

Legal considerations regarding the European Central Bank's (new) monetary policy strategy

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Abstract

Since the monetary policy strategy of the European Central Bank (ECB) is not mentioned in the Treaties of the European Union (EU), questions arise regarding its legal nature, its legal effects, and the possibilities of its implementation. Therefore, this contribution focuses on establishing the European legal framework of the monetary policy strategy, as this topic has notably received limited attention thus far. For a comprehensive assessment, the study addresses the question of the monetary policy strategy's limits and explains why the ECB's discretion regarding the goals set in the monetary policy strategy is substantial.

Keywords: ECB, new monetary policy strategy 2021, price stability, supporting the general economic policies in the Union, judicial review, *Gauweiler*, *Weiss*

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A. Introduction

Immediately after the completion of the second stage of the Economic and Monetary Union (EMU), culminating in the founding of the European Central Bank (ECB)¹ on June 1, 1998, the Governing Council introduced its first monetary policy strategy in October 1998.² In the strategy of 1998, the main element was the quantitative definition of price stability. It stated, that “[p]rice stability shall be defined as a year-on-year increase in the Harmonised Index of Consumer Prices (HICP) for the euro area of below 2%.”³ After more than four years of satisfactory implementation, the monetary policy strategy of 1998 underwent a thorough evaluation in May 2003, namely, a minor adoption of the definition of price stability, which was to be maintained over the medium term.⁴

Eighteen years after its previous review, the ECB announced a new monetary policy again in July 2021,⁵ introducing significant amendments that were deemed unavoidable due to various reasons. First, the economic landscape was very different from that of the last review in 2003. The rapid global changes and ongoing crises ultimately made a realignment of the monetary policy strategy inevitable, which was recognized not only by the ECB. The Federal Reserve (Fed), the central bank of the United States, had already adjusted its strategy a year earlier in 2020, as “the economy is always evolving, and the FOMC’s [Federal Open Market Committee] strategy for achieving its goals must adapt to meet the new challenges that arise”.⁶ A further reason stems from low inflation rates. In the years before 2021, inflation had fallen, and instead of preventing inflation from rising too high, the ECB had to prevent it from falling too low; therefore, it felt forced to adapt the definition of its inflation target.⁷ The Governing Council changed the 2% target to a symmetric one. Symmetry means that the Governing Council considers negative and positive deviations from this target as equally undesirable. Moreover, the age of digitalization and the expanded possibilities for communication have motivated the ECB to prioritize and enhance its monetary policy communication with the public, aiming

1 The European System of Central Banks (ESCB) which is made up of the ECB and the national central banks of all the Member States of the European Union (EU). The article refers to ECB exclusively and does not distinguish between ESCB and ECB.

2 See *ECB*, A stability-oriented monetary policy strategy for the ESCB, available at: https://www.ecb.europa.eu/press/pr/date/1998/html/pr981013_1.en.html (20/3/2025).

3 See *ECB*, A stability-oriented monetary policy strategy for the ESCB, available at: https://www.ecb.europa.eu/press/pr/date/1998/html/pr981013_1.en.html (20/3/2025).

4 See *ECB*, The ECB’s monetary policy strategy, available at: https://www.ecb.europa.eu/press/pr/date/2003/html/pr030508_2.en.html (20/3/2025).

5 See *ECB*, The ECB’s monetary policy strategy statement, available at: https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monopol_strategy_statement.en.html (20/3/2025).

6 The Fed, in particular, altered its policy framework to achieve its inflation target, see *FED*, Federal Open Market Committee announces approval of updates to its Statement on Longer-Run Goals and Monetary Policy Strategy, available at: <https://www.federalreserve.gov/newsevents/pressreleases/monetary20200827a.htm> (20/3/2025).

7 See *ECB*, Our price stability objective and the strategy review, available at: <https://www.ecb.europa.eu/home/search/review/html/price-stability-objective.en.html> (20/3/2025).

to ensure public understanding and to build trust in the ECB's actions.⁸ However, the biggest novelty is the fact that the ongoing climate change and its associated consequences for the Euro area have compelled the ECB to announce future actions against climate-related issues.⁹

In light of the above, the monetary policy strategy has undoubtedly played a crucial role in the ECB's monetary policy since the very beginning. This can probably also be expected in the future, as the next assessment of the monetary policy strategy is scheduled for 2025.¹⁰ Moreover, the above highlights that the aims of the strategies have shifted over time. Comparing the latest monetary policy strategy of 2021 with the strategy of 2003, which is largely the same as that of 1998, it is noticeable that the strategy of 2021 generally provides more flexibility to the ECB,¹¹ or, rather, the ECB is expanding its own scope of action, although the definition of the inflation target has become somewhat narrower.

All this shows the high importance of the ECB's strategy. This being said, it is worthwhile to have a look at the ECB's strategy from a legal perspective. To do so, this contribution will, first, examine the legal framework of the ECB's strategy, the possibilities for its implementation, its relationship to the objectives of the ECB's mandate and its role within it (B.-C.). Second, this contribution will also shed some light on the possible legal limits for the ECB when designing its strategy (D.). As an EU institution, the ECB, too, has to adhere to the principle of conferral.¹² Moreover, as with any other EU institution, ECB measures may be subject to judicial review. Undeniably, the ECB has a special role owing to its independence according to Art. 130 TFEU. However, what role does the Court of Justice of the EU (CJEU) play? And does accountability restrict the ECB? This contribution addresses these and other questions, explaining why the ECB has substantial discretion regarding the goals outlined in its monetary policy strategy.

B. Legal framework of the monetary policy strategy

Since October 1998, the newly founded ECB has formulated the EMU's monetary policy within its strategy. It provides a comprehensive and initial framework for implementing monetary policy predominantly to reach the ECB's objectives enshrined in the Treaties, guiding the ECB's Governing Council, the main decision-making

8 See *ECB*, The ECB's monetary policy strategy statement, point 11, available at: https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_state ment.en.html (20/3/2025).

9 See *ECB*, The ECB's monetary policy strategy statement, point 10, available at: https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_state ment.en.html (20/3/2025).

10 See *ECB*, The ECB's monetary policy strategy statement, point 12, available at: https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_state ment.en.html (20/3/2025).

11 See *Tuori*, *Maastricht Journal of European and Comparative Law* 2023/4, pp. 503 f; *Grünewald/van 't Klooster*, *Common Mkt. L. Rev.* 2023/60, pp. 960, 973.

