

THE ECB'S NEGLECTED SECONDARY MANDATE:

AN INTER-INSTITUTIONAL SOLUTION

Nik de Boer & Jens van 't Klooster



The authors gratefully acknowledge valuable comments by Fabian Amtenbrink, Will Bateman, Marc Beckmann, Ana Bobić, Michele Chang, Isabel Feichtner, Diane Fromage, Seraina Grünewald, Stanislas Jourdan, Rosa Lastra, Joana Mendes, René Repasi and René Smits. All errors are our own.

First published October 2021.

Download:

This document is available to download as a free PDF at: positivemoney.eu

Permission to share:

This document is published under a creative commons licence:
Attribution-NonCommercial-NoDerivs 4.0 International License



EXECUTIVE SUMMARY

The ECB's secondary mandate requires it to support broader economic policies by and in the EU. Until recently absent from the ECB strategy, the secondary mandate features prominently in the ECB's 2021 review of its monetary policy strategy.

This report asks: How should the ECB interpret the many objectives that the secondary mandate mentions? And how should it act on them? A more prominent role for its secondary mandate fits well with the new, more political role of the ECB, but it should not act on the secondary mandate alone. Why is that?

The requirements that the legal text imposes on the ECB are paradoxical and difficult to reconcile. We explain the paradox in terms of three features. Firstly, the secondary mandate is binding on the ECB so that it must support the EU's economic policies where this is possible without prejudice to price stability. However and secondly, the secondary mandate is also highly indeterminate because there are many relevant secondary objectives and ways to support them. Acting on the secondary mandate requires prioritising objectives and designing new instruments. Yet, thirdly, the ECB lacks the competence to develop its own policies to pursue the secondary objectives. For the ECB to simply choose its own secondary objectives and act on them raises severe legal and democratic objections.

To resolve this paradoxical situation, we propose that the specification of the secondary objectives should take place via high-level coordination with the political institutions of the EU. Unlike direct instructions which are illegal under EU law, coordination would be compatible with central bank independence and strengthen the ECB's ability to pursue price stability. We propose three main avenues to give shape to such interinstitutional coordination.

THREE MAIN AVENUES FOR INTER-INSTITUTIONAL COORDINATION



SUPPORTING
EXISTING
POLICIES OF
OTHER EU
BODIES

NEW INDICATIVE
ECONOMIC
POLICY
GUIDELINES SET
BY THE COUNCIL

AN ENHANCED
MONETARY
DIALOGUE WITH A
MORE PROMINENT
ROLE FOR THE
SECONDARY
MANDATE

TABLE OF CONTENTS

FOREWORD

05

INTRODUCTION

06

**THE PARADOX OF THE
SECONDARY MANDATE**

- Bindingness
- Indeterminacy
- Supportive nature

09

**COORDINATION AS A WAY TO
OVERCOME THE PARADOX**

13

**INTER-INSTITUTIONAL STRUCTURES
FOR COORDINATION**

- Support tied to existing policies
- Broad economic policy guidelines set by the Council
- An enhanced Monetary Dialogue
- Future steps

17

CONCLUSION

20

FOREWORD

By Stanislas Jourdan, Executive Director of Positive Money Europe

The question of the ECB's secondary objective is a thorny topic that I have been passionately engaging with over the past 5 years of my work at Positive Money. It struck me early on that any mention of Article 127 in a debate would almost systematically give birth to a stalemate between two viewpoints. On the one hand, the flexibility offered by the vagueness of the clause "general economic policies in the Union" offers a convenient justification for getting the ECB involved in any wishes one may have about the general direction of public policy, e.g., full employment, climate protection or anything else. On the other hand, this apparent flexibility creates a difficulty for central bankers, who are left to choose which of these priorities they should aim to contribute to, in addition to (and without prejudice to) price stability. As former ECB board member Benoit Cœuré once said at the French National Assembly as a response to a related question: "Setting priorities between different objectives is the definition of policy [...] and that is what parliaments do".

Earlier this year, Positive Money Europe, together with a number of renowned experts on this topic,¹ argued that an explicit specification and prioritisation of the secondary objectives of the ECB are needed to unlock this stalemate. At the time, we wrote that "to add legitimacy for the ECB acting on its secondary objectives, a formal procedure involving both the Council and the European Parliament should be developed in order to specify and prioritise the policy areas where the ECB would be expected to deliver".

In many ways, such a process would resemble the Bank of England's accountability framework, which allows the Chancellor of the Exchequer to specify at least once a year the "remit" of the central bank. It was recently used to explicitly give a mandate to the Bank of England to green its corporate asset purchase programme (CBPS).² It was, however, evident to us that further investigation is needed as to what concrete legal pathways could be exploited to create such a mechanism in the Eurozone.

It was very natural for Positive Money Europe to commission such work to Dr. Jens van 't Klooster and Dr. Nik de Boer, whose remarkable paper on the ECB's "democratic authorization gaps"³ has largely contributed and reinforced our prior thinking on this topic. Moreover, we are extremely delighted to publish the result of their work at a more than timely moment, when prominent voices, including from the ECB, are discussing this topic. Without pretending to have all the answers, this paper is a genuine attempt to continue and intensify our constructive dialogue with all parties involved, in order to find a balanced and decisive way of equipping the ECB with a comprehensive and operational mandate that can adequately respond to society's evolving needs and priorities.

