These specific tasks, which are (apparently) not included in the Eurosystem's basic tasks (and are carried out in a different mechanism established by EU secondary law), are set out in Article 4(1) SSMR.[490]

(3) Pursuant then to **Article 6**, since 4 November 2014, these specific tasks are, in principle, carried out for the participating Member States *directly* by the ECB for significant credit institutions and by NCAs for less significant ones (within the SSM).[491] However, this distinction does not apply to the specific

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486 *Ibid.*, Article 1, first sub-paragraph; *see* on this **Ohler (2022)**. This objective is apparently different from the primary objective of the Eurosystem, i.e., maintaining price stability.

487 By virtue of **Article 7 SSMR**, a non-euro area 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 in October 2020; the latter, however, as noted (*see* **Section A above, under 3.1.1 (2)**), joined the euro area in 2023. All these Member States are defined as "participating Member States (ibid., Article 2, point (1)).

488 *See* **Section A above, under 3.1.2.2**.

489 The term supervised entity is defined in Article 2, point (20), points (a)(c) of the SSM 'Framework Regulation' **(ECB/2014/17**, OJ L 141, 14.5.2014, pp. 1-50, '**SSM-FR**'). It also includes (point (d)) the branches established in a participating Member State by a credit institution which is established in a non-participating one.

490 On **Article 4 SSMR**, *see* **Lackhoff and Witte (2022)**.

491 The determination of supervised entities as significant is made in accordance with Article 6(4) SSMR and Articles 39-72 **SSM-FR**, which includes the case of reclassification of a less-significant supervised entity as significant; *see* **Gortsos (2022c)**, pp. 104-116. Relevant is 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). On this judgment and the Judgment of the Court (First Chamber) of 8 May 2019 in **Case C-450/17 P** on the appeal brought by *Landeskreditbank Baden-Württemberg Förderbank* (ECLI:EU:C:2019:372), *see* **Tröger (2017)**, **Annunziata (2018)** and **(2019)**, pp. 3-13, **Chiti (2019)**, pp. 129-130, **Montemaggi (2020)** and **Gortsos (2022c)**, pp. 116-118. For a regularly updated inventory of all (closed and pending) actions for annulment against ECB Supervisory Decisions and actions for failure to act against the ECB, *see* at the website of the European Banking Institute ('**EBI**'): *The Banking Union and Union Courts: overview of cases as of 21 December 2023* (edited by **Smits, R. and F. Della Negra**, at: https://ebi-europa.eu/

tasks relating to the authorisation and the withdrawal of authorisations of credit institutions, as well as the assessment of acquisitions of qualifying holdings therein, which are carried out by the ECB even for less significant ones (**"common procedures"**).[492]

3. The resulting enhancement of the ECB tasks (and powers) and a terminological clarification

(1) Taking into account these significant institutional developments in 2010 and in 2013, almost immediately after two major crises (thus, rendering them "**children of crises**"[493]), the role of the ECB has been substantially enhanced. Apart from being a monetary authority within the Eurosystem, exercising the basic and other tasks set out in the TFEU, the ECB has also specific tasks in relation to financial macroprudential oversight within the ESFS and to banking supervision within the SSM. In particular, as of 4 November 2014, the scope of its tasks consists of the following:

first, its basic tasks within the Eurosystem, as set out in **Article 127(2) TFEU**;[494]

second, its other tasks set out in the TFEU and the ESCB/ECB Statute;

third, the specific tasks conferred upon it by virtue of **Article 2 of Council Regulation (EU) No 1096/2010** on the macroprudential oversight of the EU financial system in the context of the functioning of the ESRB;[495] and

finally, its specific banking supervisory tasks conferred on it by the SSMR.[496]

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publications/eu-cases-or-jurisprudence, Sections 1-2). On the judicial review of decisions taken pursuant to the SSMR, *see* also the related contributions in **Zilioli and Wojcik (2021**, editors**)**, as well as **Tridimas (2022)**.

492 **SSMR**, Articles 4(1), points (a) and (c) and 14-15, and Articles 73-88 **SSM-FR**. On these Articles, *see* details in **Gurlit (2022)**.

493 For a critical view of the assertion that key financial regulations (in the example of the US) only follow from crises (the "crisis-legislation hypothesis"), *see* **Conti-Brown and Ohlrogge (2022)**.

494 *See* **Section A above, under 3.1.2.2 (1)**.

495 *See* **this Section above, under 1 (2)**.

496 For a comprehensive analysis of the role of the ECB within the Eurosystem, the SSM and the other systems and mechanisms where it participates, *see* by means of mere indication **Lamandini, Ramos Muñoz and Solana (2017)** and **Gortsos (2020a)** (both with extensive further references). *See* also **Lastra and Alexander (2020)**.

(2) Noteworthy is, finally, the difference in the terminology used in EU law in respect to the tasks conferred upon the ECB: its basic and other tasks under the TFEU and its specific tasks in relation to financial macroprudential oversight are carried out within "systems" (the Eurosystem/ESCB and the ESFS, respectively), while its specific banking supervisory tasks are carried out within a mechanism (the SSM). However, all these systems and mechanisms share in common that they do not have legal personality. The same applies to the ESRB, unlike the ECB, which has legal personality under the TFEU,[497] and the ESAs, which are "Union bodies" with legal personality under their founding Regulations.[498]

TABLE 7 **A comparison: ECB (as a supervisory authority within the SSM), EBA and ESRB**			
	ECB	**EBA**	**ESRB**
Institutional status	EU institution with legal personality (TEU, Article 13(1) and TFEU, Article 282(3))	Union body with legal personality (EBAR, Article 5)	Specialised, independent body without legal personality
Field of application	Euro area Member States and those under a "close cooperation" agreement	All EU Member States	All EU Member States
Objective	contribution to the safety and soundness of credit institutions and the stability of the financial system within the EU and each Member State (SSMR, Article 1)	protection of the public interest by contributing to the stability of the financial system, for the EU economy, its citizens and businesses (EBAR, Article 1(5))	contribution to the prevention/mitigation of systemic risks to financial stability in the EU arising from developments within the financial system (ESRBR, Article 3(1))
Tasks	micro-prudential supervision of credit institutions (SSMR, Articles 4-5)	various (EBAR, Articles 8-9), but *not (yet) a supervisory authority*	macro-prudential oversight of the financial system (ESRBR, Article 3(1))

497 *See* **Section A above, under 3.1.1 (5)**.
498 **ESAs Regulations**, Article 5(1).

Section D:
Implementation of the single monetary policy after the outbreak of the pandemic crisis[499]

1. Introductory remarks

(1) The onset of the pandemic crisis presented a significant shock to the global economy; pursuant to the General Manager of the BIS, Agustin Carstens:

> "*The Covid-19 pandemic and the induced global lockdown are a truly historic event. Never before has the global economy been deliberately put into an induced coma. This is no normal recession, but one that results from explicit policy choices to avoid a large-scale public health disaster. The unique character of this recession poses unfamiliar challenges*".[500]

Considering that, due to the outbreak of the pandemic, economic activity across the euro area would inevitably suffer a considerable contraction, the ECB adopted, immediately afterwards, profound liquidity-supporting measures aimed at preserving the smooth provision of credit to the economy 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 pandemic's implications. They were designed with a view (and were proportionate) to ensuring the Eurosystem's primary objective of price stability and the proper functioning of the monetary policy transmission mechanism.

(2) The monetary policy measures taken can be classified into three groups:

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499 Sub-sections 1-6 of this Section are an adjusted and fully updated version of Section B in **Gortsos (2020b)** and **(2021c)**. On the impact of the ECB's monetary policy measures taken in response to the pandemic, *see* also at: https://www.ecb.europa.eu/pub/economic-bulletin/focus/2020/html/ecb.ebbox202005_03~12b5ff68bf.en.html. For an analysis of and documentation on several of the aspects discussed below, *see* also **Bonatti (2021)**, **De Cos (2021)**, **European Parliament (2021)**, **Ohler (2022)** and **Zilioli and Riso (2023)**. On the response of central banks on a global basis (in both advanced and emerging economies) to the pandemic, *see* **English, Forbes and Ubide (2021)** and other related contributions in **Blair, Zilioli and Gortsos (2023**, editors); in particular on the measures taken by the Federal Reserve, *see* **Baxter (2023)** and on those by the Bank of England ('**BoE**'), *see* **Branch (2023)**.

500 See **Carstens (2020)**, pp. 1-2. In accordance with the IMF's World Economic Outlook for April 2020, the global economy was projected to contract sharply by 3% in 2020, much worse than during the 2007-2009 financial crisis (*see* **International Monetary Fund (2020)**).

The *first* relates to amendments made to some of the (above-mentioned) ECB legal acts and instruments governing the general monetary policy framework of the Eurosystem,[501] namely: the amendment of the **General Documentation Guideline**, the **Valuation Haircut Guideline** and **ECB Decision (EU) 2019/1311** of 22 July 2019 on the **TLTRO-III**;[502] and the repeal of **ECB Guideline 2013/170/EU** of 20 March 2013 "on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 (**ECB/2013/4**)"[503] by **ECB Guideline 2014/528/EU** of 9 July 2014 (recast) (**ECB/2014/31**)".[504] It also relates to the introduction of the so-called pandemic emergency longer-term refinancing operations ('**PELTROs**').[505]

The *second* group contains a new (and separate) Asset Purchase Programme (**APP**), the Pandemic Emergency Purchase Programme ('**PEPP**').[506] It also relates to amendments made to some pre-existing APPs, namely, the third covered bond purchase programme ('**CBPP3**'), established by **Decision 2014/828/EU** of 15 October 2014 (**ECB/2014/40**), and the Corporate Sector Purchase Programme ('**CSPP**') governed by **Decision (EU) 2016/948** of 1 June 2016 (**ECB/2016/16**)".[507]

Finally, the *third* group refers to the introduction of the Eurosystem repo facility for central banks and the reactivation of swap lines with several third country central banks.[508]

(3) Of importance in this context was also **ECB Regulation (EU) 2020/533** of **15 April 2020 (ECB/2020/23)** concerning the extension of deadlines for the reporting of statistical information.[509] Interestingly, the key interest rates on the MROs, the marginal lending facility and the deposit facility, which have been set by the ECB, with effect from **18 September 2019**, at 0%, 0.25% and **-0.50%**, respectively, remained unchanged until mid-2022.[510]

501 On this framework, *see* **Gortsos (2020a)**, pp. 286-297 (with extensive further references).
502 *See* **Section C above, under 3**.
503 *OJ L 95, 5.4.2013, pp. 23-30; this was in force as repeatedly amended.*
504 *OJ L 240, 13.8.2014, pp. 28-38.*
505 *See* **this Section below under 2**.
506 *Ibid.*, **under 3.1**.
507 *Ibid.*, **under 3.2**.
508 *Ibid.*, **under 4**.
509 *Ibid.*, **under 5**.
510 *Ibid.*, **under 6.1**. **Sub-section 6.2** develops then on the negative DFRs and interest rates in the interbank market during the entire period since the onset of the pandemic.

2. Measures relating to the ECB general monetary policy framework

2.1 Decisions on the third series of targeted longer-term refinancing operations (TLTRO-III)

As already noted,[511] the third series of targeted longer-term refinancing operations (TLTRO-III) was introduced in 2019 by **Decision (EU) 2019/1311** of 22 July 2019 (**ECB/2019/21**)". During the pandemic, this Decision was modified four times:

(1) In order to support bank lending to SMEs during the pandemic, the ECB adopted, on **16 March 2020**, **Decision (EU) 2020/407 (ECB/2020/13)**",[512] which amended four parameters of TLTRO-III: *first*, reduction (under conditions) of the interest rates applied to all operations; *second*, increase of the borrowing allowance from 30% to 50%; *third*, modification of the maximum bid limit for individual operations; and *fourth*, starting from September **2021**, offer of an early repayment option for amounts borrowed in twelve (instead of 24) months after the settlement of each operation.

(2) Moreover, on **30 April**, to further support the provision of credit to households and firms, an additional temporary reduction in interest rates applied to all TLTRO-III was introduced by **Decision (EU) 2020/614** (**ECB/2020/25**)".[513]

(3) By **Decision (EU) 2021/124** of 29 January 2021 (**ECB/2021/3**)",[514] the GC further modified several terms and conditions of the TLTRO-III, to preserve the funding conditions that supported credit institutions' efforts to keep the provision of credit to the real economy during the pandemic. This was undertaken, *inter alia*, by extending the low interest rate period until June 2022; introducing three additional operations; and increasing the borrowing allowance to 55%.[515]

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511 *See* **Section C above, under 3**.

512 OJ L 80, 17.3.2020, pp. 23-24.

513 OJ L 141, 5.5.2020, pp. 28-36.

514 *OJ L 38, 3.2.2021, pp. 93-111.*

515 It is also noted that on **7 January 2021**, the ESMA issued a Public Statement on the disclosures of significant accounting policies and judgments related to the third series of the TLTRO-III in the financial statements of credit institutions prepared in accordance with International Financial Reporting Standards ('**IFRS**') (**ESMA32-339-149**, at: https://www.esma.europa.eu/sites/default/files/library/esma32-339-149_public_statement_targeted_longer-term_refinancing_operations_iii.pdf). On the overall role of the ESMA during the first phase of the pandemic, *see* **Moloney and Conac (2020)**.

(4) Finally, on **30 April 2021**, Decision (EU) 2019/1311 was further amended by **Decision (EU) 2021/752 (ECB/2021/21)**[516] to the effect that: *first*, the sanctioning regime was amended to cover cases where required reports and audits are not provided by TLTRO-III participants in time; and *second*, new provisions were introduced regarding the treatment of corporate reorganisations occurring after 31 March 2021 for the purpose of calculating TLTRO-III interest rates.

2.2 Introduction of pandemic emergency longer-term refinancing operations (PELTROs)

On **30 April 2020**, the GC decided the conduct of so-called pandemic emergency longer-term refinancing operations ('**PELTROs**'). By virtue of this new series of *seven* additional LTROs, liquidity support was provided to the euro area financial system to preserve the smooth functioning of money markets through an effective backstop after the expiry of the bridge LTROs that had been conducted since March 2020.[517] This facility was extended on **10 December** by *four* additional PELTROs on a quarterly basis during 2021; each operation had a tenor of approximately one year. PELTROs are conducted as fixed rate tender procedures with full allotment. The interest rate is 25 basis points below the average rate applied in the Eurosystem's MROs over the life of the respective operation.[518]

2.3 Implementation of the Eurosystem monetary policy framework and valuation haircuts

(1) On **7 April 2020**, the GC adopted **Decision (EU) 2020/506** "amending [the **General Documentation Guideline**] and [the **Haircut**] **Guideline (ECB/2020/20)**".[519] In respect of this legal act the following is noted:

(a) The aim of the amendments to the **General Documentation Guideline** was to introduce temporary collateral easing measures to facilitate Eurosystem counterparties in maintaining sufficient eligible collateral in order to be able

516 OJ L 161, 7.5.2021, *pp.* 1-8.

517 *See* European Central Bank: "ECB announces new pandemic emergency longer" (at: https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200430_1~477f400e39.en.html).

518 At: https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr201210~8acfa5026f.en.html.

519 OJ L 109, 8.4.2020, pp. 1-6. To react promptly to the pandemic situation, these amendments were made by a Decision, which takes effect on the date of notification to the NCBs and is published without delay in the OJ (**ECB Decision (EU) 2020/506**, recital (7)).

to participate in all liquidity-providing operations. In particular: *first*, under the amended **Article 93** (on the minimum size of **"credit claims"**): for "domestic use", these claims must, at the time of their submission as collateral by the counterparty, meet a minimum size threshold of 0 euros, or any higher amount laid down by the home NCB; and for "cross-border use", the minimum size threshold has been set at 500,000 euro;[520] and *second*, in **Article 141(1)** on limits with respect to unsecured debt instruments issued by credit institutions and their closely linked entities, the percentage value was significantly increased from 2.5% to 10%.[521]

(b) The aim of the amendments to the **Valuation Haircut Guideline** was based on the GC willingness to temporarily take on risks to support credit provision through its refinancing operations.[522] In particular, the valuation haircuts applied to collateral were reduced by a fixed factor as follows:

First, further to the valuation haircuts laid down in **Article 3 of the Guideline**, applicable were also the following *additional* valuation haircuts: **(i)** a "valuation markdown"[523] of 4% to asset-backed securities, covered bonds and unsecured debt instruments issued by credit institutions that are theoretically valued in accordance with **Article 134 of the General Documentation Guideline**; and

520 In terms of definitions: **'credit claim'** means (General Documentation Guideline, Article 2, point (13)) a claim for the repayment of money, which constitutes a debt obligation of a debtor *vis-à-vis* a counterparty (and also covers *Schuldscheindarlehen* and Dutch-registered private claims on the government or other eligible debtors that are covered by a government guarantee, e.g., housing associations); **'domestic use'** means (*ibid.*, Article 2, point (23)) the submission, as collateral, by a counterparty established in a Member State whose currency is the euro, of: (a) marketable assets issued and held in the same Member State as that of its home NCB; (b) credit claims where the related agreement is governed by the laws of the Member State of its home NCB; (c) RMBDs issued by entities established in the Member State of its home NCB; and (d) DECCs issued and held in the same Member State as that of its home NCB; and **'cross-border use'** means (*ibid.*, Article 2, point (16)) the submission, as collateral, by a counterparty to its home NCB of: (a) marketable assets held in another Member State whose currency is the euro; (b) marketable assets issued in another Member State and held in the Member State of the home NCB; (c) credit claims where the related agreement is governed by the laws of another Member State whose currency is the euro other than that of the home NCB; (d) RMBDs in accordance with the applicable procedures of the CCBM; and (e) DECCs issued and held in another Member State whose currency is the euro other than that of the home NCB.

521 **ECB Decision (EU) 2020/506**, Article 1.

522 *Ibid.*, recital (5).

523 This term is defined in Article 2, point (98) of the **General Documentation Guideline** as a certain percentage decrease in the market value of assets, mobilised as collateral in Eurosystem credit operations, prior to the application of any valuation haircut.

(ii) a valuation haircut of 6,4% (applied to the value of debt instruments allocated to credit quality steps 1-2[524]) and of 9,6% (applied to the value of such instruments allocated to credit quality step 3) to 'own-use' covered bonds.[525]

Second, non-marketable retail mortgage-backed debt instruments are subject to a valuation haircut of 25,2%.[526]

(2) The **Valuation Haircut Guideline** was further amended by **Guideline (EU) 2020/1692** of 25 September 2020 (**ECB/2020/46**),[527] which mainly replaced Table 1 in the Annex (on the haircut categories for eligible marketable assets based on the type of issuer and/or type of asset). The **General Documentation Guideline** was also further amended by **Guideline (EU) 2021/889** of 6 May 2021 (**ECB/2021/23**).[528] The new rules, amending **Article 158(2)-(3)** apply from 28 June 2021 and gave effect to the "leverage ratio",[529] which became a binding own-funds requirement for credit institutions under the CRR.[530]

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524 On the credit quality steps, *see* **Section B above, under 3.2.3 (2)**.

525 If this additional valuation haircut cannot be applied with respect to a collateral management system of an NCB, triparty agent, or TARGET2-Securities for auto-collateralisation, it will be applied in such systems or platform to the entire issuance value of the covered bonds that can be own used (*ibid.*, Article 2(1), amending Article 4 of the Valuation Haircut Guideline). **"Own-use" covered bonds** are those issued or guaranteed by the counterparty itself or by any other entity with which the former has close links as determined pursuant to **Article 138 of the General Documentation Guideline**.

526 **ECB Decision (EU) 2020/506**, Article 2(2), amending Article 5(5) of the Valuation Haircut Guideline.

527 OJ L 379, 13.11.2020, pp. 94-95.

528 *OJ L 196, 3.6.2021, pp. 1-3.*

529 **'Leverage ratio'** means the minimum amount of regulatory (usually core) own funds as a percentage of total assets and off-balance sheet exposures *without weighting*. This is governed by **Articles 429-429g CRR** (*see* **Joosen (2022)**, pp. 152-156). On the concept and necessity of introducing a leverage ratio, *see* **Hildebrand (2008)**, and **Committee on the Global Financial System and Markets Committee (2015)**, pp. 5-9.

530 In particular, **Article 158(3)** provides that, in the context of its assessment of a counterparty's financial soundness pursuant to **Article 55, point (c)**, the Eurosystem may limit, on the grounds of prudence, access to its monetary policy operations by: (a) counterparties for which information on capital and/or leverage ratios under the CRR is incomplete or not made available to the relevant NCB and the ECB in a timely manner; and (b) those which are not required to report such capital and leverage ratios but for which information of a comparable standard pursuant to **Article 55, point (b)(iii)** is incomplete or not made available to the relevant NCB and the ECB in a timely manner.

2.4 Additional temporary measures relating to Eurosystem refinancing operations and to eligibility of collateral

(1) With a view to mitigating the adverse impact on collateral availability of potential severe rating downgrades resulting from the pandemic, on **7 April 2020** the GC adopted **Guideline (EU) 2020/515** "amending **Guideline 2014/528/EU** on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (**ECB/2020/21**)".[531] This legal instrument laid down collateral easing measures by, *inter alia*, reducing the valuation haircuts applied to certain collateral assets, to facilitate Eurosystem counterparties in maintaining and mobilising sufficient collateral in order to be able to participate in its liquidity-providing operations. Hence, participation in these operations was based on amended collateral eligibility criteria and risk control measures.[532]

The additional measures set out in the amendments under the Guideline applied temporarily. The need for extending any of these should be re-assessed by the GC to ensure an appropriate monetary policy transmission mechanism, taking into account the need of Eurosystem counterparties participating in TLTROs conducted under (the abovementioned[533]) **ECB Decision (EU) 2019/1311**, as in force.[534]

(2) Further to the above collateral easing measures, the ECB adopted on **7 May 2020** its **Guideline (EU) 2020/634** "amending Guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral **(ECB/2020/29)**".[535] The new measures aimed at *first*, mitigating the adverse impact on Eurosystem collateral availability of potential rating downgrades resulting from the economic fallout of the pandemic; and *second*, ensuring that Eurosystem counterparties remain able to maintain and mobilise sufficient collateral in order to be able to participate in its liquidity-providing operations. Accordingly, participation in these operations with this collateral should be based on temporarily amended collateral eligibility criteria and risk control measures.[536]

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531 OJ L 110, 8.4.2020, pp. 26-29.

532 **Guideline (EU) 2020/515**, recitals (3)-(4). The GC also assessed the need to alleviate pressures stemming from the pandemic on Greek financial markets, taking into account, *inter alia*, the commitments undertaken by the Hellenic Republic in the context of the enhanced surveillance pursuant to **Regulation (EU) No 472/2013** of the co-legislators of 21 May 2013 (OJ L 140, 27.5.2013, pp. 1-10) and the monitoring of its implementation by EU institutions, where the ECB is also involved, and the fact that the Hellenic Republic had regained market access (*ibid*., recital (5)).

533 *See* **this Section above, under 2.1**.

534 **Guideline (EU) 2020/515**, recital (6).

535 OJ L 148, 11.5.2020, pp. 10-15.

536 **Guideline (EU) 2020/634**, recital (2).

In this respect, the GC made three considerations:[537] *first*, marketable assets and their issuers that fulfilled minimum credit quality requirements on 7 April 2020 should temporarily continue to be admitted as collateral, despite a deterioration in the credit ratings decided by the credit rating agencies accepted in the Eurosystem, as long as the ratings remain above a certain quality level;[538] *second*, the eligibility criteria for outright purchases under the ECB's asset purchase programme (**APP**) should not be affected; and *third*, to ensure an appropriate monetary policy transmission mechanism and taking into account the need of Eurosystem counterparties that are, or would be, participating in its liquidity providing operations to maintain sufficient collateral for these operations, these measures apply until the first early repayment date under the TLTRO-III.[539]

3. The asset purchase programmes

3.1 Establishment of the "Pandemic Emergency Purchase Programme" (PEPP)

(1) This new APP was established by virtue of the **Decision (EU) 2020/440** of **24 March 2020** "on a temporary pandemic emergency purchase programme (**ECB/2020/17**)"[540] ('**PEPP**'). This APP of (initially) 750 billion euro[541] was governed by the following rules:

First, Eurosystem central banks could, in principle, purchase the following types of assets by virtue of the following ECB Decisions:[542] (a) "eligible marketable debt securities" in accordance with **Decision (EU) 2020/188** of 3 February 2020 "on a secondary markets public sector asset purchase programme

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537 *Ibid.*, recitals (4)-(5).

538 The term 'credit rating' is defined in Article 2, point (15) of the General Documentation Guideline with reference to **Article 3(1), point (a) of Regulation (EC) No 1060/2009** of the co-legislators of 16 September 2009 "on credit rating agencies" (OJ L 302, 17.11.2009, pp. 1-31), namely, an opinion regarding the creditworthiness of an entity, a debt or financial obligation, debt security, preferred share or other financial instrument, *or* of an issuer of such a debt or other financial instrument, issued using an established and defined ranking system of rating categories.

539 It is noted that **Guideline ECB/2014/31** was further amended on 2 June 2021 by **Guideline (EU) 2021/975** (**ECB/2021/26**, OJ L 215, 17.6.2021, pp. 40-46).

540 OJ L 91, 25.3.2020, pp. 1-4. On this program, *see* details in **Grund (2020)**, **Lastra and Alexander (2020)** (also briefly discussing some of the other (recent at that time) monetary policy measures) and **Smits (2021)**.

541 **Decision (EU) 2020/440**, Article 1(1).

542 *Ibid.*, Article 1(3); the ECB Decisions referred to were presented in **Section C above, under 2.3**.

