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THE IMPORTANCE OF COHESION POLICY VALUES IN THE LAW OF THE EUROPEAN CENTRAL BANK

Summary: The subject matter of analysis in this paper is the cohesion policy in the discourse of the Law of the European Central Bank (ECB), which will be reviewed for the purpose of establishing changes in the values and principles of cohesion policy which significantly redefined the postulates of the contemporary EU monetary legislation in the circumstances of the COVID-19 pandemic crisis. In that regard, the paper aims to analytically examine the characteristics and qualitative influence of the tendency to “humanize” the contemporary monetary legislation, as well as the sophisticated modus operandi of shaping the monetary authority by public law in the architecture of the European Economic and Monetary Union (EMU). By applying the dogmatic, axiological, and comparative law method, the author identifies the greatest dilemmas encountered by the European legislator in the context of adjusting the ECB regulatory activity and its primary tasks to the principles of cohesion policy.

Keywords: monetary law, monetary jurisdiction, monetary sovereignty, cohesion policy, European Central Bank

1. INTRODUCTION

The original structure of the European Central Bank (ECB) was determined by the traditional principles of monetary legislation establishing a common understanding of what the highest monetary authority should do in the field of economic policy and monetary law. In contrast to the originally established classical prerogatives, the ECB’s modern competencies aimed at maintaining financial stability are the result of managing needs in moments of crisis whose intensity and severity threatened the Eurozone foundations. Therefore, it is desirable to identify and distinguish the cause-and-effect chain in the background of monetary events before discussions reach a high degree of philosophical and dogmatic fervour. Depending on the specific case and situational frameworks, the once-established field of ECB competence

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may receive a different interpretation to adjust the current normative rule in the conditions of the changed monetary framework.

For a long time, the instruments of monetary law and policy were considered incompatible with the values and postulates of social cohesion and welfare society. Over time, the consciousness of the monetary legislators has significantly changed. Since the 1990s, the main actors of international monetary law have been paying more and more attention to the so-called “humane” functions of monetary policy as an integral part of public policy. A more humane approach in public monetary management implies a certain adjustment (i.e. adjustment of the ECB loan conditions) to the specific economic situations of the country that needs financial assistance. In the minds of citizens of a specific country, such an approach is very important because it creates an image that the central bank (as the supreme monetary institution) is “the bank of all citizens”, and not only a highly specialized state body in the field of monetary and credit policy which is perceived by a vast majority of citizens as an abstract institution and insufficiently transparent area of state public policy. During the crisis caused by the COVID-19 pandemic, the mandate of the ECB was interpreted in a way that widely respects the principles of cohesion policy and prioritizes solidarity in times of trouble, which gave the monetary policy of the ECB a “new human take-care” note by outgrowing the framework of its purely technical administrative activities and complex macroeconomic models aimed at establishing and maintaining monetary stability, which are undisputedly important, but now present in a more “community” spirit.

The first part of the paper outlines the framework of a more human approach to public monetary conduct. The second part focuses on the scope of cohesion policy in the EU. The last part analyses the ECB mandate in the field of human rights protection. The methodology framework is based on the use of the axiological, dogmatic, and comparative methods, with the aim to identify and highlight the social, “humanizing” element in EU monetary policy as a means of broadening and boosting ECB legitimization within a society (community), and provide a certain contribution in considering its mandate in the contemporary circumstances under the cohesion policy values. Nowadays, the presence of cohesion idea and elements in the central bank mandate is quite reasonable considering that monetary policy is part of general economic policy conducted by the central bank as a subject of public law, which should bear some share of social burden on its shoulder (monetary stability *per se* does not mean much in the context outside community; it must be in service of ensuring people’s better life). Convergence of monetary and cohesion policy goals and actions implies that the ECB mandate should be contextualized as a dynamic category that today brings monetary tasks, functions and measures which are closer, more acceptable and somehow “more personal” to the citizens. The author hopes that this will contribute to a better understanding of the (European) central bank legislation *ratio* in the context of its implications for long-term human and sustainable development (and *vice versa*) and to further justification of academic and practical profound studying of central banking law as an independent discipline.