1. "The ECB needs political guidance on secondary objectives", Euractiv, published on 22 April 2021, co signed by Stanislas Jourdan, Grégory Claeys, Pervenche Berès, Nik de Boer, Panicos Demetriades, Sebastian Diessner, Jens van 't Klooster, Vivien Schmidt

2. *Bank of England given green remit to aid net zero carbon goal*, The Guardian, 2 March 2021
3. de Boer, Nik and van 't Klooster, Jens, *The ECB, the Courts and the Issue of Democratic Legitimacy After Weiss* (October 15, 2020). *Common Market Law Review*, volume 57 issue 6, 2020. Available at SSRN: <https://ssrn.com/abstract=3712579>

1

INTRODUCTION⁴

The European Central Bank's recent review of its monetary policy strategy marks the unexpected return of its long neglected secondary mandate.

The secondary mandate requires the ECB to "support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union." While in the past the ECB focused almost exclusively on its primary objective of safeguarding price stability, the central bank now explicitly recognizes the relevance of other objectives, environmental protection in particular.

How can the ECB fulfil the requirements that its secondary mandate imposes on it? Like central banks around the world, the ECB struggles with new expectations placed on it. Critics already assert that the ECB's pursuit of goals beyond price stability turns it into a political actor. Such a role conflicts with the ECB's constitutional status as a non-elected and independent body that makes decisions on the basis of its monetary expertise. At

the same time, the secondary mandate is as legally binding as the primary mandate. The ECB cannot legally ignore its duty to take account of objectives beyond price stability.

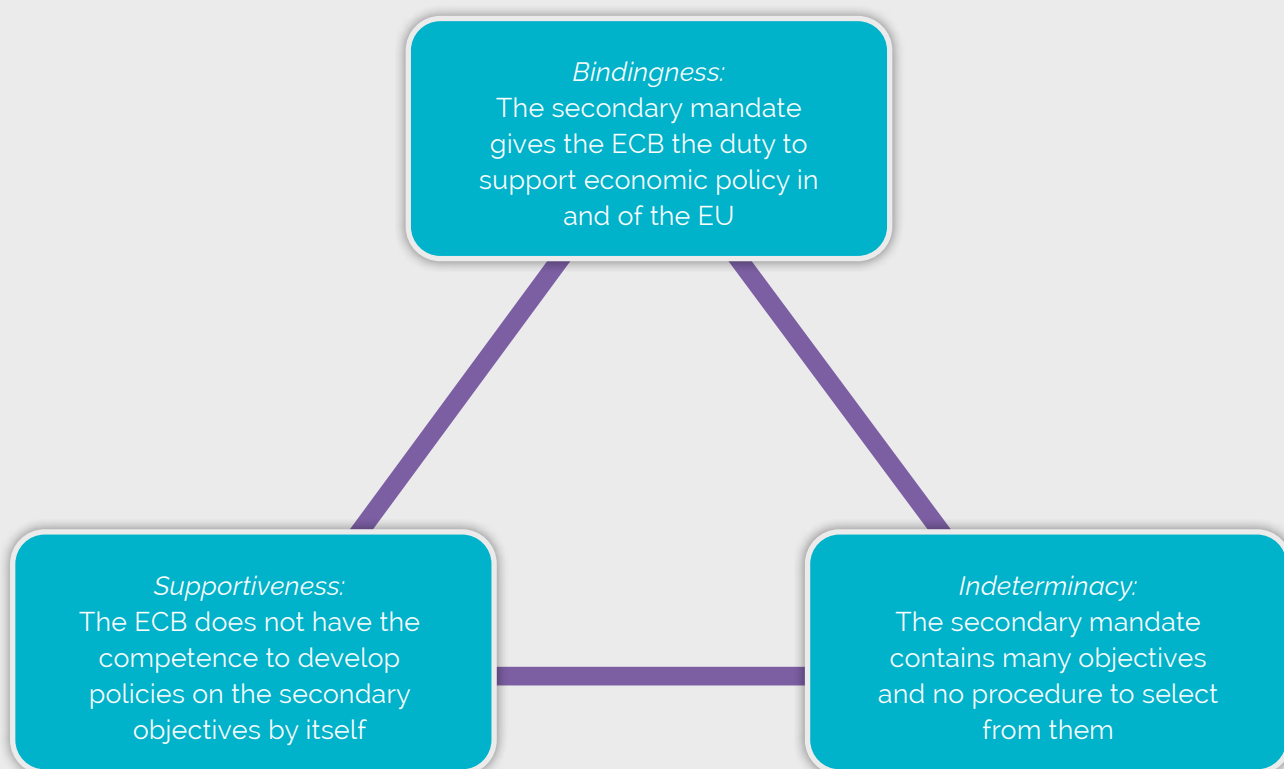
In this report we explain that the secondary mandate confronts the ECB with a paradox resulting from three features: its bindingness, indeterminacy and supportive nature. Consider these features in turn: First, the secondary mandate is legally binding and requires the ECB to support economic policy and the EU's broader objectives where this does not prejudice price stability. However, and this is the second feature, the secondary mandate does not specify how the ECB should do this. The secondary mandate contains dozens of objectives, but does not provide for a procedure to prioritise any. Implementing the mandate would thus require the ECB to decide on a set of controversial issues and balance competing objectives. Yet, thirdly, the ECB does not have the competence to develop policies on the secondary objectives by itself. Instead, it is to

4. This report draws extensively on Jens van 't Klooster and Nik de Boer, "The ECB's new strategy and the paradox of the secondary mandate" (unpublished manuscript).

merely "support" economic policies in the Union with a view to realizing the secondary objectives. As a result of these three features, the ECB faces an all but impossible task: it has to act on its secondary

mandate, while lacking the legal and democratic authority to make the contested choices that doing this requires.

