

The Future for Asset Purchase Programmes and TLTROs

Sara Elisa Dietz*

Contents

A. Introduction	259
B. Targeted Long Term Refinancing Operations (TLTROs) and Asset Purchase Programmes as Structural Liquidity Operations	261
I. TLTROs	261
II. Asset Purchase Programmes	264
C. Targeted Design Features of LTROs and Asset Purchase Programmes	267
I. Greening of CSPP	267
1. CSPP as Conventionally Market Neutral Corporate Sector Purchases	268
a) The ECB's Commitment to its Market Neutral Implementation of Asset Purchases	268
b) The Principle of Market Neutrality and the Principle of an Open Market Economy in EU Law	270
2. Greening the CSPP – Targeted Design Feature in the Pursuit of the ECB's Environmental Objective	271
a) Why Market Neutrality is not Environmentally Neutral	271
b) The Principle of Market Efficiency – Correcting Inefficiencies of Market Neutrality	273
II. Targeted Monetary Policy Operations – a New Design Feature?	275
1. The Principle of Non-Discrimination in Monetary Policy	276
a) Monetary Policy Framework	276
b) CJEU Case Law	278
2. Modifications of the Principle of Non-Discrimination and Room for Selective Design Features	279
3. Targeting Environmental Objectives via the CSPP	281
D. Music of the Future–Green TLTROs and Greening the PSPP?	282

* Dr. Sara Elisa Dietz, LL.M. (Harvard) is lecturer for Financial Markets Law at the Ludwig-Maximilians-Universität München (Munich, Germany) and works in the Financial Institutions Practice Group at Freshfields in Frankfurt/Munich (Germany).
Email: Sara.Dietz@freshfields.com.

Abstract

Asset purchase programmes and TLTROs are powerful monetary policy instruments in the ECB's toolkit to provide structural liquidity. They are also apt to be designed in a targeted manner to address secondary policy objectives – as it is currently the case within the ECB's "Green monetary policy" and the "Greening" of its Corporate Sector Purchases. The article analyses the monetary legal framework with regard to the validity of such targeted, discriminatory design features. It applies the principle of non-discrimination to the monetary policy context and concludes that the ECB has to provide a justification if it intends to diverge from it. Providing such a justification for discriminatory monetary policy measures in the pursuit of environmental objectives, as it is the case with Greening the CSPP, is, however, rather difficult. Nevertheless, using asset purchase programmes and TLTROs for the purpose of supporting the green transition would without a doubt be highly effective and is hence appealing to the ECB. *Isabel Schnabel*, Member of the Executive Board of the ECB, has already invoked such ideas with regard to Green TLTROs and Greening the public sector holdings.

Keywords: ECB, asset purchase programmes, (targeted) longer term refinancing operations, green monetary policy

A. Introduction

On March 13, 2024, the Governing Council decided on changes to the operational framework of its monetary policy.¹ These changes also address longer-term refinancing operations (LTROs)² and asset purchase programmes³ which sit at the core of the European Central Bank's (ECB) monetary policy toolkit.

The Governing Council declared that the Eurosystem will continue to provide liquidity through a broad mix of instruments, consisting of main refinancing operations (short-term credit operations) and LTROs in the form of three-month LTROs. At a later stage, the Governing Council will also consider using structural monetary policy instruments in the form of structural longer-term credit operations and a structural portfolio of securities:

"New structural longer-term refinancing operations and a structural portfolio of securities will be introduced at a later stage, once the Eurosystem balance sheet begins to grow durably again, taking into account legacy bond holdings. These operations will make a substantial contribution to covering the banking sector's structural liquidity needs arising from autonomous factors and minimum reserve requirements."⁴

1 ECB, Changes to the operational framework for implementing monetary policy (13 March 2024), available at: <https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240313~807e240020.en.html> (13/1/2025).

2 In further detail *cf.* B.I.

3 In further detail *cf.* B.II.

4 ECB, Changes to the operational framework for implementing monetary policy (13 March 2024), available at: <https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240313~807e240020.en.html> (13/1/2025).

During the Financial Crisis, structural liquidity measures were of outmost importance to provide liquidity to the markets and stimulate the economy. The ECB designed LTROs as targeted measures (targeted longer-term refinancing operations, TLTROs) and used asset purchase programmes in various modalities – buying not only asset backed securities and covered bond securities, but also corporate and public sector assets.

LTROs and asset purchase programmes do not only qualify as instruments that can provide ample liquidity on a structural basis, if needed, but can also be designed in ways to address – or in other words to *target* – specific market assets and market participants. Such design options allow the Eurosystem to tailor its monetary policy measures more closely to specific macroeconomic needs by targeting certain transmission channels more directly and effectively. In addition, refinancing operations and asset purchase programmes can be calibrated in a way to serve the Eurosystem's secondary objectives. The Governing Council also addressed the relevance of secondary objectives in its recent statement:

“To the extent that different configurations of the operational framework are equally conducive to ensuring the effective implementation of the monetary policy stance, the operational framework shall facilitate the ECB's pursuit of its secondary objective of supporting the general economic policies in the European Union – in particular the transition to a green economy – without prejudice to the ECB's primary objective of price stability. In this context, the design of the operational framework will aim to incorporate climate change-related considerations into the structural monetary policy operations.”⁵

LTROs and asset purchase programmes are exceptionally suitable for such design features to support the ECB's secondary objective and, in particular, the transition to a green economy. Accordingly, the Governing Council has used its corporate bond purchases since October 2022 to support climate-friendly issuers of corporate bonds.

This article wants to shed more light on the role of TLTROs and asset purchase programmes in the future of European monetary policy and explore conditions and scenarios, especially against the background of the ECB's latest commitment to support the fight against climate change and support the green transition as part of its secondary objective.

The first part of the paper outlines the basic design features and forms of TLTROs and asset purchase programmes (B.). It serves as the background for an in-depth analysis of how TLTROs and asset purchase programmes as structural liquidity operations are particularly well apt for targeted design features and serve secondary monetary policy objectives pursuant to Art. 127 para. 1 TFEU beyond price stability (C.). Greening of the Corporate Sector Purchase Programme (CSPP) is the most current and prominent example for such targeted measures in pursuit of the

⁵ ECB, Changes to the operational framework for implementing monetary policy (13 March 2024), available at: <https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240313~807e240020.en.html> (13/1/2025).

ECB's secondary objective to support the green transition (C.I.). While the scope of the mandate of the ECB with regard to its secondary objective in Art. 127 para. 1 TFEU has been highly debated in the last years in academic literature, the discussions rarely touched upon the directly related and more general question of whether the ECB may use targeted design features – or, framed more trenchant – selective and hence discriminatory monetary policy measures. This article explores the monetary legal framework and concludes that the principle of non-discrimination is also applicable to monetary policy measures. In consequence, the ECB has to provide a justification if it intends to diverge from it. In the context of targeted, i.e., discriminatory monetary policy measures, such justification is difficult to provide for measures discriminating in the pursuit of environmental objectives as in the case of Greening the CSPP (C.II.).⁶ Nevertheless, using asset purchase programmes and TLTROs for the purpose of supporting the green transition would be highly effective and is therefore appealing to the ECB. *Isabel Schnabel*, Member of the Executive Board of the ECB, has already invoked such ideas with regard to Green TLTROs and Greening the public sector holdings – though still music of the future, interesting food for thought (D.).

B. Targeted Long Term Refinancing Operations (TLTROs) and Asset Purchase Programmes as Structural Liquidity Operations

I. TLTROs

TLTROs⁷ were introduced in June 2014 by the ECB as a key element of its broader monetary policy framework to provide credit to financial institutions on favourable conditions in order to support the pass-through of liquidity by bank lending to the real economy.⁸ This direction of liquidity to the real economy is ensured by the targeted nature of the refinancing operations in so far as the amount that banks can borrow from the Eurosystem is linked to the amount of loans handed out to non-financial corporations and households.⁹ With TLTROs, the ECB is offering banks long-term funding at attractive conditions, thereby ensuring favourable borrowing conditions for the banks on the one hand and stimulating bank lending to the real economy on the other hand.

The TLTROs thereby serve as an effective tool to reinforce an accommodative monetary policy stance and strengthen the transmission of monetary policy by

6 Parts of this article are based on considerations laid out in *Dietz*, Common Mkt. L. Rev. 2023/5, pp. 1349 et seq.; *Dietz*, Common Mkt. L. Rev. 2022/2, pp. 395 et seq.

7 TLTROs qualify as credit operations pursuant to Art. 18 para. 1 of the Statute of the European System of Central Banks and of the European Central Bank (Statute of the ESCB/ECB).

8 Recital (2) of Decision (EU) 2014/541 of the European Central Bank of 29 July 2014 on measures relating to targeted longer-term refinancing operations (ECB/2014/34), OJ L 258 of 29/8/2014, p. 11.

9 ECB, Targeted longer-term refinancing operations (TLTROs), available at: <https://www.ecb.europa.eu/mopo/omo/tltro/html/index.en.html> (13/1/2025).

further incentivising bank lending to the real economy especially in situations, where the financial system is facing stress and banks are more hesitant to pass on liquidity.¹⁰

The borrowing conditions under TLTROs are conceptualized in a way that the interest rate to be applied is linked to the participating banks' lending patterns. In a nutshell, the more loans participating banks issue to non-financial corporations and households (with the exception of loans to households for the purpose of house purchases), the lower the interest rate on their TLTRO borrowing and hence their funding costs.¹¹ TLTROs overall received positive reactions albeit with some criticism addressing the proximity to fiscal policy by providing liquidity to specific sectors in a targeted manner.¹²

Overall, the Eurosystem implemented in total three series of TLTROs.

TLTRO-I, launched in June 2014, consisted of a total of eight four-year refinancing operations with relatively high interest rates (equivalent to the main refinancing rate at 0.15% at the time). There was also a limit on the total amount that could be borrowed from the ECB. However, banks could borrow more if they exceeded certain individually calculated net lending benchmarks. TLTRO-I also included a penalty mechanism: the borrowed amounts were subject to early repayment if the respective benchmark was not met.¹³

TLTRO-II, launched in June 2016, provided four operations extending into 2021. It included no longer a penalty mechanism. Instead, banks were able to further reduce their interest rate on additional borrowing if they exceeded their benchmark, with the rate potentially dropping as low as the deposit facility rate, which was 0.40% at the time.¹⁴ Thanks to these more favourable conditions, participation in TLTRO-II was approx. 30% higher compared to TLTRO-I.¹⁵

The third and largest tranche, TLTRO-III, has been initiated in September 2019 and has provided for a total of ten operations with interest rates as low as the ECB's deposit facility rate (which stood at -0.50% during much of the COVID-19 pandemic), effectively allowing banks to only borrow at negative rates.¹⁶ The

10 See also ECB, Targeted longer-term refinancing operations (TLTROs), available at: <https://www.ecb.europa.eu/mopo/imo/omo/tltro/html/index.en.html> (13/1/2025).