12 Art. 13 para. 2 TEU.

body of the ECB, which consists of the six members of the Executive Board and the governors of the national central banks of the Euro-area countries,¹³ to make and communicate its policy decisions to the public;¹⁴ in particular, to maintain price stability in the euro area, which is enshrined in Art. 127 para. 1 sentence 1 TFEU,¹⁵ at least, that has been the focus thus far.

Given the critical role of the monetary policy strategy in monetary policy, it is essential to examine the legal framework that governs it, namely its legal nature and legal effects, and to assess the extent of the ECB's autonomy in policymaking, particularly regarding the formulation of its goals within the monetary policy strategy. The difficulty in this examination arises from the fact that the Treaties provide only limited guidance on this matter, as they neither mention nor define the monetary policy strategy.

I. Legal nature of the monetary policy strategy

Art. 130 TFEU as well as Art. 7 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (Statute of the ESCB/ECB) declare the ECB as an independent European institution, “[w]hen exercising the powers and carrying out the tasks and duties conferred upon [...] by the Treaties and the Statute of the ESCB and of the ECB”. One of the basic tasks of the ECB is “to define and implement the monetary policy of the Union.”¹⁶ The Statute of the ESCB/ECB further states in Art. 12.1. that the Governing Council of the ECB “[...] shall formulate the monetary policy of the Union [...]”. Therefore, while the Treaties clearly assign the competence to define, implement, and formulate monetary policy to the ECB's Governing Council, they remain silent on the manner in which the ECB must carry out these tasks. However, there are several reasons to suggest that the ECB has significant discretion in determining how to implement monetary policy, as long as it takes action, since the phrase “shall formulate the monetary policy” can likely be interpreted as a mandatory requirement.

First, the wording of Art. 12.1. sentence 2 Statute of the ESCB/ECB¹⁷ suggests that, when formulating the monetary policy of the Union, the Governing Council acts through a measure that serves as the basis for subsequent decisions and further guidelines to implement those decisions. This implies that the Treaties make the

13 Art. 283 para. 1 TFEU.

14 See *ECB*, Monetary policy strategy, available at: <https://www.ecb.europa.eu/mopo/strategy/html/index.en.html> (20/3/2025).

15 See *ECB*, A stability-oriented monetary policy strategy for the ESCB, point 4, available at: https://www.ecb.europa.eu/press/pr/date/1998/html/pr981013_1.en.html. (20/3/2025).

16 Art. 127 para. 2 first indent TFEU and Art. 3 para. 3.1. first indent Statute of the ESCB/ECB.

17 Art. 12.1 sentence 2 Statute of the ESCB/ECB reads as follows: “The Governing Council shall formulate the monetary policy of the Community including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB, and shall establish the necessary guidelines for their implementation.”

Governing Council competent to formulate or, better, shape monetary policy of the Union, which implies considerable discretion for it. The wording of Art. 12.1. (“shall”) suggests an obligation of the ECB’s Governing Council to act but does not tell us in which manner the Governing Council has to do so.

Second, the Treaties do not provide a definition or the specifics for implementation, nor do they specify the choice of legal act or form to be used. Consequently, the Treaty legislator has left the choice of legal instruments and the form of implementation of Art. 127 para. 1 TFEU to the ECB. As a result, the ECB enjoys considerable independence in policymaking and the selection of appropriate tools to achieve its objectives. However, this room of action is not without limits. The ECB must operate within the confines of its mandate and respect the principle of conferral.¹⁸ Moreover, the actions of the ECB are subject to judicial oversight by the CJEU, although, as we will see later, this oversight is limited (more so in Section D.I.).

Third, the definition and formulation of monetary policy within the framework of a published strategy is not a tool exclusively used by the ECB. The formulation of monetary policy through a published strategy is a common approach adopted by other central banks such as the Bank of Japan,¹⁹ the Bank of England,²⁰ and the Fed.²¹ The publication of the monetary policy strategy, thus making it available to the public, was not always the case globally, but it is now a common practice.²²

Fourth, the ECJ has already referenced the price stability objective outlined and defined in the monetary policy strategy in its case law, thereby indirectly affirming the ECB’s competence to set monetary policy in the form of a strategy.²³ The Court stated as follows: “It does not appear that the specification of the objective of maintaining price stability as the maintenance of inflation rates at levels below, but close to, 2% over the medium term, which the ESCB chose to adopt [by its strategy] in 2003, is vitiated by a manifest error of assessment and goes beyond the framework established by the TFEU.”²⁴ Based on this statement, two conclusions can be drawn: (i) the specification of the objective of maintaining price stability is the task of the ECB and (ii) the decision on how to formulate and, thus, shape monetary policy falls within the ECB’s responsibility, as demonstrated by its choice to adopt a specific strategy.

18 See Art. 5 para. 1 TEU.

19 See *Bank of Japan*, Outline of Monetary Policy, available at: <https://www.boj.or.jp/en/mopo/outline/index.htm> (20/3/2025).

20 See *Bank of England*, Monetary policy, available at: <https://www.bankofengland.co.uk/monetary-policy#:~:text=Monetary%20policy%20affects%20how%20much,for%20us%20by%20the%20Government> (20/3/2025).

21 See *Fed*, Monetary Policy, available at: <https://www.federalreserve.gov/monetarypolicy.htm> (20/3/2025).

22 See *Tuori*, in: Amtenbrink/Herrmann (eds.), p. 616.

23 See ECJ, Case C-493/17, *Weiss and Others*, judgment of 11 December 2018, ECLI:EU:C:2018:1000, para. 56.

24 See ECJ, Case C-493/17, *Weiss and Others*, judgment of 11 December 2018, ECLI:EU:C:2018:1000, para. 56.

II. Legal effects of the monetary policy strategy

Given the reasons outlined previously, the ECB is required to establish a framework for monetary policy, but has considerable freedom in determining how it formulates, defines, and implements this policy. Since 1998, the ECB has adopted it through a strategy. Nevertheless, questions arise regarding how this monetary policy strategy should be classified: Is it considered an EU legal act, and does it have binding effects?

In principle, pursuant to Art. 132 para. 1 TFEU, the ECB has various types of EU legal acts at its disposal to fulfill the tasks assigned to it by the Treaties and the Statute of the ESCB/ECB, namely regulations, decisions, recommendations, and opinions. However, the issuance of regulations may only occur in the expressly mentioned cases to determine and implement monetary policy (according to Art. 3 para. 1 first indent Statute of the ESCB/ECB and Art. 132 para. 1 second indent TFEU). Therefore, the ECB, with the exception of directives, has access to the full range of EU legal acts, as defined in Art. 288 TFEU, to determine and implement the monetary policy strategy.²⁵ However, the legal consequences of EU acts vary.