FIGURE 1 – The paradox of the ECB's secondary mandate



The way to resolve this paradox, we propose, is closer coordination between the ECB and the EU's political institutions on the interpretation of the secondary mandate. If the Council and the EP were to offer clear political guidance on the interpretation of the secondary mandate, this would facilitate the ECB to act on its legal duties. The ECB could follow this guidance without having to make policy on the secondary objectives itself. Such coordination would not be legally binding as such and thus would not endanger the ECB's independence, or threaten its price stability mandate. In fact, it would safeguard the ECB's independent status by leaving to political institutions the political choices of ranking and specifying the secondary objectives.

We review three avenues to give shape to such coordination. The first sees the ECB tie support to existing EU-level policies. The ECB has already done this for its OMT programme, but could also use the EU's Green Taxonomy and

other environmental policies in the design of its operations. Although a step forward this still leaves specifying secondary objectives and prioritising them to the ECB. Accordingly, we also discuss ways in which broad policy guidelines set by the Council under Article 121 and an enhanced Monetary Dialogue with the EP could contribute to clarifying the ECB's secondary objectives.

The remainder of this report is structured in the following manner. First, we spell out which legal obligations the secondary mandate entails for the ECB's monetary policy and explain how the secondary mandate confronts the ECB with a paradox. Secondly, we explain why closer coordination between the ECB and political institutions is the most elegant way to resolve this paradox and why it does not threaten the ECB's independence. We conclude by outlining concrete institutional proposals for how this coordination could take shape.

2

THE PARADOX OF THE SECONDARY MANDATE

Its secondary mandate confronts the ECB with a paradox. This is the result of three key features: **binding duties, indeterminate provisions and a duty to support**. The secondary mandate is **binding** in the sense that it specifies not just that the ECB has the legal power to act on it, but also an obligation to do so. However, the secondary mandate is **indeterminate** and leaves open how the ECB should determine what its secondary objectives are. At the same time, the secondary mandate is **supportive** in nature, which precludes the ECB from making its own economic policy. As we now show, **the ECB cannot meet these three requirements without coordination with other EU political bodies**.

Bindingness

Article 127 (1) TFEU spells out two types of objectives for the ECB. Its primary mandate is to "maintain price stability". Its secondary mandate is less determinate with regard to objectives. Without "prejudice to the objective of price stability", the ECB has the duty to "support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union."⁵

Although secondary to the primary objective of price stability, both parts of Article 127 (1) are equally binding on the ECB. As its board member Frank Elderson recently explained 'the ECB's "secondary objective" stipulates a duty, not an option' (Elderson 2021). He asks us to imagine two policies which both do equally well on promoting

5. In addition, Article 127 (5) TFEU contains a similar provision specifically on financial stability, which states that "[t]he ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system." On this provision see: Lastra and Alexander 2020; Psaroudakis 2018.



ARTICLE 127 TFEU

1) The primary objective of the [ECB] shall be to maintain price stability. Without prejudice to the objective of price stability, the [ECB] shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union.

price stability. However, only one policy supports the EU's broader objectives, while the other does not. In choosing between these two policies, Elderson points out, the ECB is required to choose the policy that fits with its secondary mandate (see also Ioannidis, Hlášková Murphy, and Zilioli 2021, 15). It is illegal for the ECB to ignore the secondary mandate just like it would be illegal for the ECB to ignore its price stability mandate (see e.g. Grünewald 2021; Selmayr 2015, 1251–52; Smits 1997, 189; Thiele 2016, 533; Várhelyi and Lieshout 2021, 147).

The monetary policy strategies that the ECB published in 1998 and 2003 do not mention the secondary mandate but this has started to change (ECB 1998; 2003). The considerable

neglect of the secondary mandate is difficult to reconcile with the minimum legal requirements that Article 127 (1) TFEU imposes (Grünewald 2021, 275; similarly for environmental protection and Article 11 TFEU: Solana 2018). The European Court of Justice generally offers the ECB broad discretion in monetary policy. Nonetheless, it subjects that discretion to a duty to state reasons and a requirement for the ECB "to examine carefully and impartially all the relevant elements of the situation in question".⁶ The ECB's practices regarding the secondary mandate stand in tension with these requirements. Before the 2021 Review, the secondary mandate was almost entirely absent from its monetary policy strategy and key monetary policy decisions.⁷ The ECB has thus failed to explain how its operations are consistent with the secondary objectives and how they should be evaluated from this perspective. This absence stands in significant tension with the ECB's duty to state reasons. The 2021 Review does mention the secondary mandate. It also commits the ECB to supporting the EU's current environmental objectives:

"the Governing Council is committed to ensuring that the Eurosystem fully takes into account, in line with the EU's climate goals and objectives, the implications of climate change and the carbon transition for monetary policy and central banking."

Yet, what does acting "in line with" mean here? The new Strategy does not contain explicit reasoning on how major monetary policy decisions reflect the obligations that the secondary mandate imposes.

6. Case C-493/17, Weiss and Others, EU:C:2018:1000 (hereafter: Weiss), par. 30; *similarly Case C-62/14, Gauweiler and others v. Deutscher Bundestag*, EU:C:2015:400, par. (hereafter: Gauweiler), par. 68.