11 ECB, What are targeted longer-term refinancing operations (TLTROs)?, available at: <https://www.ecb.europa.eu/ecb-and-you/explainers/tell-me/html/tltro.en.html> (13/1/2025).

12 See, e.g., *Gros/Valiante/de Groen*, CEPS Policy Brief 2016/341, pp. 1–6.

13 Decision (EU) 2014/541 of the European Central Bank of 29 July 2014 on measures relating to targeted longer-term refinancing operations (ECB/2014/34), OJ L 258 of 29/8/2014, p. 11.

14 Decision (EU) 2016/810 of the European Central Bank of 28 April 2016 on a second series of targeted longer-term refinancing operations (ECB/2016/10), OJ L 132 of 21/5/2016, p. 107.

15 ECB, The slowdown in euro area productivity in a global context, available at: <https://www.ecb.europa.eu/pub/pdf/ecbu/eb201703.en.pdf> (pp. 42 et seq.) (13/1/2025); Universität Leipzig, (T)LTRO-Tracker, available at: <https://www.wifa.uni-leipzig.de/institut-fuer-wirtschaftspolitik/forschung/tltro-tracker> (13/1/2025).

16 Decision (EU) 2019/1311 of the European Central Bank of 22 July 2019 on a third series of targeted longer-term refinancing operations (ECB/2019/21), OJ L 204 of 2/8/2019, p. 100.

TLTRO-III facilities were designed with maturities extending up to 2024 to ensure medium-term liquidity support to the banking sector, particularly in the light of the disruptions caused by the pandemic.¹⁷ TLTRO-III was supplemented during 2020 and 2021 by seven additional pandemic emergency LTROs (PELTROs) with an aggregated volume of over €22 billion, which ended in September 2021.¹⁸ Different to TLTROs, PELTROs were not designed as targeted measures but also conceptualized to support the functioning of the money markets by providing a liquidity backstop to the Euro area banking systems during the COVID-19 pandemic.¹⁹

By 31 December 2023, the cumulative outstanding borrowing under TLTRO-III amounted to €396 billion, having declined substantially from more than €1.3 trillion by 31 December 2022.²⁰

In December 2024, the final TLTRO-III operations reached their date of maturity.²¹ Given the central role of TLTROs within the ECB's monetary policy strategy over the past decade, the question arises how the future of ECB liquidity assistance will look like. The financial sector seems to be preparing for a period without TLTROs²² with the liquidity coverage ratio (LCR) of Eurozone banks having declined throughout 2022 and 2023 and remaining at 159.39% in the second quarter of 2024, compared to 173.43% at the end of 2021.²³

As cited above, the Governing Council considers to resort to LTROs again "at a later stage" if and when a structural liquidity need stemming from autonomous factors and minimum reserve requirements arises.²⁴ The fact that the Governing Council remained open regarding the prospect of structural long-term operations opens up room for speculation whether a future series of such operations might

17 Some argued that TLTRO-III operations contributed substantially to minimizing the economic cost of the COVID-19 pandemic, see, e.g., *Altavilla* et al., *Eur. Econ. Rev.* 2023/156, Article 104478, pp. 1 et seq.

18 ECB, ECB announces new pandemic emergency longer-term refinancing operations, available at: https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200430_1~477f400e39.en.html (13/1/2025). See also *Universität Leipzig*, (T)LTRO-Tracker, available at: <https://www.wifa.uni-leipzig.de/institut-fuer-wirtschaftspolitik/forschung/tltro-tracker> (13/1/2025).

19 ECB, Monetary policy decisions (30 April 2020), available at: <https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.mp200430~1eaa128265.en.html> (13/1/2025).

20 ECB, Consolidated balance sheet of the Eurosystem as at 31 December 2023, available at: <https://www.ecb.europa.eu/press/annual-reports-financial-statements/annual/balance/html/ecb.eurosystembalancesheet2023~ca350ad75e.de.html> (13/1/2025).

21 ECB, Indicative calendar for the third series of targeted longer-term refinancing operations (TLTROs-III): Operations 1 to 7, available at: <https://www.ecb.europa.eu/mopo/implément/omo/pdf/TLTRO3-calendar-2021.en.pdf> (13/1/2025).

22 *Platerink/Kosonen*, Life after TLTROs: Bank liquidity and funding will be tested in 2024, available at: <https://think.ing.com/articles/life-after-tltros-comes-with-challenges-for-bot-h-bank-liquidity-and-funding-in-2024/> (13/1/2025).

23 ECB, Liquidity coverage ratio, SIs, EU countries participating in the Single Supervisory Mechanism (SSM) (changing composition), Quarterly, available at: <https://data.ecb.europa.eu/data/datasets/SUP/SUP.Q.B01.W0..Z.I3017..T.SII..Z..Z..Z.PCT.C> (13/1/2025).

24 ECB, Changes to the operational framework for implementing monetary policy (13 March 2024), available at: <https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240313~807e240020.en.html> (13/1/2025).

also be put at service of the Governing Council's articulated commitment on its secondary objective. This could mean that the ECB might be contemplating "Green TLTROs",²⁵ an unprecedented version of TLTROs, which has gained some attention in recent discussions.²⁶

II. Asset Purchase Programmes

Asset purchase programmes²⁷ were initiated by the ECB in mid-2014 as the key instrument of the ECB's quantitative easing strategy in a situation where monetary policy had reached the effective zero lower bound on policy rates. With different nuances, all asset purchase programmes aimed at supporting the ECB's monetary policy transmission mechanism thereby addressing persistently low inflation and stimulating economic activity in the Euro area.

The ECB's so-called Expanded Asset Purchase Programmes (APP)²⁸ consisted of several sub-programmes targeting different types of assets and hence transmission channels, including the Public Sector Purchase Programme (PSPP),²⁹ the Corporate Sector Purchase Programme (CSPP),³⁰ the Asset-Backed Securities Purchase Programme (ABSPP),³¹ and the Covered Bond Purchase Programmes (CBPP1,³² CBP-P2³³ and CBPP3).³⁴³⁵ Since the initiation of its asset purchases, the ECB has recalibrated the volume and pace of the purchases and its reinvestments to accommodate specific macroeconomic needs.

25 *Brzeski/Schroeder/Tukker/Platerink Kosonen*, The ECB's operational framework review formalises the status quo, available at: <https://think.ing.com/articles/formalising-the-status-quo-ecb/#a5> (13/1/2025).

26 *van 't Klooster/van Tilburg*, pp. 1 et seq.; *Colesanti Senni/Pagliari/van 't Klooster*, pp. 1 et seq.

27 Asset purchase programmes constitute outright transactions pursuant to Art. 18 para. 1 Statute of the ESCB/ECB, i.e., the outright purchase and sale of securities on the market.

28 ECB, ECB announces expanded asset purchase programme (22 January 2015), available at: https://www.ecb.europa.eu/press/pr/date/2015/html/pr150122_1.en.html (13/1/2025).

29 Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme (ECB/2015/10), OJ L 121 of 14/5/2015, pp. 20–24.

30 Decision (EU) 2016/948 of the European Central Bank of 1 June 2016 on the implementation of the corporate sector purchase programme (ECB/2016/16), OJ L 157 of 15/6/2016, pp. 28–32.

31 Decision (EU) 2015/5 of the European Central Bank of 19 November 2014 on the implementation of the asset-backed securities purchase programme (ECB/2014/45), OJ L 1 of 6/1/2015, pp. 4–7.

32 Decision of the European Central Bank of 2 July 2009 on the implementation of the covered bond purchase programme (ECB/2009/16), OJ L 175 of 4/7/2009, pp. 18–19.

33 Decision of the European Central Bank of 3 November 2011 on the implementation of the second covered bond purchase programme (ECB/2011/17), OJ L 297 of 16/11/2011, pp. 70–71.

34 Decision (EU) 2020/187 of the European Central Bank of 3 February 2020 on the implementation of the third covered bond purchase programme (ECB/2020/8) (recast), OJ L 39 of 12/2/2020, pp. 6–11.

35 ECB, Asset purchase programmes, available at: <https://www.ecb.europa.eu/mopo/implementation/app/html/index.en.html> (13/1/2025).

The PSPP accounts for the largest part of asset purchases under the APP. From March 2015 onwards, the Eurosystem purchased sovereign bonds and other public sector securities, including bonds issued by central governments, regional and local governments, amounting to 90% of the total volume of the programme, and European institutions such as the European Investment Bank (EIB), making up 10% of the total volume. At the end of December 2023, cumulative net purchases under the PSPP amounted to €2.529 trillion, making up more than 80% of the total volume of the APP.³⁶

Launched in June 2016, the CSPP expanded the ECB's asset purchases to the corporate sector. Within the CSPP, the ECB bought investment-grade bonds issued by non-financial corporations established in the Euro area. The ECB focused on corporate bonds with maturities of up to 30 years, aiming to lower corporate financing costs and encourage investment.³⁷ The CSPP included bonds from a wide range of industries, including utilities, telecommunications, and manufacturing, but excluded financial sector bonds to avoid conflicts of interest according to the ECB.³⁸ Purchases under the CSPP made up for 7% of total purchases under the APP, a total of ca. €300 billion in net purchases at the end of 2023.³⁹

The ABSPP, the first asset programme announced in 2014 and effective from November of that year, involved the purchase of asset-backed securities (ABS). By buying these ABS, the ECB aimed to restore their marketability as a viable refinancing tool, thus improving credit flows to households and businesses.⁴⁰ Cumulative net purchases under the ABSPP amounted to approx. €36 billion at the end of 2023, playing a minor role in the overall volume of the APP (~1% of total APP purchases).⁴¹

36 ECB, Asset purchase programmes, available at: <https://www.ecb.europa.eu/mopo/implement/app/html/index.en.html> (13/1/2025).

37 Decision (EU) 2020/187 of the European Central Bank of 3 February 2020 on the implementation of the third covered bond purchase programme (ECB/2020/8) (recast), OJ L 39 of 12/2/2020, p. 6.

38 Art. 2 para. 1 lit. b et seq. of Decision (EU) 2016/948 of the European Central Bank of 1 June 2016 on the implementation of the corporate sector purchase programme (ECB/2016/16), OJ L 157 of 15/6/2016, p. 29.

39 See the chart on cumulative net APP purchases on the ECB's website, available at: <https://www.ecb.europa.eu/mopo/implement/app/html/index.en.html#cspp> (13/1/2025); available separately at: https://www.ecb.europa.eu/mopo/pdf/ecb.APP_cumulative_net_purchases_by_programme.en.png?erty (13/1/2025).