['**PSPP**'] (**ECB/2020/9**)",[543] which repealed (the Section C above, under 2.3-mentioned) initial PSPP Decision (along with its subsequent amending Decisions); (b) "eligible corporate bonds and other marketable debt instruments" in accordance with (the also above-mentioned) **Decision (EU) 2016/948** of 1 June 2016 "on the implementation of the corporate sector purchase programme ['**CSPP**'] (**ECB/2016/16**)";[544] (c) "eligible covered bonds" in accordance with **Decision (EU) 2020/187** of 3 February 2020 "on the implementation of the third covered bond purchase programme (**ECB/2020/8**) (recast)";[545] and (d) "eligible asset-backed securities" ('**ABSs**') in accordance with (the also above-mentioned) **Decision (EU) 2015/5** of 19 November 2014 "on the implementation of the asset-backed securities purchase programme (**ECB/2014/45**)".

Second, to be eligible for purchase under the PEPP, marketable debt securities should have a minimum remaining maturity of 70 days and a maximum remaining maturity of 30 years at the time of their purchase; instruments with a remaining maturity of 30 years and 364 days were eligible for the sake of facilitating smooth implementation.[546]

Third, purchases were carried out to the extent deemed necessary and proportionate to counter the threats posed by the extraordinary conditions on the Eurosystem's ability to fulfil its mandate.[547] Under stressed conditions, flexibility in the design and conduct of all asset purchases, within the GC's, mandate was aimed at countering the impaired transmission of monetary policy.

Fourth, the allocation of cumulative net purchases of marketable debt securities issued by eligible governments and recognised agencies across euro area eligible jurisdictions was guided by the respective NCBs' subscription to the ECB's capital (pursuant to **Article 29 ESCB/ECB Statute**); purchases should be conducted in a flexible manner allowing for fluctuations in the distribution of (purchase) flows over time, across asset classes and among jurisdictions.[548]

543 OJ L 39, 12.2.2020, *pp.* 12-18.

544 *See* further **below, under 3.2.2**.

545 OJ L 39, 12.2.2020, *pp.* 6-11.

546 **Decision (EU) 2020/440**, Article 2. Despite the requirements set forth in **Article 3(2) of Decision (EU) 2020/188**, euro-denominated marketable debt securities issued by the central government of the Hellenic Republic are eligible for purchases if they comply with the criteria for purchases as set out in Article 3(4) of that Decision (*ibid.*, Article 3).

547 For the sake of effectiveness, the consolidation of holdings in accordance with **Article 5 of Decision (EU) 2020/188** (ECB/2020/9) does not apply to PEPP holdings (*ibid.*, Article 4).

548 *Ibid.*, Article 5(1)-(2). The Executive Board was given the power to set the appropriate pace and composition of PEPP monthly purchases; the purchase allocation may be adjusted to allow for fluctuations in the distribution of purchase flows, over time, across asset classes and among jurisdictions (*ibid.*, Article 5(3)). Article 6 governs disclosure requirements.

Finally, the Eurosystem could make securities purchased under the PEPP available for lending, including repos, with a view to ensuring the effectiveness of the Program.[549]

(2) At its meeting of **4 June 2020**, the GC decided to increase the PEPP's envelope to a total of **1.35 trillion euro** with a view to further easing the general monetary policy stance. Purchases would continue to be conducted in a flexible manner over time, across asset classes and among jurisdictions. The horizon for net purchases under this Programme was extended to the end of June 2021. The maturing principal payments from securities purchased under the PEPP would be reinvested until at least the end of 2022.[550] This was formalised in **ECB Decision (EU) 2020/1143** of 28 July 2020 "amending Decision 2020/440 (**ECB/2020/36**)",[551] by virtue of which the PEPP was established as a separate purchase programme. In particular:

First, the maturing principal payments from securities purchased under the PEPP, whose initial total overall envelope was 1.35 trillion euro, could be reinvested by purchasing eligible marketable debt securities until at least the end of 2022 and, in any case, the future roll-off of its portfolio should be managed in such a way as to avoid interference with the appropriate monetary stance.[552]

Second, the GC delegated to the Executive Board the power to set the appropriate pace and composition of PEPP monthly purchases within the above total overall envelope. The latter could, thus, adjust the purchase allocation to allow for fluctuations in the distribution of purchase flows, over time, across asset classes and among jurisdictions.[553]

(3) Finally, on **10 February 2021**, the ECB adopted **Decision (EU) 2021/174** "amending **Decision 2020/440** on a temporary [PEPP] (**ECB/2021/26**)".[554] This entered into force on 19 February and revised certain PEPP's design features, further increasing the overall separate envelope by 500 billion euro (to 1.85 trillion) and extending the horizon of net purchases under this Programme until at least end-March 2022 and in any case until the ECB would judge that the crisis phase is over.

549 *Ibid.*, Article 7.

550 *See* the (above-mentioned) ECB Press Release of 4 June 2020 "Monetary Policy Decisions", points (1)-(3).

551 OJ L 248, 31.7.2020, pp. 24-25.

552 **Decision (EU) 2020/1143**, Article 1(1), replacing Article 1(1) of **Decision (EU) 2020/440**.

553 *Ibid.*, Article 1(2), replacing Article 5(3) of **Decision (EU) 2020/440**.

554 OJ L 50, 15.2.201, pp. 29-30.

(4) In accordance with the monetary policy decisions of **3 February 2022**,[555] the GC announced the following in relation to this program: *first*, net asset purchases thereunder would be conducted in 2022 at a slower pace than in 2021, continue until the end of March and, since then, be discontinued; and *second*, the principal payments from maturing securities would continue to be reinvested until at least the end of 2024 but the future roll-off of the portfolio would be managed to avoid interference with the appropriate monetary policy stance.[556]

3.2 Amendments to pre-existing APPs

3.2.1 Amendments to the framework governing the third covered bonds purchase programme (CBPP3)

As already discussed,[557] the third covered bond purchase programme (**CBPP3**) was established by **Decision 2014/828/EU** of 15 October 2014 (**ECB/2014/40**). On 3 February 2020, this was recast by **Decision (EU) 2020/187** "on the implementation of the third covered bond purchase programme (**ECB/2020/8**)",[558] which was then (immediately) amended on 25 September 2020 by **Decision (EU) 2020/1688** (**ECB/2020/48**).[559] In accordance with this legal act, covered bonds issued by credit institutions whose access to Eurosystem monetary policy operations is limited, suspended or excluded under the **General Documentation Guideline** were also automatically excluded from purchases under the **CBPP3** for the duration of the limitation, suspension, or exclusion. The GC retained the power, following a case-by-case assessment, to reassess this exclusion and revoke it if appropriate.[560]

555 *See* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp220203~90fbe94662.en.html.

556 Since, under stressed conditions, flexibility is an element of monetary policy if threats to monetary policy transmission would jeopardise the attainment of price stability, in the event of renewed market fragmentation related to the pandemic, reinvestments could be adjusted flexibly across time, asset classes and jurisdictions at any time. Net purchases could also be resumed, if necessary, to counter negative shocks related to the pandemic.

557 *See* **Section C above, under 2.3 (2)**.

558 OJ L 39, 12.2.2020, *pp.* 6-11.

559 OJ L 379, 13.11.2020, *pp.* 58-59; *this legal act applies from 1 January 2021.*

560 *Ibid., Article 1, replacing Article 3(3), point (b) of* **Decision (EU) 2020/187**.

3.2.2 Amendments to the corporate sector purchase programme (CSPP)

Pursuant to **Decision (EU) 2020/441** of 24 March 2020 "amending [the above-mentioned[561]] Decision (EU) 2016/948 on the implementation of the [CSPP] (**ECB/2020/18**)",[562] the range of eligible assets under that Programme was extended to non-financial commercial papers, making all commercial papers of sufficient credit quality eligible for purchase thereunder. In particular, in accordance with the new point (2) of Article 2 of ECB Decision (EU) 2016/948: *on the one hand*, the minimum remaining maturity for marketable debt instruments with an initial maturity of 365/366 days or less would be 28 days at the time of its purchase by the relevant Eurosystem central bank; and *on the other hand*, if their initial maturity was 367 days or more, the minimum remaining maturity should be 6 months and the maximum remaining maturity 30 years and 364 days at that same time.

3.3 Further announcements relating to asset purchase programmes (APPs)

In accordance with the GC decisions on **3 February 2022**,[563] in line with the step-by-step reduction in asset purchases decided in December 2021 and with a view to ensuring that the monetary policy stance remains consistent with inflation stabilising at the target over the medium term: *first*, monthly net purchases under the APP would amount to 40 billion euro in the second quarter of 2022 and 30 billion euro in the third quarter; and *second*, from October onwards, they would be maintained at a monthly pace of 20 billion euro for as long as necessary to reinforce the accommodative impact of its policy rates and were expected to end shortly before the GC would start raising (again) the key ECB interest rates. Reinvestments of the principal payments from maturing securities purchased under the APP would continue, in full, for an extended period past the date when the key ECB interest rates would start raising and, in any case, for as long as necessary to maintain favourable liquidity conditions and an ample degree of monetary accommodation.[564]

561 *See* **Section C above, under 2.3 (2)**.

562 *OJ L* 91, 25.3.2020, *pp*. 5-6.

563 *See* just **above, under 3.1 (4)**.

564 On central bank asset purchases in response to the pandemic from a comparative point of view, *see* **Committee on the Global Financial System (2023a)**.

3.4 Some statistical data

The amounts of securities of euro area residents denominated in euro held by the Eurosystem significantly increased (again) since the onset of the pandemic from **2.84 trillion euro** in December 2019 to **4.95 trillion euro** on 28 January 2022. Overall, the Eurosystem's consolidated balance sheet further increased from **4.67 trillion euro** in December 2019 (as compared to almost **4.14 trillion** in April 2017), to **6.97 trillion euro** in December 2020, and then its consolidated financial statement further to **8.6 trillion euro** on 28 January 2022.[565]

4. The Eurosystem repo facility for central banks (EUREP) – swap lines and arrangements

(1) On **25 June 2020**, the GC set up a "backstop facility", the Eurosystem repo facility for central banks ('**EUREP**'), to provide precautionary euro repo lines to non-euro area central banks (and in one case a financial authority) against adequate collateral (consisting of euro-denominated marketable debt securities issued by euro area central governments and supranational institutions).[566] This facility, which was available until June 2021,[567] *first*, addressed possible euro liquidity needs in case of market dysfunction resulting from the crisis that might adversely impact the smooth transmission of ECB monetary policy; and *second*, complemented the ECB's bilateral swap and repo lines and reflected the importance of the euro in global financial markets.

(2) In addition, since March **2020** (and *inter alia*), the ECB *first*, reactivated swap lines in US dollar with the US Federal Reserve System and in Swiss francs with the SNB, as well as the swap arrangements with the Danish National Bank and the People's Bank of China; and *second*, also established temporary precautionary swap lines with Croatia and Bulgaria,[568] which, as already noted,[569] became members of the SSM some months later.

565 For more details, *see* **Table 8 below**.

566 *See* at: https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200625~60373986e5.en.html. Repo line arrangements were concluded with the Magyar Nemzeti Bank, the Bank of Albania, the National Bank of the Republic of North Macedonia, the Central Bank of the Republic of San Marino, the Central Bank of Montenegro, the Central Bank of the Republic of Kosovo and the Andorran Financial Authority.

567 On its recurrent further extensions, *see* **Section E below, under 2.2.4 (2)** and ***Special Topic* 4, under (1)**.

568 *See* at: https://www.ecb.europa.eu/explainers/tell-me-more/html/currency_swap_lines.en.html.

569 *See* the ***Special Topic* 2 above, under 2 (2)**.

5. Statistical information

In accordance with the **Regulation (EU) 2020/533** of **15 April 2020** "on the extension of deadlines for the reporting of statistical information **(ECB/2020/23)**",[570] since the pandemic can pose a significant challenge for statistical reporting on agents, there may be a need to allow, swiftly and efficiently, for an extension of the deadlines for certain reporting of statistical information for a fixed period.[571] In this respect, the GC delegated to the Executive Board the power to extend the deadlines: *first*, for the reporting of statistical information required pursuant to the ECB Regulations listed in the Annex,[572] considering several aspects (e.g., reporting frequency and urgency of data collection), and the advice of the ESCB's Statistics Committee in its standard composition;[573] and *second*, for transmitting this statistical information by NCBs to the ECB pursuant to its relevant decision.[574]

570 OJ L 119, 17.4.2020, pp. 15-17. Its legal bases being **Articles 5.1 and 12.1 ESCB/ECB Statute** and **Article 5** of **Council Regulation (EC) No 2533/98**, this legal act is closely linked to monetary policy.

571 The application of sanctions in case of non-compliance with statistical reporting requirements was initially governed by **ECB Decision 2010/469/EU** of 19 August 2010 (**ECB/2010/10**, OJ L 226, 28.8.2010, pp. 48-49). This legal act was (in principle) repealed, with effect from 31 January 2023, by **ECB Regulation (EU) 2022/1917** of 29 September 2022 "on infringement procedures in cases of non-compliance with statistical reporting requirements (…) (**ECB/2022/31**)" (OJ L 263, 10.10.2022, pp. 6-16). *See* also the ECB **Decision (EU) 2022/1921** of the same date "on the methodology for the calculation of sanctions for alleged infringements of statistical reporting requirements (**ECB/2022/32**)", OJ L 263, 10.10.2022, pp. 59-64.

572 Listed therein are (the above-mentioned in Section B, under 1.2.2.3 (5)) **Regulation (EU) No 1409/2013**, **Regulation (EU) 2018/231** of 26 January 2018 "on statistical reporting requirements for pension funds (ECB/2018/2)" (OJ L 45, 17.2.2018, pp. 3-30) and **Regulation (EU) No 1374/2014** of 28 November 2014 "on statistical reporting requirements for insurance corporations (ECB/2014/50)" (OJ L 366, 20.12.2014, pp. 36-76).

573 **Regulation (EU) 2020/533**, Article 1(1)-(3).

574 *Ibid.*, Article 1(8). An extension should only relate to reporting falling due on or before 31 December 2020 and the deadlines for such reporting could not be extended beyond 30 June 2021 (*ibid.*, Article 1(4)-(5)).

6. Developments in relation to interest rates before the current "inflation crisis"

6.1 An overview in the period before the outbreak of the inflation crisis

(1) Since **18 September 2019** and until July 2022,[575] the key interest rates on MROs, the marginal lending facility, and the deposit facility remained unchanged at 0%, 0.25% and **-0.50%**, respectively. As the euro area economy was facing deflation (during the period August – December 2020, *max* at -0.3%),[576] the GC repeatedly announced amidst the pandemic and before the implementation of its new monetary policy strategy the following:

> "*It expects them to remain at these or even lower levels until it has seen the inflation outlook robustly converge to a level sufficiently close to, but below, 2% within its projection horizon, and such convergence has been consistently reflected in underlying inflation dynamics*".[577]

(2) However, since early 2021, inflation started again to be – and still remains – into positive territory: 2.0% in May, 3.4% in September and **5.1% in January 2022.**[578] According to the projections of the GC, inflation was likely to remain high for longer than previously expected due to the increase in energy prices and in prices for food and a wider range of goods and services but was expected to decline in the course 2022. This was consistent with the December 2020 "Eurosystem staff macroeconomic projections for the euro area",[579] pursuant to which inflation was expected to fall slightly below 2% by the end of 2022 and stand at 1.8% in 2023 and 2024.[580]

(3) Accordingly, in line with its new monetary policy strategy and in support of its 'symmetric' 2% inflation target,[581] at its meeting of **3 February 2022**[582] the GC: *first*, considered that the key ECB interest rates will remain at their pre-

575 *See* **Section E below, under 1.1 (2)**.

576 At: https://www.ecb.europa.eu/stats/macroeconomic_and_sectoral/hicp/html/index.en.html.

577 *See*, *inter alia*, the ECB Press Releases "Monetary Policy Decisions" of 4 June 2020, point (6); 10 December 2020, first point; 11 March 2021, sixth paragraph; and 22 April 2021, first paragraph.

578 *See* at: https://www.ecb.europa.eu/home/html/index.en.html.

579 At: https://www.ecb.europa.eu/pub/projections/html/ecb.projections202012_eurosystemstaff~bf8254a10a.en.html.

580 Apparently, these projections were by far too optimistic.

581 *See* **Section A above, under 3.3.2**.

582 *See* **above, under 3.1 (4)**.

sent or lower levels until it sees inflation reaching 2% "***well ahead of the end of its projection horizon and durably for the rest of the projection horizon***";[583] *second*, judged that realised progress in underlying inflation is sufficiently advanced to be consistent with inflation stabilising at 2% over the medium term; and *third* (and most importantly) noted that, in full consistency with the new monetary policy strategy, this may also imply a transitory period in which inflation is moderately above target but "*stands ready to adjust all of its instruments, as appropriate, to ensure that inflation stabilises at its 2% target over the medium term.*"

On the contrary, members of the Federal Open Market Committee ('**FOMC**') of the US Federal Reserve had projected (as early as in December 2021) that the main interest rate would increase in 2022 and reach 2.5%.[584]

6.2 On the negative deposit facility rates and interest rates in the interbank market

6.2.1 The negative ECB deposit facility rate (DFRs) and its exceptions

The existence of negative DFRs since mid-2014 did not disincentivise credit institutions from having recourse to this standing facility.[585] As a matter of fact:

➢ its amounts totalled **623 billion euro** in December 2017 and substantially declined to **275 billion euro** in December 2019; and

➢ then, they exponentially increased again during the pandemic at the level of **683 billion euro** in December 2020 and further to **776 billion euro** on 28 January 2022.[586]

With regard to the imposition of negative rates, two exceptional provisions deserve attention:

First, exempt from negative interest rates are, by virtue of the **ECB Decision (EU) 2020/1264** of 8 September 2020 "amending Decision (EU) 2019/1743[587] on the remuneration of holdings of excess reserves and of certain deposits (**ECB/2020/38**)",[588] the funds mandatorily deposited with the ECB for the purpose of repaying financial assistance under **Council Regulation (EU) 2020/672** of

583 *See* also point 6 of the **ECB's monetary policy strategy statement (2021)**.

584 *See* at: https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20211215.pdf. The increase was even higher though; *see* **Section E below, under 1**.

585 As already noted in **Section B above, under 2.2.3 (4)**, the DFR is the key interest rate that can be negative (**General Documentation Guideline**, Article 21(3)).

586 *See* **Table 8** below, liabilities item 2.2.

587 *See* **Section B above, under 1.2.2.3**.

588 OJ L 297, 11.9.2020, pp. 5-6.

19 May 2020 “on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency (**SURE**) following the COVID-19 outbreak”.[589]

Second, in accordance with the **ECB Decision (EU) 2021/874** of 26 May 2021 “amending [Article 2 of] Decision (EU) 2019/1743 (…) (**ECB/2021/25**)”,[590] deposits held in ECB accounts in advance of the date on which a payment must be made pursuant to the legal or contractual rules applicable to a relevant facility are remunerated during this advance period at the higher of 0% or the DFR.[591]

6.2.2 Negative interest rates in the interbank market

Interest rates in the interbank market were also negative. In December **2021**, the (then existing) euro overnight index average (‘**EONIA**’), a weighted average of the interest rates on unsecured overnight lending transactions denominated in euros, as reported by a panel of contributing credit institutions,[592] which since January 2022 has been replaced by the euro short-term rate,[593] was at **-0.505%**.[594] This was considered as a positive development for the ef-

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

590 *OJ L 191, 31.5.2021, pp. 43-44.* It is noted that Decision (EU) 2019/1743 was further amended, *inter alia*, on 17 February 2022 by **Decision (EU) 2022/310** (**ECB/2022/5**) (OJ L 46, 25.2.2022, pp. 140-141); on further subsequent amendments, *see* **Section E below**.

591 The same also applied, in principle, to the following:**(a)** the dedicated account maintained with the ECB pursuant to **Article 13(2) of Commission Implementing Decision** of 14 April 2021 establishing the necessary arrangements for the administration of the *borrowing operations* under **Council Decision (EU, Euratom) 2020/2053** of 14 December 2020 “on the system of own resources of the [EU] (…)” (OJ L 424, 15.12.2020, pp. 1-10); and**(b)** the *lending operations* related to loans granted in accordance with **Article 15 of Regulation (EU) 2021/241** of the co-legislators of 12 February 2021 “establishing the Recovery and Resilience Facility” (‘**RRF**’, *OJ L 57, 18.2.2021, pp. 17-75*) for the purposes of prudential cash holdings as referred to in that Article; exceptionally, if the aggregate amount of deposits held in that account exceeds 20 billion euro, the amount in excess shall be remunerated at the DFR.Pursuant to recital (3) of the **ECB Decision (EU) 2021/874**, in accordance with **Article 22** of (the just above-mentioned) **Commission Implementing Decision**, the borrowing, debt management and lending operations of the RRF would not be implemented until the date of entry into force of **Council Decision 2020/2053**. However, it was necessary to prepare the ECB legal framework for such implementation before the date of entry into force of that Council Decision, to provide for such exemptions.

592 The EONIA underlying interest was the rate at which credit institutions of sound financial standing in the EU and the European Free Trade Area (‘**EFTA**’) Member States were lending funds in the interbank money market in euro.

593 *See* the ***Special Topic 3*** **below**.

594 *See* at: https://www.euribor-rates.eu/en/eonia. The rate turned negative in 2015 (**-0,079%**) and remained in that territory until its replacement.

fectiveness of the single monetary policy and the appropriate functioning of the transmission mechanism. As noted by **Schnabel (2020)**:

> "*After the [deposit facility] rate was lowered into negative territory, the entire 3-month Euribor*[595] *forward curve shifted down further and eventually traded fully in negative territory, and it even started to exhibit a slight inversion. In other words, the ECB had succeeded in shifting the perceived lower bound on interest rates firmly into negative territory, supported by forward guidance that left the door open for the possibility of further rate cuts. This restored a fundamentally important element of monetary policy: the possibility for the market to anticipate further policy cuts and to thereby frontload policy accommodation. The* ***zero lower bound*** *was no longer constraining market expectations.*"

TABLE 8
Evolution of the Eurosystem's consolidated accounts (2019-January 2022, in million euro):
The impact of the pandemic crisis

Assets				Liabilities			
	28.I. 2022	**XII. 2020**	**XII. 2019**		**28.I. 2022**	**XII. 2020**	**XII.2019**
1. Gold and gold receivables	559,398	**536,542**	470,742	1. Banknotes in circulation	**1,539,133**	**1,434,512**	1,292,742
2. Claims on non-euro area residents denominated in foreign currency	**496,697**	347,179↓	349,656	2. Liabilities to euro area credit institutions related to **monetary policy operations** denominated in euro	**4,598,243**	**3,489,194**	1,813,377

595 Euribor (Euro Interbank Offered Rate) is the rate, at various maturities, at which a broad panel of European credit institutions borrow from another in the money/interbank market and was very close to EONIA. The only difference was in the tenor (maturity, time horizon): while in the case of Euribor there is a set of several rates for maturities ranging from one week to one year, EONIA was a single rate which only applied to overnight transactions.

				2.1 Current account (minimum reserve system)	**3,818,999**	**2,805,331**	1,537,667
				2.2 Deposit facility	**776,826**	**683,863**	275,710
3. Claims on euro area residents denominated in foreign currency	26,688	23,437	22,074	3. Other liabilities to euro area credit institutions denominated in euro	**45,620**	**23,563**	9,869
4. Claims on non-euro area residents denominated in euro	10,248↓	14,337	17,491	4. Debt certificates issued	0	0	0
5. Lending to euro area credit institutions related to **monetary policy operations** denominated in euro	**2,201,664**	**1,793,194**	624,232	5. Liabilities to other euro area residents denominated in euro (general government & other liabilities)	**818,131**	**611,304**	311,769
5.1 MROs	**198↓**	**468↓**	7,904				
5.2 LTROs	**2,201,466**	**1,792,574**	616,188				
5.3 Marginal lending facility	**0↓**	152	140				
6. Other claims on euro area credit institutions denominated in euro	**32,033**	**25,328**	18,849	6. Liabilities to non-euro area residents denominated in euro	**439,535**	**431,145**	321,429

7. **Securities of euro area residents denominated in euro**	**4,955,695**	**3,890,916**	2,847,102	7. Liabilities to euro area residents denominated in foreign currency	**14,535**	7,816	7,734
8. General government debt denominated in euro	22,168↓	22,676	23,380	8. Liabilities to non-euro area residents denominated in foreign currency	3,561↓	3,895↓	7,408
9. Other assets	317,986↓	325,715	297,899	9. Counterpart of SDRs allocated by the IMF	**178,834**	54,799↓	57,371
				10. Other liabilities	320,834	**301,414**	275,376
				11. Revaluation accounts	**554,779**	**512,884**	466,595
				12. Capital and reserves	109,660	108,797	107,555
TOTAL	**8,622,576**	**6,979,324**	**4,671,425**	**TOTAL**	**8,622,576**	**6,979,324**	**4,671,425**

Special Topic 3: The euro short-term rate (€STR)[596]

1. General overview

1.1 The Guideline (EU) 2019/1265 on the euro short-term rate (€STR)

(1) On **10 July 2019**, the ECB adopted **Guideline (EU) 2019/1265** "on the euro short-term rate ('**€STR**') (**ECB/2019/19**)";[597] its legal basis is **Article 127(2)** and **(5) TFEU**.[598] The **€STR** (also called '**ESTER**') is an interest rate benchmark that, as noted,[599] replaced the EONIA as of **1 January 2022**. The rationale was that the absence of robust and reliable benchmarks might trigger financial market disruptions with a possible significant adverse impact on the transmission of ECB monetary policy decisions and on the ability of the Eurosystem to contribute to the smooth conduct of policies pursued by the competent authorities relating to stability of the financial system.[600]

(2) This Guideline established the ECB's responsibility for the administration and oversight of this benchmark's **"determination process"**, as well as the tasks and responsibilities of the ECB and NCBs with respect to their contribution to this process and other business procedures.[601] The reason underlying this initiative was twofold: *first*, the need to fully comply with the requirements set out in **Regulation (EU) 2016/1011** of the co-legislators of 8 June 2016 "on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (…)"[602] (the "**Benchmark Reg-**

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596 This Section is a fully updated and extended version of Section 7.1.4 in **Gortsos (2020a)**, pp. 300-301.