2. THE IMPORTANCE OF A “MORE HUMAN APPROACH” IN PUBLIC LAW MONETARY CONDUCT

The process of “humanizing” the monetary policy has been aimed at making the tasks and goals of the monetary strategy adopted and implemented by the central bank meaningful and

expedient, given the fact that they serve all members of a community where we can recognize a certain component of “humanity” that justifies each goal in the eyes of the individual. This implies greater transparency in the work of central banks and a qualitative turning point towards more efficient and effective performance of tasks.¹ Transparency entails a clear distinction between the work of current central banks and the actions of central banks in earlier periods when their task was related to rigid operations similar to keeping business secrets and not giving official information, which made the bank very distant from specific everyday needs and problems of monetary habitants (people who live under concrete monetary jurisdiction). In the context of greater central bank transparency claims, it is important to understand that the ECB is accountable to the European Parliament, but its tasks and functions must be performed following the so-called principle of openness outlined in Article 15 Treaty Functioning European Union (TFEU), which interprets open decision making (as a feature of more general decision-making principle) in a broader democracy and rule of law context.²

This phenomenon of “additional humanization” of monetary legislation is inconsistent with the intensive initiatives and monetary planning carried out in a large number of Western countries during the 20th century, which aimed to distance monetary activities from the influence of the executive.³ Nevertheless, the central bank’s concern for society is based on the premise that the means for increasing transparency in its operations are always *de facto* informal and that accountability mechanisms are based on the provisions of hard law, politically motivated, and *de jure* strictly formal. We may note that these assumptions are relatively rebuttable. Although the division into hard and soft law has been fairly relativized nowadays, the importance of these assumptions is not diminished. In the author’s opinion, when the law regulates and shapes the issue of responsibility of some entity for the first time (in case it has not been formerly regulated or debated by the legislators and the public), “relying on the good old and reliable hard law solutions” in line with the conventional and well-established normative inertia is always a solid starting point. On the other hand, although the advantages of soft legislation are valuable in monetary law (particularly in terms of flexibility and quick adaptation to new needs), it must be pointed out that soft law is neither perfect nor completely neutral, i.e. unaffected by external impact such as political influences.⁴ In the analysis of the ECB transparency, Duran states that “it is desirable to understand the law as a technical and symbolic discourse that can help the implementation of monetary policy and at the same time promote responsibility”.⁵

In the monetary law literature, it is customary to refer to the law of the central bank as the totality of legal norms governing the organizational structure, jurisdiction, tasks, and functions of the highest monetary authority, understood in the broadest sense of the word.⁶ In the

1 Sigrun Skogly, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Cavendish Publishing 2001).

2 Pieter Van Cleynenbreugel, ‘Confidentiality behind Transparent Doors: The European Central Bank and the EU Law Principle of Openness’ (2018) 25 (1) *Maastricht Journal of European and Comparative Law* 52–53.

3 Camila Villard Duran, ‘The Framework for the Social Accountability of Central Banks: the Growing Relevance of the Soft Law in Central Banking’ (2015) 8 (2) *European Journal of Legal Studies* 98–102.

4 Chris Bummer, *Soft Law and the Global Financial System: Rule Making in the 21st Century* (CUP 2001).

5 Camila Villard Duran (n 2) 103.

6 ECB law began to develop as a special branch of monetary law in the late 1990s; initially, its main task was to ensure price stability but, in the circumstances following the outbreak of the debt crisis in the 2000s, it was more focused on the field of general financial stability and supervision in the Eurozone. See: Christos V. Gortsos, *European Central Banking Law: The Role of the*

context of the EU, it is a law created and applied by the ECB. However, the evolving definition of ECB law may also be attributed to other community institutions, national entities, and other participants who more or less directly or indirectly influenced and shaped this issue. The unification of the national monetary systems of the EMU member states was a prerequisite for the creation of modern EU monetary law. Viewed from the perspective of centralized monetary policy, it can be defined as a set of primary and secondary legal sources that normatively regulate “M” (monetary policy) in “EMU” and enable the protection of the single monetary currency.⁷ At this point, it is important to notice that the EMU is the most advanced integration stage within the EU even though it does not involve all the member states.⁸ Yet, in the conditions of crisis, the defined fields of application of the common monetary policy and the principles established by the Maastricht Treaty were significantly changed; some authors believe they were tainted, which also affected the redefinition of the concept of fiscal federalism in the EU. In the conditions of technological revolution and the emergence of private digital currencies, the approach to the ECB law as a totality of norms establishing a *de facto* monopoly of the ECB over the tender for issuing Euros is challenged by the daily growth of demand for Euros because citizens want to satisfy their preferences in the digitalized market.⁹

The historical and institutional framework (for the functioning of monetary authorities) tends to be relevant to the model of their relationship with the holders of the executive and legislative power and social forums that have an impact on all public policies. However, the global theoretical-economic convergence in monetary policy (i.e. the operational transparency of interest rate policy) may be the most important driver of a significant common trend in the work of central banks. It implies that the monetary authority (which is subject to public scrutiny) creates the mechanism of self-evaluation of its social responsibility. In the work of the central bank, the non-recognition and non-acceptance of responsibility must be a relic of the obsolete monetary history which cannot be praised for monetary and legal ingenuity.