40 Recital (2) of Decision (EU) 2015/5 of the European Central Bank of 19 November 2014 on the implementation of the asset-backed securities purchase programme (ECB/2014/45), OJ L 1, p. 4; ECB, ECB announces monetary policy measures to enhance the functioning of the monetary policy transmission mechanism, available at: https://www.ecb.europa.eu/press/pr/date/2014/html/pr140605_2.en.html (13/1/2025). For details on eligibility of assets etc., see ECB, FAQ on the asset-backed securities purchase programme, available at: https://www.ecb.europa.eu/mopo/implement/app/html/ecb.faq_abs_pp.en.html (13/1/2025).

41 See the chart on cumulative net APP purchases on the ECB's website, available at: <https://www.ecb.europa.eu/mopo/implement/app/html/index.en.html#cspp> (13/1/2025); available separately at: https://www.ecb.europa.eu/mopo/pdf/ecb.APP_cumulative_net_purchases_by_programme.en.png?erty (13/1/2025).

The CBPPs focused on purchasing covered bonds. The last series of the CBPPs, CBPP3, was initiated in October 2014. CBPP3 was designed to provide funding relief for banks and to improve liquidity in the covered bond market, which is a crucial source of long-term financing for European banks.⁴² By the end of 2023, the ECB had purchased over €320 billion in covered bonds under this programme.⁴³

Between March 2015 and December 2018, the ECB implemented monthly purchases – including all sub-programmes – averaging €60 billion, which later increased to €80 billion per month during the height of the programme. The APP was temporarily halted at the end of 2018, as inflation showed signs of recovery. However, it was reactivated in November 2019 with renewed monthly purchases of €20 billion to counter economic slowdown and worsening inflationary trends.⁴⁴ By the end of 2022, cumulative purchases under the APP reached over €3.2 trillion, with public sector bonds purchased under the PSPP making up the bulk of the portfolio (approx. 80%). Since then, the bonds held by the ECB have gradually declined. In August 2024, the holdings under the APP still amounted to €2.79 trillion.⁴⁵

Between 2015 and February 2023, the ECB regularly reinvested the redemptions from maturing securities to maintain favourable liquidity conditions and smooth the monetary policy transmission. In line with the Governing Council's decision announced on 9 June 2022,⁴⁶ the ECB discontinued net asset purchases in July 2022 but kept reinvesting the principal payments from maturing bonds in full. This lasted until March 2023, when, following another decision by the Governing Council on 15 December 2022,⁴⁷ the ECB gradually began reducing its APP portfolio, marking a shift towards normalizing monetary policy in the face of rising inflation.⁴⁸

During the COVID-19 pandemic, the ECB had introduced the Pandemic Emergency Purchase Programme (PEPP)⁴⁹ in March 2020 as a temporary measure, which was conceptualized as a separate and additional purchase programme to the APP. PEPP – comprising the same asset categories as the APP – was designed to provide a flexible response to the acute economic crisis brought about by the

42 Recital (2) of Decision (EU) 2014/828 of the European Central Bank of 15 October 2014 on the implementation of the third covered bond purchase programme (ECB/2014/40), OJ L 335 of 22/11/2014, p. 22.

43 See the chart on cumulative net APP purchases on the ECB's website, available at: <https://www.ecb.europa.eu/mopo/implement/app/html/index.en.html#cspp> (13/1/2025); available separately at: https://www.ecb.europa.eu/mopo/pdf/ecb.APP_cumulative_net_purchases_by_programme.en.png?erty (13/1/2025).

44 See comprehensive chart below.

45 ECB, Asset purchase programmes, available at: <https://www.ecb.europa.eu/mopo/implement/app/html/index.en.html> (13/1/2025).

46 ECB, Monetary policy decisions (9 June 2022), available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp220609~122666c272.en.html> (13/1/2025).

47 ECB, Monetary policy decisions (15 December 2022), available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.mp221215~f3461d7b6e.en.html> (13/1/2025).

48 ECB, Asset purchase programmes, available at: <https://www.ecb.europa.eu/mopo/implement/app/html/index.en.html> (13/1/2025).

49 Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17), OJ L 91 of 25/3/2020, pp. 1–4.

pandemic, which jeopardised the price stability and functioning of the monetary policy transmission mechanism.⁵⁰ Net purchases under the PEPP, which were mainly conducted by the national central banks and accumulated to €1.85 trillion during its existence, were terminated by end of March 2022 and reinvestment seized at the end of 2024.⁵¹

Overall, these figures demonstrate the potential scope and magnitude of asset purchase programmes and LTROs making them a particularly powerful instrument in the monetary policy toolkit.

C. Targeted Design Features of LTROs and Asset Purchase Programmes

As LTROs and APPs are structural liquidity operations providing high levels of liquidity to specific market participants, they represent a particular powerful tool to steer monetary policy and influence market conditions. Combined with the conceptual possibility to design them as targeted measures, they are able to provide ample liquidity directed to specific transmission channels and market participants thereby ensuring much more tailored and at the same time strong macroeconomic monetary policy effects.

With TLTROs, the ECB had already implemented targeted design features in the form of linking structural liquidity supply to microeconomic objectives situated within its price stability mandate. However, the targeted design features can be used even more extensively to include objectives outside the ECB's primary mandate by linking structural liquidity to secondary monetary policy objectives enshrined in Art. 127 para. 1 sentence 2 TFEU – as it is the idea behind Green TLTROs.

While Green TLTROs are still music of the future, the Eurosystem has already embarked on such a journey in the realm of its asset purchases in form of Greening its corporate holdings under the CSPP (see C.I.). Greening the CSPP shall serve as an example to explore the legal framework for such targeted design features in pursuit of secondary monetary policy objectives (see C.II.).

I. Greening of CSPP

Greening the CSPP took its starting point in July 2022, when the ECB declared its commitment to support the fight against climate change and to consider “the implications of climate change and the carbon transition for monetary policy and central

50 Recital (3) of Decision (EU) 2020/440 of the European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase programme (ECB/2020/17), OJ L 91, p. 1.

51 *Deutsche Bundesbank*, Pandemic Emergency Purchase Programme (PEPP), available at: <https://www.bundesbank.de/de/aufgaben/geldpolitik/geldpolitische-wertpapierrankaeufe/pandemic-emergency-purchase-programme-pepp--830356> (13/1/2025).

banking”⁵² Accordingly, the Governing Council declared that the “Eurosystem aims to gradually decarbonize its corporate bond holdings, on a path aligned with the goals of the Paris Agreement”⁵³ However, until then, the ECB subscribed to the so-called principle of market neutrality as a guideline for the allocation of its corporate sector purchases explicitly refraining from any adherence to secondary policy objectives when implementing asset purchases.

The following section will first describe the ECB’s commitment to the principle of market neutrality and its implementation in its asset purchases until 2022 (see C.I.1.a)) and then explore the legal basis of this principle within the monetary policy context (see C.I.1.b)). While the principle of market neutrality serves the objective of ensuring that monetary policy shall not interfere with market forces and not enhance any other secondary objectives besides price stability, it also enforces market mechanisms that are inherently less *neutral* than the principle suggests at first sight. In fact, certain market biases are perpetuated by such seemingly market neutral monetary policy which, in addition, negatively impacts environmental objectives (see C.I.2.a)). Therefore, the ECB started to move away from the principle of market neutrality and shifted to the so-called principle of market efficiency in order to correct such biases enshrined in the principle of market neutrality (see C.I.2.b)).

1. CSPP as Conventionally Market Neutral Corporate Sector Purchases

Corporate sector purchases had been used conventionally as non-targeted measures trying not to enhance any policy objectives besides price stability. In consequence, the ECB tried to mirror existing market structures within its allocation of asset purchases thereby ensuring to act – what it called – *market neutral*.

a) The ECB’s Commitment to its Market Neutral Implementation of Asset Purchases

For the first time in 2015, the concept coined *market neutrality* was explicitly referred to by *Benoît Cœuré*, as a general principle guiding asset purchases (though interestingly in the context of the launch of the ECB’s PSPP):

“The concept of market neutrality means that, while we do want to affect prices, we do not want to suppress the price discovery mechanism. We will operationalize this

52 ECB, The ECB’s monetary policy strategy statement, available at: www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_statement.en.html (13/01/2025). See also ECB, ECB takes further steps to incorporate climate change into its monetary policy operations, available at: www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704~4f48a72462.en.html (13/1/2025).

53 ECB, ECB takes further steps to incorporate climate change into its monetary policy operations, available at: www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704~4f48a72462.en.html (13/1/2025).

principle by ensuring a high degree of transparency around our interventions and by closely monitoring their impact on liquidity and collateral availability.”⁵⁴

In 2017, the ECB then applied this principle directly to the allocation of asset purchases under the APP:

“In pursuing its objective of maintaining price stability, the ECB is mandated to act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources. Consequently, the ECB aims for a market-neutral implementation of the APP, and therefore CSPP purchases are conducted according to a benchmark that reflects proportionally the market value of eligible bonds.”⁵⁵

The ECB also elaborated more explicitly on the role of secondary objectives – as environmental or social goals – when implementing asset purchases, making clear that there is no room for such objectives within a market neutral monetary policy approach:

“To ensure the effectiveness of monetary policy while maintaining a level playing field for all market participants and avoiding undue market distortions, *there is no positive or negative discrimination in the CSPP-eligible bond universe on the basis of environmental or social criteria*. While the ECB shares the view that an awareness of environmental issues, together with ethical and socially responsible behaviour, are important for society, it is nevertheless up to political decision-makers (in the first instance) to agree on, define and promote appropriate policies and measures. It is not, however, possible to embed these into a large-scale asset purchase programme that is carried out as a temporary monetary policy measure over a relatively short period of time. To do so would limit the effectiveness of the APP in its contribution to fulfilling the ECB’s mandate of maintaining price stability.”⁵⁶

Until July 2022, the ECB had adhered to these guidelines as confirmed by the composition of the CSPP holdings. The CSPP holdings generally mirrored the composition of bonds of the CSPP-eligible bond universe with green bonds purchased under the CSPP by the Eurosystem corresponding to their weightings in the benchmark.⁵⁷

⁵⁴ ECB, Embarking on public sector asset purchases, Speech at the Second International Conference on Sovereign Bond Markets, Frankfurt, 10 March 2015, available at: https://www.ecb.europa.eu/press/key/date/2015/html/sp150310_1.en.html (13/1/2025).

⁵⁵ ECB, Economic Bulletin, 2017/4, p. 40.