597 OJ L 199, 26.7.2019, pp. 8-17. This legal instrument was (slightly) amended by **Guideline (EU) 2020/496** of 19 March 2020 (**ECB/2020/15**) (OJ L 106, 6.4.2020, pp. 1-2) and then by **Guideline (EU) 2021/565** of 17 March 2021 (**ECB/2021/10**) (OJ L 119, 7.4.2021, pp. 128-131); on the latter, see also **below, under 2 (3)**.

598 On Article 127(5) TFEU, *see* ***Special Topic 2*** **above, under 1 (1)**.

599 *See* **this Section above, under 6.2.2**.

600 The Guideline is also in line with the "Principles for Financial Benchmarks: Final Report" of the International Organisation of Securities Commissions ('**IOSCO**') of July 2013 (at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf); on this international financial forum, *see* **Gortsos (2023a)**, pp. 184-186. Although neither the IOSCO Principles nor the Benchmark Regulation apply to central banks, in determining the **€STR** the ECB, as its administrator, endeavours to transpose the intention of these Principles, where relevant and as appropriate (*ibid.*, recital (7)).

601 **ECB Guideline (EU) 2019/1265**, Article 1. On the amendment to the Benchmark Regulation, *see* just **below, under 1.2**.

602 OJ L 171, 29.6.2016, pp. 1-65, as in force.

ulation");[603] and *second*, mitigate the risk that the use of the existing EONIA in new financial instruments or contracts might not be further permitted in the future. Thus, the €STR was designed to complement existing benchmarks and serve as a backstop reference rate in the event of discontinuation of the EONIA,[604] which has, indeed, been the case on **31 December 2021**. NCBs should have (and have, indeed) complied with the Guideline by **1 October 2019**.[605]

1.2 The amendment to the Benchmark Regulation

(1) In consistency with the above-mentioned, on 10 February 2021 the co-legislators adopted **Regulation (EU) 2021/168**, which amended the Benchmark Regulation as regards the exemption of certain third-country spot foreign exchange benchmarks and the designation of replacements for certain benchmarks in cessation.[606] These amendments, which addressed the termination of financial benchmarks, were made against the background of the phasing-out of the London Inter-Bank Offered Rate ('**LIBOR**').[607] The aim of the new rules was to reduce legal uncertainty and avoid risks to financial stability by ensuring that a statutory replacement rate can be put in place by the time a systemically important benchmark is no longer in use.

Under the new framework, the power was conferred upon the Commission to *first*, replace so-called **"critical benchmarks"**, which could affect EU financial stability, as well as other relevant benchmarks, if their termination would result in a significant disruption in the functioning of EU financial markets; and *second*, replace third-country benchmarks if their cessation would result in a significant disruption in the functioning of financial markets or pose a systemic risk for the financial system in the EU.[608]

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603 **'Benchmark'** means any index by reference to which the amount payable under a financial instrument or contract, or the value of a financial instrument, is determined, or an index used to measure the performance of an investment fund with the purpose of tracking the return of such index or of defining the asset allocation of a portfolio or of computing the performance fees (*ibid.*, Article 3(1), point (3)). On this legislative act, *see* **Wundenberg (2022)**.

604 **ECB Guideline (EU) 2019/1265**, recital (1).

605 *Ibid.*, Article 16(2), recital (1).

606 OJ L 49, 12.2.2021, pp. 6-17.

607 At: https://www.gov.uk/government/publications/discontinuation-of-london-inter-bank-offered-rate. *See* further details in **Box 9** just below.

608 New Article 23b inserted in the Benchmark Regulation.

(2) In this respect, the Commission adopted on 21 October 2021 its **Implementing Regulation (EU) 2021/1848** "on the designation of a replacement for the benchmark Euro overnight index average",[609] which provides that: *first*, the €STR as published by the ECB is designated as the replacement rate for the EONIA in references to the latter in any contract and in any financial instrument as defined in **MiFID II**; and *second*, the fixed spread adjustment that shall be added to that replacement rate designated shall be equal to 8.5 basis points.[610] The new rules also govern the replacement of a benchmark designated as critical in one member state, through national legislation.[611]

BOX 9: The phasing-out of LIBOR

(1) In relation to the phasing-out of LIBOR it is noted that the UK Financial Conduct Authority ('**FCA**') confirmed in early 2021 that all LIBOR settings will either cease to be provided by any administrator or no longer be representative:

(a) immediately after **31 December 2021**, in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings; and

(b) immediately after **30 June 2023**, in the case of the remaining US dollar settings (in this respect, *see* also the recent (27 April 2023) statement of the Financial Stability Board ('**FSB**') to encourage final preparations for the USD LIBOR transition and the (even more recent, 3 June 2023) IOSCO Statement on Alternatives to USD Libor.[612]

(2) According to the FCA announcement of **3 July 2023**, all LIBOR panels have ended, and the majority of their settings ceased or became permanently unrepresentative. The overnight and 12-month US dollar LIBOR settings permanently ceased by end-June 2023.[613] It is noteworthy, however, that the Euribor has not been terminated.[614]

2. Specific aspects

(1) The €STR reflects the wholesale euro unsecured overnight borrowing costs of credit institutions located in the euro area. It is published for each TARGET2 business day based on transactions conducted and settled on the previous

609 OJ L 374, 22.10.2021, pp. 6-9. This implementing act was adopted on the basis of (the new) **Article 23b(8)** of the Benchmark Regulation.

610 **Implementing Regulation (EU) 2021/1848**, Article 1(1)-(2).

611 New Article 23c inserted in the Benchmark Regulation.

612 At: https://www.fsb.org/2023/04/fsb-statement-to-encourage-final-preparations-for-the-usd-libor-transition and https://www.iosco.org/library/pubdocs/pdf/IOSCOPD738.pdf), respectively.

613 At: https://www.fca.org.uk/markets/libor-transition. *See* also the FSB Press Release of 28 July "Final Reflections on the LIBOR Transition" (at: https://www.fsb.org/2023/07/final-reflections-on-the-libor-transition).

614 On its current rates, *see* at: https://www.euribor-rates.eu/en.

TARGET2 business day (reporting date 'T') with a maturity date of T+1, which are deemed to be executed at arm's length and reflect market rates in an unbiased way. The ECB published the €STR for the first time on **2 October 2019**, reflecting trading activity on 1 October 2019. Even though during the first half of 2022 the €STR was still into negative territory (like the EONIA by end-2021[615]), after the increase of the ECB key interest rates in July 2022[616] it turned positive.[617]

(2) The €STR methodology includes several aspects: the rationale for its adoption; the definition of the underlying interest which it represents; the sources of the input statistical information; the calculation method; the arrangements for its publication and re-publication; a transparency policy concerning the periodic publication of errors; the conditions for triggering the contingency procedure; and the calculation of the contingency rate.[618] In this respect:

First, the ECB should adopt clear written and publicly available policies and procedures on the possible cessation of the €STR owing to a situation, or any other condition, which would make it no longer representative of the underlying interest.[619] These are contained in the **"ECB policy and procedure for the cessation of the €STR"** document of March 2021.[620]

Second, it must also review, at least annually, whether changes in the underlying market for that rate require changes thereto and its methodology.[621] The method of calculation is defined in the document "€STR methodology and policies".[622]

(3) Since 15 April 2021, the ECB publishes on each TARGET2 business day the following: *first*, compounded €STR average rates for tenors of 1 week, as well as 1, 3, 6, and 12 months; and *second*, a compounded €STR index enabling the

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615 *See* **Section D above, under 6.2.2**.

616 *See* **Section E below, under 1**.

617 On 26 April 2024, the €STR was set at 3.909% (*see* at: https://www.ecb.europa.eu/stats/financial_markets_and_interest_rates/euro_short-term_rate/html/index.en.html).

618 **ECB Guideline (EU) 2019/1265**, Articles 3 and 6(1).

619 *Ibid.*, Article 10.

620 At: https://www.ecb.europa.eu/stats/euro-short-term-rates/interest_rate_benchmarks/WG_euro_risk-free_rates/shared/pdf/ecb.ESTER_methodology_and_policies.en.pdf.

621 **ECB Guideline (EU) 2019/1265**, Article 15(2).

622 At: https://www.ecb.europa.eu/paym/interest_rate_benchmarks/WG_euro_risk-free_rates/shared/pdf/ecb.ESTER_methodology_and_policies.en.pdf. It is also noted that, under the ESMA's secretarial support, a Euro Risk-Free Rates Working Group is operating, which issued its final statement on 4 December 2023, announcing the completion of the "EU Interest Rate Reform" (**ESMA81-1071567537-121**, at: https://www.esma.europa.eu/document/working-group-euro-risk-free-rates-final-statement).

derivation of compounded rates for any non-standard tenor.[623] Furthermore, since 23 June 2023, the €STR is made available through the Market Information Dissemination ('**MID**') platform and the ECB Data Portal, which as of that date, replaced the ECB Statistical Data Warehouse.[624]

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623 At: https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr210318~4835219b4b.en.html. The amendment of **ECB Guideline (EU) 2019/1265** by the (above-mentioned) **Guideline (EU) 2021/565** also overs the calculation and publication of the compounded €STR average rates and index.

624 This is provided in Article 4(5) of **ECB Guideline (EU) 2019/1265**, as this is in force after its amendment by **Guideline (EU) 2024/419** of 18 January 2024 (**ECB/2024/1**) (OJ L, 2024/419, 30.01.2024).

Section E: Implementation of the single monetary policy under the new monetary policy strategy of the Eurosystem amidst the current "inflation crisis"[625]

1. Decisions taken in July 2022

1.1 General overview

(1) After the prolonged period of very low inflation and even, for a few quarters, negative inflation (deflation), as noted in **Section D above**,[626] the inflation rate started increasing in the euro area in 2021 (due to the more rapid than expected rebound of demand after the pandemic, the rise in energy and commodity prices and supply chain bottlenecks) and then even more significantly in 2022, after the Russian Federation's military aggression against Ukraine in late-February of that year. Hence, due to the (unprecedented) mix of supply shocks linked to the pandemic crisis and Russia's invasion of Ukraine, the development of inflation within a very short period was remarkable: from -0.3% in September 2020, to 0.9% in January 2021, 5.1% in January 2022, 7.4% in March, and 8.9% in July.[627]

(2) Under these conditions, central banks in most advanced economies started, in quite a synchronised way and taking into account that inflation expectations were embedded in their framework, to accelerate the pace of monetary tightening (also labelled as quantitative tightening ('**QT**') of monetary policy – the opposite to QE[628]), in terms of both frequency and magnitude of rate rises and

625 The term "inflation crisis" is, *inter alia*, used by **Rogoff (2022)** who analyses the causes of that development and **Corsetti *et al.* (2023**, editors**)**.

626 On the causes and consequences of persistently low interest rates, *see* by means of mere indication **Bean *et al.* (2015)** and **Ball *et al.* (2016)** (both with extensive further references), **Beau (2019)**, as well as **Blanchard and Summers (2019)**, pp. xxviii – xxvi.

627 *See* at: https://sdw.ecb.europa.eu. On the transition from the pandemic to the inflation crisis and the causes of the latter, *see* **Bernanke and Blanchard (2023)** (relating to the US), **Corsetti *et al.* (2023**, editors**)**, pp. 19-37, and **Arce *et al.* (2024)**; on the reasons underlying the failure of forecasts to predict the current levels of inflation, *see* **Ball *et al.* (2022)**. On a brief historical overview of inflationary episodes, *see* **Lopez (2012)** and more extensively **Ari *et al.* (2023)** (covering 56 countries since the 1970s). On the threats to euro area financial stability from the impact of, *inter alia*, higher inflation, *see* **Chapter 3 below, under 2**.

628 *See* **Section A above, under 2.2.2**.

to reduce the size of their balance sheets,[629] moving thus toward normalisation of monetary policy.[630]

Within this context, the GC decided at 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 ensure that the 2% 'symmetric' inflation target over the medium term under the new monetary policy strategy is granted. The GC set the interest rate on MROs at 0.5%; the interest rate on the marginal lending facility at 0.75%; and the DFR at 0%, which marked the exit from the era of negative interest rates. It also decided to continue (under modified conditions) APPs and the PEPP.[631]

(3) In the meantime, the GC had started the gradual phasing out of the "package of pandemic collateral easing measures", which were in place since April 2020.[632] In this respect, on **5 May 2022**, it adopted three ECB Guidelines amending **Guideline ECB/2014/31** on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral; as well as the General Documentation and Valuation Haircut Guidelines.[633]

1.2 In particular: the "Transmission Protection Instrument" (TPI)

(1) A novel element approved during that same GC meeting was the establishment of a "Transmission Protection Instrument" ('**TPI**') for the effective transmission of monetary policy across all euro area Member States. This new

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629 According to **English *et al.* (2024)**, it was emerging market central banks which resorted first to a raising of rates in response to high inflation since they were more concerned about maintaining credibility and less constrained by APPs. On the other hand, advanced economy central banks adjusted at a slower pace but, when it became clear that inflation would be much higher and for much longer than forecast, they responded more aggressively, they raised rates quickly and to the highest levels in many years, while in parallel they have taken action to gradually exit from unconventional monetary policy by starting to reduce their balance sheets.

630 On QT in the euro area, *see* by means of mere indication **Claeys (2023)**, **Whelan (2023a)** and **Wyplosz (2023a)**. According to the latter, there is a strong case in favour of cutting the size of central banks' balance sheets even if QT is as inefficient as QE at affecting inflation, since the stabilising effects of large balance sheets are eroded as financial markets adapt to excess reserves, while, if QT proves to be financially destabilising, it can be temporarily interrupted or even reversed.

631 *See* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp220721~53e5bdd317.en.html.

632 *See* **Section D above, under 2**.

633 **Guidelines (EU) 2022/987 (ECB/2022/17)** (already discussed in **Section B, under 2.2.1 (1)**), **2022/988 (ECB/2022/18)**, OJ L 167, 24.6.2022, pp. 131-134 and **2022/989 (ECB/2022/19)**, OJ L 167, 24.6.2022, pp. 135-139, respectively.

instrument will be activated: "*to counter unwarranted, disorderly market dynamics that pose a serious threat to the transmission of monetary policy across all euro area countries, thus allowing the GC to more effectively deliver on its price stability mandate*". The scale of purchases thereunder is not *ex-ante* restricted but will depend on the severity of the risks facing monetary policy transmission. They will be focused on public sector securities (marketable debt securities issued by central and regional governments as well as agencies, as defined by the ECB) with a remaining maturity of between one and ten years, while purchases of private sector securities could be considered as well, if appropriate.

(2) Under the conditionality attached to the TPI, 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 judgment 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.[634]

2. Further decisions taken in September, October, and December 2022

2.1 Decisions relating to interest rates

The further raising of interest rates continued during the next months until the end of 2022 In particular:

(1) At its meeting of **8 September 2022**, the GC decided to further tighten its monetary policy and raised the ECB key interest rates, by 75 basis points.[635] This decision was taken upon the consideration that inflation continues to remain **"far too high"** (9.1% in August) due to soaring energy and food prices, demand pressures in some sectors due to the reopening of the economy and

634 *See* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220721~973e6e7273.en.html. For an assessment of the TPI, *see* by means of indication **Albuquerque Matos (2022)** and **Nicolaides (2022)**.

635 *See* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp220908~c1b6839378.en.html.

supply bottlenecks. Thus, with effect from 14 September 2022, the interest rate on MROs was set at 1.25%; the interest rate on the marginal lending facility at 1.50%; and the DFR at 0.75%.[636]

In this context, it is worth quoting an interesting comment by **Brunnenmeier (2023)**:[637]

> "*Central banks (…) took a complacent approach to dealing with supply shocks. The economic models typically employed by central banks often imply that monetary policy should not fully neutralize inflation caused by supply shocks because such inflation is only temporary (ending when the supply increases), and interest rate policy is meant to control aggregate demand. Instead, the standard argument is that the central bank should trade off the benefits of cooling the temporary inflation against the costs of stifling economic growth. However, failing to react to supply shocks by taking steps to reduce demand could destabilize the inflation anchor and prevent the central bank from achieving its goals down the road. Paradoxically, the Ukraine war strengthened the inflation anchor because it gave central banks cover to explain why inflation rose so much.*"

(2) A further raising of the three key ECB interest rates, by 75 basis points as well, was decided by the GC at its meeting of **27 October 2022**.[638] Thus, with effect from 2 November 2022, the interest rate on MROs was set at 2.00%; the interest rate on the marginal lending facility was set at 2.25%; and the DFR was set at 1.50%. Pursuant to the ECB press release: "*With this third major policy rate increase in a row, [it] has made substantial progress in withdrawing monetary policy accommodation. The [GC] (…) expects to raise interest rates further, to ensure the timely return of inflation to its 2% medium-term inflation target. [It] will base the future policy rate path on the evolving outlook for inflation and the economy, following its meeting-by-meeting approach. Inflation remains far too high and will stay above the target for an extended period. In September, euro area inflation reached 9.9%.*[639] *(…) The [GC's] monetary policy is aimed at reducing support for demand and guarding against the risk of a persistent upward shift in inflation expectations.*"

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636 In the US, the FOMC raised on 21 September the Federal Funds Rate to 3.00%-3.25%, following two previous increases in June and July (*see* at: https://www.federalreserve.gov/data.htm). The BoE and the Bank of Canada also markedly raised their key interest rates, while the SNB raised in September its policy rate by 0.5% as well, even though inflation in Switzerland was comparatively milder (3.5% in August) and was forecasted to remain at these or lower levels (*see* at: https://www.snb.ch/en/mmr/reference/pre_20220922/source/pre_20220922.en.pdf).

637 *See* **Brunnenmeier (2023)**, p. 9.

638 *See* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp221027~df1d778b84.en.html.

639 On the monetary developments in the euro area in September 2022, *see* the related ECB press release of 26 October (at: https://www.ecb.europa.eu/press/pr/stats/md/html/ecb.md2209~d7f36984da.en.html).

(3) At its meeting of **15 December 2022**, the GC took the decision for the fourth raising of the three key ECB interest rates in 2022, by 50 basis points this time.[640] According to the ECB, even though in November the euro area inflation rate was slightly lower than in October (10% from 10.6% – and then further decreased in December to 9.2%) due to lower energy price inflation, food price inflation and underlying price pressures across the economy strengthened and were expected to persist for some time. Thus, with effect from **21 December 2022**, the interest rate on MROs was set at 2.50%; that on the marginal lending facility was set at 2.75%; and the DFR was set at 2.00%.[641]

2.2 Other monetary policy-related decisions

2.2.1 Aspects relating to the APP, the PEPP, the CSPP and TLTRO-III operations

(1) Due to the lasting vulnerabilities caused by the pandemic, which continued to pose a risk to the smooth transmission of monetary policy, the GC expressed in its 2022 September, October and December meetings its intention to *first*, continue reinvesting, in full, the principal payments from maturing securities purchased under the APP until the end of February 2023;[642] *second*, reinvest the principal payments from maturing securities purchased under the PEPP until at least the end of 2024; and *third*, continue applying flexibility in reinvesting redemptions coming due in the PEPP portfolio, to counter risks to the monetary policy transmission mechanism related to the pandemic.

(2) On 9 September, the (above-mentioned[643]) **ECB Decision (EU) 2016/948** on the implementation of the CSPP was amended (again) by **Decision (EU) 2022/1613 (ECB/2022/29)**.[644] The new rules, which entered into force on **26 September 2022**, applied to transactions settled on or after 1 October 2022. They were aimed at incorporating climate change considerations into the benchmark allocation (set out in Article 4(3)) to address the management of the Eurosystem's exposure to climate-related financial risks, in accordance with the

640 *See* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp221215~f3461d7b6e.en.html.

641 For a summary of the monetary policy decisions taken at this meeting (as well as at the first in 2023), *see* **Loi, Psarras and Rakic (2023)**.

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

643 *See* **Section C above, under 2.3 (2)**.

644 OJ L 241, 19.9.2022, pp. 13-15.

methodology approved by the GC.[645] In addition, on 19 September, the ECB announced (in a press release) details on its strategy relating to the decarbonisation of its corporate bond holdings.[646]

(3) Furthermore, in order to contribute to the normalisation of bank funding costs, at its meeting of **27 October**, the GC also decided to change the favourable financing conditions under its TLTRO-III programme by recalibrating the terms and conditions of the TLTRO-III as part of the monetary policy measures adopted to restore price stability over the medium term. Thus, as of 23 November until the maturity date or early repayment date of each respective outstanding operation, its interest rate will be indexed to the average applicable key ECB interest rates over that period.[647]

2.2.2 Remuneration of government deposits held with the Eurosystem

On **8 September 2022**, the GC decided to set up a framework on temporary adjustments to the remuneration of certain non-monetary policy deposits held with the Eurosystem;[648] this was immediately implemented by the **ECB Decision (EU) 2022/1521 (ECB/2022/30)** of 12 September.[649] The consideration was that the remuneration of government deposits held with NCBs and with the ECB should be temporarily adjusted to prevent, due to the significant increase of the official rates, their unwarranted abrupt outflows from Eurosystem accounts into money markets and, thereby, preserve the monetary policy transmission's effectiveness and safeguard orderly market functioning in the

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645 **ECB Decision (EU) 2022/1613**, Article 1, inserting **new Article 4a**. In accordance with the last sentence of recital (2), the adoption by the Eurosystem of measures designed to circumscribe the risk of financial losses forms part of the definition and implementation of monetary policy, as also reflected in Article 18.1 ESCB/ECB Statute.

646 At: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220919~fae53c59bd.en.html; *see* also **Schnabel (2023)**.

647 **ECB Decision (EU) 2022/2128** of 27 October 2022 "amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2019/21) **(ECB/2022/37)**", OJ L 285, 7.11.2022, pp. 15-30. The term 'maturity date' is defined in **Article 2, point (60) of the General Documentation Guideline** as the date on which a Eurosystem monetary policy operation expires. In the case of a repurchase agreement or swap, the maturity date corresponds to the repurchase date.

648 At: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220908~0705913289.en.html.

649 OJ L 236I, 13.9.2022, pp. 1-3. This relates to deposits held with the NCBs acting as "fiscal agents" in accordance with **Article 21.2 ESCB/ECB Statute**, as specified in the (abovementioned) **ECB Guideline (EU) 2019/671**.

(new) positive interest rate environment.[650] Thus, the 0% interest rate ceiling was temporarily removed and set at the DFR or the €STR,[651] whichever was lower, until 30 April 2023.

2.2.3 Remuneration of minimum reserves

The GC also decided in October to set the remuneration of minimum reserves at the DFR rate instead at the MRO rate. This change, which was formally introduced by (the already mentioned[652]) **Regulation (EU) 2022/2419** (**ECB/2022/43**) of 6 December, became effective as of the beginning of the reserve maintenance period that started on **21 December 2022**. The rationale underlying this decision was that the DFR better reflects the rate at which funds can be invested in money market instruments if not held as minimum reserves and the rate at which credit institutions borrow funds in the money market to meet their keep minimum reserves requirements;[653] thus, minimum reserve remuneration was more closely aligned with short-term money market rates.

2.2.4 Other decisions

(1) On **9 September**, the GC adopted a Regulation and a Decision relating, respectively, to the infringement procedures in cases of non-compliance with statistical reporting requirements and the methodology for the calculation of sanctions for alleged infringements.[654] Then, 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. The swap arrangement's conditions remained unchanged.[655]

(2) Furthermore, on **8 and 9 November**, the GC confirmed its readiness *first*, to extend the availability of the (above-mentioned[656]) Eurosystem Repo facility for central banks (EUREP) framework (which was set to expire on 15 January 2023) **until 15 January 2024**,[657] considering that providing backstop euro liquidity lines through that framework was warranted from a monetary policy

650 **ECB Decision (EU) 2022/1521**, recital (3).
651 The latter was discussed in the ***Special Topic 3*** **above**.
652 *See* **Section B above, under 1.2.2.2 (1)**.
653 *See* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr221027~25d335259c.en.html.
654 These were already discussed in **Section D above, under 5**.
655 *See* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr221010~29cab889cf.en.html.
656 *See* **Section D above, under 4 (1)**.
657 On its further extension, *see* the ***Special Topic 4*** **below, under (1)**.

perspective; this was then decided upon at its meeting of **15 December**;[658] and *second*, to increase the overall limit for securities lending against cash collateral under the APP and the PEPP from 150 to 250 billion euro.[659]

(3) On **16 December**, the GC adopted an amending ECB Decision and three amending ECB Guidelines: *first*, **ECB Decision (EU) 2023/55**[660] amended (the above-mentioned[661]) **Decision (EU) 2019/1743** on the remuneration of holdings of excess reserves and of certain deposits, as well as (the also above-mentioned[662]) **Decision (EU) 2022/1521** on temporary adjustments to the remuneration of certain non-monetary policy deposits held with NCBs and the ECB; *second*, the three ECB Guidelines, which relate to the further gradual phasing out of the package of pandemic collateral easing measures,[663] amended (yet again and respectively) the General Documentation Guideline, the Valuation Haircut Guideline, and **Guideline ECB/2014/31** on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral.[664]

(4) Finally, on **20 December**, the GC announced the results of the review of its **"risk control framework"** for collateralised credit operations[665] and communicated its intention to implement a new valuation haircut schedule for credit operations based on its pre-pandemic risk tolerance levels, taking into

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658 *See* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr221215~6bc5ecf0ff.en.html.

659 *See* at: https://www.ecb.europa.eu/press/govcdec/otherdec/2022/html/ecb.gc221202~2708f7d351.en.html. Noteworthy is also the **ECB Opinion of 2 December 2022** on the proposal for a Council Regulation "establishing a [gas] market correction mechanism to protect Union citizens and the economy against excessively high prices (OJ C 41, 3.2.2023, pp. 14-16). The relevant **Council Regulation (EU) 2022/2578** was adopted on 22 December 2022 (OJ L 335, 29.12.2022, pp. 45-60). Its legal basis is **Article 122(1) TFEU** on "economic solidarity".

660 OJ L 3, 5.1.2023, pp. 16-18.

661 *See* **Section B above, under 1.2.2.3 (3)**.

662 *See* **just above, under 2.2.2**.

663 *See* **this Section above, under 1.1 (3)**.