7. "The ECB has not to date relied on the secondary objective as an explicit legal basis for its monetary policy measures." (Ioannidis, Hlášková Murphy, and Zilioli 2021, 13)



Indeterminacy

Why has the ECB not done more to explain how its policies contribute to the secondary mandate? To understand this, we need to consider its **indeterminacy**. The secondary mandate is like a Rorschach test: everybody will see other objectives for the ECB to pursue and requirements that it imposes. **From a legal viewpoint, there are multiple possible interpretations of how the ECB should implement the secondary mandate.**

For one, it largely leaves open which secondary objectives the ECB should pursue. Article 127 (1) refers to “the general economic policies in the EU” as well as a wide range of objectives listed in Article 3 TEU. The pursuit of these quite different objectives can require different and mutually incompatible policies (Claeys and Domínguez-Jiménez 2020, 84–85). In addition to the EU’s climate goals, the ECB could also have paid more attention to other strategic priorities such as economic inequality and inclusive growth, digitalisation and tech policy or support for the Next Generation EU bonds. All these topics are absent from the 2021 Review.

At the same time, many of the secondary objectives are so general that it is difficult to imagine any policy that could not be justified as contributing to at least some. The ECB could have done much more to promote the EU’s environmental objectives, but also much less. It could have focused on merely protecting itself against financial risk resulting from climate change but now also uses its monetary policy to “promote more consistent disclosure practices in the market” (ECB 2021). The ECB could also have done more in using its monetary policy operations to actively promote green lending (van ’t Klooster and van Tilburg 2020; NGFS 2021). The Treaty contains no procedure for ranking secondary objectives and deciding how to incorporate them into operations.

ARTICLE 3 TEU

1. *The Union’s aim is to promote peace, its values and the well-being of its peoples.*
2. *The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.*
3. *The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance*
It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.
It shall promote economic, social and territorial cohesion, and solidarity among Member States.
It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced.

Supportive nature

The secondary mandate does not specify what the ECB should do exactly but it is clear that it should not do more than merely supporting the existing general economic policies in the Union.

This reflects the fact that the ECB cannot simply develop its own economic policy (Grünewald 2021, 275–76; Ioannidis 2020, 371; Ioannidis, Hlásková Murphy, and Zilioli 2021, 4 and 17; Smits 2021). The tasks of protecting the environment, promoting employment and deciding on fiscal policy are assigned to the EU's political institutions and the Member States.⁸ The ECB does not have competences to make policy with regard to these broader objectives. In practice it will be hardly possible for the ECB to set monetary policy that supports existing economic policies, without also making policies for those topics. It requires setting priorities between different objectives. It also involves new operational choices in designing new instruments. Take again the case of climate policy. Any measure taken by the ECB to green the financial system will impact the allocation of capital; it can steer money towards specific green sectors as well as steering it away from carbon-intensive ones. In acting on its secondary mandate, the ECB unavoidably faces several significant choices which impact economic policy far beyond the medium-term price level.

More importantly: it would also be undemocratic for the ECB to simply design its own policies on the secondary objectives. As a non-elected and independent institution, the ECB was historically given a narrow mandate to accompany its strict independence.⁹ In the absence of clear instructions on what to do, there are grave democratic concerns over monetary policy objectives selected by the ECB alone. This is also problematic from a legal perspective since democracy itself is one of the core values of the EU (Article 2 TEU) and “[t]he functioning of the Union shall be founded on

representative democracy” (Article 10 TEU). That democratic concern also featured prominently in the German Constitutional Court's decision of 5 May 2020 to declare the ECB's Public Sector Purchase Programme (PSPP) **ultra vires**.¹⁰ An ECB that cherry-picks its own secondary objectives sets itself up for new legal challenges.

The ECB cannot set its own objectives, without thereby going beyond merely supporting the objectives of other EU policymakers. If the ECB sets its own secondary objectives, it no longer supports other policies, but decides on its own. Yet, if the ECB does nothing with its secondary mandate, it fails on its legal obligations.

8. See for example Title IX of the TFEU, which leaves employment policy largely to the Member States and Article 192 TFEU, which grants the European Parliament and the Council the competence to adopt legislation to protect the environment.

9. Amtenbrink and Repasi (2020), Bateman (2020), Borger (2020), Dawson, Maricut-Akbik, and Bobic (2019), Feichtner (2020), Fromage et al. (2019).

10. 2 BvR 859/15 etc., PSPP, judgment of 5 May 2020, ECLI:DE:BVerfG:2020:rs20200505_2bvrr085915.

3

COORDINATION AS A WAY TO OVERCOME THE PARADOX

The ECB must act on its secondary mandate, but avoid simply imposing new objectives on itself. To “square the circle” (Lastra 2015, 80), the ECB should coordinate its policies with the political institutions of the EU. This would be a break with earlier practices, but provide the ECB with a sound legal and democratic basis for its current policies.

Throughout its existence the ECB has struggled with its secondary mandate. Historically the ECB's independence was justified on the basis of its democratically authorized mandate focused on price stability. The central bank was expected to use one instrument, setting interest rates, to achieve a well-defined price stability objective. In 1998 and 2003 the ECB published detailed strategies for how to achieve price stability, but said nothing about its secondary mandate. In over 2500

speeches between 1997 and the start of the recent review of the monetary policy strategy in 2020, members of the ECB Governing Council referred to the secondary objective(s) in only 10 speeches; 6 times in 1999, and then once in 2002, 2007, 2009, and 2016.