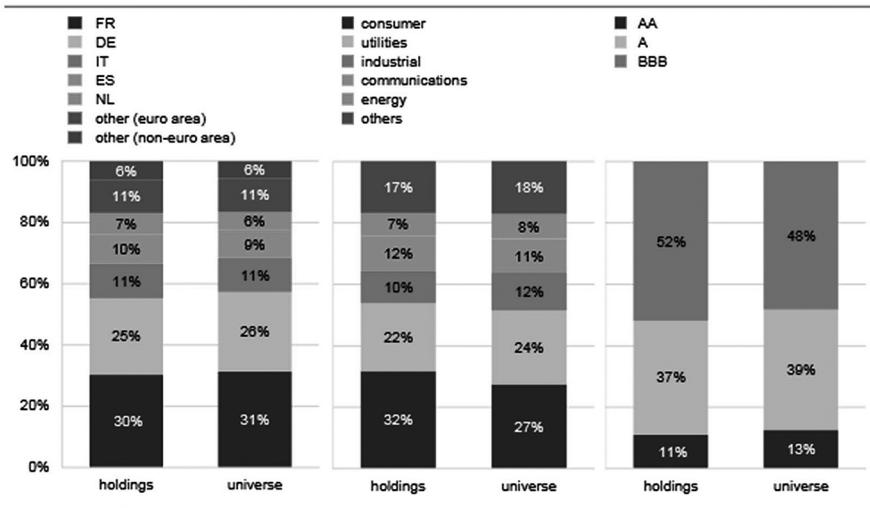
⁵⁶ ECB, Economic Bulletin, 2017/4, p. 41 (emphasis added).

⁵⁷ ECB, Economic Bulletin, 2017/4, p. 41, Chart 1; Dafermos/Gabor/Nikolaidi/Pawloff/van Lerven, pp. 14 et seq.

Chart: Country, sector and rating classification of CSPP holdings and CSPP-eligible bond universe⁵⁸

Chart A

Country, sector and rating classification of CSPP holdings and CSPP-eligible bond universe



Sources: ECB, Bloomberg.

Notes: Bloomberg country of risk classification, sector classification and first-best ratings (broad categories) are used. The distribution is according to nominal values.

b) The Principle of Market Neutrality and the Principle of an Open Market Economy in EU Law

The principle of market neutrality is not explicitly spelt out in the EU treaties nor in secondary law. However, it is closely linked to the principle of an open market economy⁵⁹ enshrined in Art. 127 para. 1 sentence 3 TFEU, which stipulates that the “ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119”.⁶⁰

With formulating the principle of an open market economy, the drafter of the Treaties intended to ensure that, as a general rule, the ECB would refrain from interfering with market forces or disrupting market dynamics when implementing

58 ECB, Economic Bulletin, 2017/4, p. 41.

59 See also Opinion of AG Wathelet, Case C-493/17, *Weiss and others*, judgment of 11 December 2018, ECLI:EU:C:2018:815, para. 74; Nees, EuR 2021/2, p. 130.

60 Opinion of AG Wathelet, Case C-493/17, *Weiss and others*, judgment of 11 December 2018, ECLI:EU:C:2018:815, para. 74; Nees, EuR 2021/2, p. 130.

its monetary policy.⁶¹ This perspective was based on the ordoliberal understanding of the functioning of the markets and state interference with market mechanisms: free market forces lead to the most efficient allocation of resources and any interference by the regulator should be kept to a minimum.⁶² In consequence, the ECB's monetary policy strategy should focus on influencing aggregate variables such as employment or nominal growth aiming to affect the price level. It should refrain from affecting market participants and financing conditions on a microeconomic level.⁶³

As outlined above, the ECB derived the principle of market neutrality from Art. 127 para. 1 sentence 3 TFEU. According to the interpretation of the ECB, this principle entails that the ECB may not allocate its asset purchases according to environmental or social criteria thereby avoiding discrimination of certain market participants based on such criteria.

In consequence, the ECB should only mirror existing market structures by replicating the existing bond issuance behaviour of market participants within its purchases – thereby acting (presumably) *market neutral*. This perspective rests on the premise that the existing market structures and bond issuance behaviour of market participants are yielding an efficient allocation of resources (see Art. 127 para. 1 sentence 3 TFEU).⁶⁴

2. Greening the CSPP – Targeted Design Feature in the Pursuit of the ECB's Environmental Objective

a) Why Market Neutrality is not Environmentally Neutral

However, the principle of market neutrality is itself by far not as neutral as the name implies. To the contrary, it encapsulates inevitably inherent biases due to its reference point – the bond markets. Only such market participants active on the financial markets can participate and, in turn, fall within the reach of any asset purchases. Small and medium-sized enterprises (SMEs) regularly don't issue bonds but instead resort to other means of financing more suitable to their size, such as bank loans. Also, the credit requirements stipulated by the purchase programmes

61 Objections to the principle of market neutrality were raised by *van Tilburg/Simić*, pp. 23 et seq.

62 *van Tilburg/Simić*, p. 23; *Selmayr*, in: Von der Groeben/Schwarze/Hatje (eds.), Art. 282 AEUV, paras. 52 et seq. with further references; *Wutscher*, in: Schwarze/Becker/Hatje/Schoo (eds.), Art. 282 AEUV, para. 13; *Zilioli/Ioannidis*, Common Mkt. L. Rev. 2022/2, pp. 389 et seq.; *Smits*, p. 32 et seq.

63 See also *Steinbach*, Common Mkt. L. Rev. 2022/2, p. 352; *van 't Klooster/Fontan*, New Political Econ. 2020/6, p. 865 et seq. Critical regarding the principle of market neutrality as disguising an actual politicization of the Central Bank are *van 't Klooster/Fontan*, New Political Econ. 2020/6, pp. 865 et seq.

64 Critical regarding the principle of market neutrality as disguising an actual politicization of the Central Bank are *van 't Klooster/Fontan*, New Political Econ. 2020/6, pp. 865 et seq.

can often not be fulfilled by such SMEs.⁶⁵ These limitations of the bond markets are likewise mirrored within the concept of market neutrality resulting in inherent limitations of this principle.

These limitations of the principle of market neutrality also become apparent with regard to the ECB's CSPP resulting into an emission bias of the CSPP holdings due to a high correlation between bond issuance and carbon emission.⁶⁶ The underlying reason is in essence the existence of market failures embodied in the bond markets due to externalities which are not adequately digested by market forces and result in a less efficient allocation of resources.⁶⁷ Certain industries (manufacturing, utility, automobile, and transportation) are overrepresented on the bond markets compared to other economic sectors.⁶⁸ This over- and underrepresentation in turn correlates with an increase in emissions by sector. Exactly those sectors overrepresented on the bond markets and hence within the ECB's holdings are very high in emissions as evidenced by Eurostat's air emission accounts by sector. This correlation is due to the fact that large firms in emission-intensive sectors regularly issue more bonds than firms in other sectors. As a result, the companies issuing the most bonds happen to be the market participants most detrimental to environmental sustainability.

Markets are, however, not adequately reacting to this phenomenon with regard to a long-term efficient allocation of resources due to a number of reasons, including, *inter alia*, the fact that the rising costs of climate change are not fully priced by market participants. Despite the EU's efforts to price CO₂ emissions, financial markets still continue to overestimate the returns on carbon-intensive assets, leading to suboptimal capital allocation.⁶⁹

65 *van 't Klooster/Fontan*, *New Political Econ.* 2020/6, pp. 865 et seq.

66 *Papoutsi/Piazzesi/Schneider*, pp. 1 et seq.; *Hauser*, It's not easy being green – but that shouldn't stop us: How central banks can use their monetary policy portfolios to support orderly transition to net zero, speech at Bloomberg, 21 May 2021, available at: <https://www.bankofengland.co.uk/-/media/boe/files/speech/2021/may/its-not-easy-being-green-but-that-shouldnt-stop-us-speech-by-andrew-hauser.pdf> (13/1/2025); *Dafermos/Gabor/Nikolaidi/Pawlloff/van Lerven*, pp. 5 et seq.

67 See also *Wutscher*, in: *Busch/Ferrarini/Grünewald* (eds.), p. 435; *Banque de France*, The role of central banks in the greening of the economy: Speech by François Villeroy de Galhau, available at: <https://www.bis.org/review/r210211g.pdf> (13/1/2025); *Knot*, Getting the Green Deal done – How to mobilize sustainable finance, available at: <https://www.bis.org/review/r210217d.pdf> (13/1/2025).

68 *ECB*, From green neglect to green dominance? Intervention by Isabel Schnabel, Member of the Executive Board of the ECB, at the "Greening Monetary Policy – Central Banking and Climate Change" online seminar, organised as part of the "Cleveland Fed Conversations on Central Banking", 3 March 2021, available at: https://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210303_1~f3df48854e.en.html (13/1/2025); see also *Solana*, *EBLR* 2019/4, p. 556; *Schoenmaker*, *Clim. Policy* 2021/4, p. 583, especially Figure 1, who therefore proposes to steer the allocation of the Eurosystem's assets and collateral towards low-carbon sectors in order to reduce the cost of capital for these sectors relative to high-carbon sectors.

69 *Hong/Li/Xu*, *J. Econom.* 2019/1, pp. 265 et seq.

By merely replicating existing bond issuance structures, the ECB therefore unintentionally reinforces this emission bias, exacerbating underlying market failures.⁷⁰ This approach hinders the transition to a carbon-neutral economy and obstructs the efficient allocation of resources.⁷¹

In general, the principle of market neutrality has less normative value with regard to the concept of *neutrality* as its name might suggest. It only warrants to mirror any given existing market structure – including its inherent biases and market failures. The concept is not capable of ensuring any neutrality beyond and above the financial market's situation at the time of reference. The principle of market neutrality as interpreted by the ECB is also restricted to the perimeter of bond markets and therefore does not include market participants not active on the bond market. However, at least in theory, broader market concepts could be conceptualized to better reflect all sectors of the real economy.

b) The Principle of Market Efficiency – Correcting Inefficiencies of Market Neutrality

In order to correct these market inefficiencies, the ECB decided to gradually decarbonize its corporate bond holdings, thereby moving away from the principle of market neutrality to market efficiency.⁷² From October 2022 onwards, it started to increase the share of assets on the Eurosystem's balance sheet issued by companies with a better climate performance compared to those with a poorer climate performance within the ECB's CSPP holdings, called tilting measures.⁷³ As the ECB points out, tilting shall help mitigate climate-related financial risks on the Eurosystem's balance sheet, incentivize issuers to improve their disclosures, and reduce their carbon emissions in the future.⁷⁴

⁷⁰ Schoenmaker, Clim. Policy 2021/4, pp. 582 et seq.; Schnabel, From market neutrality to market efficiency: Welcome address at the ECB DG-Research Symposium “Climate change, financial markets and green growth”, available at: <https://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210614~162bd7c253.en.html> (13/1/2025); Solana, EBLR 2019/4, p. 556.

⁷¹ Papoutsis/Piazzesi/Schneider, pp. 1 et seq.; ECB, From market neutrality to market efficiency: Welcome address at the ECB DG-Research Symposium “Climate change, financial markets and green growth”, available at: <https://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210614~162bd7c253.en.html> (13/1/2025).