664 **Guidelines (EU) 2023/831** (**ECB/2022/48**), **2023/832** (**ECB/2022/49**), and **2023/833** (**ECB/2022/50**), OJ L 104, 19.4.2023, pp. 32-39, 40-47 and 48-51, respectively. The current consolidated version of Guideline ECB/2014/31, which as of April 2024 has been amended ten times, is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02014O0031-20230629.

665 On the specific measures decided, following the review, to improve the consistency of the risk control framework, *see* at: https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr221220_1~ca6ca2cc09.en.html.

account the need to ensure haircuts' resilience to climate-related financial risks.[666]

Excursus 2: Introduction of "green dual interest rates"

In this context, it is also worth noting that, taking as a benchmark the initial "dual rate" embedded in the TLTRO programmes,[667] as well as the initiation by the Bank of Japan in December 2021 of a "climate change-related lending program",[668] proposals have been tabled for the introduction of **"green dual interest rates"**. On the basis of these proposals, lower (even zero) interest rates should be applied to lending for green projects, which would allow more investments in renewable energy projects (including for housing purposes).[669] These include (but are confined to) an "open letter" to the GC of 1 June 2022 by a group of academics and economists, backed most recently (January 2024) at political level by the French President (Emmanuel Macron).[670] The ECB' stance on this particular aspect is cautious due to the lack of data (yet) to validate green labels.

3. Decisions taken in 2023

3.1 Decisions relating to interest rates

3.1.1 The first set of decisions (February – March)

(1) In view of the persisting underlying inflation pressures and in order 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, at its meeting of **2 February 2023**, the GC decided to further raise the three key ECB interest rates by another 50 basis points (as

666 This is consistent with the GC decision of **4 July 2022** to take further steps to include climate change considerations in the monetary policy framework (*see* **Section A above, under 3.3.2**).

667 *See* **Section C above, under 2.3**. According to **van 't Klooster (2022)**, TLTROs should be used to align bank lending with the EU's long-term economic strategy.

668 At: https://www.boj.or.jp/en/about/climate/index.htm.

669 At: https://greencentralbanking.com/2024/02/15/green-dual-interest-rate-environment.

670 At: https://www.positivemoney.eu/wp-content/uploads/2022/06/Open-Letter-ECB-Green-TLTROs-June-2022.pdf and https://www.lemonde.fr/en/opinion/article/2023/12/29/emmanuel-macron-our-strategy-must-be-to-speed-up-the-ecological-transition-as-well-as-the-fight-against-poverty_6384821_23.html, respectively.

in December 2022). Thus, with effect from **8 February 2023**: the interest rate on MROs was set at 3.00%; that on the marginal lending facility has been set at 3.25%; and the DFR has been set at 2.50%.[671]

(2) Quite interestingly, it was the first time that it also 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.*" This was, indeed, the case: considering that inflation is projected to remain "*too high for too long*", at its meeting of **16 March** it decided to raise the three key ECB interest rates by another 50 basis points. Thus, with effect from **22 March**, the interest rates on the MROs, the marginal lending facility and the deposit facility were set at 3.50%, 3.75% and 3.00%, respectively.[672] The GC also considered that the elevated level of uncertainty reinforced the importance of a **"data-dependent approach"** to policy rate decisions, to be determined by assessing the inflation outlook, considering the incoming economic and financial data, the dynamics of underlying inflation and the strength of monetary policy transmission.[673]

3.1.2 Subsequent decisions (May – July)

(1) The raising of interest rates continued during the period May – July 2023 in accordance with the decisions taken in three subsequent meetings of the GC. However, the pace of interest rate rises was lowered to 0.25%. In particular:

First, considering again that the inflation outlook continued to be "*too high for too long*" and that the incoming information broadly supported the assessment of the medium-term inflation outlook formed by the GC at its previous meeting, at its meeting of **4 May**, the interest rates on the MROs, the marginal lending facility and the deposit facility were set at 3.75%, 4.00% and 3.25%, respectively, with effect from **22 March**.[674] Two important considerations dur-

671 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp230202~08a972ac76.en.html.

672 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp230316~aad5249f30.en.html.

673 On the difficulties facing central banks in addressing supply shocks, like the current, *see* **Rogoff (2022)** who claims that unlike in the case of demand shocks, where central banks can resort to interest rate increases to stabilise both growth and inflation, in the case of supply shocks they must weigh difficult trade-offs. Furthermore, according to **Wyplosz (2023b)**, in acting to bring inflation down, the ECB sometimes may even deepen lingering real-side disturbances inherited from the pandemic crisis and the invasion of Ukraine, which it cannot deal with (and should not try to).

674 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp230504~cdfd11a697.en.html.

ing the meeting were the following: (a) Headline inflation in the euro area had declined. However, despite this development, underlying price pressures remained strong (since core inflation remained persistently high and was declining more gradually than headline inflation[675]), prices of (other than energy) goods and services continued to rise despite their decline from their peaks of 2022, and labour markets were tight. (b) The past rate increases were being forcefully transmitted to euro area financing and monetary conditions but the lags and strength of transmission to the real economy remained uncertain.

Second, at its meeting of **15 June**, the GC decided to raise the three key ECB interest rates by another 25 basis points, to the effect that they were set, with effect from **21 June**, at 4.00%, 4.25% and 3.50%, respectively.[676] This rate increase was dictated by the updated assessment of the factors underlying its (just above-mentioned) data-dependent approach. This time, however, the consideration was prevailing that the past rate increases were not only being transmitted forcefully to financing conditions but were gradually also having an impact across the economy due to the fact that borrowing costs have steeply increased and growth in loans is slowing.

Third, the fifth interest rate increase for 2023, yet again for 25 basis points, was decided at the GC meeting of **27 July**. Accordingly, with effect from 2 August: the interest rate on MROs has been set at 4.25%; the interest rate on the marginal lending facility has been set at 4.50%; and the DFR has been set at 3.75%.[677] This decision was taken under the following considerations:

> "*The developments since the last meeting support the expectation that inflation will drop further over the remainder of the year but will stay above target for an extended period. While some measures show signs of easing, underlying inflation remains high overall. The past rate increases continue to be transmitted forcefully: financing conditions have tightened again and are increasingly dampening demand, an important factor in bringing inflation back to target.*"

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675 On the difference between headline and core inflation, *see* **Section A above, under 3.1.3 (2)**. On the different interpretations related to the drivers of elevated core inflation, *see* **Guerrieri *et al.* (2023)**.

676 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp230615~d34cddb4c6.en.html.

677 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp230727~da80cfcf24.en.html.

Pursuant to the June 2023 "Eurosystem staff macroeconomic projections for the euro area",[678] inflation was expected to continue declining during 2023 from 5.4% to 3.0% in 2024 and to 2.2% in 2025, driven by declines in energy and food inflation, as cost pressures fade and the ECB's monetary policy measures gradually take effect. Thus, despite the tightening financing conditions, there is a recovery in household income and a strengthening of foreign demand, and the euro area economy is expected to grow by 0.9% in 2023, by 1.5% in 2024 and by 1.6% in 2025. Accordingly, and until inflation has reached the 2% target level, it was strongly expected that the ECB would keep raising its key interest rates, even though the pace of interest rate rises could not yet be assessed.

Finally, taking into account that, despite its continued decline, inflation was still expected to remain too high for too long and its determination to ensure that it should timely return to its 2% medium-term target, at its meeting of **14 September**, the GC decided to raise the three key ECB interest rates by another 25 basis points. Thus, with effect from 20 September 2023 the interest rate on MROs has been set at 4.50%; that on the marginal lending facility has been set at 4.75%; and the DFR has been set at 4.00%.[679] This decision was taken under the following considerations: "*Based on its current assessment, the GC considers that the key ECB interest rates have reached levels that, maintained for a sufficiently long duration, will make a substantial contribution to the timely return of inflation to the target. The GC's future decisions will ensure that the key ECB interest rates will be set at sufficiently restrictive levels for as long as necessary. The GC will continue to follow a data-dependent approach to determining the appropriate level and duration of restriction.*"

(2) Taking into account the above **ten consecutive raisings** of the three key ECB interest rates during the period July 2022 – September 2023, the interest rate on MROs was raised from 0% to 4.50%; that on the marginal lending facility from 0.25% to 4.75%; and the DFR to 4.00% **from -0.50%** – thus, at the level when the GFC erupted. Since then, these raisings have then been paused. In particular:

First, at its meeting of **26 October**, while reinsuring its determination to ensure that inflation returns to its 2% medium-term target in a timely manner, the GC decided to keep the three key ECB interest rates unchanged since the incoming information has broadly confirmed its previous assessment of the

678 At: https://www.ecb.europa.eu/pub/projections/html/ecb.projections202306_eurosystemstaff~6625228e9f.en.html. *See* also **Loi and De Lemos Peixoto (2023)**.

679 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp230914~aab39f8c21.en.html.

medium-term inflation outlook.[680] Even though inflation was still expected to stay too high for too long and domestic price pressures remain strong, the GC considered that inflation dropped markedly in September, including due to strong base effects, and most measures of underlying inflation have continued to ease. Furthermore, its past interest rate increases continued to be transmitted forcefully into financing conditions, increasingly dampening demand and thereby helping push down inflation.

Second, at its meeting of **14 December**, the GC reinsured (once again) its determination to ensure that inflation timely returns to its 2% medium-term target and decided to keep the three key ECB interest rates unchanged this time as well.[681] In this respect and with reference to the December 2023 "Eurosystem staff macroeconomic projections for the euro area",[682] the GC noted the following:

(a) Despite its decline over the last months, inflation is likely to temporarily increase again in the near term and then gradually decline over the course of 2024, before approaching the 2% target in 2025. Overall, headline inflation is expected to average 5.4% in 2023, 2.7% in 2024, 2.1% in 2025 and 1.9% in 2026. Compared with the September staff projections,[683] this amounts to a downward revision for 2023 and especially for 2024.

(b) Despite the further easing of underlying inflation, domestic price pressures remained elevated, (mainly) due to robust growth in unit labour costs. The expectation was that inflation (excluding energy and food) will average 5.0% in 2023, 2.7% in 2024, 2.3% in 2025 and 2.1% in 2026.

(c) It was also expected that economic growth will remain subdued in the near term and then recover due to rising real incomes – due to benefits from falling inflation and growing wages – and improving foreign demand. Economic growth was, thus, expected to pick up from an average of 0.6% for 2023 to 0.8% for 2024, and to 1.5% for both 2025 and 2026.[684]

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680 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp231026~6028cea576.en.html.

681 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.mp231214~9846e62f62.en.html.

682 At: https://www.ecb.europa.eu/pub/projections/html/ecb.projections202312_eurosystemstaff~9a39ab5088.en.html.

683 At: https://www.ecb.europa.eu/pub/projections/html/ecb.projections202309_ecbstaff~4eb3c5960e.en.html.

684 From a comparative point of view, on 31 December 2023, the Federal Funds Rate of the FOMC was at the range of 5.25-5.50%; the BoE's policy rate at 5.25%, that of the Bank of Canada at 5%, and the SNB's policy rate at 1.75% (all unchanged for the last few months of the year). On similarities and differences between the ECB and the Federal Reserve re-

3.2 Other monetary policy-related decisions

3.2.1 Aspects relating to the APP, the PEPP and TLTRO-III refinancing operations

(1) In consistency with (and as a specification of) its decisions in its December 2022 meeting, the GC decided, at its meeting of **2 February 2023**, on detailed modalities for reducing the Eurosystem's holdings of securities under the APP.[685] In all its subsequent meetings, it considered that the APP portfolio was declining at a measured and predictable pace, until the end of June, as the Eurosystem did not reinvest all the principal payments from maturing securities and as of July would no longer reinvest such principal payments.

(2) *On the other hand*, while continuing applying flexibility in reinvesting redemptions coming due in the PEPP portfolio with a view to countering risks to the monetary policy transmission mechanism related to the pandemic, the GC consistently expressed during its 2023 meetings its intention to reinvest the principal payments from maturing securities purchased under the PEPP until at least the end of 2024. However, the future roll-off of the PEPP portfolio will be appropriately managed to avoid interference with the appropriate monetary policy stance and the GC will continue applying flexibility in reinvesting redemptions coming due in the PEPP portfolio, with a view to countering risks to the monetary policy transmission mechanism related to the pandemic.

In addition, in its meeting of **14 December**, the GC announced its intention to continue reinvesting, in full, the principal payments from maturing securities purchased under the PEPP during the first half of 2024 to advance the normalisation of the Eurosystem's balance sheet and, thus, reduce its resort to balance sheet policy. It also announced that over the second half of the year it intends to reduce the PEPP portfolio by 7.5 billion euro per month on average and then to discontinue reinvestments under the PEPP at the end of 2024, while continuing applying flexibility in reinvesting redemptions coming due in the PEPP portfolio for the same above-mentioned reasons.

(3) Furthermore, in all GC meetings the decision was taken that, as credit institutions are repaying the amounts borrowed under the TLTROs, a regular assessment will be carried out by the GC how these lending operations and

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lating to inflation and monetary policy, *see* **Bonatti, Fracasso and Tamborini (2023)** and **Wyplosz (2023c)**.

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

their ongoing repayment contribute to the ECB monetary policy stance.[686] It is also noteworthy that all the above-mentioned ECB press releases after the GC meetings during 2023 were concluding as follows:

> "*The [GC] stands ready to adjust all of its instruments within its mandate to ensure that inflation returns to its 2% target over the medium term and to preserve the smooth functioning of monetary policy transmission. Moreover, the [TPI] is available to counter unwarranted, disorderly market dynamics that pose a serious threat to the transmission of monetary policy across all euro area countries, thus allowing the [GC] to deliver on its price stability mandate more effectively*."

(4) For the sake of completeness it is finally noted that, on **5 June 2023**, the EBA published its third Report on the monitoring of liquidity coverage ratio ('**LCR**') and net stable funding ratio ('**NSFR**') implementation in the EU in the context of the new economic environment and TLTRO repayment.[687] In this Report, the EBA: developed some broad projections of LCR and NSFR values in 2023-2024 before considering alternative funding sources; provides guidance to both credit institutions and supervisory authorities on how they should monitor, on an ongoing basis, the real capacity of markets and the economic conditions for potential funding sources; and highlights the importance for credit institutions' funding plans to include realistic ways in which to seek other funding to replace maturing central bank funding, where needed.

3.2.2 Remuneration of government deposits held with the Eurosystem

As already noted,[688] on 8 September 2022, the GC decided to temporarily remove the 0% interest rate ceiling for the remuneration of government deposits held with the Eurosystem (other than government deposits related to an

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686 According to **Heider and Schlegel (2024)**, analysing potential consequences of exiting the ECB's TLTRO- III programme, the Eurosystem was still holding plenty of reserves due to its APPs, explaining why voluntary and mandatory repayments of TLTRO-III borrowing was smooth. They also highlight the increased importance of interbank-market borrowing and lending in view of the draining of liquidity from the banking system. This author adds that the latter applies in particular to Member States (e.g., in Italy) where the amount of TLTRO-III borrowings by credit institutions is higher than the amount of their claims to the Eurosystem under the deposit facility.

687 At: https://www.eba.europa.eu/eba-reports-lcr-and-nsfr-implementation-eu-context-new-economic-environment-and-tltro-repayment. On these ratios, which form part of the prudential regulatory framework governing credit institutions, *see* by means of mere indication **Boonstra and De Cleen (2022)**.

688 *See* **this Section above, under 2.2.2**.

adjustment programme), setting the ceiling for such remuneration at the DFR or the €STR, whichever was lower, until 30 April 2023. However, on **7 February 2023**, it decided to adjust the ceiling for the remuneration of such deposits, **as of 1 May 2023**, at the €STR minus 20 basis points. The rationale was to provide incentives for a gradual and orderly reduction of those holdings with a view to minimising the risk of adverse effects on market functioning and ensure the smooth transmission of monetary policy.[689] This decision also altered the remuneration of deposits held under the ERMS. The amendments to the related ECB legal acts and instruments reflecting this new remuneration regime of government deposits were implemented by an ECB Decision and an ECB Guideline of 5 April.[690]

3.2.3 Remuneration of minimum reserves

Even though, as already mentioned,[691] in October 2022 the remuneration of minimum reserves was reduced from the MRO rate to the DFR, on **27 July 2023** the GC modified its previous decision and further reduced it, by setting it at 0%, effective as of the beginning of the reserve maintenance period starting on 20 September. The consideration underlying this decision was that, in the current conditions of ample liquidity, the interest paid on the reserves that credit institutions hold in the ECB's deposit facility – i.e., reserves beyond the minimum required level – is a main instrument for setting the monetary policy stance and that this reduction will *first*, preserve the effectiveness of monetary policy by maintaining the current degree of control over the monetary policy stance and ensuring the full pass-through of interest rate decisions to money markets; and *second*, improve the efficiency of monetary policy by reducing the overall amount of interest that needs to be paid on reserves in or-

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689 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.pr230207_2~02299a78b5.en.html.

690 **Decision (EU) 2023/817** "amending Decision (EU) 2019/1743 on the remuneration of holdings of excess reserves and of certain deposits (ECB/2019/31) **(ECB/2023/9)**" and **Guideline (EU) 2023/818** "amending Guideline (EU) 2019/671 on domestic asset and liability management operations by the [NCBs] (ECB/2019/7) **(ECB/2023/8)**" (OJ L 102, 17.4.2023, pp. 56-58 and 59-60, respectively).Of relevance is also **ECB Decision (EU) 2023/815** of 28 March 2023 "amending Decision ECB/2010/4 concerning the management of pooled bilateral loans for the benefit of the Hellenic Republic **(ECB/2023/7)**" (OJ L 102, 17.4.2023, pp. 20-21). This legal act, which applies as of 1 May 2023, provides that the account maintained with the ECB in the name of its lenders shall be remunerated in accordance with Article 2(1) of **ECB Decision (EU) 2019/1743**. The current consolidated version of this legal act (which – as discussed – has been repeatedly amended) is available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02019D0031-20230501.

691 *See* **this Section above, under 2.2.3**.

der to implement the appropriate stance.[692] This decision was reflected in **ECB Regulation (EU) 2023/1679** of 25 August 2023 "amending [the ECB **Reserve Requirements Regulation**] **(ECB/2023/21)**",[693] implementing the GC's decision of 27 July 2023 to set the remuneration rate of minimum reserves at 0%.

3.2.4 Other aspects

(1) On **7 September 2023**, the GC approved the alignment, as of January 2024, of the announcement, allotment and settlement dates of the three-month LTROs with the corresponding dates of the MROs for the sake of operational simplicity. Accordingly, the maturity dates of these LTROs to be allotted in October, November, and December 2023 were adjusted to coincide with the new settlement dates applicable as of January 2024.

(2) On **5 October**, the GC took note of the first regular review of the implementation of the climate score methodology and tilting framework for purchases of corporate sector securities which came into effect on 1 October 2022, welcoming the conclusion that the methodology and framework had achieved their intended objectives and decided accordingly that the main building blocks of the framework would be maintained. It also decided, in the interest of transparency, to disclose more details of the applied methodology in the relevant ECB Decision. The amending legal act is the **ECB Decision (EU) 2024/190** of 15 December 2023 "amending Decision (EU) 2016/948 on the implementation of the [CSPP] (ECB/2016/16) (**ECB/2023/38**)".[694]

On the same date, for the sake of consistency, legal clarity, and transparency, the GC approved technical clarifications on the collateral eligibility rules for assets with a guarantor. These clarifications should be implemented by means of revisions to a number of the articles of the General Documentation Guideline as part of its next regular update in 2024.

(3) On **30 November**, the GC approved the discontinuation of short-term debt instruments for use as collateral under the Guideline on temporary collateral measures, as well as of some specific features under the additional credit claims ('**ACC**') framework, with very limited impact. The relevant NCBs will communicate the details to the affected counterparties.

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692 *See* at: https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.pr230727~7206e9aa48.en.html.

693 *See* **Section B above, under 1.2.2.2 (1)**.

694 OJ L, 2024/190, 05.01.2024.

The GC also approved the reinstatement of the 25,000-euro minimum size threshold for credit claims accepted for use as collateral, and decided to extend the validity of the ACC frameworks with their remaining features, until at least the end of 2024, and in this context recalled that any future changes will be announced with sufficient lead time. NCBs retain the discretion terminating their ACC frameworks earlier. The related amendments to ECB legal acts are discussed in ***Special Topic 4*** below.

(4) Finally, on **18 December**, the GC decided that recovery interest would be an appropriate corrective measure to propose to an NCB in case of an infringement of the prohibition of monetary financing laid down in **Article 123(1) TFEU**,[695] namely, if an NCB has financed transactions that should have been financed by other public authorities or bodies. As of 1 January 2024, corrective actions include government reimbursement of the funds in question to the NCB and interest on the reimbursement amount.[696]

4. Development of the Eurosystem's consolidated accounts in 2022 and 2023

Considering the above-mentioned, there are some noteworthy developments in the Eurosystem's consolidated accounts from the beginning of 2022 until December 2023.[697] In particular:

First, in 2022, the balance sheet continued to increase albeit only modestly, reaching in October a total of **8.77 trillion euro** (from 8.62 trillion euro by end-January 2022). Since then, the trend has been reversed: on 27 January 2023, the balance sheet was reduced by 10% (to almost **7,9 trillion euro**) and then, by end-2023, by another 10% to almost **6.93 trillion euro** (thus, cumulatively, more than 1.8 trillion euro).

Second, until October 2022, the amounts relating to lending to euro area credit institutions related to euro-denominated monetary policy operations (**assets item 5**) has not significantly changed, even though resort to MROs substantially increased and resort to LTROs slightly retreated; since then, these amounts have been drastically reduced: from **2.12 trillion euro** on 21 October 2022, to almost **1.26 trillion euro** on 27 January 2023 and then to **410 billion**

695 *See* **Section B above, under 1.2.2.3 (2)**.

696 At: https://www.ecb.europa.eu/press/govcdec/otherdec/2024/html/ecb.gc240126~80908b06b4.en.html.

697 For details, *see* **Tables 8-9** below.

euro by year-end. Overall, recourse to the standard refinancing operations – MROs and three-month LTROs – has mildly increased, albeit less than expected.[698]

Third, the purchase by the Eurosystem of securities of euro area residents denominated in euro (mainly) held for monetary policy purposes (**assets item 7**) has continued to increase throughout the period until 21 October 2022, and then started to mildly decrease from almost **5.12** to less than **5 trillion euro** by end-2023.

Finally (and impressively), resort by credit institution to the deposit facility (**liabilities item 2.2**) exponentially increased **from 776 billion euro** as of 21 January 2022 to **4.62 trillion euro** on 21 October 2022;[699] this was due to the exponential rise of the DFR and the continued reluctance of credit institutions in extending credit to the real economy because of general economic developments. It then slightly retreated to almost **3.3 trillion euro** on 31 December 2023.

5. An important further consideration: the appropriate mix between monetary and fiscal policies

(1) The efficiency of monetary policy can be negatively affected by prolonged and non-targeted fiscal expansion (meaning that, while higher official interest rates are aimed at dampening demand, fiscal expansion may lead to the opposite direction). An aspect, thus, requiring close attention under the current circumstances is the extent to which the effects of monetary policy tightening could be neutralised by unwarranted expansive fiscal policy measures (espe-

698 In the near future, excess liquidity was expected to decline at a steady pace, as the remaining TLTRO III operations matured, and the APP portfolios were gradually unwound.

699 Accordingly, the deposit facility amounted to **52.7% of total liabilities** (!).

cially as regards the exit strategy when the negative conditions on the inflation front will have been tamed).[700] In accordance with the most recent (October 2022) **IMF "Fiscal Monitor"**:[701]

> "*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****.*"[702]

This aspect has also been on the focus of the Eurogroup's meeting of 7 November 2022. Its President, Paschal Donohoe, noted that the Eurogroup noticed the challenges of the significant supports in effectively managing the trade-off between reducing inflation, while also supporting both vulnerable households and also the euro area's international competitiveness. Furthermore:

> "A *key issue for the overall policy mix and for the budget outlook for next year is what happens if measures are extended into spring and beyond.*"[703]

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700 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. On the interaction between monetary and fiscal policies, *see* by means of mere indication **Bartsch *et al.* (2020)**, as well as **Meyer and Caporal (2021)**. *See* also **Bernoth *et al.* (2023)**, **Brunnenmeier (2023)**, pp. 6-7 and **Corsetti *et al.* (2023**, editors**)**, pp. 41-42.On fiscal consolidation in the wake of the GFC, the large increase in debt in Japan, and the current US fiscal and monetary policy mix, *see* (**Blanchard 2023**). The author makes the case for rethinking the role of fiscal and monetary policy once monetary policy will have achieved the goal of taming inflation and real interest rates will have become very low again, taking, however, also into account the historically high debt ratios. On this later aspect, *see* also **Chapter 3 below, under 1.2.1 (1)**.

701 *See* **International Monetary Fund (2022a)**.

702 *See* also **International Monetary Fund (2022b)** with a focus on the outlook for the euro area. Furthermore, the IMF's Managing Director noted (**Georgieva (2022)**) that in view of the high levels of inflation, even though central banks are globally tightening monetary policy to restore price stability, "*challenges related to how to manage the monetary tightening cycle remain open*". Furthermore, she focused on the need to adopt an appropriate policy mix between monetary policy and the formulation and calibration of "*responsible fiscal policy in an environment with persistent price pressures*" to preserve that those fiscal policies do "*not further fuel inflation and side-track the efforts of monetary policy*". *See* also **Gros and Shamsfakhr (2023)**.

703 *See* at: https://www.consilium.europa.eu/en/press/press-releases/2022/11/07/remarks-by-paschal-donohoe-following-the-eurogroup-meeting-of-7-november-2022.