Today, the ECB faces many new choices, which it has to date navigated all by itself (de Boer and van 't Klooster 2020; van 't Klooster 2021). The ECB's 2012 Outright Monetary Transactions (OMT) programme ended the crisis in European bond markets, but its legality remains contested. In 2015, 35,000 German citizens asked the German Constitutional Court to prohibit the OMT programme.¹¹ However, had the ECB not acted, the Eurozone crisis could have easily marked the end of monetary integration. In 2015 a multi-

11. Culminating in the *Gauweiler* case before the Court of Justice of the EU and two judgments by the German Constitutional Court: 2 BvR 2728/13 etc., *OMT reference*, BVerfGE 134, 366. Order of 14 Jan. 2014, ECLI:DE:BVerfG:2014:rs20140114.2bvr272813; 2 BvR 2728/13 et al., OMT II, BVerfGE 142, 123, judgment of 21 June 2016, ECLI:DE:BVerfG:2016:rs20160621.

trillion government bond Public Sector Purchase Programme (PSPP) again landed the ECB in the German Court, which in May 2020 ultimately came out in favour of the litigants.¹² Just a few weeks earlier, the ECB had broken new taboos with its 2020 Pandemic Emergency Purchase Programme (PEPP). Today the EU faces the epochal challenge of impending climate catastrophe, where the ECB is once more expected to play a pivotal role.

Across all these controversial programmes, the ECB has kept its focus on price stability, but said very little about its secondary mandate.

Consider the PEPP. It serves to fight an economic downturn and stage an economic recovery, but also aims to stabilize government bond markets. Both objectives are narrowly justified as the ECB's response to an 'extraordinary and acute economic crisis, which could jeopardise the objective of price stability and the proper functioning of the monetary

policy transmission mechanism'.¹³ However, it is also clearly a programme that supports the general economic policy objectives in the EU. As Christine Lagarde explicitly stated on announcing the programme, it aims to provide 'supportive financing conditions for all sectors in the economy', amongst which she included 'governments' (Lagarde 2020).

If the ECB is to meet the paradoxical requirements of the secondary mandate, coordination is required between the ECB and the EU's political institutions. Implementing the indeterminate secondary mandate requires the ECB to make policies for the secondary objectives. If the ECB is to retain its supportive role, it must follow the priorities set by the institutions that are competent to develop policies for the secondary objectives. This requires coordination between the ECB and the EU's political institutions.



Across all these controversial programmes, the ECB has kept its focus on price stability, but said very little about its secondary mandate.

12. 2 BvR 859/15 etc., PSPP, judgment of 5 May 2020, ECLI:DE:BVerfG:2020:rs20200505.2bvr085915.

13. Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17).



Coordination between the ECB and the EU's political institutions would not be contrary to the ECB's independence. Although Article 130 TFEU bars the EU's political institutions to give the ECB instructions on its monetary policy, it does not prohibit coordination. The legal framework governing the ECB makes clear that a degree of influence by other institutions is compatible with the central bank's independence. Article 284 (1) TFEU gives both the President of the Council and the Commission President a right to participate in the ECB's Governing Council. The President of the Council is allowed to submit motions for deliberation (Article 284 (2) TFEU). Also, the EP can hear the ECB's President and can hold a general debate on the ECB's annual report. These provisions would lose their meaning were Article 130 TFEU to exclude all influence by political bodies on the ECB's monetary operations (Beukers 2013, 1581–88; Smits 1997, 170–74; Bini Smaghi and Casini 2000, 381–84). This was affirmed by Advocate-General Jacobs in the OLAF-case, who clarified that:

“[T]he principle of independence does not imply a total isolation from, or a complete absence of cooperation with the institutions and bodies of the Community. The Treaty prohibits only influence which is liable to undermine the ability of the ECB to carry out its tasks effectively with a view to price stability, and which must therefore be regarded as undue.”¹⁴

The ECB Legal Service has recently affirmed that they too see the secondary objectives as best pursued through coordination. In their contribution to the recent review of the monetary policy strategy, the general counsel of the ECB, Chiara Zilioli, and other members of the ECB's Directorate General Legal Services warn that the ECB should not use “its own subjective judgement” and make assessments that de facto amount to “autonomous policymaking” (Ioannidis,

ARTICLE 130 TFEU

When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

14. Opinion AG Jacobs in Case C-11/00, *Commission of the European Communities v European Central Bank*, ECLI:EU:C:2002:556, (hereafter: Opinion AG Jacobs OLAF), par. 155, also par. 156-158.

Hlásková Murphy, and Zilioli 2021, 17). They also caution against cherry picking by the ECB from amongst the many economic policies that the ECB could support: "given that the role of the ECB in this context is to support the policies of other institutions, deferring to these policies would be warranted not only with regard to their content but also to the **hierarchisation of priorities** [our emphasis]" (Ioannidis, Hlásková Murphy, and Zilioli 2021, 17). Consequently, the ECB must orient itself to the broad outlines of economic policy set by other competent institutions. Implementing the secondary mandate requires the ECB to "support general economic policies but not autonomously make them." (Ioannidis, Hlásková Murphy, and Zilioli 2021, 16). Rather than leaving the interpretation of the secondary mandate to the ECB, "[t]he institutions responsible for indicating priorities for the purpose of Article 127(1) TFEU are primarily the European Council, the Council of the European Union (the "Council"), and the European Parliament" (Ioannidis, Hlásková Murphy, and Zilioli 2021, 18).

The specification of the secondary objectives by political institutions would not be an instruction, but rather a communication that provides the ECB with evidence for the interpretation of its secondary mandate. The communication would

facilitate the ECB in discovering how to act in accordance with its secondary mandate. As the specification concerns the secondary objectives and the priority of price stability is unaffected, coordination will not impede the pursuit of price stability. In any case, Article 130 TFEU excludes that such coordination would be legally binding. The decision of how to support the ECB's secondary objectives and how to reconcile this with its price stability objective, would remain with the ECB.