⁷² ECB, From market neutrality to market efficiency: Welcome address at the ECB DG-Research Symposium “Climate change, financial markets and green growth”, available at: <https://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210614~162bd7c253.en.html> (13/1/2025).

⁷³ ECB, ECB takes further steps to incorporate climate change into its monetary policy operations, available at: www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220704~4f48a72462.en.html (13/1/2025); ECB, ECB provides details on how it aims to decarbonise its corporate bond holdings, available at: www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220919~fae53c59bd.en.html (13/1/2025).

⁷⁴ ECB, ECB provides details on how it aims to decarbonise its corporate bond holdings, available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220919~fae53c59bd.en.html> (13/1/2025).

The ECB therefore created a climate score ranking in order to assess the climate performance of issuers of corporate bonds. The issuer's rank determines the amounts of bonds to be purchased by the ECB in the process of reinvestment of CSPP redemptions. The climate score consists of a combination of three sub-scores:⁷⁵ (i) A backward-looking emissions sub-score, based on the issuers' past greenhouse gas emissions, compared with their peers in a specific sector. The lower the past emissions have been, the more favourable the result in this sub-score; (ii) a forward-looking target sub-score which takes the issuers' self-set objectives for future emission reduction into account – the more ambitious the target, the better this sub-score; and (iii) a climate disclosure sub-score, evaluating the issuers' reporting of greenhouse gas emissions. Higher-quality disclosures lead to a better score.⁷⁶

The resulting score is weighted according to a *tilting parameter* to determine the benchmark allocation for new purchases.⁷⁷ Through this scoring system, the ECB aims to incentivize corporations to set themselves ambitious emission reduction targets and to improve their climate related disclosures.

The Governing Council reinforced its commitment to the green transition efforts in February 2023, when it announced to intensify the tilting of corporate bond purchases in the period of partial reinvestment between March and July 2023.⁷⁸ After the discontinuation of reinvestment within the CSPP in July 2023, the climate score is still being utilized in the reinvestment process of PEPP redemptions in the corporate sector.⁷⁹

The second set of climate-related disclosures published by the ECB in June 2024 shows that the tilting framework has had a notable impact in reducing financed emissions associated with corporate assets in 2022 and 2023.⁸⁰ According to the ECB's assessment, around one fifth of the total emission reduction in relation to

75 In further detail *cf. Byttebier/De Troyer*, EBLR 2024/1, p. 81.

76 ECB, ECB provides details on how it aims to decarbonise its corporate bond holdings, available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220919-fae53c59bd.en.html> (13/1/2025).

77 ECB, Monetary policy tightening and the green transition: Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the International Symposium on Central Bank Independence, Sveriges Riksbank, Stockholm, available at: <https://www.ecb.europa.eu/press/key/date/2023/html/ecb.sp230110-21c89bef1b.en.html> (13/1/2025).

78 ECB, ECB decides on detailed modalities for reducing asset purchase programme holdings, available at: <https://www.ecb.europa.eu/press/pr/date/2023/html/ecb.pr230202-1a4ecbe398.en.html> (13/1/2025).

79 ECB, ECB provides details on how it aims to decarbonise its corporate bond holdings, available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220919-fae53c59bd.en.html> (13/1/2025).

80 ECB, Eurosystem and ECB portfolios steadily decarbonising, climate-related disclosures show, available at: <https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240625-94de5e0780.en.html> (13/1/2025).

assets held by the Eurosystem in 2022 and 2023 is linked to the ECB's tilting efforts in reinvestment.⁸¹

This preferential treatment of issuers with a better climate score corrects the emission bias attributed to the principle of market neutrality within the ECB's corporate bond holdings. At the same time, this targeted design feature supports the ECB's secondary policy objective with regard to environmental sustainability pursuant to Art. 127 para. 1 sentence 2 TFEU.

II. Targeted Monetary Policy Operations – a New Design Feature?

Targeted – or one could also call them *selective* or *discriminatory* – design features as such are not a new invention that started with Greening the CSPP. Also, Outright Monetary Transactions (OMT)⁸² envisaged selective bond purchases of only those Member States that experienced – according to the ECB's assessment – irregular and unwarranted deteriorations in their bond prices, which hampered policy transmission. While selectivity was highly disputed with regard to OMT,⁸³ the ECB already foresaw and implemented selective public bond purchases via the Securities Markets Programme (SMP)⁸⁴ – the pre-runner programme of OMT – and envisaged such potential targeted design features also within the Transmission Protection Instrument (TPI).⁸⁵

- 81 ECB, Eurosystem and ECB portfolios steadily decarbonising, climate-related disclosures show, available at: <https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.pr240625~94de5e0780.en.html> (13/1/2025); Schnabel suggested in: Monetary policy tightening and the green transition, speech at the International Symposium on Central Bank Independence, Sveriges Riksbank, Stockholm, available at: <https://www.ecb.europa.eu/press/key/date/2023/html/ecb.sp230110~21c89bef1b.en.html> (13/1/2025) to move away from a “flow-based tilting approach”, which affects (only) the adjustment of the reinvestments of corporate bond holdings according to the climate score of the issuers and instead move to a “stock-based tilting approach” adjusting the portfolio towards greener issuers also absent any reinvestments.
- 82 ECB, Technical features of Outright Monetary Transactions, available at: https://www.ecb.europa.eu/press/pr/date/2012/html/pr120906_1.en.html (13/1/2025).
- 83 BVerfG, 2 BvR 2728/13, Order of the Second Senate of 14 Jan. 2014, DE:BVerfG:2014:rs20140114.2bvr272813, para. 73; Opinion of AG Cruz Villalón, Case C-62/14, Gauweiler, ECLI:EU:C:2015:7, para. 153; ECJ, Case C-493/17, Weiss and others, judgment of 11 December 2018, ECLI:EU:C:2018:1000, para. 89. Also in the PSPP proceedings the argument was brought forward that the non-selectivity of the programme would contribute to its admissibility (see Opinion of AG Wathelet, Case C-493/17, Weiss and others, ECLI:EU:C:2018:815, para. 105; ECJ, Case C-493/17, Weiss and others, judgment of 11 December 2018, ECLI:EU:C:2018:1000, para. 82). See also Thiele, EuZW 2014/18, p. 698; Dornacher/Thiele, in: Pechstein/Nowak/Häde (eds.), Art. 123 AEUV, paras. 23 et seq.; Mayer, NJW 2015/28, pp. 2001, 2003; Borger, Common Mkt. L. Rev. 2015/1, pp. 154 et seq., 158 et seq., 175 et seq.
- 84 Decision of the European Central Bank of 14 May 2010 establishing a securities markets programme (ECB/2010/5), OJ L 124 of 20/5/2010, pp. 8–9.
- 85 ECB, The Transmission Protection Instrument, available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220721~973e6e7273.en.html> (13/1/2025).

This raises the more general question if the ECB's legal framework allows for such targeted, selective measures. The article will therefore explore in more detail the validity of selective and targeted monetary policy design features from a legal perspective. It will develop the legal conditions under which selective monetary policy measures are in conformity with EU law (C.II.1. and C.II.2.). This legal framework shall then serve as the benchmark for assessing the validity of Greening of CSPP as a targeted monetary policy measure (C.II.3.).

1. The Principle of Non-Discrimination in Monetary Policy

As the following analysis will demonstrate, the legal framework of the Monetary Union is based in general on a non-discriminatory design of monetary policy instruments. Selective design features are not the premise monetary policy is built upon. Rather, the monetary policy framework rests upon the principle of non-discrimination (see C.II.1.a)), which the Court of Justice of the European Union (CJEU) also applied within the monetary policy context (see C.II.1.b)).

a) Monetary Policy Framework

The monetary policy framework is built on the principle of a single monetary policy in the Monetary Union.⁸⁶ There is only "one and indivisible"⁸⁷ monetary policy for and in the Euro area within the exclusive competence of the Union.⁸⁸ The single monetary policy for the Eurozone has to take a holistic view and – at least in theory – be blind to the needs of single Member States, regions or industries.⁸⁹ Preferential treatment of certain Member States is contrary to the concept of the Monetary Union. This is in line with the principle of non-discrimination on grounds of nationality as a cornerstone of the EU legal order (see Art. 4 para. 2 sentence 1 TEU) prohibiting any discriminatory treatment of Member States unless there is an objective reason for its justification.⁹⁰

However, the principle of non-discrimination within the monetary policy conduct is by far not only confined to Member States as market participants, but encompasses also private actors, as demonstrated in the Eurosystem's monetary

86 Art. 119 para. 2 TFEU.

87 *Lastra*, p. 6.

88 Art. 3 para. 1 lit. c. TFEU; see, e.g., *Wutscher*, in: Schwarze/Becker/Hatje/Schoo (eds.), Art. 127 AEUV, para. 16.

89 *Berger/De Haan*, Atl. Econ. J. 2002/3, pp. 263 et seq.; *Enderlein*, Central Banking Journal, 2005/4, pp. 24 et seq.; *Sapir/Wolff*, Bruegel Policy Brief 2015/01, pp. 1 et seq.; *Wyplosz*, Econ. Policy 2016/87, pp. 559 et seq.; different, e.g., *Fritzsche/Harms*, pp. 1 et seq. In addition, Art. 123 and 125 TFEU shall ensure that monetary policy is not used as a means to support the political interests (and especially fiscal needs) of Member States.

90 *Streinz*, in: *Streinz* (ed.), Art. 4 EUV, para. 13; *Obwexer*, in: *Von der Groeben/Schwarze/Hatje* (eds.), Art. 4 EUV, para. 21, who speaks of a ban on arbitrariness in this context.

policy framework with regard to the rules on eligible counterparties, eligible assets, and the procedures for the implementation of open market operations in general.⁹¹

Guideline 2015/510 for example explicitly declares that the principle of equal treatment is a guiding principle regarding eligibility criteria for assets: “[a]ll risk control measures applied by the Eurosystem shall ensure consistent, transparent and *non-discriminatory conditions* for any type of mobilized eligible asset across the Member States whose currency is the euro”.⁹²

The tender procedures for implementing its monetary policy operations shall likewise ensure that the ECB is not making voluntary choices when allocating credit, but instead provide for fair competition among potential counterparties to avoid interference with market forces. The principle of non-discrimination is also referenced in the rules governing minimum reserve requirements concerning potential exceptions and deviations from the minimum reserve obligation.⁹³

The principle of an open market economy in Art. 127 para. 1 sentence 3 TFEU (see above C.I.1.b)) can also be interpreted and has been read by the ECB to encompass the principle of market neutrality as a nuanciation of some form of non-discrimination.