(2) The ECB has also been involved in the discussion on the predominant importance of an appropriate monetary policy – fiscal policy mix. According to its Chief Economist, Philip Lane:

> "*Finding the "sweet spot" between fiscal and monetary policies will allow for continued support to vulnerable Europeans hard hit by high energy prices and double-digit inflation without further straining public finances.*"[704]

Furthermore, the **ECB "Financial Stability Review" of November 2022**[705] also discusses the role of targeted fiscal policy measures in supporting vulnerable sectors of the economy, while avoiding actions that could interfere with the monetary policy normalisation process. In the same vein, Christine Lagarde, in her capacity as President of the ECB, noted in the press conference following the GC meeting of 2 February 2023:[706]

> "*Government support measures to shield the economy from the impact of high energy prices 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. The reform of the EU's economic governance framework should be concluded rapidly.*"[707]

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704 *See* (and hear) at: https://www.imf.org/en/News/Podcasts/All-Podcasts/2022/11/17/philip-lane-on-inflation-in-europe?utm_medium=email&utm_source=govdelivery.

705 At: https://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr202211~6383d08c21.en.html#toc2.

706 At: https://www.ecb.europa.eu/press/pressconf/shared/pdf/ecb.ds230202~40a069a7b4.en.pdf, pp. 5-6. On the challenges for monetary and fiscal policy interactions in the post-pandemic era, including an extensive literature review, *see* the most recent ECB occasional paper by **Bonam, Ciccarelli and Gomes (2024**, editors).

707 Furthermore, pursuant to the OECD's above-mentioned (*see* **Section C above, under 1 (1)**) Global Debt Report (**OECD (2024)**), taking into that the new macroeconomic landscape of higher inflation and more restrictive monetary policies is transforming bond markets

Excursus 3: The amendment of the Stability and Growth Pact (SGP)

(1) In relation to this very last remark it is noted that the political debate on the reform of the economic governance framework in the EU, and in particular **Council Regulations (EC) No 1466/97** and **(EC) No 1467/97** of 7July 1997[708] which constitute the two pillars of the Stability and Growth Pact ('**SGP**'), was based on the Commission's Communication of 9 November 2022 "on orientations for a reform of the EU economic governance framework".[709] The main objectives of this reform were ensuring sound and sustainable public finances, as well as promoting sustainable and inclusive growth in all Member States through reforms and investment.[710]

(2) Then, on 26 April 2023, the Commission submitted legislative proposals, on which the co-legislators reached a provisional political agreement on 10 February 2024.[711] The new rules were adopted and are embedded in three acts of 29 April 2024: **Regulation (EU) 2024/1263** of the co-legislators "on the effective coordination of economic policies and on multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97"; **Council Regulation (EU) 2024/1264** "amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure"; and **Council Directive (EU) 2024/1265** "amending Directive 2011/85/EU[712] on requirements for budgetary frameworks of the Member States".[713]

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globally at a pace not seen in decades, government spending needs to be more highly targeted, with an increased focus on investments in areas that drive productivity increases and sustainable growth.

708 OJ L 209, 2.8.1997, *pp.* 1-5 *and* 6-11, *respectively*, and as in force. The legal basis of the former was Article 99(5) TEC (now Article 121(6) TFEU) and that of the latter Article 104(14) TEC (now Article 126(14) TFEU).

709 COM/2022/583 final.

710 *See* **Feld *et al.* (2023)**.

711 At: https://www.consilium.europa.eu/en/press/press-releases/2024/02/10/economic-governance-review-council-and-parliament-strike-deal-on-reform-of-fiscal-rules). On the potential macroeconomic implications for the euro area, *see* **Bouabdallah *et al.* (2024)**.

712 Council Directive 2011/85/EU of 8 November 2011 "laying down requirements for the budgetary frameworks of the Member States", *OJ L 306, 23.11.2011, pp. 41-47. Its legal basis* is the enabling provision in the third sub-paragraph of **Article 126(14) TFEU**. "Budgetary framework" is the set of arrangements, procedures, rules and institutions that form the basis for the conduct of public budgetary policy (*ibid.*, Article 2, second sub-paragraph).

713 OJ L, 2024/1263, 2024/1264 and 2024/1265, respectively, 30.4.2024. All three acts entered into force immediately (upon their publication in the OJ). For a first analysis of this new framework, *see* **Gortsos and Perakis (2024)**, Section 3 (forthcoming).

(3) Relevant in the context of the wider related debate is also the Commission Communication of 21 November 2023 "Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia".[714] This new, particularly flexible, soft law instrument, which succeeded the Temporary Frameworks in relation to the pandemic crisis and for Ukraine, will undoubtedly influence discussions on fiscal prudence at national and EU levels.

Special Topic 4: Decisions taken in early 2024[715]

(1) In its meeting of **25 January 2024**, the GC decided to continue keeping the three key ECB interest rates unchanged since, on the basis of the incoming information, its previous assessment of the medium-term inflation outlook had been broadly confirmed, in view of the fact that aside from an energy-related upward base effect on headline inflation, the declining trend in underlying inflation continued and the past interest rate increases kept being forcefully transmitted into financing conditions.[716] The same decision was taken in its meetings of **7 March** and **11 April**.[717]

Taking into account that inflation in Switzerland has sharply fallen since its peak at 3.5% in August 2022[718] (1.0% in March 2024, i.e., well below the target level), the SNB was the first among major central banks to ease monetary policy by cutting its policy rate by 25 basis points at 1.50% as from **22 March**.[719]

(2) On **29 January 2024**, the GC decided to extend the availability of the EUREP framework (repo lines with the seven above-mentioned non-euro area central banks and the Andorran Financial Authority[720]), which was set to expire on 15 January 2024, until 31 January 2025. It is noted, however, that the decision

714 C/2023/8045, OJ C, C/2023/1188, 21.11.2023.

715 It is reminded that, as noted in the Preface, even though the focus of this study is on the first 25 years of the Eurosystem (thus, until end-2023), the cut-off date for information included herein is April 2024.

716 At: https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.mp240125~f738889bde.en.html. In the same January GC meeting it was also considered that the APP portfolio is declining at a measured and predictable pace, as the principal payments from maturing securities are no longer reinvested.

717 At: https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.mp240307~a5fa52b82b.en.html and https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.mp240411~1345644915.en.html, respectively.

718 *See* **this Section above, under 2.1 (1)**.

719 On the contribution of the implementation and transmission of the SNB's monetary policy to the substantial decline in inflation, during the recent tightening cycle, *see* **Martin and Moser (2024)**.

720 On this framework, *see* **Section D above, under 4 (1)**.

was taken pursuant to the adoption, in 2023, of a revised framework for euro liquidity lines, which is effective as of 16 January 2024 and retains the objectives and purpose of liquidity lines while establishing a single unified framework for the provision of euro liquidity.

In this respect the following is further noted:[721] *First*, **swap lines** continue to be available to countries with the highest creditworthiness and systemic importance from a euro area perspective, as well as countries with which reciprocal arrangements have been established (i.e., a backstop foreign currency liquidity facility for euro area banks). Some ECB swap agreements are *standing agreements* with no end date, although either party may terminate them at any time. Other arrangements have a *predefined end date but can be prolonged* by mutual agreement.[722] *Second*, **repo lines** are available under uniform conditions, as part of the EUREP framework, which include the risk control framework and pricing that may be adjusted by the GC on the basis of monetary policy considerations.

The risk control framework defines the requirements for the eligibility of collateral assets, the applicable valuation haircuts, and a central bank-specific maximum borrowable amount. All repo lines have *a predefined end date but can be prolonged by mutual agreement*; establishment and prolongation are based on the assessment of a monetary policy case, which is considered to be stronger with countries which have strong economic and financial relationships with the euro area and in the context of a global or regional crisis, or a heightened risk thereof, with potential adverse effects on ECB monetary policy transmission.[723]

Third, temporary lines established in the context of a global or regional crisis, or a heightened risk thereof, are terminated when conditions normalise. Thus, access to a euro liquidity line differs between normal circumstances and periods of financial market stress (or heightened risk thereof), when the establishment of liquidity lines with a broader set of countries could be warranted.

(3) Furthermore, on **30 January**, the ECB decided to expand its work on climate change following the stocktake of its climate actions since launching

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721 *See* at: https://www.ecb.europa.eu/mopo/implement/liquidity_lines/html/index.en.html.

722 Currently, the ECB has such standing agreements with the Danmarks Nationalbank, the Sveriges Riskbank, the Bank of Canada, the Bank of Japan, the SNB, the BoE and the Federal Reserve System; except for the two first, the others are reciprocal. The swap line agreement, which is also reciprocal, expires on 8 October 2025 but is extendable. In most cases, the maximum borrowable amount is unlimited.

723 All repo lines with the above-mentioned six central banks and the Andorran Financial Authority are non-reciprocal. The maximum borrowable amount ranges from 35 million euro (Andorra) to 4 billion euro (Hungary).

its **“Climate Agenda 2022”** of 4 July 2022[724] and an adjustment of its work plan in the light of the changing environment and improvements in data availability and methodologies. In this respect, three focus areas were identified to guide its activities in 2024-2025: the impact and risks of the transition to a green economy, especially the associated transition costs and investment needs; the increasing physical impact of climate change, and how measures to adapt to a hotter world affect the economy; and the risks stemming from nature loss and degradation, how they interact with climate-related risks and how they could affect the ECB's work through their impact on the economy and financial system.[725]

(4) On **8 February**, the GC adopted a package of legal acts amending several of those that implement the Eurosystem monetary policy framework (in accordance with its just above-mentioned decisions of 5 October and 30 November 2023) as follows: **ECB Guideline ECB/2024/4** amending the General Documentation Guideline;[726] **ECB Guideline ECB/2024/5** amending the Valuation Haircut Guideline;[727] **ECB Guideline ECB/2024/6** “amending **Guideline ECB/2014/31** on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral”;[728] and **ECB Decision ECB/2024/7** “amending **ECB Decision (EU) 2020/440** on a temporary pandemic emergency purchase programme”.[729]

The amendments introduced will apply as of 6 May 2024 and include provisions whereby short-term debt instruments are no longer to be used as collateral under the ACC framework, further clarification of the collateral eligibility rules for assets with a guarantor, the establishment of a harmonised list of events of default under the general framework and editorial amendments to simplify and improve clarity.

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724 *See* **Section A above, under 3.3.2**.

725 At: https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240130~afa3d90e07.en.html.

726 **Guideline (EU) 2024/1163** of the ECB of 8 February 2024 “amending Guideline (EU) 2015/510 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) (**ECB/2024/4**)”, OJ L, 2024/1163, 26.4.2024.

727 **Guideline (EU) 2024/1164** of the ECB of 8 February 2024 “amending Guideline (EU) 2016/65 on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework (ECB/2015/35) (**ECB/2024/5**)”, OJ L, 2024/1164, 26.4.2024.

728 **Guideline (EU) 2024/1165** of the ECB of 8 February 2024 “amending Guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (**ECB/2024/6**)”, OJ L, 2024/1165, 26.4.2024.

729 **Decision (EU) 2024/1166** of the ECB of 8 February 2024 “amending Decision (EU) 2020/440 on a temporary pandemic emergency purchase programme (ECB/2020/17) (**ECB/2024/7**), OJ L, 2024/1166, 26.4.2024.

(5) Changes to the operational framework for the implementation of monetary policy were decided in the GC's meeting of **13 March** to ensure that it remains appropriate as the Eurosystem balance sheet normalises. According to the related Statement:[730]

> "*These changes will affect how central bank liquidity will be provided as excess liquidity in the banking system, while remaining significant over the coming years, gradually declines. The purpose of the operational framework is to steer short-term money market rates closely in line with the [GC's] monetary policy decisions.*"

The GC announced its intention to continue steering the monetary policy stance by adjusting the DFR; liquidity will be provided through broad mix of instruments; MROs will play a central role in meeting credit institutions' liquidity needs and will continue to be conducted through fixed-rate tenders with full allotment against broad collateral; the spread between the rate on MROs and DFR will be reduced to 15 basis points as from 18 September 2024; and a review of key framework parameters will expectedly take place at the latest in 2026.[731]

(6) Finally, on **16 April**, the GC confirmed the remuneration ceiling for euro area government deposits and adjusted remuneration of other non-monetary policy deposits.[732] Furthermore, for the sake of increased transparency, it decided to merge the legal provisions for the remuneration of non-monetary policy deposits into a single Decision.[733] In that respect, and in order to align provisions, the GC also decided on the same date to amend the (repeatedly above-mentioned) **ECB Guideline (EU) 2019/671** on domestic asset and liability management operations by the NCBs,[734] and adopted the **ECB Guideline (EU) 2024/1211** "on the Eurosystem's provision of reserve management services in to central banks and countries located outside the euro area and to international organisations (ECB/2024/13) (recast)".[735]

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730 At: https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240313~807e240020.en.html.

731 For recommendations on, *inter alia*, the ECB's future monetary policy strategy, *see* **Reichlin, Pisani-Ferry and Zettelmeyer (2024)** and **Diessner (2024)** (with extensive further references).

732 At: https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240417~1f4431a9d4.en.html.

733 **ECB Decision (EU) 2024/1209** of 16 April 2024 "on the remuneration of non-monetary policy deposits held with NCBs and the ECB (**ECB/2024/11**)", OJ L, 2024/1209, 3.5.2024.

734 **ECB Guideline (EU) 2024/1210** of 16 April 2024, OJ L, 2024/1210, 3.5.2024.

735 OJ L, 2024/1211, 3.5.2024. The Decision shall apply from 1 December 2024, when the Eurosystem NCBs are expected to comply with the two Guidelines.

Excursus 4: Establishment of an "Interinstitutional EU ethics body"

In 2024, on the basis of a Commission proposal of May 2023,[736] an Interinstitutional Agreement was concluded between the European Parliament, the Council, the Commission, the CJEU, the ECB, the Court of Auditors, the Economic and Social Committee and the Committee of Regions concerning the establishment of an independent "Interinstitutional EU ethics body".[737] Its task is to improve transparency and integrity in EU institutions by developing common minimum standards for ethical conduct of high-level EU officials, establishing a formal mechanism for coordination and exchange of views. and initiating investigations on possible conflicts of interest ("revolving door") cases.[738]

TABLE 9
Evolution of the Eurosystem's consolidated accounts in 2022 (in million euro): The impact of the inflation crisis

Assets				Liabilities			
	31.XII.2022	**21.X.2022**	**28.I.2022**		**31.XII.2022**	**21.X.2022**	**28.I.2022**
1. Gold and gold receivables	592,898	592,847	559,398	1. Banknotes in circulation	1,572,033	1,559,813	1,539,133
2. Claims on non-euro area residents denominated in foreign currency	523,240↓	548,482	496,697	2. Liabilities to euro area credit institutions related to **monetary policy operations** denominated in euro	3,998,940↓	4,841,542	4,598,243

[736] Commission Communication of 8 May 2023 "Proposal for an interinstitutional ethics body", COM/2023/311 final.

[737] The legal basis of this Agreement is Articles 9, 10, 15(3) and 17(3) TEU and Article 298 TFEU; its txt is not yet officially available.

[738] On the approval of this Agreement by the ECB (on 10 May 2024) and its representation in this new body, *see* at: https://www.ecb.europa.eu/press/govcdec/otherdec/2024/html/ecb.gc240510~463d58280d.en.html.

				2.1 Current account (minimum reserve system)	218,933	**215,642**↓	**3,818,999**
				2.2 Deposit facility	**3,778,787**↓	**4,623,036**	776,826
3. Claims on euro area residents denominated in foreign currency	20,417↓	25,363↓	26,688	3. Other liabilities to euro area credit institutions denominated in euro	**78,335**	**59,686**	45,620
4. Claims on non-euro area residents denominated in euro	14,224	10,756	10,248	4. Debt certificates issued	0	0	0
5. Lending to euro area credit institutions related to **monetary policy operations** denominated in euro	**1,324,347**↓	**2,119,674**↓	2,201,664	5. Liabilities to other euro area residents denominated in euro (general government & other liabilities)	**564,582**↓	**676,386**↓	818,131
5.1 MROs	**2,406**↓	**3,640**	198				
5.2 LTROs	**1,321,422**↓	2,116,034↓	2,201,466				
5.3 Marginal lending facility	**519**	0	0				
6. Other claims on euro area credit institutions denominated in euro	31,035	13,320↓	32,033	6. Liabilities to non-euro area residents denominated in euro	**540,725**	**384,784**↓	439,535

7. **Securities of euro area residents denominated in euro**	5,102,068↓	**5,118,277**	**4,955,695**	7. Liabilities to euro area residents denominated in foreign currency	11,683↓	11,865↓	14,535
8. General government debt denominated in euro	21,589	21,724↓	22,168	8. Liabilities to non-euro area residents denominated in foreign currency	4,753↓	6,083	3,561
9. Other assets	321,222	324,318	317,986	9. Counterpart of SDRs allocated by the IMF	181,121↓	189,859	178,834
				10. Other liabilities	290,578↓	318,305↓	320,834
				11. Revaluation accounts	588,053↓	611,738	554,779
				12. Capital and reserves	**120,237**	**114,698**	109,660
TOTAL	**7,951,039↓**	**8,774,759**	**8,622,576**	**TOTAL**	**7,951,039↓**	**8,774,759**	**8,622,576**

TABLE 10
Evolution of the Eurosystem’s consolidated accounts in 2023 (in million euro): The impact of the ‘inflation crisis’

Assets				**Liabilities**			
	31.XII.2023	**19.V.2023**	**27.I.2023**		**31.XII.2023**	**19.V.2023**	**27.I.2023**
1. Gold and gold receivables	649,110	**632,875**	593,003	1. Banknotes in circulation	1,567,711	1,562,238	1,558,996

2. Claims on non-euro area residents denominated in foreign currency	499,583↓	500,596↓	519,463	2. Liabilities to euro area credit institutions related to **monetary policy operations** denominated in euro	3,508,865↓	4,280,761	4,268,947
				2.1 Current account (minimum reserve system)	**174,019**	156,299↓	**175,950**
				2.2 Deposit facility	**3,334,822↓**	**4,124,152**	**4,091,722**
3. Claims on euro area residents denominated in foreign currency	13,876↓	23,655↓	18,473	3. Other liabilities to euro area credit institutions denominated in euro	58,873	40,790	38,950
4. Claims on non-euro area residents denominated in euro	20,097	12,923	12,121	4. Debt certificates issued	0	0	0
5. Lending to euro area credit institutions related to **monetary policy operations** denominated in euro	**410,290↓**	**1,101,858↓**	**1,259,194**	5. Liabilities to other euro area residents denominated in euro (general government & other liabilities)	**303,864↓**	**375,364↓**	**497,719**

5.1 MROs	**14,085**	1,410	**1,241**				
5.2 LTROs	**396,197**↓	1,100,448↓	**1,257,951**				
5.3 Marginal lending facility	**10**	0	2				
6. Other claims on euro area credit institutions denominated in euro	28,707↓	38,240	28,620	6. Liabilities to non-euro area residents denominated in euro	281,940	252,368↓	328,253
7. **Securities of euro area residents denominated in euro**	**4,898,966**↓	5,076,772↓	5,123,401	7. Liabilities to euro area residents denominated in foreign currency	**16,382**	11,379	11,315
8. General government debt denominated in euro	20,917↓	21,484↓	21,589	8. Liabilities to non-euro area residents denominated in foreign currency	4,474↓	6,995	4,987
9. Other assets	393,943	331,715	318,127	9. Counterpart of SDRs allocated by the IMF	177,116↓	180,263↓	182,361
				10. Other liabilities	260,877↓	277,564↓	297,367
				11. Revaluation accounts	**635,144**	**622,156**	588,700
				12. Capital and reserves	**120,242**	**120,241**	**116,397**
TOTAL	**6,935,489**↓	**7,730,118**↓	**7,893,991**↓	**TOTAL**	**6,935,489**↓	**7,730,118**↓	**7,893,991**

CHAPTER 3
EPILOGUE: CONSIDERATIONS ON THE IMPACT OF MONETARY POLICY DECISIONS ON FINANCIAL STABILITY IN THE EURO AREA

1. The linkages between financial and monetary stability

1.1 Introductory remarks

Financial stability is a "global public good".[739] There is no single generally accepted definition of this term; the ECB defines it as follows: "*a condition in which the financial system – which comprises financial intermediaries, markets and market infrastructures – is capable of withstanding shocks and the unravelling of financial imbalances*".[740] The linkages between financial stability and monetary stability are significant.[741] In particular:

(1) Financial instability in the form of a financial/banking crisis[742] (or even a financial/banking turmoil) may cause the monetary authority (central bank) to adapt its monetary policy by lowering interest rates. This was the case during the GFC, which was then followed by the adoption of even more drastic unconventional monetary policy measures.[743] Amidst that crisis, monetary pol-

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739 On this term, *see* **Kaul, Grunberg and Stern (1999)**, pp. 4-6.

740 At: https://www.ecb.europa.eu/pub/financial-stability/html/index.en.html). On the various definitions of the term "financial stability" in literature, *see* **Allen and Gale (2001)**, **Houben, Kakes and Schinasi (2004)**, pp. 10-11 and 38-42, as well as **Schinasi (2005)** and **(2006)**. On a historical overview of major "systemically important" financial crises all over the world and the reasons why banking stability is rare, *see* by means of mere indication **Reinhart and Rogoff (2009)**, **Laeven and Valencia (2012)**, **Calomiris and Haber (2014)** and **Baron, Verner and Xiong (2021)**. It is finally noted that, in accordance with the **"financial trilemma"** developed by **Schoenmaker (2011)**, in open market economies the objectives of financial stability, financial integration and national financial policies are incompatible; any two can be combined, but not all three.

741 The interaction between monetary policy and financial stability is well established; in this respect, in the aftermath of the GFC, the aim of monetary policy remained price stability, while macroprudential policies were tasked with the preservation of financial stability; *see* **Lastra and Goodhart (2015)**, On this interaction in general, *see* further, by means of mere indication, **Bank for International Settlements (2003)**, **Viñals *et al.* (2015)**, **Brunnenmeier (2019)**, **Martin *et al.* (2021)** and **Ajello *et al.* (2022)**. On whether central banks should (or not) deviate from price stability to promote financial stability, *see* **Boissay *et al.* (2023)**.

742 It is noted that the causes of a major financial crisis are usually not one-dimensional but are a function of a combination of market, supervisory, regulatory and macro-economic failures. In the words of **Honohan (1997)**: **(**under 1.1.): "*Systemic failures in the financial system are typically complex and they differ one from the other. In order to understand the processes involved it is necessary to schematize and simplify, but extreme reductionism is misleading.*" On these failures, *see* also **Gortsos (2023a)**, Chapter 1 (in various Sub-sections and with extensive further references).

743 *See* **Section C above, under 1**.

icy moved in parallel to financial policy and coincided, since the primary concern in relation to price stability was the support of aggregate demand and the avoidance of deflation and recession, while that in relation to financial stability the primary concern was to avoid deeper financial distress.[744]

(2) The stance of monetary policy and the level of official interest rates set by central banks, *vice versa*, may also have an impact on the financial system. This aspect requires a further brief discussion in the context of this study.

1.2 The impact of monetary policy actions on financial stability

1.2.1 An environment of high inflation

In an environment of high inflation and, thus usually, comparatively high official interest rates, the dynamics of debt servicing and the balance sheet of credit institutions and other financial firms may be negatively affected. In particular, rising interest rates lead to tighter financing conditions to address high inflation.[745] In combination with strained market liquidity conditions and risk-aversion on behalf of (some) investors, this may lead to an increase in market volatility and an (eventually sharp) correction of the price of several classes of financial assets (such as stocks and bonds, bond yields rising broadly across credit ratings). The tightening of financial conditions, especially if also combined with a deterioration of the macroeconomic outlook leading to conditions of anaemic growth (an economic environment of stagflation or even recession[746]) may have the following consequences:

(1) Higher interest rates may affect (at least) medium-term sovereign debt dynamics, as sovereigns are facing rising funding costs, financial vulnerabilities being elevated for governments with mounting debt.[747] Thus, in an environ-

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744 *See* **Brunnenmeier (2023)**, p. 8 and **Adrian, Gopinath and Gourinchas (2023)**.

745 In accordance with a recent study of **Jiménez *et al.* (2023)**, analysing 17 countries over 150 years, a raising of official interest rates materially increases crisis risk *via* credit and asset price cycles, but only if rates were previously cut (or low) for long ("U-shaped" monetary rate path), while rate cuts in the first half of such a path increase the likelihood of vulnerable "red zones" of high credit and asset prices, while subsequent rate hikes within "red zones" tend to trigger crises. **Boissay *et al.* (2023)** also defend the view that financial crises may occur after a long period of unexpectedly loose monetary policy as the central bank abruptly reverses course.

746 It is generally accepted that growth could be lower to the extent that the effects of monetary policy would prove stronger than expected.

747 In this respect, the following is noted in relation to actual developments:*First*, according to the OECD Sovereign Borrowing Outlook 2023 published on 22 May 2023 (**OECD (2023)**), sovereign borrowing needs were expected to further increase, as many of its member

ment of high inflation and restrictive monetary policies, government bond markets are affected with profound implications for government spending and financial stability at a time of renewed financing needs (i.e., refinancing of outstanding debt).[748]

(2) Tighter financial conditions may affect both households (particularly those on lower incomes since their purchasing power may be reduced and their ability to repay loans be compromised[749]) and corporates (depending on their outstanding debt level, their rating (and the prospects thereof) and, thus, their borrowing cost and their overall profitability). Higher interest rates may also activate vulnerabilities in the residential and the commercial real estate sectors.[750]

(3) Credit institutions may also be negatively affected as financial stability risks are increasing, even though their profitability may increase due to gains derived from higher interest rates and margins (especially after a period of very low interest rates due to the abolition of maturity mismatches) and positive deposit facility rates at the central bank. In particular (and in brief):

first, a correction of asset prices may expose them to market risks (which largely depends on their business models and the robustness of their risk management techniques); this has, indeed, been the case during the 2023 banking turmoil in the US;[751]

second, the quality of their assets may deteriorate due to a potential increase of non-performing loans (‘**NPLs**’, impaired assets) and non-performing expo-

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states sought to cushion households and businesses from rising prices; the same applies to net borrowing needs.*Second*, the OECD’s (twice) above-mentioned Global Debt Report (**OECD (2024)**) discusses how governments and firms need to address the key risks from the sharp increase in global bond borrowing (raising also potential financial stability considerations), since, by end-2023, the total volume of sovereign and corporate bond debt stood at almost 100 trillion USD, similar in size to global GDP, and the central government debt-to-GDP ratio in OECD countries reached 83% (thus, an increase of 30% in comparison to 2008). On the drivers of public debt-to-GDP ratios’ substantial fluctuations in 17 advanced economies since the 1980s, *see* **Patel and Peralta Alva (2024)**.