Regulations and decisions are binding in their entirety, whereas recommendations and decisions have no binding force. In addition, there are also other forms of non-binding measures such as the aforementioned guidelines (Art. 12.1. Statute of the ESCB/ECB). These non-binding acts are often described as EU *soft law*²⁶ Since *soft law* is not explicitly mentioned in the Treaties, there is no single accepted definition.²⁷ The individual acts that are considered as *soft law* are diverse in their designation, but have at least in common that they are non-binding and organs provide expectations of behavior and points of orientation, but also include tools that concretize norms or serve to interpret norms.²⁸

The fact that the monetary policy provides the ECB with behavioral expectations and points of orientation supports the assumption that the monetary policy strategy can be classified as *soft law*, meaning that it initially does not produce binding effects. However, *soft law* can, under certain circumstances, produce legal effects that affect legal enforcement (see Section D.I.).²⁹

The monetary policy strategy was unanimously approved by the ECB's Governing Council and was subsequently announced on the homepage.³⁰ Due to its publi-

25 See Zahradnik/Richter-Schöller, in: Jaeger/Stöger (eds.), para. 1.

26 More on *soft law*, see P. Ionescu/Eliantonio, Journal of Contemporary European Research 2021/17, pp. 1-23.

27 See P. Ionescu/Eliantonio, Journal of Contemporary European Research 2021/17, p. 46.

28 See Stocker/Vcelouch, in: Jaeger/Stöger (eds.), para. 121.

29 See Klamert/Loewenthal, in: Kellerbauer/Klamert/Tomkin (eds.), p. 2532, para. 59; Fromage/Eliantonio/Wright, Journal of Banking Regulation 2022/23, p. 2.

30 See Banco de España, The European Central Bank's new monetary policy strategy* Anuario del euro 2022/2022 Euro YearBook, available at: <https://www.bde.es/f/webbde/GAP/Secciones/SalaPrensa/Articulos%20Prensa/art-hdc170222en.pdf> (20/3/2025), as for example: ECB, Strategy review key topics, available at: <https://www.ecb.europa.eu/home/search/review/html/workstreams.en.html> (20/3/2025).

cation on the homepage, it can also be seen as an instrument, an act of informing the public, that strengthens transparency. By contributing to the effectiveness of monetary policy and signalling the central bank's commitment to price stability, the monetary policy strategy contributes to the credibility of the ECB in financial markets. This is not a contradiction; rather, it signals the importance of strategy within the ECB's monetary policy. The ECB also acts in this manner when implementing its monetary policy strategy, such as by communicating decisions that involve changes in key interest rates³¹ or by publishing press releases.³² These forms of announcement are permissible since, as previously noted, the ECB is not obliged to use any specific legal form.

C. Implementation of the monetary policy strategy

The ECB sets the monetary policy framework in the form of a strategy, thus fulfilling the task of defining and formulating the monetary policy in the Union, which the Treaties assign to it (Art. 127 para. 2 first indent TFEU and Art. 3.1. first indent as well as Art. 12.1. Statute of the ESCB/ECB). Therefore, expectedly, the monetary policy strategy is covered by the ECB's mandate and is compatible with Union Law.

However, what options are available to the ECB for adopting the monetary policy strategy? To avoid misunderstandings, it is important to clarify that the focus should not be on the individual operational instruments, such as the change in the key interest rate, unconventional measures, or the Eurosystem collateral framework. Rather, the focus should be on the possible competence bases and objectives that the ECB can rely on to achieve the various goals set in the monetary policy strategy, as well as on the appropriate (legal) acts for its implementation. To address this, we must examine the ECB's mandate and the specific objectives it aims to achieve, namely, maintaining price stability, supporting the general economic policies in the Union, and ensuring financial stability and its role in this regard.

I. Legal bases for implementing the monetary policy strategy

The Treaties explicitly assign the ECB the mandate to maintain price stability, as enshrined in Art. 127 para. 1 sentence 1 TFEU. The monetary policy strategy and goals of ensuring price stability cannot be seen separately; on the contrary, when formulating the monetary policy strategy, maintaining price stability is inevitably of highest priority, since it is the primary objective.³³ However, according to Art. 127 para. 1 TFEU, the ECB has the discretion to formulate its policy indepen-

31 See, e.g., through the ECB's press release: *ECB*, Monetary policy decisions, available at: <https://www.ecb.europa.eu/press/pr/date/2024/html/ecb.mp240606~2148ecdb3c.en.html> (20/3/2025).

32 See *ECB*, Press Releases, available at: www.ecb.europa.eu/press (20/3/2025).

33 See, e.g., ECJ, Case C-370/12, *Pringle*, judgment of 27 November 2012, ECLI:EU:C:2012:756, para. 54.

dently provided that it aims to achieve price stability. Therefore, it can serve as a competence basis for the ECB's authority to make concrete decisions to implement the monetary policy,³⁴ as long as it is necessary to guarantee price stability. Consequently, this also applies to climate change related measures, insofar as it affects price stability.

The ECB's mandate comprises a further objective that it is obliged to pursue³⁵, namely to "support the general economic policies in the Union", as enshrined in Art. 127 para. 1 sentence 2 TFEU. It is understood as the second objective, as it is to guarantee it "without prejudice to the objective of price stability".

Given the ECB's mandate regarding its "supporting objective", for many reasons, the question arises as to what extent the ECB can rely on the second sentence of Art. 127 para. 1 TFEU when implementing its monetary policy strategy and associated goals. Furthermore, it must be examined whether Art. 127 para. 5 TFEU constitutes a suitable legal basis for the ECB's competence.

1. Maintaining price stability vs. supporting the general economic policies in the Union

The monetary policy strategy is commonly acknowledged as serving the objective of maintaining price stability. While price stability is included among the objectives of the EU and its Member States under Art. 119 para. 2 TFEU, and prominently set in Art. 3 para. 3 TEU as an expression of the common European interest,³⁶ the ECB is bound by this goal in accordance with Art. 127 para. 1, Art. 219 para. 2 and Art. 2 of the Statute of the ESCB/ECB. Within the realm of monetary policy, the ECB acts as the policymaker responsible for specifying the measures necessary to achieve price stability. Whether the ECB also holds a policymaking role in the field of general economics or in relation to the objectives pursued by general economic policies under Art. 127 para. 1 sentence 2 TFEU, in conjunction with Art. 3 TEU (e.g., supporting full employment, social progress, or improving environmental quality), is largely denied, and in the author's view, correctly so. According to the prevailing opinion, the ECB's competence does not lie in policymaking, but rather only in supporting the general economic policies,³⁷ as the wording shows, since the Treaties assign the ECB a supporting role in achieving a broad range of general eco-

34 See, for example, 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 25/03/2020, pp. 1–5.

35 See Ioannidis/Hlásková Murphy/Zilioli, Occasional Paper Series 2021/276, pp. 13, 16; Wutscher, in: Schwarze et al (eds.), p. 2048, para. 12.