The monetary policy framework is also informed by general provisions of EU law including those relating to equality and non-discrimination. In particular, the ECB is bound by Art. 8, 10 and 18 TFEU which substantiate the equality-related objectives in Art. 3 para. 3 TEU. They serve as guiding principles for all EU institutions when implementing EU policies, and likewise for the ECB.⁹⁴ In addition, equality also bears an individual rights dimension, as explicitly acknowledged by the Charter of Fundamental Rights (CFR) in its Title III (see Art. 20, 21), which is also binding for the ECB.

⁹¹ BVerfG, 2 BvR 2728/13, Order of the Second Senate of 14 Jan. 2014, DE:BVerfG:2014:rs20140114.2bvr272813, para. 73; Opinion of AG Cruz Villalón, Case C-62/14, *Gauweiler*, ECLI:EU:C:2015:7, para. 73; *Beukers*, GLJ 2014/2, pp. 349 et seq.

⁹² Art. 127 of Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (recast) (ECB/2014/60), OJ L 91/3 of 02/04/2015 (emphasis added). Already in its earlier version, Guideline of the ECB of 31 Aug. 2006 amending Guideline ECB/2000/7 on monetary policy instruments and procedures of the Eurosystem (ECB/2006/12), O.J. 2006, L 352/1, Chapter 2.1 on general eligibility criteria for counterparties stated that the general eligibility criteria “are defined with a view to giving a broad range of institutions access to Eurosystem monetary policy operations, enhancing *equal treatment* of institutions across the euro area and ensuring that counterparties fulfil certain operational and prudential requirements” (emphasis added).

⁹³ Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (recast) (ECB/2014/60), OJ L 91/3 of 02/04/2015, para. 5, annex I: “Pursuant to Article 2 para. 2 of Regulation (EC) No. 1745/2003 (ECB/2003/9), the ECB may exempt, on a non-discriminatory basis, the institutions listed in points (a) to (c) thereof from reserve requirements.”.

⁹⁴ Regarding Art. 8 TFEU: *Kocher*, in: *Pechstein/Nowak/Häde* (eds.), Art. 8 AEUV, para. 1; regarding Art. 10 TFEU: *Schorkopf*, in: *Grabitz/Hilf/Nettesheim* (eds.), Art. 10 AEUV, paras. 12, 18; in general, see *Jacqué*, in: *Von der Groeben/Schwarze/Hatje* (eds.), Art. 3 EUV, para. 1 with further references.

b) CJEU Case Law

Since the inception of the Union, the CJEU has made clear that the principle of equality and non-discrimination present fundamental principles of the EU legal order.⁹⁵ Concerning the content of the principle of equality, the CJEU elaborates:

“Moreover, the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (see, to that effect, judgment of 18 April 2024, Dumitrescu and Others v Commission and Court of Justice, C-567/22 P to C-570/22 P, EU:C:2024:336, paragraph 67 and the case-law cited).”⁹⁶

The CJEU also elaborated on its conceptual understanding of the principle of non-discrimination, recognizing it as a manifestation of the broader principle of equality.⁹⁷ It explicitly refers to Art. 20 CFR as informing the general principle of equality from a fundamental rights perspective.⁹⁸

Moreover, the General Court (GC) directly invoked the principles of non-discrimination and equal treatment in the context of assessing monetary policy measures. It confirmed in *Accorinti* the applicability of the principle of non-discrimination and equal treatment. The case dealt with the status of the ECB as a preferred creditor within the debt restructuring of Greece. The applicants alleged that the fact that the ECB enjoyed this preferred creditor status presented a violation of the principle of equal treatment of private creditors with regard to Art. 20 and 21 CFR.⁹⁹ The GC ruled that the ECB, as an EU institution, is required to observe the CFR provisions as superior rule of EU law and that the principle of equal treatment is also applicable to the case at hand. However, the GC did not find a violation of the principle of equal treatment,¹⁰⁰ since the situation of private investors who followed private pecuniary interests with their purchases of Greek bonds was not

95 ECJ, Joined Cases 117/76 and 16/77, *Ruckdeschel*, judgment 19 October 1977, ECLI:EU:C:1977:160, para. 7.

96 See, for example, ECJ, Case C-601/22, *Umweltverband WWF Österreich and Others v. Amt der Tiroler Landesregierung*, judgment 11 July 2024, ECLI:EU:C:2024:595, para. 33.

97 ECJ, Joined Cases 117/76 & 16/77, *Ruckdeschel*, judgment 19 October 1977, ECLI:EU:C:1977:160, para. 7. With regard to the fundamental rights dimension and Art. 20 in relation to Art. 21 CFR see also ECJ, Joined Cases C-567/22 P to C-570/22 P, *Dumitrescu and Others v. European Commission and CJEU*, ECLI:EU:C:2024:336, para. 66: “In that regard, it should be recalled that the principle of equal treatment [enshrined in Article 20 of the Charter] is a general principle of EU law of which the principle of non-discrimination laid down in Article 21 para. 1 of the Charter is a specific expression (judgment of 14 July 2022, *Commission v VW and Others*, C-116/21 P to C-118/21 P, C-138/21 P and C-139/21 P, EU:C:2022:557, paragraph 140 and the case-law cited.”.

98 ECJ, Joined Cases C-567/22 P to C-570/22 P, *Dumitrescu and Others v. European Commission and CJEU*, judgment 18 April 2024, ECLI:EU:C:2024:336, paras. 65 et seq.

99 GC, Case T-79/13, *Accorinti*, judgment of 19 June 2018, ECLI:EU:T:2015:756, para. 85.

100 GC, Case T-79/13, *Accorinti*, judgment of 19 June 2018, ECLI:EU:T:2015:756, para. 88.

comparable to that of the Eurosystem which was serving the public interest with its monetary policy.¹⁰¹

2. Modifications of the Principle of Non-Discrimination and Room for Selective Design Features

The principle of non-discrimination is, however, not a strict rule, but allows for exemptions – both under general EU law, as outlined by the CJEU throughout its case law,¹⁰² and within the monetary policy context. In *Accorinti*, the GC explicitly made reference to the possibility of deviations from the principle of equal treatment:

“The general principle of equal treatment requires that comparable situations are not treated differently and that different situations are not treated in the same way *unless such treatment is objectively justified*. The comparability of different situations must be assessed with regard to all the elements which characterize them. Those elements must in particular be determined and assessed *in the light of the subject-matter and purpose of the European Union act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account*”.¹⁰³

This understanding is in line with the principle of market neutrality, which also contains a dimension of non-discrimination. The principle of market neutrality was derived as a conceptual enunciation of the principle of an open market economy with free competition allowing for an *efficient allocation of resources*. If market neutrality is not serving the latter, the principle lost its justification.

Therefore, in general, deviations from the principle of non-discrimination are conceivable, but must be in conformity with the mandate of the ECB and the objectives and principles underlying monetary policy.

General provisions of EU law also come into play here. These general provisions of EU law include the principles of equality and non-discrimination (Art. 3 para. 3 TFEU, see above)¹⁰⁴ as well as other general principles and objectives including environmental protection and sustainability (Art. 11 TFEU) as potential secondary monetary policy objectives. Articles 7–17 TFEU serve as so-called cross-sectoral

101 GC, Case T-79/13, *Accorinti*, judgment of 19 June 2018, ECLI:EU:T:2015:756, paras. 91 et seq.

102 ECJ, Joined Cases 117/76 & 16/77, *Ruckdeschel*, judgment 19 October 1977, ECLI:EU:C:1977:160, para. 7.

103 GC, Case T-79/13, *Accorinti*, judgment of 19 June 2018, ECLI:EU:T:2015:756, para. 87, with reference to ECJ, Case C-127/07, *Arcelor Atlantique and Lorraine and Others*, judgment 16 December 2008, ECLI:EU:C:2008:728, paras. 23, 25, 26 and the case law cited; ECJ, Case C-176/09, *Luxembourg v. Parliament and Council*, judgment of 12 May 2011, ECLI:EU:C:2011:290, paras. 31, 32 and the case law cited (emphasis added).

104 ECJ, Case 31/74, *Galli*, judgment of 23 January 1975, ECLI:EU:C:1975:8, para. 14; ECJ, Case 1/69, *Italy v. Commission*, judgment 9 July 1969, ECLI:EU:C:1969:34, paras. 4 et seq.; see also *Terhechte*, in: Grabitz/Hilf/Nettesheim (eds.), Art. 3 EUV, paras. 8 et seq. with further references.

tasks, which underlie all Union policies, including monetary policy.¹⁰⁵ Also, Art. 127 TFEU bridges the gap to the general provisions in EU law via its reference to Art. 3 TEU in Art. 127 para. 1 sentence 2 TFEU. In consequence, the ECB has to take environmental considerations into account and pursue environmental objectives when implementing its monetary policy.¹⁰⁶ Primary and secondary EU law have to be interpreted in a way that supports the objective of environmental protection, as also demanded for by Art. 127 para. 1 sentence 2 TFEU in conjunction with Art. 3 TEU, Art. 11 TFEU.¹⁰⁷

Yet, at the same time, the general provisions of EU law are not conceptualized to override the detailed articulation and structure of the ECB's mandate and tasks. The ECB's primary mandate is to safeguard price stability which is not altered by any reference to secondary objectives in Art. 127 para. 1 sentence 2 TFEU and the incorporation of further Union objectives in Art. 3 para. 3 TEU.¹⁰⁸ This understanding corresponds to the conceptualization of Art. 127 para. 1 sentence 2 TFEU as a "contributory competence" (*Unterstützungskompetenz*) of the ECB. The ECB's secondary objective to support the general economic policies in the Union shall not serve as a legal basis for measures which are predominantly economic in nature or predominantly in pursuit of any other secondary objective enshrined in Art. 3 para. 3 TEU.¹⁰⁹

This nuanced competence structure is also warranted by democratic considerations, since it is not for the ECB as an independent institution to conduct economic policies and to decide and choose among the many potential economic policy objectives. The ECB's independence is functionally tied to its task to safeguard price stability. This reduced democratic legitimacy, however, in turn also warrants its clearly circumsised mandate with regard to its secondary objective in the realm of economic policy in Art. 127 para. 2 TFEU. The ECB is not equipped to take distributional decisions beyond monetary policy and decide which economic policy objective – be it the fight against unemployment, the fight against climate change, or the support of gender equality – to prioritize over others. The fact that the European Commission and the Member States have expressed their normative preferences with the Green Deal initiative and the implementation of EU standards, such as the Taxonomy Regulation or the EU Green Bond Standard, cannot compensate the missing

¹⁰⁵ Regarding Art. 8 TFEU: *Kocher*, in: Pechstein/Nowak/Häde (eds.), Art. 8 AEUV, para. 1; regarding Art. 10 TFEU: *Schorkopf*, in: Grabitz/Hilf/Nettesheim (eds.), Art. 10 AEUV, paras. 12, 18; in general see *Jacqué*, in: Von der Groeben/Schwarze/Hatje (eds.), Art. 3 EUV, para. 1 with further references.