748 **OECD (2024)**.

749 On this aspect, *see* **Bellon and Gnewuch (2023)**, who further claim that low-income households were hit the most by the recent inflation, since they typically spend a larger share of their income on energy and that this inequality creates vulnerabilities that can aggravate recessions, reinforcing the need to build resilience through larger fiscal buffers.

750 On the appropriate macroprudential policies to mitigate housing market risks, *see* **Committee on the Global Financial System (2023b)**.

751 *See* the ***Excursus 5*** **below**.

sures ('**NPEs**') in their portfolios leading to the risk of high rates of corporate defaults and bank losses;[752]

third, their liquidity position may be adversely affected taking into account in particular the higher cost for market funding (mainly through the issuance of bonds in money and capital markets);[753]

fourth, a negative impact on their profitability may be caused by tightened lending standards and, thus, a decrease in outstanding loan exposures to non-financial corporates and households (including for residential and commercial and real estate-related lending), as well as by an increase in their funding cost to higher interest rates (the level depending on their rating);

finally, deteriorating growth prospects may expose them to rising medium-term risks;[754]

(4) Beyond the banking sector, financial markets and non-bank financial intermediation ('**NBFIs**', as the "shadow banking sector" is currently named) may also become vulnerable to the risk of disorderly asset price adjustments (particularly in the event of a recession) due to investment fund vulnerabilities, stretched valuations, high volatility, tighter financing conditions and lower market liquidity. Financial vulnerabilities may also be elevated for regulated financial firms, such as insurance companies, as well as pension, hedge and mutual funds.

1.2.2 An environment of very low inflation

(1) In an environment of very low inflation (or even deflation) and, thus usually, very low official interest rates, laxer financing conditions prevail (to the benefit of governments, individuals and firms), with an increase in asset prices (mak-

752 The proper management and disposition of NPLs are among the most complex aspects of successful and speedy bank restructuring. On the obstacles to NPL resolution in the EU and proposals for a comprehensive EU strategy on those, *see* by means of indication, **Aiyar *et al.* (2015)**, **Montanaro (2019)** and **Gortsos (2021a)**.

753 The author also notes that, in this environment of higher interest rates, significant credit institutions in the BU were also required to raise debt in capital markets to fully meet the binding target for the minimum requirement for own funds and eligible liabilities ('**MREL**'), as set out in **Articles 12-12k SRMR**, by end-2023 (which marked the end of a transitional period). On the MREL, *see* details in **Maragopoulos (2020)** and **Haentjens (2022)** and **Gortsos (2022d)**, pp. 17-23. On the most recent status relating to credit institutions' meeting the MREL requirements, *see* the SRB MREL Dashboard for the third quarter of 2023, published in February 2024 (at: https://www.srb.europa.eu/system/files/media/document/2024-02-12_MREL-dashboard-Q3-2023.pdf).

754 *See* **Gortsos (2023b)**, pp. 11-12.

ing them, however, susceptible to corrections), a reduction in risk aversion and an expansion in the housing market. However, financial stability risks are also apparent. Key concerns are:

> *first*, a potential overheating of the economy by increased demand for borrowed funds and an overvaluation in housing prices in both residential and commercial real estate markets;
>
> *second*, the (eventually significant) increase of asset prices taking into account the potential for their (even sharp) correction when the period of very low interest rates is terminated;[755] and
>
> *third*, a destabilising impact on the financial system[756] and credit institutions' profitability, in particular in a territory of negative DFRs, taking account of the fact that they face (legal or business) limitations in passing negative rates through to (in particular) retail depositors.[757]

(2) The risk analysis in the **ESRB Report** "Lower for longer – macroprudential policy issues arising from the low interest rate environment" of **1 June 2021**[758] is illustrative in that respect.[759] This report identified several areas of concern (for the euro area) owing to the prolonged period of persistently low interest rates (a **"liquidity trap"** situation[760]), including: *first*, credit institutions' profitability and resilience, as the negative effects of existing structural problems in the EU banking sector (including overcapacity and cost inefficiencies) were being compounded; *second*, indebtedness and viability of borrowers, who are

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755 On the basis of historical data for 18 countries between 1870-2020, **Grimm, Jordà Schularick and Taylor (2023)** come to the conclusion that the likelihood of a financial turmoil increases considerably when the stance of monetary policy is accommodative over an extended period due to (*inter alia*) credit creation and asset price overheating.

756 *See* **Schnabl and Sonnenberg (2020)**, comparing (under two alternative economic theories and *inter alia*) the impact of the monetary policy stance on financial stability of the Federal Reserve and the ECB after the GFC and the euro area fiscal crisis.

757 *See* **Altavilla *et al.* (2019)**, **Heider, Saidi and Schepens (2019)** and **Schnabel (2020)**.

758 *See* **European Systemic Risk Board (2021b)**.

759 *See* also **Committee on the Global Financial System (2018)**.

760 According to **Keynes (1936)**: "*There is the possibility (…) that, after the rate of interest has fallen to a certain level, liquidity-preference may become virtually absolute in the sense that almost everyone prefers cash to holding a debt which yields so low a rate of interest. **In this event the monetary authority would have lost effective control over the rate of interest**. But whilst this limiting case might become practically important in future, I know of no example of it hitherto.*"

taking on more debt due to search for yield; and *third*, systemic liquidity risk as the financial system has become more sensitive to market shocks, also due to structural changes.[761]

1.3 *Interim* conclusions

(1) As discussed,[762] there are conditions under which monetary policy *may* need to be adjusted in periods of a financial crisis, taking into account the threats to financial stability and to the real sector of the economy. On the other hand, typically, monetary policy is not considered as the appropriate means to safeguard financial stability. However, a trade-off between persistently high inflation and financial (in)stability (a **"balancing act"**) is evident.[763] Thus, when setting interest rates to restore the level of inflation at their policy target (even in the medium term), central banks need to also integrate into their monetary analysis, *inter alia*, the impact of (further) increased interest rates on the lending activity of credit institutions and on capital markets (without prejudice to any potential conflicts of interest and taking into account their statutory objectives).[764]

(2) Under these conditions, the preservation of financial stability even in times of high(er) inflation mainly (and ultimately) depends on the existence of appropriate micro- and macroprudential financial/banking regulations, as well as the efficiency of macroprudential financial oversight by central banks (or other earmarked public authorities).[765] It is noted that, in accordance with the (just

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761 Quite interestingly, the Report noted that the pandemic may have increased the likelihood and persistence of a "low for long" scenario, making it "even lower for even longer". Considering, however, the most recent developments this has apparently not been the case.

762 *See* just **above, under 1.1**.

763 According to the taxonomy proposed by **Adrian, Gopinath and Gourinchas (2023)**, a distinction must be made between times when financial stress remains modest, and times of heightened financial stress or acute financial crises even though uncertainty about the health of the financial system and its resilience to monetary tightening will inevitably complicate central banks' decision processes.

764 On the role of financial stability considerations in monetary policy and the interaction with macroprudential policy in the euro area, *see* **European Central Bank (2023a)**. According to **Glocker *et al.* (2023)**, restrictive monetary policy effectively dampens inflation but also raises stress in financial markets through revaluations of financial assets on banks' balance sheets and weakened economic activity. Furthermore, with most of the disinflationary impact of higher interest rates yet to materialise, monetary policy should allow the financial sector to digest the rapid rate hikes by reducing the pace of tightening.

765 On the case for establishing macroprudential financial stabilisation frameworks for financial supervision and regulation in view of procyclicality in the financial system, *see* further the seminar works of **Borio (2003)** and **White (2006)** (both before the onset of the GFC). The interaction between monetary policy and financial stability *via* macroprudential policies is well established; in this respect, in the aftermath of the GFC, the aim of monetary

above-mentioned) 2021 ESRB Report, addressing the risks identified therein requires wide-ranging macroprudential policy responses; the Report set out a range of policy options for mitigating systemic risk and improving its analysis. Furthermore, predominant is the quality of financial/banking prudential supervision[766] and the appropriateness of the related sanctioning regimes to ensure financial firms' (including credit institutions') compliance with the regulatory framework.[767] This includes the monitoring of debt sustainability in the corporate sector and overall exposures in the financial system by capital market supervisory authorities.

(3) The above-mentioned remarks and considerations are clearly summarised in the remarks by **Kohn (2016)**, (then) External Member of the Financial Policy Committee of the Bank of England:[768]

> "***Monetary policy can have important effects on financial stability risks, but, for the most part, it is not the right policy to address those risks***. *I am concerned about burdening monetary policy with too much to do; putting weight on financial stability in monetary policy decisions implies less weight on economic and price stability in the conduct of policy, and that can have substantial costs in terms of economic welfare.* ***Financial stability is a prerequisite for price and economic stability***, *so we cannot rule out adjusting monetary policy for financial stability purposes under some, hopefully rare, circumstances.* ***But authorities should develop other tools and other decision processes to rely on first*** *– macroprudential policies – and the more fully developed are these alternatives to monetary policy, the less monetary policy itself might need to be used to defend financial stability*".

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policy remained price stability and macroprudential policies, introduced at that time) were tasked with the preservation of financial stability; *see* **Lastra and Goodhart (2015)**. *See* also by means of mere indication **Viñals *et al.* (2015)**, **Klein (2019)**, **Altavilla, Laeven and Peydró (2020)** and **Martin *et al.* (2021)**. For an estimation of the causal effects of macroprudential policies on the distribution of GDP growth, *see* **Fernández-Gallardo *et al.* (2023)**.

766 On the relation between monetary policy and banking supervision, *see* by means of mere indication **Eijffinger and Nijskens (2012)**, **Beck and Gros (2013)** and **Goldmann (2017)** (in relation to the BU).

767 On all these aspects pertaining to the "bank safety net", *see* further details in **Gortsos (2023a)**, pp. 23-24 (with extensive further references.

768 *See* **Kohn (2016)**, p. 3 (emphasis in bold characters added).

2. Financial stability in the euro area through the lens of international and EU official reports – and the spring 2023 banking turmoil

2.1 Introductory remarks

(1) As already noted,[769] the ECB plays a significant role in terms of safeguarding financial stability, taking into account its mandate (pursuant to **Article 127(5) TFEU**) to contribute to the smooth conduct of policies pursued by the NCAs relating to the prudential supervision of credit institutions and the stability of the financial system. This has been the basis for its action during the GFC and the euro area fiscal crisis.[770] *Furthermore*, as also noted,[771] since 2014 and by virtue of **Article 127(6)**, "specific tasks" were conferred upon it concerning policies relating to the prudential supervision of credit institutions, while noteworthy is also its contribution in the field of financial macroprudential oversight to address systemic vulnerabilities by means of Opinions and Recommendations issued by the ESRB. *Finally*, financial stability is also being preserved by the new prudential regulatory framework established for all three sectors of the financial system in the wake of the GFC and the subsequent fiscal crisis in the eurozone (as partly discussed above[772]).[773] In this respect it is noted (*inter alia*) that, in accordance with Article 5 SSMR, the ECB has within the SSM direct macroprudential powers, including its "top-up power".[774]

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769 *See* the ***Special Topic 2*** **above, under 1 (1)**.

770 On the conflicting narratives of the ECB and the Eurogroup over the nature of the euro area crisis and the combination of economic growth with financial stability, *see* **Donnelly (2018)** (with extensive further references).

771 *See* the ***Special Topic 2*** **above, under 2**.

772 For a more detailed presentation and analysis (until December 2022), *see* **Gortsos (2023a)**, pp. 201-315.

773 It is also noted that, as of 1997, the ECB publishes annually, "structural financial indicators", namely, a comprehensive dataset reporting structural features of the banking sector in each EU Member State. Data comprise, *inter alia*, aggregated statistics on the number, employees and total assets of all credit institutions, their branches and their subsidiaries (*see* at: https://data.ecb.europa.eu/methodology/structural-financial-indicators).

774 **SSMR**, Article 5(2). The macroprudential tools available to the ECB are defined in Article 101 SSM-FR and the ECB macroprudential decision-making process is further detailed in Article 13h of the ECB Rules of Procedure. On these Articles, *see* **Lackhoff (2017)**, pp. 186-190. It is furthermore noted that, taking into account the provisions set out in **Articles 128-134 CRD IV** (on buffers) and in order to ensure the effectiveness and consistent application of national macroprudential policy measures, the recognition required under EU law is complemented by a voluntary reciprocity framework for such measures, which was set out in the **ESRB's Recommendation** of 15 December 2015 "on the assessment of cross-border effects of and voluntary reciprocity for macroprudential policy measures

(2) In 2020, it was reasonably considered that the banking system remained overall resilient. This is mainly attributed to the implementation of (parts at least of) the G20 2009 "Global Financial Reform Agenda" implemented after the GFC, which contained enhanced, and (in some areas) new international financial standards adopted by international financial for a, as well as to (on average) stricter and more efficient banking supervision (including in the euro area in the wake of the SSM's operationalisation). During the pandemic, given that the prudential regulatory and supervisory framework governing credit institutions provides certain elements of flexibility, and by considering that making *full use* of this flexibility was essential for overcoming the financing pressures faced by firms and households, the ECB took some bold initiatives:

First, as a banking supervisory authority within the SSM, complemented by the EBA and by interpreting and applying institution-specific micro-prudential supervisory measures under exceptional circumstances, it provided operational flexibility in the implementation of supervisory measures to ensure that credit institutions were in a position to continue to provide credit to the real sector of the economy in a flexible manner during (at least the initial phase of) the pandemic.[775]

Second, an essential element of flexibility is the releasability of capital and liquidity buffers included in the macroprudential policy and regulatory framework. Accordingly, the ECB also adopted specific capital relief macroprudential measures, which were complemented and enhanced by measures swiftly taken by several euro area national designated authorities (**'NDAs'**). These releases of countercyclical capital buffers (**'CCyB'**) and systemic risk buffers freed up more than 20 billion euro of Common Equity Tier 1 (**'CET1'**) capital held by euro area credit institutions,[776] facilitating the absorption of losses and supporting lending to the real sector of the economy.[777]

(**ESRB/2015/2**)" (OJ C 97, 12.3.2016, pp. 9-14). This is in force as amended by **Recommendation ESRB/2023/13** of 8 December 2023 (OJ C, C/2024/3114, 6.5.2024).

775 *See* details in **Gortsos (2021b)**.

776 This is calculated in accordance with **Articles 50-55 CRR**. On the definition of regulatory capital instruments under the CRR (the core element of which are CET1 instruments, as defined in Articles 28-29), *see* **Lamandini and Ramos Muñoz (2022b)**.

777 *See* ECB: "Macroprudential measures taken by national authorities since the outbreak of the coronavirus pandemic", 26 May 2020, at: https://www.ecb.europa.eu/pub/financial-stability/macroprudential-measures/html/index.en.html. For details on these macroprudential measures, *see* **Joosen (2020)**, pp. 339-360 and **Lagaria (2021)**. On the ECB's response to the pandemic crisis in relation to contributing to green recovery, *see* **Grünewald (2021c)**.

2.2 Financial stability conditions just before the outbreak of the pandemic crisis

(1) Just before the outbreak of the pandemic, the EU banking system was quite robust. As noted by **Andrea Enria**, Chair of the ECB Supervisory Board:

> "*Unlike in the 2008 financial crisis, banks are not the source of the problem this time. But we need to ensure that they can be part of the solution.*"[778]

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 so-called 2010 Basel III regulatory framework of the BCBS[779] (cumulatively, the so-called **"Basel III impact"**). Furthermore, their accumulated stock of NPLs, built up in the wake of the GFC and the subsequent fiscal crisis in the euro area (the so-called "legacy NPLs"[780]), were significantly reduced and, overall, financial stability was enhanced compared to a decade before. This was manifested, *inter alia*, by the EBA quarterly Risk Dashboard (**RDB**) of **14 April 2020**,[781] which covered data of the fourth quarter of 2019, summarised the main risks and vulnerabilities in the EU banking system ahead of the crisis, and concluded that EU credit institutions' capital ratios and asset quality have (on average) constantly improved (even though return on equity ('**RoE**') had worsened).

(2) The path to *full* recovery in the euro area remained uncertain (and was not smooth for all Member States[782]), even though its economic growth rate in 2021 was higher than projected, signalling that the euro area economy was robustly recovering. Pursuant to the ECB "Financial Stability Review" of November **2021**,[783] 'real GDP'[784] in the third quarter of 2021 was fell 0.5% short of its level in the fourth quarter of 2019 and it was still likely that it would exceed its pre-pandemic levels in the fourth quarter, two quarters earlier than expected. However, the growth momentum was moderated to some extent due to downside risks caused by the rise in energy prices and supply chain bottlenecks.[785]

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778 *See* at: https://www.bankingsupervision.europa.eu/press/interviews/date/2020/html/ssm.in200623~e668f871fa.en.html.

779 *See* **Section B above, under 3.1**.

780 On legacy NPLs as a market failure problem, *see* **Lamandini, Lusignani and Ramos Muñoz (2017)**.

781 **At:** https://eba.europa.eu/eu-banks-sail-through-corona-crisis-sound-capital-ratios.

782 *See* **Georgieva (2021)**.

783 At: https://www.ecb.europa.eu/pub/pdf/fsr/ecb.fsr202111~8b0aebc817.en.pdf.

784 **"Real GDP"**, a measure of aggregate output in an economy, is also known as **"GDP adjusted for inflation"**.

785 **ECB Financial Stability Review** (November 2021), pp. 16-17.

This Review also highlighted that, despite the lower risk of high rates of corporate defaults and bank losses in comparison to the previous period, risks stemming from the pandemic had not entirely disappeared, while some vulnerabilities had intensified.

(3) Against this background, and before the Russian Federation's military aggression against Ukraine, the overall resilience of the euro area banking sector remained the baseline scenario, as shown in the December 2020 "Eurosystem staff macroeconomic projections for the euro area".[786] The EBA EU-wide stress tests, published on 30 July 2021,[787] reinforced this. However, according to the ECB "Financial Stability Review" of May **2021**,[788] risks to financial stability remained elevated and had become more unevenly distributed. Thus, financial stability vulnerabilities as identified therein should not be underestimated, taking into account, *inter alia*: *first*, the increased importance of climate change-related transition and physical risks;[789] *second*, credit institutions' persistently low profitability, which to a certain extent was caused by the (very) low level of interest rates;[790] *third*, delays in sustainable economic recovery; and *fourth*, higher credit risks due to weaknesses in some sectors of the economy despite strong public support and government guarantees[791] (which in the medium term will require the adjustment of any ensuing Member States' fiscal imbalances).

In respect to the latter point it is noted that, pursuant to its **Communication of 20 March 2020** "on the activation of the general escape clause of the Stability and Growth Pact [SGP]",[792] the Commission assessed that: **(a)** the conditions for the use of this clause of the EU fiscal framework, namely, a severe economic downturn in the euro

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786 *See* **Section D above, under 6.1 (1)**.

787 At: https://www.eba.europa.eu/eba-publishes-results-its-2021-eu-wide-stress-test.

788 At: https://www.ecb.europa.eu/pub/pdf/fsr/ecb.fsr202105~757f727fe4.en.pdf.

789 *See* **Section A above, under 3.3.2**. On the implications of physical risk for financial stability, *see* also by means of mere indication **Boldrini *et al.* (2023)**. On how climate change-related risks are reflected in IFRS financial statements, *see* **European Systemic Risk Board (2024)**. On climate risks as a macroprudential concern and the role that macroprudential policies may play in assessing and managing these risks, *see* **Grünewald (2023a)**. For an overview of environmental sustainability (including the related international initiatives) and the (already quite extensive) legal framework governing sustainable finance, *see* by means of mere indication **Alexander (2019)**, pp. 347-371, various contributions in **Busch, Ferrarini and Grünewald (2021**, editors**)**, **Busch (2022) Colaert (2022)** and various contributions in **Smits (2024**, editor**)** and in **Busch, Ferrarini and Grünewald (2024**, editors**)** (forthcoming).

790 *See* also **above, under 1.2.1 (3)**.

791 For data on these fiscal measures, *see* **European Systemic Risk Board (2021a)**, **pp.** 58-68.

792 COM/2020/123 final. The "general escape clause" is laid down in Articles 5(1), 6(3), 9(1) and 10(3) of **Council Regulation (EC) No 1466/97** and Articles 3(5) and 5(2) of **Council Regulation (EC) No 1467/97** (namely, the two pillars of the SGP; *see* ***Excursus 3*** **above**).

area or the EU as a whole, are fulfilled;[793] and **(b)** overall fiscal guidance will be provided within this framework and as part of a streamlined "European Semester for economic policy coordination exercise".[794]

(4) A key (but not the single) challenge was an expected new wave of NPLs, across the board in relation both to credits and loans granted to corporates and households before the onset of the pandemic, to the extent that these would be affected by the economic slowdown, as well as to credit and loans granted during the pandemic crisis (albeit in certain cases to ailing businesses covered by State guarantees). The alertness of the ECB and the EBA on this front was given.[795] As noted in the foreword of the May 2021 Financial Stability Review by the ECB Vice-President, **Luis De Guindos**:

> "*The pandemic has imposed higher costs on some vulnerable countries with larger services sectors, which in turn implies a greater need for continued policy support and growing interconnections between their government, corporates and banks. More broadly, the euro area banking sector also continues to face headwinds, with its profitability subject to uncertainty about the balance of loan losses to come and provisions already booked.*"[796]

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793 *See* the "Statement of EU ministers of finance on the [SGP] in light of the COVID-19 crisis" (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).

794 The European Semester was introduced by **Council Regulation (EU) No 1175/2011** of 16 November 2011 "(…) on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies" (OJ L 306, 23.11.2011, pp. 12-24), which amended **Council Regulation (EC) 1466/97** (*see* **Excursus 3 above**).

795 *See* "Risk Assessment of the European Banking System", EBA, December 2020 (at: https://www.eba.europa.eu/sites/default/documents/files/document_library/Risk Analysis and Data/Risk Assessment Reports/2020/December 2020/961060/Risk Assessment_Report_December_2020.pdf) and "ECB Banking Supervision: Assessment of risks and vulnerabilities for 2021", 28 January 2021 (at: https://www.bankingsupervision.europa.eu/ecb/pub/ra/html/ssm.ra2021~edbbea1f8f.en.pdf).It is also noted that, on **16 December 2020**, the Commission published its **Communication** "Tackling non-performing loans in the aftermath of the COVID-19 pandemic" (COM/2020/822 final), which set out its new NPL Action Plan, intended to prevent a future build-up of NPLs across the EU due to the pandemic. The strategy proposed contains four pillars: *first*, the further development of secondary markets for distressed assets; *second*, the reform of the EU's corporate insolvency and debt recovery legislation; *third*, support for the establishment and cooperation of national asset management companies ('**AMCs**') to restructure distressed but viable credit institutions, serving as a vehicle for removing NPLs from their balance sheet and eventually a cross-border network among national AMCs at EU level; and *fourth*, the implementation of precautionary public support measures to ensure the continued funding of the real economy under the BRRD and State aid frameworks.

796 On the author's views concerning threats to EU financial stability amidst the pandemic and the various means to overcome them, *see* **Gortsos (2021c)** (with extensive further references).

2.3 Financial stability at the outbreak of the inflation crisis

(1) After a prolonged period of low and stable inflation and persistently low interest rates, 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. The raising of official interest rates had *on the one hand*, a positive impact: return to normality in terms of banking intermediation, which prompted a significant increase in banks' profitability.[797] *On the other hand*, it induced an, across the board, decrease in the market value of outstanding bonds,[798] and caused a correction of prices in stocks (at variable rates) and other asset categories.

(2) In May **2022**, the ECB published its bi-annual "Financial Stability Review",[799] which was prepared as the Russian Federation's military aggression against Ukraine unfolded and the economic outlook became uncertain. This Review *first*, assessed financial stability vulnerabilities and their implications for financial markets, debt sustainability, bank resilience, the non-bank financial sector and macroprudential policies; and *second*, highlighted that the risks, *inter alia*, to economic growth, as already identified in late 2021 and with significantly higher levels of inflation, have intensified due to the current geopolitical tensions.[800] Thus, since the main threat to euro area financial stability came from the impact through these macroeconomic channels, it concluded that financial stability conditions had deteriorated.[801]

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797 This impact is in particular positive for banks whose capital quality is not optimal.

798 This also had a negative impact on central banks' portfolios (especially when marking-to market of positions is required and there is an exposure to foreign exchange risk as well) – typical was the SNB case (*see* **Swiss National Bank (2023a)**, pp. 93 and 102).

799 At: https://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr202205~f207f46ea0.en.html.

800 According to the ECB macroeconomic projections of September 2022, economic growth was expected to decline from 3.1% in 2022 to 0.9% in 2023, and then recover to 2.3% in 2024 as gas markets improve and inflation and uncertainty decline.

801 For the sake of completeness, it is also noted that the reputational impact of the geopolitical tensions caused by Russia's invasion of Ukraine has also been felt in the BU where Russian banks were operating. Accordingly, in order to protect financial stability and bank depositors amidst that crisis situation, taking into account the significant deposit outflows experienced by the Austrian parent of Sberbank Europe AG (a subsidiary of Sberbank of Russia, whose majority shareholder was the Russian Federation) and its two subsidiaries in Croatia and in Slovenia, and in order to prevent any negative externalities to the banking sector in the euro area, the ECB assessed, on 28 February, that these credit institutions, which were significant and hence under its remit, were failing or likely to fail in accordance with **Article 18 SRMR**. On this case, *see* **Gortsos (2024b)**.