36 See Klamert, in: Jaeger/Stöger (eds.), para. 13.

37 See Ioannidis/Hlásková Murphy/Zilioli, Occasional Paper Series 2021/276, pp. 13, 16; Zilioli/Ioannidis, Common Mkt. L. Rev. 2022/2, p. 370; Steinbach, Common Mkt. L. Rev. 2022/2, p. 348; de Boer/van 't Klooster, PositiveMoney Europe 2021, p. 18; Palmstorfer, in: Blanke/Mangiameli (eds.), pp. 727 et seq.; Dietz, Common Mkt. L. Rev. 2022/2, p. 414; Grünewald, in: Gortsos/Ringe (eds.), pp. 275 et seq.; Grünewald/van 't Klooster, Common Mkt. L. Rev. 2023/60, p. 981.

conomic policy objectives, as outlined in Art. 127 para. 1 sentence 2 TFEU in conjunction with Art. 3 TEU. Moreover, following a systematic interpretation, it can also be said that Art. 127 para. 1 sentence 2 TFEU does not include the competence of the ECB to prioritize the goals mentioned in Art. 3 TEU. It is widely argued that establishing these objectives in Art. 3 TEU within different policies in the EU is not the task of the ECB; rather, it is the responsibility of the relevant authorities.³⁸ This view is justifiable, as a closer examination of the specific objectives outlined in Art. 3 TEU, the EU's competences, and the legislative process reveal that neither the policies nor Art. 3 TEU suggest that any competence of the ECB justifies such prioritization. For example, economic policy is a coordinating competence between the Member States and the EU,³⁹ while environmental policy is a shared competence between the Member States and the EU and within the EU, it is determined by the European Parliament and the Council.⁴⁰ Employment policy is coordinated between the Member States and the EU, implemented by the European Parliament and Council.⁴¹ The adoption of policy-related measures falls within the competence of the institutions entrusted with the respective policy areas (policies). This also includes the interpretation of the relevant Union objectives that guide the use of the respective competences pursuing these objectives.⁴² Hence, according to this view, it would not be for the ECB to formulate or prioritize these policies and their associated objectives. Of course, this does not answer the question of who is the policy-maker responsible for prioritizing the goals in Art. 3 TEU and the contribution cannot and does not aim to deliver an answer. This may require broader examination. It can at least be said that there is a view suggesting that the Council, in accordance with Art. 121 para. 2 TFEU could be entitled to prioritize the relevance of these objectives, at least as regards the general economic policies to ensure democratic legitimacy.⁴³ Yet the Treaty provides the Council only with a weak instrument, as the "broad guidelines of the economic policies of the Member States and of the Union" are recommendations⁴⁴ and, thus, not legally binding.

This being said, the ECB, on the one hand, enjoys a broad margin of appreciation but, on other, does not find itself in the role of a policymaker aiming at the second objective.⁴⁵ By the same token, the policymakers to be supported by the ECB may not instruct the ECB or the national central banks how to make use of the secondary mandate. Against this, the view that, for example, the European Parliament

38 See *Steinbach*, Common Mkt. L. Rev. 2022/2, p. 348; *Dietz*, Common Mkt. L. Rev. 2022/2, p. 414; *Palmstorfer*, in: Blanke/Mangiameli (eds.), pp. 727, 728.

39 Art. 5 para. 1, 119 para. 1, 120 para. 1 TFEU; see *Ioannidis/Zilioli*, Common Mkt. L. Rev. 2022/59, p. 348; *Dietz*, Common Mkt. L. Rev. 2022/2, p. 414.

40 Art. 4 para. 2, 11, 191 para. 1, 192 para. 1 TFEU.

41 Art. 5 para. 2, 145 para. 1, 149 TFEU.

42 See *Ioannidis/Hlásková Murphy/Zilioli*, Occasional Paper Series 2021/276, pp. 13, 19; *Ioannidis/Zilioli*, Common Mkt. L. Rev. 2022/59, pp. 371 et seq.

43 See *Thiele*, in: ECB (ed.), p. 38; with a critical view on this: *van der Sluis*, in: Beukers/Fromage/Monti (eds.), pp. 392–408.

44 Art. 121 para. 2 subpara. 3 TFEU.

45 See *Dietz*, Common Mkt. L. Rev. 2022/2, p. 414.

may provide guidance to the ECB on the secondary objective,⁴⁶ seems problematic, because this may be tantamount to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

Bearing the above in mind, the ECB can still refer to Art. 127 para. 1 sentence 2 TFEU, when implementing its monetary policy strategy's objectives. Rather, it indicates that the ECB must consider two factors. First, the ECB assures that general economic policies are supported; however, it is designed not to jeopardize the maintenance of price stability.⁴⁷ Second, the policymaker responsible must first set the direction.⁴⁸ Therefore, Art. 127 para. 1 sentence 2 TFEU in conjunction with Art. 127 para. 2 first intend TFEU may serve as an adequate competence basis for the implementation of the monetary policy strategy.⁴⁹

2. Financial stability

Given the differing views on the role of financial stability (Art. 127 para. 5 TFEU), it is pertinent to briefly examine whether this provision can serve as a legal basis for implementing the monetary policy strategy. The ongoing debate likely stems from the ambiguity surrounding whether financial stability falls within the scope of monetary policy.⁵⁰ On the one hand, it has been argued that Art. 127 para. 5 TFEU provides itself as an objective and can serve as a legal basis for measures aimed at ensuring financial stability.⁵¹ On the other hand, it is contended that safeguarding financial stability is achievable only through the monetary policy mandate, with Art. 127 para. 5 TFEU playing only a complementary role. Consequently, measures addressing financial stability would need to be instrumental to the primary objective of maintaining price stability as set forth in Art. 127 para. 1 TFEU. The ECB appears to support the latter view as it has not cited para. 5 in its monetary policy decisions.⁵² Therefore, if financial stability is at risk, it generally necessitates measures aimed at achieving the primary objective of maintaining price stability, in accordance with Art. 127 para. 1 TFEU. Hence, it is more convincing that financial stability is not an objective or legal competence in itself, but rather a means to achieve price stability.⁵³