High-level coordination would help to protect the ECB's independence where it matters. The absence of explicit democratic authorization undermines the ECB's ability to contribute effectively to the EU's broader economic, environmental, and social policy objectives. It lacks clear guidance on how to act, while being vulnerable to the objection that it makes political choices. That charge has led to repeated contestation in the courts about the ECB's role. When the ECB draws on the explicit position of the EU's political institutions, it acts on a sound democratic and legal basis – its Governing Council retains all autonomy in deciding how to pursue price stability. Rather than politicizing monetary policy, coordination is the best way to prevent the ECB from taking on an overtly political role.

4

INTER-INSTITUTIONAL STRUCTURES FOR COORDINATION

What would coordination look like in practice? We discuss three avenues for the ECB to draw on economic policies developed by other EU institutions to overcome the indeterminacy of its secondary mandate.

Existing policies of other EU bodies

Left to its own devices, the ECB can already do more to draw on the economic policies of other bodies in the EU. Even in the absence of explicit coordination, the ECB should explain how its monetary policy operations fit with relevant economic policy frameworks adopted by other Union institutions and the Member States. It should also continue to connect its operations to relevant

EU-level policies. Interestingly, the ECB has done so before. The ECB's OMT programme, for example, was tied to politically agreed conditionality under the EFSF or ESM. The ECB has already announced incorporating the EU's new disclosure policies into the rules of its monetary policy operations. These disclosures reflect in part the EU Green Taxonomy, which establishes criteria for when economic activities count as environmentally sustainable.¹⁵

The ECB could also use the Green Taxonomy to inform the design of its monetary policy operations (van 't Klooster and van Tilburg 2020; Bovenschen and Lieshout 2021; Knot 2021; Várhelyi and Lieshout 2021). By drawing on existing EU policies in the design of its operations, the ECB can explicitly support specific policies of the EU.

15. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, O.J. 2020, L 198/13.

However, even when drawing on existing EU policies, the ECB would still make its own choices in what policies it prioritises. Explicit coordination goes beyond the ECB merely drawing on the economic policy decisions of other institutions. It requires that political institutions explicitly state their position on the relevant secondary objectives for the ECB's monetary policy. Such coordination allows the ECB to also draw on views put forward by other EU institutions on how to interpret its secondary mandate. We see two ways in which these institutions could support the ECB in these efforts (see also de Boer and van 't Klooster 2020; Claeys et al. 2021; Claeys and Domínguez-Jiménez 2020, 85; Coeuré 2021; Monnet 2021).

New indicative economic policy guidelines set by the Council

The Council could articulate its position on the secondary mandate by adopting broad economic policy guidelines on the basis of Article 121 (2) TFEU.¹⁶

The Council consists of government representatives at ministerial level. These representatives are democratically accountable to their respective national parliaments. Together with the European Parliament, the Council exercises legislative and budgetary functions. The Council's competence to formulate broad economic policy guidelines reflects its important role in coordinating the Member States' economic policies. These guidelines are not legally binding (Article 288 TFEU), but constitute authoritative recommendations on the EU's economic policy stance. A downside of the Article 121 (2) procedure is that the EP only has to be informed. A more extensive role for the EP is desirable for democratic reasons, because the EP represents all European citizens directly and the EU is based on a dual legitimisation structure of citizens and states' peoples (See Article 10 TEU and Bogdandy 2012,

322). A more extensive role for the EP would also fit that monetary policy is an exclusive competence of the ECB. For this reason, the ECB regards itself accountable at the EU level (Lastra 2020, 30–31; Fraccaroli, Giovannini, and Jamet 2018). In addition, the secondary objectives are intertwined with policy areas in which the EP has a stronger role than general economic policy. A key example is environmental protection (Article 191 and 192 TFEU).

An enhanced Monetary Dialogue

The second avenue is a renewed Monetary Dialogue between the EP and the ECB. As part of this Dialogue, the EP's ECON committee now holds quarterly hearings with the ECB President. The EP also adopts a yearly resolution on the ECB's annual report, in which the EP states its position on the ECB's monetary policy. There is ongoing debate as to whether the Monetary Dialogue currently provides sufficient democratic oversight of the ECB. Studies on the Monetary Dialogue indicate that more extensive and focused scrutiny of the ECB's performance in achieving its mandate could improve the potential of the Monetary Dialogue. Existing research shows that the introductory statement by the ECB President often repeats information already widely available. The subsequent Q&A often dwells on topics that lie outside the ECB's competences, while being only partially effective in assessing the ECB's performance in fulfilling its mandate (Amentbrink and van Duin 2009; Claeys and Domínguez-Jiménez 2020, 74 and 82–83; Claeys, Hallerberg, and Tschekassin 2014, 7–8). A proactive role of the EP regarding the secondary mandate could help address these issues. The EP should articulate a clear position on the secondary mandate in its annual resolution. Subsequently, it should use its quarterly hearings to hold the ECB accountable based on this standard.

16. Possibly this could be the Eurogroup based on Article 136 TFEU together with Article 121 (2) TFEU. Also, Article 125 (2) allows the Council to further specify the definition of the monetary financing prohibition of Article 123 (1) TFEU. This has been done in Council Regulation 3603/93 of 13 Dec.

1993 specifying definitions for the application of the prohibitions referred to in Arts. 104 and 104b(1) of the Treaty, O.J. 1993, L 332/1. This Regulation was decided almost thirty years ago and is in need of urgent revision (de Boer and van 't Klooster 2020).

The proposed inter-institutional agreement between the ECB and the EP could formalize this procedure. In this agreement, the ECB could commit to use the EP's position on the secondary mandate in the justification of its monetary policy.