¹⁰⁶ *Calliess/Tuncel*, GLJ 2023/5, p. 806.

¹⁰⁷ See, e.g., ECJ, Case C-513/99, *Concordia Bus Finland*, judgment of 17 September 2002, ECLI:EU:C:2002:495, para. 57; *Sjåfjell*, in: Ippolito/Bartoloni/Condinanzi (eds.), p. 112; also *Krämer*, in: Von der Groeben/Schwarze/Hatje (eds.), Art. 11 AEUV, para. 34; *Heselhaus*, in: Pechstein/Nowak/Häde (eds.), Art. 11 AEUV, paras. 20, 23, 29 et seq.; *Nettesheim*, in: Grabitz/Hilf/Nettesheim (eds.), Art. 11 AEUV, paras. 30 et seq.

¹⁰⁸ *Dietz*, Common Mkt. L. Rev. 2022/2, pp. 413, 414 with further references.

¹⁰⁹ See also *Zilioli/Ioannidis*, Common Mkt. L. Rev. 2022/2, pp. 363 et seq.

democratic legitimacy of the ECB to take such decisions.¹¹⁰ While these regulatory decisions show a certain democratically founded societal preference for specific economic policy objectives, as currently environmental protection, they do not entail the democratic decision to implement these objectives via discriminatory monetary policy measures. Also, at the moment, combating climate change stands as the top priority, but this focus may shift in the future. There are numerous initiatives at EU level which address various policy objectives that the ECB could potentially support through its monetary policy measures. This raises additional questions of which initiatives to prioritize and what to do in case of potentially conflicting interests.

In consequence, the necessary justification for discriminatory, i.e. targeted measures must fulfil certain conditions. First and foremost, it must be in line with the mandate of the ECB, i.e. serve a monetary policy objective *stricto sensu* as laid down in Art. 127 para. 1 sentence 1, 2 and para. 5 TFEU.¹¹¹ Any targeted design feature must be in conformity with the nuanced mandate structure as laid out above, taking into account also limitations on the ECB's mandate especially with regard to secondary monetary policy objectives. In addition, the mandate of the ECB must be read against the background of its reduced democratic legitimacy. Lastly, the justification needs to be in conformity with the principle of proportionality applicable to all monetary policy measures¹¹² and may not contravene the price stability objective.¹¹³

3. Targeting Environmental Objectives via the CSPP

Coming back to the example of Greening corporate sector purchases referred to at the beginning of the article (see C.I.2.), the ECB justified its tilting measures with two reasons: (i) the mitigation of climate-related financial risks on the Eurosystem balance sheet, and (ii) the fight against carbon emissions and the objective to contribute to a CO2-neutral, sustainable economy.¹¹⁴

Counteracting financial risks for the Eurosystem balance sheet is a legitimate objective and justification for discriminatory measures, as it relates to the ECB's contributory mandate to support the stability of the financial system (Art. 127 para. 5 TFEU) and the ECB's financial independence (Art. 282 para. 3 TFEU).

Also, as outlined above, the ECB may and shall also make recourse to sustainability objectives in Art. 3 para. 3 TEU and Art. 11 TFEU when conceptualizing its as-

¹¹⁰ However, *Zilioli/Ioannidis* suggest that the EU's preference for environmental goals may serve as a justification for the ECB's preference to prioritize environmental objectives, see *Zilioli/Ioannidis*, Common Mkt. L. Rev. 2022/2, pp. 384 et seq.

¹¹¹ In a similar direction *Thiele*, EuZW 2014/18, p. 698.

¹¹² *Zilioli/Ioannidis*, Common Mkt. L. Rev. 2022/2, pp. 389, 391.

¹¹³ See also *Steinbach*, Common Mkt. L. Rev. 2022/2, p. 352.

¹¹⁴ ECB, ECB provides details on how it aims to decarbonise its corporate bond holdings, available at: <https://www.ecb.europa.eu/press/pr/date/2022/html/ecb.pr220919~fae53c59bd.en.html> (13/1/2025).

set purchases. But does the ECB's secondary objective in Art. 127 para. 2 TFEU in conjunction with the Union's environmental objectives warrant for preferential asset purchases of climate friendly bond issuers? Or, more generally speaking, may the ECB support certain environmental, social, economic, and other non-monetary policy objectives contained in the EU's agenda in Art. 3 TEU via its contributory function to support the economic policies in Art. 127 para. 1 sentence 2 TFEU if it results into discriminatory measures?¹¹⁵

The ECB made recourse to the concept of market efficiency to argue for its tilting measures. However, also this line of argumentation cannot overcome the lack of competence when it comes to discriminatory measures based on the ECB's secondary objective. From a microeconomic standpoint, allocating resources to polluting industries may in fact appear efficient as long as these industries deliver high returns. This is due to the fact that the firms most responsible for emissions do not bear a proportional share of the costs associated with climate change. When, however, taking a medium or long-term macroeconomic perspective, this assessment changes since investing financial resources in polluting and carbon-intensive sectors will not be efficient – in line with the ECB's reasoning. This raises another competence question: Is it really within the competence of the ECB to decide on the benchmark to assess market efficiency with regard to non-monetary policy objectives?¹¹⁶

D. Music of the Future–Green TLTROs and Greening the PSPP?

The ECB has not yet announced it would actually pursue a strategy of targeted longer-term refinancing operations aimed specifically at *green* businesses. In January 2023, ECB's Executive Board Member *Isabel Schnabel* dismissed green TLTROs at least as an option for the immediate future because of the "current need for a restrictive monetary policy".¹¹⁷ This does not rule out, however, that Green TLTROs could be introduced once monetary policy tightening is fading in favour of a more expansive monetary policy stance including liquidity measures, as

¹¹⁵ In similar fashion, *Zilioli/Ioannidis* concede that potential interference with market functions might be legally more constrained if undertaken in pursuit of the ECB's secondary objective; see *Zilioli/Ioannidis*, *Common Mkt. L. Rev.* 2022/2, p. 390.

¹¹⁶ See also *Wutscher*, in: *Busch/Ferrarini/Grünewald* (eds.), p. 438; *Steinbach*, *Common Mkt. L. Rev.* 2022/2, p. 353.

¹¹⁷ *Schnabel* had dismissed green TLTROs in her speech in Stockholm on 10 January 2023 as an option for the immediate future because of the "current need for a restrictive monetary policy", see *ECB*, Monetary policy tightening and the green transition: Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the International Symposium on Central Bank Independence, Sveriges Riksbank, Stockholm, available at: <https://www.ecb.europa.eu/press/key/date/2023/html/ecb.sp230110~21c89bef1b.en.html> (13/1/2025).

also *Isabel Schnabel* suggests.¹¹⁸ In light of the Governing Council's commitment with regard to the ECB's secondary objective on the one hand and the potential for structural LTROs on the other hand, Green TLTROs could serve as a powerful tool to boost the ECB's contribution to support the green transition.¹¹⁹ The argumentation in favour of Green TLTROs could be similar to that justifying tilting measures: Market failures to adequately price the risk of climate change are still impeding sufficient private sector investments in green economic activities. By offering more favourable funding to banks that, in turn, offer credit for projects aligned with the EU's Green Taxonomy, the ECB could incentivize green lending and correct existing misallocations of capital, which often favour high-carbon activities (the so-called carbon bias, as discussed above).¹²⁰

In addition, Green TLTROs could reduce climate-related financial risks in the banking sector that threaten long-term financial stability and thereby serve its contributory task in the field of financial stability (Art. 127 para. 5 TFEU). By incentivizing green investments, banks would be less exposed to high-emission sectors, which are themselves confronted with climate and transition risks. Despite efforts to adequately price these risks, they are not yet fully internalised by market participants, so that Green TLTROs would contribute to safeguarding the banking system by promoting environmentally sound investments.¹²¹

Again, the ECB would need to justify such selective design features, as Green TLTROs directly and indirectly favour certain banks and certain real economy market participants interfering with the principle of market neutrality and the existing allocation of capital via bank lending across industries.¹²² In addition, each bank has a different capacity for green lending so that certain financial institutions with a higher proportion of lending activities in sectors like renewable energy would benefit disproportionately compared to banks which – for various reasons – mainly operate with less climate-friendly sectors and potentially cannot change their business concept in the short- and medium-term.

In any case, there is not yet a fully comprehensive system in place to define what constitutes a *green* investment across all sectors which the ECB could adhere to as

118 ECB, Monetary policy tightening and the green transition: Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the International Symposium on Central Bank Independence, Sveriges Riksbank, Stockholm, available at: <https://www.ecb.europa.eu/press/key/date/2023/html/ecb.sp230110~21c89bef1b.en.html> (13/1/2025): "Green targeted lending operations, for example, could be an instrument worth considering in the future when policy needs to become expansionary again, provided the underlying data gaps are resolved".

119 See also *Wutscher*, in: Busch/Ferrarini/Grünewald (eds.), p. 451; *Colesanti Senni/Pagliari/van 't Klooster*, p. 14 and *Dafermos*, p. 12 with further references.

120 *van 't Klooster/van Tilburg*, p. 11; in greater economic depth see the propositions in *Böser/Colesanti Senni*, pp. 2, 18 et seq.; *Batsaikhan/Jourdan*, p. 15.

121 *van 't Klooster/van Tilburg*, p. 12; *Colesanti Senni/Pagliari/van 't Klooster*, p. 14 with further references; in greater economic depth see the propositions in *Böser/Colesanti Senni*, pp. 21 et seq.

122 See also *Wutscher*, in: Busch/Ferrarini/Grünewald (eds.), p. 452; *van 't Klooster/van Tilburg*, p. 19.

a benchmark for Green TLTROs.¹²³ Without such a coherent system aligned with existing sustainable finance regulation frameworks, there is a risk of inconsistent implementation and a lack of standardization in assessing which loans are truly in line with environmental objectives – a problem at large discussed within the current ESG regulation.¹²⁴

Even more controversy than Green TLTROs might raise another idea *Isabel Schnabel* invoked as part of the ECB's endeavour to support the green transition: Greening the public sector bond holdings.¹²⁵

Since the ECB's public sector bond holdings account for about half of the Eurosystem's balance sheet, expanding the tilting measures to also include these asset purchases would certainly prove to be a very efficient tool to support environmentally friendly economic activities.¹²⁶ In addition, the ECB would treat private and public market participants equally when it comes to incentivizing the financial markets actors to support the green transition.