46 See *Grünwald/van 't Klooster*, Common Mkt. L. Rev. 2023/60, p. 982.

47 See ECJ, Case C-493/17, *Weiss and Others*, judgment of 11 December 2018, ECLI:EU:C:2018:1000, para. 51.

48 See *Zilioli/Ioannidis*, Common Mkt. L. Rev. 2022/2, p. 370; *Steinbach*, Common Mkt. L. Rev. 2022/2, p. 365.

49 This view is also held by the ECB, as it based its decision (Decision (EU) No. 2022/1613 of the European Central Bank of 9 September 2022 amending Decision (EU) No. 2016/948 on the implementation of the corporate sector purchase programme (ECB/2016/16) (ECB/2022/29) [2022] OJ L 241 of 9/09/2022) on this norm.

50 See *Palmstorfer*, in: Blanke/Mangiameli (eds.), p. 729.

51 See *Ohler*, p. 313; *Dietz*, Common Mkt. L. Rev. 2022/2, p. 414; *Ioannidis/Hlásková Murphy/Zilioli*, Occasional Paper Series 2021/276, p. 20; basically, too: *Zilioli/Ioannidis*, Common Mkt. L. Rev. 2022/2, p. 370; *Steinbach*, Common Mkt. L. Rev. 2022/2, p. 375.

52 See *Ohler*, p. 313.

53 See *Ioannidis/Hlásková Murphy/Zilioli*, Occasional Paper Series 2021/276, p. 20.

II. Possible (legal) instruments for implementing the monetary policy strategy

As mentioned before, in order to fulfill the tasks assigned to the ECB by the Treaties and the Statute of the ESCB/ECB, the ECB has pursuant to Art. 132 para. 1 TFEU various types of EU legal acts for action, namely, regulations, decisions, recommendations, and opinions, to implement its monetary policy.⁵⁴ The ECB issues both non-binding announcements and binding decisions, the latter particularly when implementing “non-standard monetary policy measures”⁵⁵ (also called “[un-]conventional monetary policy measures”)⁵⁶ as part of its strategy. Most of the ECB’s measures that fall within its mandate to maintain price stability are based on Art. 127 para. 2 first indent TFEU and take the form of legally binding decisions. For example, the Public Sector Purchase Programme (PSPP) was implemented by Decision (EU) No. 2015/774, in which the ECB decided to adopt these measures in order to achieve price stability, namely to contribute “[...] to a return of inflation rates to levels below but close to 2% over the medium term”⁵⁷, which was the target inflation rate at that time. However, the ECB measures to implement the monetary policy strategy’s goals of maintaining price stability are of a vastly varied legal nature.⁵⁸ Measures are also issued in the form of an internal administrative nature.⁵⁹ Consequently, the same must apply to the second objective. Therefore, it appears that the necessary measures to support general economic policies in the Union could be issued not only in the form of regulations and decisions but also through non-binding *soft law*.

D. Limits of the monetary policy strategy

Even though the ECB is an independent institution,⁶⁰ it must operate within certain limits to ensure compliance with Union law. On the one hand limits of the ECB’s mandate regarding monetary policy result from the listed objectives assigned to the ECB by the Treaties, namely the obligation to maintain price stability, and the obligation that 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 Art. 3 of the Treaty on European Union.”⁶¹ Additionally, from the hierar-

54 See Section B.II. for details.

55 See *ECB*, Monetary policy decisions, available at: <https://www.ecb.europa.eu/mopo/decisions/html/index.en.html> (20/2/2025).

56 See *Schnabel*, Unconventional fiscal and monetary policy at the zero lower bound, available at: <https://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210226~ff6ad267d4.en.html> (20/3/2025).

57 Recital 3 of the Decision (EU) No. 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 14/05/2015, p. 20.

58 Art. 12.1. Statute of the ESCB/ECB.

59 See *Waldboff*, in: Siekmann (eds.), p. 268, para. 22.

60 Art. 282 para. 3 TFEU.

61 Art. 127 para. 1 sentence 2 TFEU.

chy of those objectives, the latter may only be pursued if the former does not suffer from it.⁶² However, the scope of action in monetary policy is restricted by the principles of conferral (Art. 5 paras. 1 and 2 TFEU)⁶³ and proportionality (Art. 5 para. 4 TEU).⁶⁴ Additionally, through the principle of an open market economy (Art. 127 para. 1 sentence 3 TFEU),⁶⁵ non-discrimination⁶⁶ and the prohibition of monetary financing (Art. 123 para. 1 TFEU).

The central issue here is how to ensure the ECB's legality of ECB measures. In instances where a violation of the aforementioned principles occurs—for example, if the ECB establishes a framework and formulates objectives that exceed its conferred mandate by prioritizing general economic policies over the primary objective of price stability, or assumes a policymaking role by prioritizing the Union's objectives under Art. 3 TEU, which fall outside its primary mandate as outlined in Section C.I.1.—legal scrutiny is necessary to avoid undermining the EU legal system.

I. Judicial review

Art. 282 para. 3 TFEU provides the ECB with legal personality and Art. 35 para. 1 Statute of the ESCB/ECB subjects it to judicial oversight by the CJEU. However, the questions are (i) which legal procedure can be considered and whether the admissibility of challenging the monetary policy strategy is established, and (ii) whether there is a realistic chance of successfully contesting the monetary policy strategy.

(i) First, an action for annulment against the ECB pursuant to Art. 263 TFEU, brought before the CJEU by privileged, semi-privileged, and non-privileged applicants, may be of relevance. One argument could be that the goals in the monetary policy strategy undermine the objective of maintaining price stability or that the ECB exceeds the limits of its mandate (such as a lack of competence or misuse of powers according to Art. 263 para. 2 TFEU). If the Court finds the action to be well founded, it declares the contested act null and void, which typically means it is considered invalid from the time it was originally adopted. However, this provides that the ECB's action can be challenged by an action for annulment.