(2) A number of "severe" and "elevated" systemic risks to financial stability were also identified in the **Warning** "on vulnerabilities in the Union financial system" (**ESRB/2022/7**) of the General Board of the ESRB of **22 September 2022**.[802] The former group of systemic risks pertained to the following: deterioration of the macroeconomic outlook combined with the tightening of financing conditions due to the higher-than-expected inflation; financial stability risks stemming from a (possible) sharp asset price correction; and the implications of these developments for asset quality and the profitability outlook of credit institutions, whose resilience is also affected by structural factors, competition from new (and, in several cases, still non-regulated) providers of financial services, and exposure to climate change-related risks. On the other hand, elevated systemic risks were linked to vulnerabilities in the residential and the commercial real estate sectors, the probability of large-scale cyber incidents and the medium-term sovereign debt dynamics.[803]

On the basis of these considerations and noting that the resilience of the EU financial system was already supported by the actions of relevant authorities (including the ECB, the ESAs and national supervisory authorities), the ESRB warned that the probability of **"tail-risk scenarios"** materialising had increased since the beginning of 2022 and had been exacerbated by recent geopolitical developments.[804] Accordingly, it: *first*, called for relevant authorities and market participants to continue preparing for scenarios in which tail risks materialise, and for close coordination between relevant authorities and prudent risk management practices across all financial sectors and market participants to effectively address vulnerabilities in order to avoid market fragmentation and negative externalities; *second*, noted that credit institutions' prudent risk management practices should be complemented by capital buffers that are consistent with the prevailing level of risk; and *third*, highlighted the need to address financial stability risks beyond the banking sector.[805]

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802 OJ C 423, 7.11.2022, pp. 1-6. The ESRB's task of issuing warnings where systemic risk is deemed to be significant and its power, where appropriate, to make those public are set out in **Article 3(2), point (c) ESRBR**.

803 **ESRB Warning (2022)**, recitals (3)-(6) and (7)-(11), respectively.

804 *Ibid.*, first paragraph. **"Tail risk"** is a financial risk of an asset or a portfolio of assets moving more than three standard deviations from its/their current price, above the risk of a normal distribution. They include "low-probability" or "low-frequency" events, which may expose banks to "disaster myopia", i.e., to low-frequency risks and whose occurrence may cause disproportionally significant losses (*see* **Guttentag and Herring (1986)**).

805 **ESRB Warning (2022)**, second – fourth paragraphs, fifth paragraph and sixth paragraph (and recital (18)), respectively. See also **European Systemic Risk Board (2022)**, pp. 8-22.

(3) Furthermore, in accordance with the October **2022** IMF **"Global Financial Stability Report"**,[806] in view of the continuous rise of central banks' interest rates (due to persistently intensive inflationary pressures) and amidst the highly uncertain global environment, financial stability risks have globally increased substantially. In this respect, and *inter alia*, it warned that an economic environment of stagflation could challenge the banking sector's resilience, in particular as far as global banks would be affected.[807] The cost of funding for governments, non-financial corporates, households, and bank themselves also increased.

(4) The increase of risks to financial stability in the euro area due to the deterioration in economic and financial conditions was further highlighted in the (above-mentioned[808]) **ECB "Financial Stability Review" of November 2022**. The Review, published amidst the inflation crisis in the euro area and the tightening of the ECB's monetary policy, identified several (almost identical to the IMF) sources of risks to financial stability.[809]

Excursus 5: The spring 2023 banking turmoil

(1) On the turmoil

The first months of 2023 were marked by the banking turmoil[810] (also referred to as financial turmoil) prompted by the failure of three US medium-sized depository institutions: *Silicon Valley Bank of Santa Clara, California* ('**SVB**') and *Signature Bank, New York*, NY on 12 March and *First Republic Bank, San Francisco, California* on 1 May.[811] All three were resolved by the US Federal Deposit

806 *See* **International Monetary Fund (2022c)**.

807 *Ibid.*, Chapter 1 ("Financial Stability in the New High-Inflation Environment"), pp. 1-44.

808 *See* **Section E above, under 5**.

809 Furthermore, its Special Feature C is earmarked to the evolution of threats to financial stability from cyberattacks and the means to mitigate them. On financial stability conditions globally, relevant are also two further reports of November 2022: the Federal Reserve Board's "Financial Stability Report" on its assessment of the US financial system's resilience (at: https://www.federalreserve.gov/publications/financial-stability-report.htm); and the 2022 FSB Annual Report "Promoting Global Financial Stability" (at: https://www.fsb.org/wp-content/uploads/P161122.pdf), as well as **Borio *et al.* (2022)**. On the impact of several pandemic-related scenarios to the banking system, *see* also **Sánchez Serrano (2022)**.

810 Unlike most other sources, **Acharya *et al.* (2023**, editors**)** refer to a "banking stress".

811 These failures were induced by bank runs and were attributable to idiosyncratic business, as well as to specific regulatory and/or supervisory failures. However, they emphatically demonstrated that banks continue (over time and structurally) to be exposed to the risk of bank runs (especially from savers whose deposits are not covered by a deposit guarantee scheme); *see* on this the seminal work of **Diamond and Dybvig (1983)**.Furthermore,

Insurance Corporation ('**FDIC**') under the provisions of US banking resolution law.

The March US banking failure episodes spread over to Europe and led, on 19 March, to the approval by the FINMA of the forced takeover of the second largest Swiss bank, *Credit Suisse*, by the largest Swiss bank,[812] UBS in order to safeguard financial stability (both in Switzerland and internationally due to its global presence), and to protect the Swiss economy under this stressed situation.[813] This was not a resolution case.[814]

In this respect it is interesting to briefly note the following:[815]

First, the *Credit Suisse* failure was not caused by a direct, interconnectedness-induced spillover from the failed US banks, especially since, in accordance with a joint FINMA/SNB Statement of 15 March,[816] the bank was meeting the

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in the case of SVB (in particular), apart from business and supervisory failures, two major regulatory failures were the lack of *effective* interest rate risk regulation for all depository institutions, and the exemption since 2018 of medium-sized ones from some prudential rules, including the requirements for meeting prudential liquidity requirements (*see* **Feldberg (2023a)** and **(2023b)**).

812 *See* at: https://www.finma.ch/en/news/2023/03/20230319-mm-cs-ubs.

813 This forced takeover was legally based on the Emergency Ordinance enacted by the Swiss Federal Council on 16 March and with immediate effect, and then amended on 19 March (Ordinance of the Swiss Federal Council "on Additional Liquidity Assistance Loans and the Granting of Federal Default Guarantees for Liquidity Assistance Loans from the [SNB] to Systemically Important Banks", at: https://www.newsd.admin.ch/newsd/message/attachments/76289.pdf and at: https://www.newsd.admin.ch/newsd/message/attachments/76290.pdf, respectively. Legal basis were Articles **184(3)** and **185(3) FC** (on foreign relations and on external and internal security, respectively); on these Articles, *see* **Saxer and Brunner (2023)**. *See* also the accompanying explanatory document of 16 March (at: https://www.newsd.admin.ch/newsd/message/attachments/76270.pdf). In this respect, the role of the SNB as an LLR (*see* **Box 3 above**) was enhanced.

814 For a brief cost-analysis of this decision as compared to the resolution of *Credit Suisse*, *see* **Swiss National Bank (2023b)**, p. 8 and **Group of Experts on Banking Stability (2023)**, pp. 10-12. It is further noted that, on 2 April, the Swiss Office of the Attorney General ('**OAG**') opened an investigation into the takeover of *Credit Suisse* to investigate potential breaches of national criminal law by government officials, regulators and bank executives (*see* at: https://www.swissinfo.ch/eng/business/swiss-prosecutor-investigates-credit-suisse-takeover/48412234).

815 On the causes and the effects of this turmoil on financial stability, *see* **Gortsos (2023b)** (with extensive further references to primary and secondary sources). On the US banking episodes, *see* also details in the various contributions in **Acharya *et al.* (2023**, editors**)**. On the regulatory responses and the evolving challenges financial authorities, *see* also by means of mere indication **Carletti and Kiuhan-Vásquez (2024)**.

816 At: https://www.finma.ch/en/news/2023/03/20230315-mm-statement.

minimum capital and liquidity requirements for "systemically" important banks.[817]

Second, unlike at the time of the GFC, as all these bank failure episodes were ongoing, central banks in most advanced economies (including those in the EU, US and Switzerland) decided to continue raising their official interest rates despite the existing potential threats to financial stability.[818] In the author's view, amidst a highly and multidimensionally uncertain international environment (perma-crisis), there is a reinforced argument that monetary policy is, in principle, not the most appropriate instrument to safeguard financial stability, while price stability is crucial for durable financial stability. However, the trade-off between high inflation and financial (in)stability remains evident since the tightening of monetary policy to reduce high inflation can reveal vulnerabilities in the financial system. Accordingly, when setting their interest rates, central banks used to incorporate in the definition and implementation of their monetary policy an economic analysis of the impact that (further) increases (and/or, where appropriate, decreases) in interest rates may have on banks' credit policy, as well as on capital markets.[819]

Third, taking into account these episodes, the IMF introduced three new pillars in relation to risk assessments under its Financial Sector Assessment Program ('**FSAP**')[820] (jointly conducted with the World Bank): *first*, pay more attention in risk analyses relating to potentially vulnerable smaller financial companies; *second*, closely investigate the interlinkages of asset market stress,

817 The task of designating a bank as systemically important (such as *Credit Suisse* and UBS) is assigned to the SNB after having consulted the FINMA (Banking Act, Articles 7(2) and 8(3)). On the legal basis of Article 52 of that federal act and also based on mandates from the Federal Parliament, the Federal Council has carried out an in-depth assessment and evaluation of the regulation of these banks. This "Report of the Federal Council to safeguarding financial stability" of April 2024 is available at: https://www.efd.admin.ch/efd/en/home/financial-affairs/report-too-big-too-fail.html. The need for further and expedited progress in relation to financial reforms, was, *inter alia*, also highlighted in the IMF's Staff Report (May) for the 2023 Article IV Consultation on Switzerland (**International Monetary Fund (2023e)**, Annex IV, pp. 42-44)

818 *See* on this **Whelan (2023b)**.

819 Furthermore, decisions on raising or not interest rates, which *ceteris paribus* also leads to an appreciation of the exchange rate of the domestic currency, depends on several issues, such as: the flexibility of labour markets (with high flexibility being in favour of higher interest rates); the price sensitivity of imports and exports; the potential complication of the public debt management; and the stance of the general public.

820 On the FSAP, *see* **Gortsos (2023a)**, pp. 124-131.

financial firms' earnings, and their run risk, especially for banks; and *third*, strive towards better understanding of the funding risk spillovers across financial firms ("systemwide liquidity risks").[821]

(2) Reports published by international financial fora

In the aftermath of the banking turmoil, three international financial fora published significant reports:

(1) In October 2023, the BCBS and (immediately thereafter) the FSB published two Reports,[822] both of which relate to an overall assessment of the causes of the spring 2023 turmoil and the initial lessons learnt. Their different focus reflects the diverging objectives of these two international financial fora: *on the one hand*, the focus of the BCBS Report is on the assessment of the regulatory and supervisory responses to the failure episodes; it clearly states that the discussion therein is not an indication of planned revisions to the **Basel Framework**.[823] *On the other hand*, upon (correctly) pointing out that the failures of the US banks showed that even non-G-SIBs can still be systemically significant or critical in failure, the FSB Report assesses the implications for its **"Key Attributes of Effective Resolution Regimes for Financial Institutions"** framework[824] in resolving G-SIBs and other systemically important banks and sets out considerations on the effective implementation (and in some jurisdictions operationalization) of the international resolution framework that merit further attention as part of the future FSB work.

(2) These were followed by the publication on 14 December 2023 by the International Association of Deposit Insurers ('**IADI**')[825] of its own Report[826] ('**IADI Report (2023)**').[827] This Report undertakes an overview of actions taken, amidst

821 *See* **Adrian and Oura (2023)**. On the "systemwide liquidity stress testing tool", *see* **Oura (2022)**.

822 See **Basel Committee on Banking Supervision (2023)** and **Financial Stability Board (2023)**, respectively.

823 However, the BCBS's **"Core Principles for Effective Banking Supervision"**, have been amended in April 2024 (*see* at: https://www.bis.org/bcbs/publ/d573.pdf). On the case for further enhancing banking supervision, *see* also **Adrian *et al.* (2023)**.

824 This framework is included in an FSB Report adopted on 4 November 2011, which is currently in force as amended on 15 October 2014 (at: https://www.Financialstability-board.org/2014/10/r_141015). For an overview of the key elements of the initial report, see **Grünewald (2014)**, pp. 79-80 and **Kleftouri (2015)**, pp. 160-165.

825 On this international financial forum and its work, *see* **Gortsos (2024a)**, pp. 17-47.

826 *See* **International Association of Deposit Insurers (2023)**.

827 In the wake of the turmoil, questions arose whether there is need to increase the level of coverage and how these could be better used to also serve crisis prevention functions; see on this **Hüpkes (2023)**. In addition, in the US, the FDIC published, on 1 May 2023, a Report entitled "Options for Deposit Insurance Reform" (at: https://www.fdic.gov/analy-

and in the wake of that turmoil, by deposit insurers across jurisdictions[828] and, as noted in its Executive Summary;[829] it also briefly analyses the potential implications and emerging policy issues for deposit insurance systems resulting from the spring 2023 banking turmoil.[830] Finally (and most importantly), the Report identifies a number of issues and challenges, in four key areas, which should be further analysed and can inform the review, in 2024, of the "IADI Core Principles for Effective Deposit Insurance Systems" of 1 November 2014.[831] These include: deposit insurance design, bank failure resolution, financial safety-net coordination (including the strengthening of the IADI's engagement and cooperation with, *inter alia*, the BCBS and the FSB), as well as the implications of digital innovation.[832]

2.1 Most recent and current financial stability considerations in the EU in a global context

2.1.1 Reports in 2023

(1) The spring 2023 banking turmoil has been brought under control and, in any case, did not have impact on the stability of the EU banking system on account of EU credit institutions' limited exposures to the failed banks in the US and Switzerland. Interestingly and unlike in the GFC case, in the wake of the

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sis/options-deposit-insurance-reforms/index.html). *Inter alia*, this Report: (a) discusses the March failures; (b) undertakes a historical review of deposit insurance in the US; and (c) examines three options for reform that range in their departure from the *status quo* (i.e., maintenance of "Limited Coverage"; extension of "Unlimited Coverage" to all depositors; and offer of different deposit insurance limits across account types, with business payment accounts receiving significantly higher coverage than other accounts ("Targeted Coverage")), with preference to the third option on the basis of a cost-benefit analysis. On a more radical reform, *see* **King (2023)**.

828 **IADI Report (2023)**, pp. 14-22.

829 *Ibid.*, pp. 5-6.

830 *Ibid.*, pp. 23-49.

831 At: https://www.financialstabilityboard.org/2014/11/cos_090618. Like the BCBS's "Core Principles for Effective Banking Supervision" and the FSB's "Key Attributes", the IADI 2014 "Core Principles" are included in the **"Key Standards for Sound Financial Systems"**. These constitute the main component of the FSB's 'Compendium of Standards and Codes' entitled "International Standards and Codes to Strengthen Financial Systems" (widely known as the **'Compendium'**). These are designated by the FSB as deserving of priority implementation depending on country circumstances. The Compendium is available at: https://www.fsb.org/what-we-do/about-the-compendium-of-standards; the list of these key standards at: https://www.fsb.org/what-we-do/about-the-compendium-of-standards/key_standards. In April **2024**, they included 16 of the numerous reports issued by international organisations and fora; for more details, *see* **Gortsos (2023a)**, pp. 137-138.

832 **IADI Report (2023)**, pp. 50-52.

above-mentioned episodes and despite the eminent threats to financial stability, major central banks in advanced economies have not decided to lower but rather to further increase their official interest rates in an effort to control the higher-than-expected and persistently intensive inflation pressures. In that respect and amidst a highly uncertain global environment, this reinforces the (above-mentioned[833]) argument that monetary policy is not considered as the proper means to safeguard financial stability.[834]

(2) The **ECB "Financial Stability Report" of May 2023**,[835] published just after the outbreak of the banking turmoil, also reinforced that argument. However, in view of persistent inflation and tightening financing conditions, and despite the slight improvement in economic conditions, it identified five key sources of threat to financial stability (partly also in line with its November 2022 Report), considering that the resilience of euro area credit institutions has been noteworthy but should not give way to complacency.[836] In particular:

First, the overall outlook for euro area financial stability remained fragile, due to uncertain growth prospects, which weigh on the balance sheets of firms, households and governments, and the threat that an unexpected deterioration in economic conditions or financial tightening could lead to disorderly price adjustments in financial and real estate markets.

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833 *See* **above, under 1.3**.

834 In the words of **Adrian, Gopinath and Gourinchas (2023)**: "*Recent events have shown central banks and policymakers can deal with sizable financial stress without compromising their inflation-fighting stance. Regulators and central banks were able to contain contagion from the collapse of [SVB' and other US regional banks, as well as Credit Suisse, without retreating on the inflation front*." They further note, that through the lens of their proposed taxonomy (*see* **above, under 1.3 (1)**), these events "*suggest that the forceful responses by authorities to heightened financial stress helped reduce financial instability and allowed central banks to maintain their inflation fighting stance*."

835 *See* at: https://www.ecb.europa.eu/pub/pdf/fsr/ecb.fsr202305~65f8cb74d7.en.pdf).

836 On the overall performance of the **EU banking sector until March 2023,** including on its profitability and the robustness of credit institutions' capital and liquidity ratios, *see* the quarterly **EBA RDB** of 13 July (at: https://www.eba.europa.eu/sites/default/documents/files/document_library/Risk Analysis and Data/Risk dashboard/Q2 2023/1058319/EBA Dashboard - Q1 2023.pdf). Furthermore, on **28 July 2023**, the ECB and the EBA published the results of the most recent EU-wide stress test of 57 significant supervised entities directly supervised by the ECB within the SSM. This stress test was conducted with a view to assessing, *inter alia*, the impact of adverse shocks on their solvency and covered credit, market, counterparty and operational risks. The results were, on average, positive. (*see* ECB: "2023 stress test of euro area banks – Final results", at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.Report_2023_Stress_Test~96bb5a3af8.en.pdf).

Second, another policy priority in this respect was to continue focusing on developments in the NBFI sector to enhance its resilience, by monitoring, in particular, those parts that may pose bank-like financial stability and/or regulatory arbitrage risks, as well as to identify their build-up and initiate appropriate policy interventions.[837]

Third, tighter financial conditions are testing the resilience of: households (particularly those on lower incomes since their purchasing power was reduced and their ability to repay loans compromised); corporates that came out of the pandemic with greater debt and weaker earnings; and sovereigns facing rising funding costs (despite reduced pressures to fund additional fiscal support due to the falling energy prices).

Fourth, euro area real estate markets are undergoing a correction, as higher interest rates weigh on "affordability". This applies to both residential markets, where overvaluation in house prices has been corrected, but could turn disorderly if higher mortgage rates would increasingly reduce demand; as well as commercial real estate markets, which remain in a downturn, facing tighter financing conditions and an uncertain economic outlook, as well as weaker demand in the wake of the pandemic crisis; the ongoing correction could test the resilience of investment funds with interests in the commercial real estate sector.

Fifth, even though euro area credit institutions are robust and resilient, supported by strong capital and liquidity positions, higher funding costs and lower asset quality may weigh on profitability. In that respect, the Report considers that the preservation of this resilience depends on credit institutions' ability to build up capital to cover potential losses (and hence impacted profitability) due to a reduced demand for new loans, especially mortgage loans, as a result of rising interest rates.

Finally, increases in funding costs have to be taken into consideration, as well as the ability to efficiently manage credit risks arising from a potential deterioration of asset quality in loan portfolios exposed to commercial real estate, smaller firms and consumer loans.

(3) In accordance with the ESAs' "Spring 2023 Joint Committee Report on risks and vulnerabilities in the EU financial system" of 24 April,[838] national supervisors, financial institutions and market participants should remain vigilant in

837 On the related system-wide monitoring framework of the FSB and its work on contributing to the development of such policies, *see* at: https://www.fsb.org/work-of-the-fsb/financial-innovation-and-structural-change/non-bank-financial-intermediation.

838 At: https://www.eba.europa.eu/esas-call-vigilance-face-mounting-financial-risks.

the face of mounting risks even though EU financial markets remained broadly stable despite the challenging macro environment and recent market pressure in the banking sector.[839] In the same vein, in its 2023 "Global Financial Stability Report" of April 2023[840] the IMF remarked, *inter alia*, that "*financial stability risks have increased rapidly as the resilience of the global financial system has been tested by higher inflation and fragmentation risks*".[841]

(4) In the FSB Chair's letter to the G20 Finance Ministers and Central Bank Governors of 11 July 2023,[842] and taking into account the spring 2023 banking failure episodes, it is noted that the FSB work programme has been reprioritised, placing an additional focus on, *inter alia*, the interactions between interest rate and liquidity risk across the financial system, the role of technology and social media in deposit runs ("digital" bank runs[843]).

(5) Furthermore, Christine Lagarde – addressing the seventh annual conference of the ESRB on 16 November 2023 in her capacity as its Chair – remarked one year on from the ESRB's above-mentioned first general warning[844] that, even though the financial system has avoided the worst-case scenario of severe systemic risks materialising at the same time, proactiveness and alertness to financial stability risks is warranted as and when they arise.[845]

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839 According to the IMF's April 2023 World Economic Outlook, pursuant to the "baseline forecast", growth in advanced economies was expected to moderate from 2.7% in 2022 to 1.3% in 2023, while under a "plausible alternative scenario", which embeds further financial sector stress, it was projected moderating below 1%. *On the other hand*, the return of inflation to its overall 2% target was not foreseen, in most cases, before 2025, while indebtedness is also expected to remain high (*see* **International Monetary Fund (2023a)**, pp. 1-14). *See* also **Hansen *et al.* (2023)** and **International Monetary Fund (2023c)** in relation to Europe's inflation outlook, as well as **International Monetary Fund (2023d)** for an update on the World Economic Outlook.

840 *See* **International Monetary Fund (2023b)**.

841 Furthermore, **Catalán *et al.* (2023)** also draw attention to the geopolitical tensions transmitted to banks through the *real economy*. They note that the effect of disruptions to supply chains and commodity markets on domestic growth and inflation could exacerbate banks' market and credit losses, hence further reducing their profitability and capitalisation, diminishing their risk-taking capacity, and prompting them to cut lending, further weighing on economic growth. Finally, they consider that the financial and real-economy channels are likely to feed off one another, with the overall effect being disproportionately larger for, *inter alia*, banks with lower capitalisation ratios.

842 At: https://www.fsb.org/wp-content/uploads/P120723.pdf.

843 In this respect, *see* also at: https://www.srb.europa.eu/en/content/eu-resolution-authority-look-how-handle-digital-bank-runs-after-us-crisis. On the role of social media as a bank run catalyst, *see* **Cookson *et al.* (2023)**.

844 *See* **above, under 2.3 (2)**.

845 *See* **Lagarde (2023)**. On 3 November 2023, the US Financial Stability Oversight Council ('**FSOC**') issued the final version of its new "Analytic Framework for Financial Stability Risk Identification, Assessment, and Response" (at: https://home.treasury.gov/system/files/

(6) Several other official reports published thereafter highlight the elevated risks to financial stability and banking vulnerabilities in the environment of high interest rates. These include: the IMF "Global Financial Stability Report: Financial and Climate Policies for a High-Interest-Rate Era" of 10 October 2023;[846] the 2023 FSB Annual Report "Promoting Global Financial Stability" of 11 October 2023;[847] and the ECB Financial Stability Review of November 2023.[848]

2.1.2 Reports in 2024

(1) In early 2024, four new Reports dealing with financial stability considerations in the current environment of high interest rates deserve attention: the ESRB "Follow-up Report on residential real estate sector" of 1 February;[849] the BIS "Quarterly Review – International banking and financial market developments" of March;[850] and the Federal Reserve Board's "Financial Stability Re-

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261/Analytic-Framework-for-Financial Stability-Risk-Identification-Assessment-and-Response.pdf). This framework contains details on the vulnerabilities and the transmission channels that most commonly contribute to risks to financial stability and explains the range of authorities the FSOC may use to address any particular risk.

846 At: https://www.imf.org/en/Publications/GFSR/Issues/2023/10/10/global-financial-stability-report-october-2023. **Chapter 1** of this report points out that optimism about a "soft landing" of the global economy, whereby disinflation continued apace, and a recession was avoided, had eased financial conditions. The global credit cycle started to turn, as borrowers' debt repayment capacity diminishes, credit growth slows and thus risks to global growth are skewed to the downside.Furthermore, in **Chapter 2** assessing global banking vulnerabilities in a higher-for-longer environment, it is noted that, in accordance with a global stress test that has been enhanced to draw lessons from the March 2023 banking turmoil, many banks in advanced economies were exposed to the potential for significant capital losses, driven by marking-to-market securities and provisioning for loan losses. These results were consistent with a set of newly developed indicators, based on market data and analyst forecasts, which point to a substantial group of smaller banks at risk in the US, and risks increasing in Asia, China, and Europe.

847 At: https://www.fsb.org/wp-content/uploads/P111023.pdf.

848 At: https://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr202311~bfe9d7c565.en.html. In the Report's foreword, it is noted that despite the risks arising from the steep increases in interest rates, financial markets have remained resilient, which "*reflects expectations of a soft landing, with limited impacts on economic growth as inflation recedes to moderate levels*".

849 At: https://www.esrb.europa.eu/news/pr/date/2024/html/esrb.pr240201~2abae96aef.en.html. Pursuant to the analysis therein, the level of accumulated vulnerabilities remains significant in most EEA countries since the levelling off in the residential real estate markets has been too short-lived to significantly reduce the level of accumulated risks. However, as the growth of cyclical risks has decelerated or stopped, the results of the risk assessments for overall risk, which also accounts for cyclical risks, remain unchanged since 2021.