However, as *Isabel Schnabel* points out, such Greening of the public sector purchases raises many questions: How is an allocation according to the climate related benchmarks compatible with the capital key which presents the decisive allocation mechanism for public sector purchases so far? Furthermore, how should the climate score, as used within corporate sector bond holdings, be tailored to Member States as market participants?¹²⁷

In addition, one might again raise the question, whether it is for the ECB to use monetary policy measures to foster Member States' commitment to the Paris Agreement. A divergence from the capital key as yardstick for the allocation of asset purchases has to be justified in line with the monetary policy framework and monetary policy objectives, first and foremost price stability. Public sector purchases are

123 Also *Wutscher*, in: Busch/Ferrarini/Grünewald (eds.), p. 452 refers to the “uncertainties relating to the modelling of climate risks in general and the shortcomings of existing valuation models in particular” and points out that any unjustified discrimination can be raised by affected parties under the CFR.

124 *van 't Klooster/van Tilburg*, p. 12; see also *Colesanti Senni/Pagliari/van 't Klooster*, p. 26.

125 ECB, Monetary policy tightening and the green transition: Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the International Symposium on Central Bank Independence, Sveriges Riksbank, Stockholm, available at: <https://www.ecb.europa.eu/press/key/date/2023/html/ecb.sp230110~21c89bef1b.en.html> (13/1/2025).

126 A less controversial option than reshuffling the sovereign bond portfolio could be to target green bonds of supranational institutions and agencies, which also form part of public sector purchase programmes. They already account for a substantial amount of green bonds, and their allocation is not tied to any capital key, see ECB, Monetary policy tightening and the green transition: Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the International Symposium on Central Bank Independence, Sveriges Riksbank, Stockholm, available at: <https://www.ecb.europa.eu/press/key/date/2023/html/ecb.sp230110~21c89bef1b.en.html> (13/1/2025).

127 ECB, Monetary policy tightening and the green transition: Speech by Isabel Schnabel, Member of the Executive Board of the ECB, at the International Symposium on Central Bank Independence, Sveriges Riksbank, Stockholm, available at: <https://www.ecb.europa.eu/press/key/date/2023/html/ecb.sp230110~21c89bef1b.en.html> (13/1/2025).

crucial for ensuring monetary policy transmission and have been considered and used in the past as selective monetary policy instruments when monetary policy transmission was distorted. The allocation of such sovereign bond purchases was conceptualized to be tailored to the perceived need to target unwarranted rises in sovereign bond yields resulting into distortions of the transmission channels. Against that background and depending on the specific macroeconomic situation, a conflict of objectives might arise between allocating bond purchases in order to correct sovereign bond yield spreads (as perceived unwarranted) on the one hand and the climate performance of the respective Member States on the other hand.

These questions are only exemplary for the operational and legal difficulties which arise if the ECB continues its path of embarking on such a form of targeted asset purchases and TLTROs in pursuit of secondary objectives. From a political perspective, it will be interesting to see if Member States are willing to be assessed by the ECB on their climate performance. It would also bring about a change in the political dynamics between the ECB and the Eurozone Member States. The financial markets audience will hear with interest whether this music of the future will be harmonic.

Bibliography

ALTAVILLA, CARLA; BARBIERO, FRANCESCA; BOUCINHA, MIGUEL; BURLON, LORENZO, *The Great Lockdown: Pandemic response policies and bank lending conditions*, European Economic Review, 2023, Vol. 156(C), Article 104478, pp. 1–22

BATSAIKHAN, UURIINTUYA; JOURDAN, STANISLAS, *Money looking for a home. How to make the European Central Bank's negative interest rates pay for building renovations*, 2021, Positive Money Europe, pp. 1–22

BERGER, HELGE; DE HAAN, JAKOB, *Are Small Countries too Powerful with-in the ECB?*, Atlantic Economic Journal, 2002, Vol. 30(3), pp. 263–282

BEUKERS, THOMAS, *The Bundesverfassungsgericht Preliminary Reference on the OMT Program: "In the ECB We Do Not Trust. What About You?"*, German Law Journal, 2014, Vol. 15(2), pp. 343–368

BORGER, VESTERT, *Outright Monetary Transactions and the stability of the Mandate of the ECB: Gauweiler*, Common Market Law Review, 2015, Vol. 52(1), pp. 139–196

BÖSER, FLORIAN; COLESANTI SENNI, CHIARA, CAROs: *Climate Risk-Adjusted Refinancing Operations*, SSRN Papers, 2021, pp. 1–59

BYTTEBIER, KOEN; DE TROYER, JOLIEN, *The ECB's Decarbonization Plan for Corporate Bonds*, European Business Law Review, 2024, Vol. 35(1), pp. 81–94

CALLIESS, CHRISTIAN; TUNCEL, EBRU, *The Role of Article 11 TFEU in the Greening of the ECB's Monetary Policy*, German Law Journal, 2023, Vol. 24(5), pp. 796–824

CALLIESS, CHRISTIAN; RUFFERT, MATTHIAS (eds.), *EUV/AEUV*, 6th edition, Munich, 2022

COLESANTI SENNI, CHIARA; PAGLIARI, SOLE MARIA; VAN 'T KLOOSTER, JENS, *The CO2 content of the TLTRO III scheme and its greening*, Centre for Climate Change Economics and Policy Working Paper 422, Grantham Research Institute on Climate Change and the Environment, 2023, Working Paper, No. 398, pp. 1–36

DAFERMOS, YANNIS, *The Climate Crisis Meets the ECB: Tinkering Around the Edges or Paradigm Shift?*, SOAS Department of Economics, 2024, Working Paper, No. 264, pp. 1–24

DAFERMOS, YANNIS; GABOR, DANIELA; NIKOLAIDI MARIA; PAWLOFF, ADAM; VAN LERVEN, FRANK, *Greening the Eurosystem collateral framework. How to decarbonise the ECB's monetary policy*, New Economics Foundation, 2021, pp. 1–46

DIETZ, SARA, *Central Banks and Inequality*, Common Market Law Review, 2023, Vol. 60(5), pp. 1349–1382

DIETZ, SARA, *Green Monetary Policy between Market Neutrality and Market Efficiency*, Common Market Law Review, 2022, Vol. 59(2), pp. 395–432

ENDERLEIN, HENRIK, *One Size Fits None*, Central Banking Journal, 2005, Vol. 15(4), pp. 24–28

FRITSCHE, JAN PHILIPP; HARMS, PATRICK CHRISTIAN, *Better off without the Euro? A Structural VAR Assessment of European Monetary Policy*, Discussion Papers of DIW Berlin, 2020, pp. 1–59

GRABITZ, EBERHARD; HILF, MEINHARD; NETTESHEIM, MARTIN (eds.), *Das Recht der Europäischen Union: EUV/AEUV*, 83rd edition, Munich, 2024

GROS, DANIEL; VALIANTE, DIEGO; DE GROEN, WILLEM PIETER, *The ECB's Latest Gimmick: Cash for Loans*, Centre for European Policy Studies Policy Brief, 2016, No. 341, pp. 1–6

HONG, HARRISON; LI, FRANK WEIKAI; XU, JIANGMIN, *Climate risks and market efficiency*, Journal of Econometrics, 2019, Vol. 208(1), pp. 265–281

LASTRA, ROSA M., *The Evolution of the European Central Bank*, Queen Mary University of London, School of Law Legal Studies Research Paper, 2012, No. 99, pp. 1–20

MAYER, FRANZ C., *Zurück zur Rechtsgemeinschaft: Das OMT-Urteil des EuGH*, Neue Juristische Wochenschrift, 2015, Vol. 68(28), pp. 1999–2003

NEES, DANIEL, *Klimaschutz durch die EZB? Reichweite und Grenzen des Mandats der EZB in Bezug auf den Erwerb sogenannter „grüner“ Anleihen*, Europarecht, 2021, Vol. 56(2), pp. 119–137

PAPOUTSI, MELINA; PIAZZESI, MONIKA; SCHNEIDER, MARTIN, *How unconventional is green monetary policy?*, JEEA-FBBVA Lecture at ASSA, January 2021 Working Paper, 2022, pp. 1–55

PECHSTEIN, MATTHIAS; NOWAK, CARSTEN; HÄDE, ULRICH (eds.), *Frankfurter Kommentar zu EUV, GRC und AEUV*, 2nd edition, Tübingen, 2023

SAPIR, ANDRE; WOLFF, GUNTRAM B., *Euro-area governance: what to reform and how to do it*, Bruegel Policy Brief, 2015, No. 870(1), pp. 1–8

SCHOENMAKER, DIRK, *Greening monetary policy*, Climate Policy, 2021, Vol. 21(4), pp. 581–592

SCHWARZE, JÜRGEN; BECKER, ULRICH; HATJE, ARMIN; SCHOO, JO-HANN (eds.), *EU-Kommentar*, 4th edition, Baden-Baden, 2019

SMITS, RENÉ, *Elaborating a Climate Change-Friendly Legal Perspective for the ECB*, SSRN Papers, 2021, pp. 1–55

SOLANA, JAVIER, *The Power of the Eurosystem to Promote Environmental Protection*, European Business Law Review, 2019, Vol. 30(4), pp. 547–575

STEINBACH, ARMIN, *The greening of the Economic and Monetary Union*, Common Market Law Review, 2022, Vol. 59(2), pp. 329–362

STREINZ, RUDOLF (ed.), *EUV/AEUV*, 3rd edition, Munich, 2018

THIELE, ALEXANDER, *Die EZB als fiskal- und wirtschaftspolitischer Akteur?*, Europäische Zeitschrift für Wirtschaftsrecht, 2014, pp. 694–699

VAN TILBURG, RENS; SIMIĆ ALEKSANDAR, *Legally Green. Climate change and the ECB mandate*, Sustainable Finance Lab Policy Paper, 2021, pp. 1–42

VAN 'T KLOOSTER, JENS; FONTAN, CLÉMENT, *The Myth of Market Neutrality: A Comparative Study of the European Central Bank's and the Swiss National Bank's Corporate Security Purchases*, New Political Economy, 2020, Vol. 25(6), pp. 865–870

VAN 'T KLOOSTER, JENS; VAN TILBURG, RENS, *Targeting a sustainable recovery with green TLTROs*, Positive Money Europe/Sustainable Finance Lab, 2020, pp. 1–27

VON DER GROEBEN, HANS; HATJE, ARMIN; SCHWARZE, JÜRGEN (eds.), *Europäisches Unionsrecht*, 7th edition, Baden-Baden, 2015

WUTSCHER, CLAUDIA, *The ECB's New Green Monetary Policy*, in: Busch, Danny; Ferrarini, Guido; Grünewald, Seraina (eds.), *Sustainable Finance in Europe. Corporate Governance, Financial Stability and Financial Markets*, Cham, 2024, pp. 409–462

WYPLOZ, CHARLES, *The six flaws of the Eurozone*, Economic Policy, 2016, Vol. 31(87), pp. 559–606

ZILLIOLI, CHIARA; IOANNIDIS, MICHAEL, *Climate change and the mandate of the ECB: Potential and limits of monetary contribution to European green policies*, Common Market Law Review, 2022, Vol. 59(2), pp. 363–394



© Sara Elisa Dietz