According to Art. 263 para. 1 TFEU, legislative acts (as defined in Art. 289 para. 3 TFEU), as well as acts of the Council, the European Commission, and the ECB, can be challenged through an action for annulment, provided they are not mere recommendations or opinions, as they have no binding force according to Art. 288

62 Art. 127 para. 1 sentence 2 TFEU: "Without prejudice to the objective of price stability [...]".

63 Art. 5 para. 1 TEU.

64 According to Art. 119 para. 2 and Art. 127 para. 1 TFEU in conjunction with Art. 5 para. 4 TEU. See ECJ, Case C-62/14, *Gawweiler and Others*, judgment of 16 June 2015, ECLI:EU:C:2015:400, para. 66 and Case C-493/17, *Weiss and Others*, judgment of 11 December 2018, ECLI:EU:C:2018:1000, para. 71.

65 On that topic see *Weismann*, Eur. L. Rev. 2025/5, pp. 554–556; *Dietz*, Common Mkt. L. Rev. 2022/2, pp. 404–406.

66 See *Dietz*, Common Mkt. L. Rev. 2023/5, pp. 1358 et seq.

para. 5 TFEU. In principle, the same applies to *soft law*.⁶⁷ Nonetheless, when an action for annulment is brought by a privileged applicant, such as a Member State or an EU institution, legally non-binding acts—including announcements made by the institutions and published solely on the internet—can directly be the subject of an action for annulment,⁶⁸ provided that they produce legal effects.⁶⁹ However, the limits of admissibility are reached when an act merely demonstrates the institution's intention to behave in a certain way⁷⁰ or concerns only the internal organization of the institution, as these are not intended to have legal effects and therefore, are not subject to legal challenge under Art. 263 TFEU.⁷¹ To enhance legal protection against EU *soft law*, it is proposed to adopt a more liberal, constitutionally oriented interpretation of Art. 263 and 288 TFEU.⁷² This approach advocates moving away from the Court's formalistic stance and supports direct judicial review of such acts through annulment actions.⁷³

According to case law, determining the legal effects of the act in question depends on its true essence or substance, regardless of its form or legal nature.⁷⁴ The ECJ determines this by examining the wording and context in which it appears, its substance, and the intention of the author.⁷⁵ At this point, a case worth mentioning is *United Kingdom v. ECB*.⁷⁶ The General Court declared the admissibility of the non-binding⁷⁷ Eurosystem Oversight Policy Framework by the ECB, as the requirements were considered to be present, with the consequence that the framework created legal effects.⁷⁸ The ECB published the Eurosystem Oversight Policy Framework on its website, which it presents as having the purpose of describing

67 See Klamert/Loewenthal, in: Kellerbauer/Klamert/Tomkin (eds.), p. 2532, para. 59; P. Ionescu/Eliantonio, *Journal of Contemporary European Research* 2021/17, pp. 49 et seq.

68 See Schima/Eisendle, in: Kellerbauer/Klamert/Tomkin (eds.), pp. 2410 et seq., para. 6.

69 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, paras. 30 et seq.; ECJ already in its early case law: C-22/70, *Commission v. Council*, judgment of 31 March 1971, ECLI:EU:C:1971:32, para. 42.

70 Such as the European Commission's issuance of a reasoned opinion in the context of infringement proceedings, see ECJ, Joined Cases C-593/15 P and C-594/15 P, *Slovak Republic v. Commission*, judgment of 25 October 2017, ECLI:EU:C:2017:800, para. 63.

71 See Schima/Eisendle, in: Kellerbauer/Klamert/Tomkin (eds.), pp. 2411, paras. 8 et seq.

72 See Gentile, *Ensuring Effective Judicial Review of EU Soft Law via the Action for Annulment before the EU Courts: a Plea for a Liberal-Constitutional Approach*, pp. 491 et seq.

73 See Gentile, *Ensuring Effective Judicial Review of EU Soft Law via the Action for Annulment before the EU Courts: a Plea for a Liberal-Constitutional Approach*, pp. 491 et seq.

74 See ECJ, Joined Cases C-551/19 P and C-552/19 P, *ABLV Bank v. ECB*, judgment 6 May 2021, ECLI:EU:C:2021:369, para. 40 and the case-law cited.

75 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, paras. 31 et seq. with further references.

76 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133.

77 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, para. 29.

78 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, para. 54.

the role of the Eurosystem in the oversight of payment, clearing and settlement systems.⁷⁹ The monetary policy strategy is non-binding and was also merely published on the ECB's website. Given these similar circumstances, the monetary policy strategy should be evaluated in light of the judgment's findings on legal effects. However, in the case of *United Kingdom v. ECB*, the ECJ determined that, for a non-binding act to produce legal effects, it must meet certain requirements.

To assess the way in which the parties concerned perceive the wording and context of the contested act, first, it should be examined whether the act was publicized outside the author itself.⁸⁰ This can be answered affirmatively since the monetary policy strategy was published on the ECB's homepage. From the perspective of the parties concerned, the wording of the act is also relevant for determining whether it is phrased in mandatory terms.⁸¹ In the case *United Kingdom v. ECB*, it should be noted that the introductory provisions of the Oversight Policy Framework showed that its purpose was to set the monetary policy framework. To apply this to the monetary policy strategy, it clearly restates the powers conferred by the Treaties on the ECB and mentions them.⁸² The monetary policy strategy is far from being seen as a mere expressly indicative proposal.

It should be determined whether the objective pursued by the adoption of the monetary policy strategy, as resulting in particular from its wording and substance, was to determine a definitive position of the ECB or, on the other hand, to prepare a subsequent act, which alone was intended to have legal effects.⁸³ This must probably be denied since the monetary policy strategy merely sets out the ECB's intention to behave in a certain way in the future (in the next few years, until the monetary policy strategy is amended). Unlike the Oversight Policy Framework, the ECB's monetary policy strategy does not address the behaviour of others. It cannot be perceived by others "as an act which they must comply with, despite the form or designation favoured by its author".⁸⁴

Based on the findings in the case *United Kingdom v. ECB* concerning the legal effects of the Oversight Policy Framework, it can be concluded that the ECB's monetary policy strategy might not produce legal effects and, therefore, cannot be the subject of an action for annulment.

79 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, para. 1.

80 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, para. 33.

81 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, para. 35.

82 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, para. 36; ECB, The ECB's monetary policy strategy statement, point 8, available at: https://www.ecb.europa.eu/home/search/review/html/ecb.strategyreview_monpol_strategy_statement.en.html (20/3/2025).

83 See GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, para. 52.

84 GC, Case T-496/11, *United Kingdom v. ECB*, judgment of 4 March 2015, ECLI:EU:T:2015:133, para. 32.

The situation might be different when legally binding decisions are made on the basis of the monetary policy strategy, which may very well be the subject of an action for annulment. Of course, further requirements must be met, namely, a ground for annulment, the right to bring an action, and the action must be brought within two months of the publication or notification of the contested measure.