Future steps

These three avenues are complementary routes towards more effective and democratic EMU governance. Certainly, it would be unworkable if the Council and EP were each to specify the secondary mandate independently, possibly leading to divergent outcomes. The EP and Council would have to end up with a joint procedure. For this to happen, **we propose that the EP takes the first steps and starts articulating its position on the secondary mandate.** The negotiations on a new inter-institutional agreement between the ECB and the EP are an excellent opportunity to enhance the potential of the monetary dialogue in this way.

The European Parliament articulates its position on the secondary mandate

The Council coordinates with the Parliament to articulate a joint position

The ECB acts on its secondary mandate in accordance with the guidance received by the Parliament and the Council

5

CONCLUSION: DEMOCRATIZING THE EUROPEAN CENTRAL BANK

Until recently, the ECB all but ignored its legally-binding secondary mandate. That neglect reflects a paradox at the heart of the ECB's secondary mandate: it is binding, but also indeterminate and supportive in nature. The secondary mandate asks the ECB to support the EU's economic policy objectives in other areas. However, the ECB cannot simply ignore these provisions just because it is unclear what they require.

Democratic guidance on the ECB's secondary objectives is not only a desirable but a necessary condition for fulfilling the obligations that the secondary mandate imposes on it. Although potentially useful for the ECB to navigate its many new challenges, the secondary mandate does not allow the ECB to make its own economic policy choices for the secondary objectives. Besides its dubious legality, an ECB that cherry-picks its own secondary objectives also raises grave democratic concerns.

To navigate its paradoxical secondary mandate, the ECB should engage in high-level coordination with the Council and the European Parliament. If the ECB acts on the specification of the secondary mandate, this would merely mean it would finally act on its whole mandate – a clear improvement over decades of simply ignoring these legal obligations, and a further step in adapting the European Economic and Monetary Union to the new challenges of the 21st century.

WORKS CITED

- Amttenbrink, Fabian, and Kees van Duin. 2009. 'The European Central Bank before the European Parliament: Theory and Practice after Ten Years of Monetary Dialogue'. *European Law Review* 34 (4): 561–83.
- Amttenbrink, Fabian, and René Repasi. 2020. 'The German Federal Constitutional Court's Decision in Weiss: A Contextual Analysis'. *European Law Review* 45 (6): 757–78.
- Bateman, Will. 2020. *Public Finance and Parliamentary Constitutionalism*. Cambridge & New York: Cambridge University Press.
- Beukers, Thomas. 2013. 'The New ECB and Its Relationship with the Eurozone Member States: Between Central Bank Independence and Central Bank Intervention'. *Common Market Law Review* 50: 1579–1620.
- Bini Smaghi, Lorenzo, and Claudio Casini. 2000. 'Monetary and Fiscal Policy Co-Operation: Institutions and Procedures in EMU'. *Journal of Common Market Studies* 38 (3): 375–91.
- Boer, Nik de, and Jens van 't Klooster. 2020. 'The ECB, the Courts and the Issue of Democratic Legitimacy after Weiss'. *Common Market Law Review* 57 (6): 1689–1724.
- Bogdandy, Armin von. 2012. 'The European Lesson for International Democracy: The Significance of Articles 9–12 EU Treaty for International Organizations'. *European Journal of International Law* 23 (2): 315–34.
- Borger, Vestert. 2020. *The Currency of Solidarity: Constitutional Transformation during the Euro Crisis*. Cambridge: Cambridge University Press.
- Bovenschen, Willem, and René Lieshout. 2021. 'EU Taxonomy, Action Plan & Supervisory Developments on Sustainable Finance: What Uses May These Have for the E(S)CB?' In *ESCB Legal Conference 2020*, 118–29. European Central Bank. <https://www.ecb.europa.eu/pub/pub/legal/>.
- Claeys, Grégory, Berès, Pervenche, Nik de Boer, Panicos Demetriades, Sebastian Diessner, Stanislas Jourdan, Jens van 't Klooster, and Vivien Schmidt. 2021. 'The ECB Needs Political Guidance on Secondary Objectives'. *Bruegel-Blogs*, 22 April 2021. <https://www.bruegel.org/2021/04/the-ecb-needs-political-guidance-on-secondary-objectives/>.
- Claeys, Grégory, and Marta Domínguez-Jiménez. 2020. 'How Can the European Parliament Better Oversee the European Central Bank?' Monetary Dialogue Papers. Luxembourg: Study for the Committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament.
- Claeys, Grégory, Mark Hallerberg, and Olga Tschekassin. 2014. 'European Central Bank Accountability: How the Monetary Dialogue Could Evolve'. Bruegel Policy Contribution Issue 2014/04. <https://www.bruegel.org/2014/03/european-central-bank-accountability-how-the-monetary-dialogue-could-be-improved/>.
- Coeuré, Benoit. 2021. 'Comment on Grégory Claeys et. al., "The ECB Needs Political Guidance on Secondary Objectives", Bruegel-Blogs, 22 April 2021'. <https://twitter.com/BCoeure/status/1381992554909073412>.