850 At: https://www.bis.org/publ/qtrpdf/r_qt2403.pdf.

port" of April on its assessment of the US financial system's resilience.[851] Noteworthy is also the IMF's most recent (April 2024) "World Economic Outlook: A Rocky Recovery". In this Report, the Fund notes that, despite the fears to the opposite, the raising of official interest rates has not led (at least yet) to a significant slowdown or even a recession, but global growth has held (surprisingly) resilient and steady. In addition, in relation to financial stability considerations, investigates the effects of monetary policy across countries and over time through the lens of mortgage and housing markets.[852]

(2) Furthermore, of interest are also the two 2024 EBA quarterly risk dashboards (RDB). In this respect, it is briefly noted that, pursuant to its RDB of **12 January 2024** for the third quarter of 2023, published together with a Risk Assessment Questionnaire ('**RAQ**'),[853] credit institutions in the EU/EEA remained highly profitable, were well capitalised (with a weighted average CET1 ratio at 15.8%) and maintained robust liquidity, despite their reluctance to increase their lending exposures (mainly due to macroeconomic uncertainty) and an expected deterioration in asset quality (as higher interest rates affect borrowers). Furthermore, their RoE was reported at 10.9%, supported by widening net interest margins (1.62%) and net interest income generation, while, on the other hand, their exposure to operational risk remained elevated driven by fraud and followed by cyber and data security, conduct and legal risks. However, according to its (most recent) quarterly dashboard of **4 April 2024** for the fourth quarter of 2023, even though EU credit institutions remained robust, signs of credit quality deterioration are becoming apparent.[854] Furthermore, in accordance with the ESAs' "Spring 2024 Joint Committee update on risks and vulnerabilities in the EU financial system" of **30 April**,[855] risks therein remain elevated in an economic environment of slowing growth, uncertainty about the development of official interest rates and ongoing geopolitical tensions.

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851 At: https://www.federalreserve.gov/publications/files/financial-stability-report-20240419.pdf.

852 *See* **International Monetary Fund (2024)**, Chapter 2, pp. 43-63 (with extensive further references).

853 At: https://www.eba.europa.eu/sites/default/files/2024-01/8039a4ea-6e61-45a9-a746-058fd070c34a/EBA Dashboard - Q3 2023.pdf.

854 At: https://www.eba.europa.eu/publications-and-media/press-releases/eu-banks-are-robust-signs-credit-quality-deterioration-are-becoming-apparent-ebas-risk-dashboard. *See* also the most recent (Issue 47) ESRB risk dashboard, based on data available to the ECB by 7 March 2024 (at: https://www.esrb.europa.eu/pub/rd/html/index.en.html).

855 At: https://www.eba.europa.eu/publications-and-media/press-releases/esas-risk-update-risks-remain-high-eu-financial-system.

SUMMARY TABLE 1 The system of rules in Article 127 TFEU		
Paragraph of Article 127	**Specific aspects**	**Application to Member States with a derogation**
Article 127(1): objectives of the Eurosystem	**primary objective**: preservation of **monetary stability** **secondary objective**: without prejudice to its primary objective, (a) support of the general economic policies in the EU to contribute to the achievement of its objectives as laid down in Article 3 TEU; and (b) action pursuant to the principle of an open market economy with free competition and in compliance with the principles set out in Article 119(3) TFEU	No
Article 127(2): basic tasks within the Eurosystem	definition and implementation of monetary policy conduct of foreign-exchange operations consistent with Article 219 holding and management of Member States' official foreign reserves promotion of the smooth operation of payment systems	No
Article 127(3): holding and management by Member States' governments of foreign-exchange working balances (without prejudice to Article 127(2), third point)		No

Article 127(4): *inter alia*, consultation of the ECB by national authorities regarding draft legislative provisions falling within its field of competence, within the limits and under the terms set out by the Council	Council Decision 98/415/EC	Yes
Article 127(5): contribution by the Eurosystem to the smooth conduct of policies *pursued by the (national) competent authorities* relating to the prudential supervision of credit institutions and the **stability of the financial system**		No
Article 127(6): specific tasks conferred upon the ECB (not upon the Eurosystem)	**(I) *specific* tasks of the ECB within the ESFS**: macroprudential oversight of the EU financial system (Council Regulation (EU) No 1096/2010) **(II) *specific* tasks of the ECB within the SSM**: (a) micro-prudential supervision of credit institutions, financial holding companies and mixed financial holding companies (Article 4 SSMR); and (b) direct macroprudential powers (Article 5 SSMR), including the ECB's 'top-up power' (Article 5(2) – in more detail: (i) the macroprudential tools available to the ECB are defined in Article 101 SSM-FR (ii) the ECB macroprudential decision-making process is detailed in Article 13h of the ECB Rules of Procedure	Yes Yes, under the conditions of the 'close cooperation' procedure (Article 7 SSMR)

SUMMARY TABLE 2 **Key policy responses of the ECB to the various financial and non-financial crises which erupted since 2007**		
Type of crisis	**Period**	**Policy measures**
Global Financial Crisis (GFC)	2007-2009	adoption and implementation of first set of unconventional monetary policy instruments: (1) gradual and drastic 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: currency swap lines through ECB swap agreements with several third country central banks; (4) massive purchases of euro-denominated covered bonds; and (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	2010-2019	(1) immediately following the onset of the fiscal crisis: *first*, further cut of the rate for MROs to 0.5% (and then to 0%, a level held until July 2022); *second*, further extension of the maturity of LTROs and exponential increase of their use; and *third*, further broadening of the pool of assets eligible by the Eurosystem as collateral in the conduct of its credit transactions and of the categories of eligible counterparties; (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) further recourse to further quantitative easing (QE), containing additional unconventional monetary policy instruments and mainly asset purchase programmes (APPs), including – initially:

		first, the (first) covered bond purchase programme of 2 July 2009 (CBPP), replaced by the second CBPP of 3 November 2011 (CBPP2); and *second*, the Securities Markets Programme (SMP) of 14 May 2010); (4) announcement on 6 September 2012 of the Outright Monetary Transactions (OMTs) Programme (which has never been implemented) **note**: the Judgment of the Court (Grand Chamber) of 16 June 2015 in the *Gauweiler case* confirmed the legality of this programme; (5) adoption and implementation of the "expanded" asset purchase programme, which included: *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) **note**: the Judgment of the Court (Grand Chamber) of 11 December 2018 in the *Weiss case* confirmed the legality of the PSPP (as implemented); (6) adoption and implementation of the programme for targeted longer-term refinancing operations (TLTROs) – there were three series of TLTRO; and (7) since September 2019; entry of the interest rate on the deposit facility (DFR) into negative territory (until recently, at -0.50%)

Pandemic crisis	2020-2022	(1) amendments to some of the ECB legal acts and instruments governing the general monetary policy framework of the Eurosystem (including (but not confined to) the "General Documentation Guideline" and the "Valuation Haircut Guideline"; (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; and (5) introduction of the Eurosystem repo facility for central banks and reactivation of swap lines with several third country central banks
Climate change crisis	ongoing	(1) "Climate Action Plan" and "Roadmap of climate change-related actions" annexed thereto (8 July 2021, on the basis of the new (2021) monetary policy strategy); (2) further measures to include climate change considerations in the monetary policy framework, including the "ECB Climate Agenda 2022" (4 July 2022); (3) amendment of ECB Decision (EU) 2016/948 on the implementation of the CSPP to: *first*, incorporate climate change considerations into the benchmark allocation; and *second*, introduce maturity limits for bonds of issuers with a poorer climate performance (9 September 2022 and December 2023); and (4) expansion of work on climate change (following the stocktake of climate actions since the launching of the "Climate Agenda 2022") and adjustment of the work plan in the light of the changing environment and improvements in data availability and methodologies (30 January 2024)

Inflation crisis	since 2022	(1) consecutive raising (during the period July 2022 – September 2023) of the three key ECB interest rates (quantitative tightening, (QT)); thus, with effect from 20 September 2023: ➢ interest rate on MROs: 4.50% (from 0%); ➢ interest rate on the marginal lending facility: 4.75% (from 0.25%); and ➢ deposit facility rate (DFR): 4.00% (from -0.50%); thus, their levels recorded at the onset of the GFC; (2) introduction of the "Transmission Protection Instrument" (TPI); and (3) extension by the ECB and the People's Bank of China of their bilateral euro-renminbi currency swap arrangement until 8 October 2025 (10 October 2022)
Spring 2023 banking turmoil	March – May 2023	no *specific* action was deemed necessary

Concluding Remarks

1. The scope of this study and its inherent limitations

This study clearly sets out what its readers should expect in the Preface. In particular:

(1) Its objective is to comprehensively present and thoroughly analyse the legal framework governing the definition and implementation of the single (and not common) monetary policy in the euro area during the first twenty-five years of the Eurosystem's operation. Given that this period has been marked by several financial and non-financial crises (from 2007 when the GFC started up to the current inflation crisis and the ongoing climate change crisis), the evolution of this legal framework in response to this "permacrisis"[856] has duly been taken into account; thus, the ultimate goal is to highlight the significant contribution and importance of the legal framework in shaping the single monetary policy of the Eurosystem not only in normal times but also in times of (continuous, as it proved) stress.

(2) The study does not intend to cover any aspect relating to the Eurosystem and its central bank members; it focuses on the single monetary policy and not on euro area central banking law in general. In this respect, the following remarks are in order in terms of its content:

First, the independence and accountability of the ECB and the NCBs whose currency is the euro, their liability regime and their immunities, as well as the monetary income (seigniorage) and other financial provisions of the Eurosystem are outside its scope.

Second, the Eurosystem's "green" monetary policy is very briefly discussed (mainly) only in the context of the ECB's "new" (2021) monetary policy strategy within the Eurosystem (including the "Climate Action Plan" and "Roadmap of climate change-related actions" annexed thereto (on the basis of the new monetary policy strategy) and further measures adopted on 4 July 2022 to in-

856 A term already referred to and used, among others, by ECB President, Christine Lagarde, in her welcome remarks also as Chair of the ESRB at its sixth annual conference "Addressing financial stability challenges" of 8 December 2022 (at: https://www.esrb.europa.eu/news/speeches/date/2022/html/esrb.sp221208~6434a7d3dd.en.html).

clude climate change considerations in the monetary policy framework, including the "ECB Climate Agenda 2022"),[857] and the prospect of introducing "green dual interest rates".[858]

Third, under the heading of ***Special Topics***, four closely related aspects are discussed in brief: the establishment of the digital euro; the role of the ECB in the ESFS and in the SSM; the euro short-term rate (€STR); and the ECB monetary policy decisions taken until April 2024 (i.e., the cut-off month for this study).[859] Furthermore, the study contains, as an ***Epilogue***, some considerations on the impact of monetary policy decisions on financial stability in the euro area.[860]

Fourth, the boxes included herein contain detailed information on earmarked issues relating to various aspects, such as a comparative analysis of the Eurosystem with the SNB (Box 3) and key judgments of the CJEU (Boxes 2, 6 and 8).

Furthermore, five topics which are linked to the flow of the presentation are dealt with under the heading **Excursus** (in principle very brief and similar): the Eurosystem's "consolidated accounts", the (just above-mentioned) green dual interest rates, the amendment of the Stability and Growth Pact (SGP), the establishment of an "Interinstitutional EU ethics body", and the spring 2023 banking turmoil, respectively.

Finally, on top of all other tables in the study, two summary tables (just above) schematically present the system of rules in Article 127 TFEU (the key primary EU law Article on the tasks of the ECB, Summary Table 1), as well as the key policy responses of the ECB to the various financial and non-financial crises since 2007 (Summary Table 2).

857 **Section A, under 3.3.2**.

858 ***Excursus 2*** in Section E.

859 ***Special Topics 1*-*4***, at the end of Sections A, C, D and E, respectively.

860 **Chapter 3**.

2. Key findings

2.1 On the Eurosystem's monetary policy strategy and the general framework on the implementation of the Eurosystem's monetary policy

(1) The definition and implementation of the single monetary policy in the euro area is the first among the basic tasks conferred upon the ECB within the Eurosystem by virtue of Article 127(2) TFEU;[861] it must be carried out within the limitations set out in Article 127(1) on the Eurosystem's primary (i.e., safeguarding price stability in the euro area) and secondary objectives.[862] For most of this 25-year period, the Eurosystem's monetary policy strategy for the definition of the single monetary policy, for which the GC is responsible, was based on the October 1998 setup, which was slightly revised in 2003 and consisted of three pillars: a "double-key" formulation of the price stability objective, comprising a quantitative definition of price stability as a yearly increase in the HICP of below 2%, *and*, within that definition, the aim of maintaining inflation rates in the euro area "*below, but close to, 2%*"; a *medium-term orientation* in view of the time lags in the effects of monetary policy on inflation; and two types of analysis: an economic and a monetary one.[863] A quite substantial revision took place in July 2021 with the adoption of the "new" monetary policy strategy. This remains consistent with the Eurosystem's mandate to achieve its primary objective, but also takes into account other considerations without prejudice to price stability. Its two pillars remain the same (although the second has been slightly revised) and it provides that price stability shall be (henceforth) best maintained by aiming for a 2% "symmetric" inflation target over the medium term (while tolerating transitory periods in which inflation may be moderately above target due to implementation lags) and that, next to the setting of key interest rates as the primary monetary policy instrument, asset purchases and longer-term refinancing operations will also be used, as appropriate, taking into account the experience gained after the GFC.[864]

It has also been discussed and clarified that the ECB is not acting within the Eurosystem (or even at all) as an LLR to credit institutions established in the euro area. Such a function must be (and has, indeed, been) performed, albeit

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861 The provisions of the ESCB/ECB Statute repeating those of the TFEU will not be referred to in these concluding remarks.

862 **Section A, under 3.1.2.2** and **3.1.2.1**, respectively.

863 *Ibid.*, **under 3.1.3** and **3.2**.

864 *Ibid.*, **under 3.3**.

under the conditions set out in Article 14.4 ESCB/ECB Statute, by the NCBs of the Member States whose currency is the euro (where these credit institutions are established) on their own responsibility.[865]

(2) The key provisions relating to the general framework on the implementation of the Eurosystem's monetary policy are laid down in the Treaties and the ESCB/ECB Statute. This general regulatory framework has been adopted – and then continuously adapted – by the GC and is contained in various ECB legal acts and instruments on the legal basis of primary law, in particular (and *inter alia*) Articles 18-19 ESCB/ECB Statute. In this respect, the following is noted:

First, despite the various (and subsequent) crises which erupted since 2007, the legal basis for the ECB legal acts and instruments adopted in the course of implementing the single monetary policy, including those on intermediate monetary objectives, key interest rates and supply of reserves in the Eurosystem, has remained the same. The relevant provisions of the TFEU and of the ESCB/ECB Statute have remained unchanged.[866] It is also (and in particular) noteworthy that the Statute is broadly based on the Draft Statute of the Committee of Governors of the Central Banks of the EEC of 21 November 1990.[867] Thus, the key legal features governing the implementation of the single monetary policy have been a *continuum* since the early 1990s and then the operationalisation of the Eurosystem.

Second, for the accomplishment of the basic tasks conferred upon the Eurosystem, autonomous regulatory powers have been conferred upon the ECB bodies, which pursuant to the TFEU can issue Regulations, Decisions, Recommendations and Opinions and pursuant to the ESCB/ECB Statute can adopt Guidelines and give Instructions to NCBs.[868] These rule-making powers allow the GC (and the Executive Board) to adopt the above-mentioned general regulatory framework and adapt it on the basis of evolving circumstances.

Third, as noted, this study does not delve into the dynamics of decision-taking with the ECB bodies, since this would require deeper analysis with the use of analytical skills in academic fields which are beyond the author's expertise (e.g., political theory and theory of institutions). Notwithstanding this, it can (more than) reasonably be argued that the content of the secondary legisla-

865 *Ibid.*, **under 3.1.2.3**.

866 This remark holds notwithstanding the fact that the Lisbon Treaty has substantially amended these sources of primary EU law, albeit not in relation to the provisions relating to the implementation of the single monetary policy.

867 **Section A, under 3.1.1 (1)**.

868 **Section B, under 1.2.1.1** (and **Box 5**).

tion adopted by the ECB is the by-product of compromises among the members of its bodies, especially when it comes to politically sensitive issues, often reflecting diverging views on basic policy orientation paths (and usually under the influence of specific macroeconomic and financial perceptions). This reinforces the argument that the links between central banking law (including both institutional settings and operational arrangements) and central bank political economy are very close. However, and in any case, decisions shaping monetary policy and the legal acts and instruments adopted to that effect always duly take into account the limitations set by the legal framework set out in primary EU law.

(3) One of the key findings of this study is the *broad* general regulatory framework governing the implementation of the single monetary policy. In particular:

Its *first pillar*, referring to the Eurosystem monetary policy operations (namely, open market operations and standing facilities), is mainly governed by the "General Documentation Guideline", which also sets out in detail the instruments employed, the procedures followed, as well as the eligible counterparties and the assets eligible as collateral in the Eurosystem.[869]

Furthermore, among the other legal acts and instruments adopted by the GC in relation to this pillar, of primary importance are the Valuation Haircut Guideline on valuation haircuts applied to the implementation framework; Guideline (EU) 2019/671 on the domestic asset and liability management operations by NCBs; Decision (EU) 2019/1743 on the remuneration of deposits, balances, and holdings of excess reserves; Guideline 2007/830/EC on monetary and financial statistics; and Guideline 2008/596/EC on the management of the foreign reserve assets of the ECB by NCBs (all as in force).[870]

The *second pillar*, which refers to the minimum reserve system, is governed by a Council Regulation of November 1998 (as in force) and the "ECB Reserve Requirements Regulation".[871]

869 *Ibid.*, **under 1.2.2.1**, **2.1**-**2.2** and **3**.
870 *Ibid.*, **under 1.2.2.3** (and **Table 3**).
871 *Ibid.*, **under 1.2.2.2** and **2.3**.

2.2 On the implementation of the single monetary policy during the GFC, the fiscal crisis in the euro area, the pandemic crisis and the (current) inflation crisis

(1) Following the onset of the GFC (in 2007-2008) and in its wake, in order to bolster liquidity in the euro area economy and taking into account that price levels were well below the benchmark set for price stability, the ECB (along with other major central banks), the ECB started having recourse to balance sheet policies (QE) and made use of unconventional monetary policy instruments, including by (but not confined to) gradually but drastically cutting the MRO rate and extending the maturity of LTROs (from 3 months to 1 year).[872]

(2) This policy stance continued during the subsequent fiscal crisis in the euro area (since 2010), when gradually, official interest rates came close to their effective lower bound (0%, a level held until July 2022). Amidst this prolonged crisis, the ECB further, and *inter alia*, had recourse to additional unconventional monetary policy instruments and mainly asset purchase programmes (APPs), including the Securities Markets Programme (SMP) of 14 May 2010 and the announcement on 6 September 2012 of the Outright Monetary Transactions (OMTs) Programme (as a crisis management measure). Even though this program has never been implemented, it gave rise to judicial review, which culminated in the adoption by the Court of its judgement of 16 June 2015 on the *Gauweiler case*. This was a benchmark decision to the extent that it confirmed the legality of this programme (as falling within the Eurosystem's monetary policy competence), while also considering that the proportionality principle was fulfilled, and safeguards were in place to ensure that the monetary financing prohibition set out in the TFEU was not infringed. Thus, the crisis management measures adopted by the ECB at that time were fully legitimised.[873]

The ECB also adopted and implemented an "expanded" asset purchase programme, which included, *inter alia*, the corporate sector purchase programme (CSPP) of 1 June 2016. The Judgment of the Court of 11 December 2018 in the *Weiss case* also confirmed the legality of the PSPP (as implemented).[874] Another novel element was the programme for Targeted Longer-Term Refinancing Operations (TLTROs).[875]

872 *Ibid.*, **under 1 (1)**.

873 **Section C, under 1 (2)** and **2.1**-**2.2**; on the Court's judgment, *see* Box 6.

874 *Ibid.*, **under 2.3**; on the Court's judgment, *see* Box 8.

875 *Ibid.*, **under 3**.

Finally, the ECB's "specific tasks" under Article 127(6) TFEU have also been activated during this period, first in 2010 in the context of the operation of the ESRB and then, in 2013, by the adoption of the SSMR upon the establishment of the Banking Union (BU),[876] broadening the range of its tasks also in the fields of financial macroprudential oversight and prudential banking supervision.

(3) Developments relating to the implementation of the single monetary policy during the pandemic crisis were also bold. In particular, since the onset of that crisis in February 2020 and, *inter alia*, the ECB adopted the Pandemic Emergency Longer-Term Refinancing Operations (PELTROs) and the Pandemic Emergency Purchase Programme (PEPP). It also applied amendments to its legal acts and instruments governing the general monetary policy framework of the Eurosystem, as well as to some pre-existing APPs, and introduced the Eurosystem repo facility for central banks and reactivated swap lines with several third country central banks.[877]

(4) Amidst the pandemic crisis, the ECB (and other major central banks) were keeping their official interest rates at unprecedentedly low levels. However, after a prolonged period of persistently low interest rates, which lasted even longer due to the pandemic, this trend was reversed due to higher inflation rates (in the euro area and in almost all other advanced economies, albeit at diverse levels) since mid-2021, which peaked in 2022. Within this new macroeconomic environment, the ECB resorted, during the period July 2022-September 2023 (which coincided with the full implementation of its new monetary policy strategy), to consecutive raising of its three key ECB interest rates (quantitative tightening, (QT)), to the effect that the interest rate on MROs, as well as the marginal lending facility and the deposit facility rate (DFR) returned in September 2023 to their levels recorded at the onset of the GFC. Furthermore, the "Transmission Protection Instrument" (TPI) was introduced and (*inter alia*) the ECB and the People's Bank of China extended (on 10 October 2022) their existing bilateral euro-renminbi currency swap arrangement until 8 October 2025.[878]

At the cut-off period for this study (i.e., April 2024), inflation in the euro area had been relatively tamed but was still above the 2% "symmetric" inflation target level over the medium term. Thus, despite a pause in the ECB interest rate hikes (which began in September 2023) and concerns relating to future growth

876 ***Special Topic 2***.

877 **Section D**.

878 **Section E**.

prospects (i.e. fears of a recession), the ECB has not yet decided to cut its key interest rates. This also applies to all advanced economies with the mere exception of Switzerland.[879]

(5) The monetary policy measures taken by the ECB within the Eurosystem during these consecutive financial and economic crises are reflected on the evolution of the Eurosystem's "consolidated accounts". In that respect, Table 6 shows developments during the period 2007-2017 (highlighting the impact of the measures taken amidst and after the GFC and the subsequent euro area fiscal crisis); Table 8 depicts those during the period December 2019-January 2022 (indicating the impact of the measures taken amidst the pandemic crisis); and Tables 9-10 show those in 2022 and 2023 amidst the current inflation crisis. This allows the assessment of how these consolidated accounts have developed during both the period of (very) low interest rates and quantitative easing (QE) – including the extensive recourse to APPs – and the subsequent (recent) period of raised interest rates and quantitative tightening (QT).

2.3 On the linkages between monetary policy and financial stability

The last part of the study focuses on the linkages between financial stability and monetary policy. It first discusses how conditions of financial instability may affect the stance of monetary policy and then, in more detail, the impact of monetary policy actions on financial stability, both in an environment of high inflation (as is currently the case) and in an environment of very low inflation (as that prevailing for a prolonged period of time since the onset of the GFC).[880] The discussion then turns to financial stability conditions in the euro area (just before the outbreak of the pandemic crisis, at the outbreak of the inflation crisis and currently) through the lens of international and EU official reports[881] – taking also into account the spring 2023 banking turmoil.[882] Key findings include the following:

First, even though, under certain conditions, monetary policy may need to be adjusted in periods of crisis, taking into account potential threats to financial stability and to the real sector of the economy, this should not always be case (as, e.g., during the recent (spring 2023) banking turmoil).

879 ***Special Topic 4***, **under (1)**.

880 **Chapter 3, under 1**.

881 *Ibid.*, **under 2**.

882 ***Excursus 5***.

Second, even though higher official interest rates have not led to a significant slowdown or even a recession, global growth has been (surprisingly) resilient and steady and the financial system has avoided the worst-case scenario of severe systemic risks materialising, whilst, at the same time, risks to financial stability and banking vulnerabilities in the environment of high interest rates are elevated. In particular as concerns the EU, the most recent (April 2024) data reveal that, even though EU credit institutions are robust, signs of credit quality deterioration are becoming apparent and risks in the EU financial system remain elevated in an economic environment of slowing growth, uncertainty about interest rates and ongoing geopolitical tensions.[883]

Finally, the preservation of financial stability even in times of high(er) inflation mainly depends on the existence of appropriate micro- and macroprudential financial regulation, the efficiency of macroprudential financial oversight by central banks, the quality of financial prudential supervision, and the appropriateness of the related sanctioning regimes. Monetary policy is therefore not considered the appropriate means to safeguard financial stability despite the trade-off between persistently high inflation and financial (in)stability, which usually induces central banks, when setting interest rates, to also integrate into their monetary analysis the impact on the lending activity of credit institutions and on capital markets.

883 **Chapter 3, under 2.4.2 (2)**.

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This study, completed in April 2024, aims at comprehensively presenting and thoroughly analysing the legal framework governing the definition and implementation of the single monetary policy in the euro area during the first twenty-five years of the Eurosystem's operation. In this historical context, the focus is on the legal aspects pertaining to the definition and implementation of this single monetary policy since the establishment of the Eurosystem on 1 January 1999 amidst, and in response to, several financial and non-financial crises which erupted in the course of that period (and in particular since 2007, which marked the onset of the Global Financial Crisis). The ultimate goal is to highlight the significant contribution and the importance of the legal framework in shaping the single monetary policy of the Eurosystem, in normal times and at times of stress. The study is structured in two key chapters entitled "The Single Monetary Policy in the Euro Area: Definition and Legal Framework" and "Implementation of the Single Monetary Policy in the Euro Area in Periods of Crises". The Epilogue (Chapter 3), entitled "Considerations on the Impact of Monetary Policy Decisions on Financial Stability in the Euro Area" discusses the interaction between monetary policy and financial stability, as well as the latest (until April 2024) financial stability conditions in the euro area through the lens of international and EU official reports, taking also into account the (spring 2023) banking turmoil.