Second, the preliminary ruling pursuant to Art. 267 TFEU should be considered. Given that the legal nature of the strategy is non-binding and does not produce legal effects, it may oppose an action for annulment. Legal protection in the preliminary ruling procedure is broader than in the case of an action for annulment; for example, the ECJ, through preliminary rulings, does indeed have the authority to discuss and interpret the validity of recommendations and opinions (*soft law*),⁸⁵ as Art. 267 TFEU does not provide a review limitation comparable to that of Art. 263 TFEU.⁸⁶ However, the case of *Gauweiler and Others*⁸⁷ also provided valuable insights. Among other things, the question of the admissibility of an ECB act was the subject of the preliminary ruling procedure.

The case *Gauweiler and Others* was about the ECB's Outright Monetary Transactions Programme (OMT Programme), which was only announced in a press release on the homepage and was therefore not implemented. The ECJ decided that this act would be the subject of a preliminary ruling procedure.⁸⁸ In particular, the argument of Advocate General Cruz Villalón is noteworthy, as it provides arguments for the admissibility of the monetary policy strategy. The General Advocate saw two valid reasons why the Governing Council's OMT decision, despite its *preparatory* nature, must be subject to judicial review,⁸⁹ which, however, were not dealt with in the ruling itself.

The first reason relates to the fact that the programme forms an act setting out the broad features of a general programme for action by a union institution and the case law of the ECJ. According to the General Advocate, the condition for challenging, their binding nature, and the production of the legal effects of those acts should be interpreted more flexibly compared to those that establish the rights and obligations of third parties.⁹⁰ He further argued that the working method of modern central banks should be taken into account, since communication strategy is a central instrument of monetary policy and announcements, which all play

85 See ECJ, Case C-322/88, *Grimaldi v. Fonds des maladies professionnelles*, judgment of 13 December 1989, ECLI:EU:C:1989:646 paras. 8 et seq.; See *Schima/Eisendle*, in: Kellerbauer/Klamert/Tomkin (eds.), p. 2439, para. 11.

86 To explore the possibilities of challenging EU *soft law* through actions for annulment and preliminary rulings, see: *Scholz*, *Soft Law: Rechtsschutzpotenzial von Nichtigkeitsklage und Vorabentscheidungsverfahren*, EuZW 2022/10, pp. 454 et seq.

87 ECJ, Case C-62/14, *Gauweiler and Others*, judgment of 16 June 2015, ECLI:EU:C:2015:400.

88 See ECJ, Case C-62/14, *Gauweiler and Others*, judgment of 16 June 2015, ECLI:EU:C:2015:400, paras. 18–31 (in particular para. 31).

89 See Opinion of AG Cruz Villalón, Case C-62/14, *Gauweiler and Others*, ECLI:EU:C:2015:7, para. 73; *Borger*, *Common Mkt. L. Rev.* 2016/1, p. 157.

90 See Opinion of AG Cruz Villalón, Case C-62/14, *Gauweiler and Others*, ECLI:EU:C:2015:7, paras. 73, 75–83.

important roles in influencing and managing market expectations and are therefore key to an effective monetary policy.⁹¹ Denying the actionability of such acts merely because they have not been formally adopted and published in the Official Journal risks excluding important monetary policy tools from judicial review,⁹² which could seriously undermine the Union's system of legal review.

Building upon the compelling arguments presented by the Advocate General *Cruz Villalón* in the case *Gauweiler and Others*, applying these perspectives to the ECB's monetary policy strategy would necessitate initiating a preliminary ruling procedure. As already explained, the monetary policy strategy has no legal effects on third parties but is nevertheless an important tool of monetary policy with far-reaching consequences. Although the monetary policy strategy, therefore, might be *soft law*, it must be amenable to legal protection, due to its important roles in influencing and managing market expectations, and different rules apply to the ECB in many respects. This must not lead to the ECB running the risk of depriving legal control of compliance with the limits of its mandate, with the consequence that the ECB would not be subject to any obligation to provide reasons, even in the event of manifest errors of assessment.

ii) However, there are other obstacles in the possibility of judicial review of the monetary policy strategy and its prospects for success in the preliminary ruling.

First, Art. 127 para. 1 TFEU has no direct effect on private individuals and does not confer any subjective rights. If a party therefore felt that its rights had been violated due to the monetary policy strategy and non-compliance with the guarantee of price stability and other rights such as fundamental rights, this would have to be asserted in the course of a national procedure. The court itself might have doubts regarding the interpretation of Art. 127 para. 1 TFEU or fundamental rights and could then submit a question to the ECJ and, if necessary, indirectly refer to the monetary policy strategy.⁹³

Second, the ECB enjoys wide discretion when it comes to its monetary policy mandate.⁹⁴ The ECJ grants the ECB a wide margin of discretion in ensuring price stability, as complex decisions must be made, provided it fulfills its obligation to state reasons and no manifest error of assessment occurs.⁹⁵ Although the ECJ has not yet defined the terms "complex decisions" nor "decisions of a technical nature", based on its statements in the two cases *Gauweiler and Others* and *Weiss and*

91 See Opinion of AG *Cruz Villalón*, Case C-62/14, *Gauweiler and Others*, ECLI:EU:C:2015:7, paras. 84–90.

92 See Opinion of AG *Cruz Villalón*, Case C-62/14, *Gauweiler and Others*, ECLI:EU:C:2015:7, para. 89.

93 See *Waldhoff*, in: Siekmann, p. 266, paras. 17 et seq.

94 See ECJ, Case C-62/14, *Gauweiler and Others*, judgment of 16 June 2015, ECLI:EU:C:2015:400, para. 68 and Case C-493/17, *Weiss and Others*, judgment of 11 December 2018, ECLI:EU:C:2018:1000, para. 24.

95 See ECJ, Case C-62/14, *Gauweiler and Others*, judgment of 16 June 2015, ECLI:EU:C:2015:400, para. 24.

Others, it can be stated that the formulation of long-term goals in the monetary policy strategy requires complex technical and economic decisions.⁹⁶

If these decisions are sufficiently justified by the ECB, and as long as the ECJ does not identify a manifest error of assessment on the part of the ECB, they are likely to be upheld. This being said, the ECB's actions will probably be within its mandate. Therefore, there are ways to subject the monetary policy strategy to judicial review in the course of a preliminary ruling procedure, but these are extremely limited. To conclude, the fight against the monetary policy strategy in the course of the preliminary ruling procedure will hardly be crowned with success.