- Dawson, Mark, Adina Maricut-Akbik, and Ana Bobic. 2019. 'Reconciling Independence and Accountability at the European Central Bank: The False Promise of Proceduralism'. *European Law Journal* 25 (1): 75–93.
- ECB. 1998. 'A Stability-Oriented Monetary Policy Strategy for the ESCB'. European Central Bank. 1998. https://www.ecb.europa.eu/press/pr/date/1998/html/pr981013_1.en.html.
- . 2003. 'The ECB's Monetary Policy Strategy'. European Central Bank. 2003. https://www.ecb.europa.eu/press/pr/date/2003/html/pr030508_2.en.html.
- . 2021. 'The ECB's Monetary Policy Strategy Statement'. 2021. European Central Bank. 8 July 2021. https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpoL_strategy_statement.en.html.
- Elderson, Frank. 2021. 'Greening Monetary Policy'. 2021. <https://www.ecb.europa.eu/press/blog/date/2021/html/ecb.blog210213~7e26af8606.en.html>.
- Feichtner, Isabel. 2020. 'The German Constitutional Court's PSPP Judgment: Impediment and Impetus for the Democratization of Europe'. *German Law Journal* 21: 1090–1103.
- Fraccaroli, Nicolò, Alessandro Giovannini, and Jean-François Jamet. 2018. 'The Evolution of the ECB's Accountability Practices during the Crisis'. *ECB Economic Bulletin*, no. 5. https://www.ecb.europa.eu/pub/economic-bulletin/articles/2018/html/ecb.ebart201805_01.en.html.
- Fromage, Diane, Paul Dermine, Phedon Nicolaides, and Klaus Tuori. 2019. 'ECB Independence and Accountability Today: Towards a (Necessary) Redefinition?'. *Maastricht Journal of European and Comparative Law* 26 (1): 3–16.
- Grünewald, Seraina. 2021. 'The ECB's Response to the COVID-19 Crisis and Its Role in the Green Recovery'. In *Financial Stability amidst the Pandemic Crisis: On Top of the Wave*, 263–86. Frankfurt: European Banking Institute. <https://ssrn.com/abstract=3877946>.
- Ioannidis, Michael. 2020. 'The European Central Bank'. In *The EU Law of Economic and Monetary Union*, edited by Fabian Amténbrink and Christoph Herrmann. Oxford University Press.
- Ioannidis, Michael, Sarah Jane Hlášková Murphy, and Chiara Zilioli. 2021. 'The Mandate of the ECB: Legal Considerations in the ECB's Monetary Policy Strategy Review'. 276. Occasional Paper Series. ECB. <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op276~3c53a6755d.en.pdf?1c01b997e11da2c1945d9551bc9a5477>.
- Klooster, Jens van 't. 2021. 'The ECB's Conundrum and 21st Century Monetary Policy: How European Monetary Policy Can Be Green, Social and Democratic'. SocArXiv. Berlin: Finanzwende and Heinrich-Böll-Foundation. <https://ideas.repec.org/p/osf/socarx/f25td.html>.
- Klooster, Jens van 't, and Rens van Tilburg. 2020. 'Targeting a Sustainable Recovery with Green TLTROs'. Positive Money Europe & Sustainable Finance Lab. <http://www.positivemoney.eu/wp-content/uploads/2020/09/Green-TLTROs.pdf>.
- Knot, Klaas. 2021. 'Getting the Green Deal Done – How to Mobilize Sustainable Finance', February. <https://www.bis.org/review/r210217d.htm>.
- Lagarde, Christine. 2020. 'Our Response to the Coronavirus Emergency'. European Central Bank. ECB Blog. 2020. <https://www.ecb.europa.eu/press/blog/date/2020/html/ecb.blog200319~11f421e25e.en.html>.

- Lastra, Rosa. 2015. *International Financial and Monetary Law*. Oxford University Press.
- . 2020. 'Accountability Mechanisms of the Bank of England and of the European Central Bank'. Study for the Committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies. Monetary Dialogue Papers. Luxembourg: European Parliament.
- Lastra, Rosa, and Kern Alexander. 2020. 'The ECB Mandate: Perspectives on Sustainability and Solidarity'. Monetary Dialogue Papers. Luxembourg: Study for the Committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament.
- Monnet, Eric. 2021. 'New Central Banking Calls for a European Credit Council'. VoxEU (blog). 26 March 2021. <https://voxeu.org/article/new-central-banking-calls-european-credit-council>.
- NGFS. 2021. 'Adapting Central Bank Operations to a Hotter World: Reviewing Some Options'. Paris: Network for Greening the Financial System. <https://www.ngfs.net/en/communique-de-presse/ngfs-presents-options-central-banks-adapt-monetary-policy-operations>.
- Psaroudakis, Georgios. 2018. 'The Scope for Financial Stability Considerations in the Fulfilment of the Mandate of the ECB/Eurosystem'. *Journal of Financial Regulation*, no. 4: 119–56.
- Selmayr, Martin. 2015. 'Artikel 282'. In *Von Der Groeben/Schwarze/Hatje, Europäisches Unionsrecht*. Vol. 4. Baden-Baden: Nomos.
- Smits, René. 1997. *The European Central Bank, Institutional Aspects*. Amsterdam: Kluwer Law International.
- . 2021. 'Memo on Monetary Policy and Climate Change, Biodiversity Loss'. 2021. renesmits.eu/wp-content/uploads/2021/03/Memo-on-monetary-policy-and-climate-change-biodiversity-loss_210221.pdf.
- Solana, Javier. 2018. 'The Power of the Eurosystem to Promote Environmental Protection'. *University of Oslo Faculty of Law Legal Studies Research Paper Series*, no. No. 2018-23.
- Thiele, Alexander. 2016. '(No) Haircut for Hellas?' *European Constitutional Law Review* 12: 520–37.
- Várhelyi, György, and René Lieshout. 2021. 'EU Taxonomy and the Monetary Policy Prism'. In *ESCB Legal Conference 2020*, 144–65. European Central Bank. <https://www.ecb.europa.eu/pub/pub/legal/>.



Rue Ducale 67
1000 Brussels
Belgium
Enterprise number: 0718.859.377

+32 2 880 04 49
info@positivemoney.eu
www.positivemoney.eu