II. Accountability

Another potential issue that could push the ECB to the limits of its mandate is accountability. A principle in EU law holds from the ECB to guarantee checks and balances,⁹⁷ which is enshrined in Art. 284 para. 3 TFEU in accordance with Art. 15.3 Statute of the ESCB/ECB⁹⁸ and hotly debated within the last years.⁹⁹

The European Parliament is the main institution holding the ECB accountable, and the ECB shall report annually to the European Parliament, to the European Council of the EU and to the European Commission. In practice, this way of accountability takes the form of a quarterly monetary dialogue between the president of the ECB and the European Parliament Economic and Monetary Affairs Committee (ECON).¹⁰⁰ The monetary dialogue does not restrict the rights of the ECB or curtail its independence (Art. 130 TFEU), neither the European Parliament nor the Council of the EU has legal power for sanctions, and the requests are not legally

96 Regarding complex assessments in detail, see *Kreuzhuber*, Eur. L. Rev. 2024/49, pp. 651–664.

97 See *ECB, Accountability*, available at: <https://www.ecb.europa.eu/ecb/our-values/accountability/html/index.en.html> (20/3/2025).

98 Art. 284 para. 3 TFEU says: “The European Central Bank shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis. The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.”; Art. 15 para. 3 Statute of the ESCB/ECB says: “In accordance with Art. 284 (3) of the Treaty on the Functioning of the European Union, the ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council.”.

99 See *Grünwald/van 't Klooster*, Common Mkt. L. Rev. 2023/60, pp. 959–998; *Lastra/Dietz*, Maastricht Journal of European and Comparative Law 2023/4, p. 378; also see the contribution by *Marijn van der Sluis* in this issue on the topic, “Who needs accountability? The limited usefulness of accountability for researching the ECB”.

100 See *Delaude*, in: Kellerbauer/Klamert/Tomkin (eds.), p. 2505, para. 5; *Clayes/Hallenberg/Tschekassin*, Bruegel Policy Distribution 2014/4, p. 1.

binding.¹⁰¹ Art. 284 para. 3 TFEU serves to strengthen the exchange and improve the flow of information. Internal cooperation also supports cooperation between the ESCB, which is responsible for monetary policy, and the Council, which is responsible for coordinating general economic policy in the Union (Art. 121 para. 1 TFEU).

Even in the early days of the ECB, relatively much attention has been paid to the second objective in the monetary dialogue.¹⁰² Given that the ECB invoked this second objective for the first time in 2022,¹⁰³ many questions are likely to arise that can be addressed in the context of Art. 284 para. 3 TFEU. In practice, however, it plays a less important role than in the earlier days of the ECB,¹⁰⁴ although the ECB's broad interpretation of its mandate would probably require a more intense exchange with the European Parliament and the Council to ensure democratic legitimacy. This is why there is also a call to reassess the issue of accountability,¹⁰⁵ as the principle of accountability has not adapted to the expansion of the ECB's mandate. The broader its discretion, the more crucial it becomes to uphold a strong system of accountability, as ECB's power necessitates accountability to ensure democratic legitimacy.¹⁰⁶

E. Conclusion

As the contribution demonstrates, the ECB—more precisely, the ECB's Governing Council—possesses significant discretion in implementing monetary policy, primarily because the Treaties neither mention nor define the monetary policy strategy. This can also be said when it comes to implementing the goals of the monetary policy strategy. The ECB has a choice of legal instruments of Art. 288 TFEU (with the exception of the directive) to set concrete measures, and it is within EU law to base them on both Art. 127 para. 1 sentence 1 and sentence 2 TFEU, depending on the desired goal. However, the monetary policy strategy itself must be declared as a guideline (as *soft law*), with the result that it creates no binding effects, which makes access to legal protection (almost) impossible. Limits arise from judicial control, but, as the contribution shows, the monetary policy strategy being subject to judicial oversight by the CJEU is hardly crowned by success. This applies under the premise of different reasons: non-binding *soft law* with no legal effects cannot be subject to the action for annulment and private individuals cannot derive any subject rights from Art. 127 para. 1 TFEU, as well as the broad discretion of the ECB

101 See *Amttenbrink/van Duin*, Eur. L. Rev. 2009/4, p. 569.

102 See *Amttenbrink/van Duin*, Eur. L. Rev. 2009/4, pp. 575 et seq.

103 Decision (EU) No. 2022/1613 of the European Central Bank of 9 September 2022 amending Decision (EU) 2016/948 on the implementation of the corporate sector purchase programme (ECB/2016/16) (ECB/2022/29) [2022] OJ L 241 of 9/09/2022, p. 13.

104 See *Grünwald/van 't Klooster*, Common Mkt. L. Rev. 2023/60, pp. 961 et seq.; for a detailed analysis for the years from 1998 to 2009, see *Amttenbrink/van Duin*, Eur. L. Rev. 2009/4, pp. 561-583.

105 See *Grünwald/van 't Klooster*, Common Mkt. L. Rev. 2023/60, pp. 981, 994.

106 See *Lastra/Dietz*, Maastricht Journal of European and Comparative Law 2023/4, p. 378.

when it comes to monetary policy, significantly limits the possibilities for a preliminary ruling. Another potential issue that could push the ECB to the limits of its mandate when it comes to the monetary policy strategy is the principle of accountability enshrined in Art. 284 para. 3 TFEU in accordance with Art. 15.3 Statute of the ESCB/ECB. Currently, it does not effectively ensure the ECB's accountability. However, the discussion about the extent to which accountability limits the ECB's actions is expected to continue.

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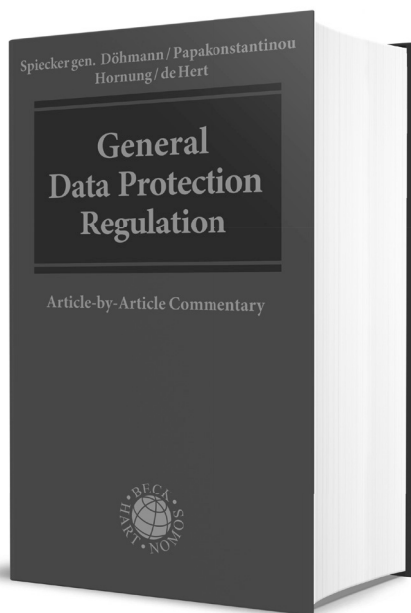
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