The mechanism of legal responsibility shaped by the ECB acts does not differ in any way from the mechanism of responsibility created by primary sources. Even the “soft” mechanism creates a relevant legal expectation that has a special meaning in the circumstances of crisis (or post-crisis re-examinations of responsibility) because it enables social actors to challenge the political choices underlying political decisions. In the current circumstances, almost every decision of the central bank has a more or less prominent impact on citizens’ social and economic rights.¹⁰ Thus, decisions about the interest rate amount (and how they are implemented), financial support for banks in trouble, and the degree of risk tolerance in the financial system can affect the conditions of access to private and public services (such as housing, health care, education and quality of food).¹¹ The human rights matrix offers central banks a

European Central Bank and the National Central Banks under European Law (Palgrave Macmillan 2020) and Chiara Zilioli, Selmayr Martin, *The Law of European Central Bank* (Oxford Hart Publishing 2001).

7 Dirk Meyer, *European Union and Monetary Union in Permanent Crisis I, An Inventory* (Springer 2022).

8 Chiara Zilioli, Karl-Philipp Wojcik, *Judicial Review in the European Banking Union* (Edward Elgar 2022).

9 Robert Freitag, Sebastian Omlor (eds), *The Euro as Legal Tender, A Comparative Approach to a Uniform Concept* (de Gruyter 2020).

10 Marko Dimitrijević and Srđan Golubović, ‘About the Legal Responsibility of the Central Bank in Monetary Law’ (2020) 1(64) *TEME* 1–16.

11 Daniel Bradlow, ‘Why Central Banks Need to Take Human Rights More Seriously?’ *Washington College of Law, Articles in Law Reviews & Other Academic Journals* (2019) 10.

“new tool” to understand the real costs of the population and the benefits of proposed actions of central banks; it also provides useful additional information that can help central banks identify ways to mitigate the negative consequences of their actions. Today, it seems that central banks can fulfill their human rights obligations without compromising the independence they need to effectively fulfill their monetary and financial responsibilities.

The impact of the COVID-19 pandemic crisis on EU monetary law is reflected in reforming the EMU architecture in the segment of strengthening the cohesion policy and shaping the so-called new schemes of European unemployment insurance, the application of the European instrument for temporary support to mitigate unemployment risks in an emergency (SURE), changes in the area of the joint budget (medium-term fiscal strategy), and the procedure for issuing government bonds in the context realization of the so-called Next Generation EU (NGEU), which is a complex and ambitious undertaking.¹² The *ratio* of the NGEU as complex supranational financial measures consolidated the financial and economic structure of the EU, and provided a transition to a more sustainable, resilient, green, and digital economy in the function of strengthening the EU foundation after the pandemic crisis.¹³ In conjunction with the use of the general escape clause and the temporary suspension of fiscal rules for EU member states, these adjustments provided the real and profound mix and coordination of the fiscal and monetary policy. For the first time in EMU history, it practically meant that fiscal policy worked “hand in hand” with monetary policy to mitigate the consequences of the pandemic crisis. In effect, these changes conceptualized the legal-economic precondition for a strong joint political response to enable European households and firms to overcome the consequences of the crisis. These activities were aimed at reaching the level of economic activity in the Eurozone attained before the pandemic.

At the outset of the pandemic crisis, the ECB specifically emphasized in its strategy that it was crucial to provide tailor-made instruments of fiscal stabilization in an environment where monetary policy measures have a limited effect in practice; this goal had to be accomplished by unconventional measures in the form of major purchases of government assets. In terms of its characteristics and functions, the Next Generation EU (NGEU) plan for supranational financial measures has had a broader scope than a pure stabilization goal. In addition to the “humane redistributive function” (i.e. directing financial resources to the most affected countries and their citizens), the NGEU plan also emphasizes the importance of financing long-term investments in green and digital areas for sustainable development. The NGEU plan is also incorporated as a mandatory matrix into national structural reform plans, thus supporting potential growth in the Eurozone. Consequently, its implementation generates and supports the purchase and holding of secure assets that are in high demand; thus, it can support the idea and functions of the Capital Market Union and additionally affirm the role of the euro in the international currency market.¹⁴

In the circumstances of the pandemic crisis, the legal instruments of the main EU institutions were based on introducing new institutional practices and simultaneous redefinition

¹² Franck Smets, ‘The COVID-19 Crisis: a Hamiltonian Moment for Europe’ (Continuity and Change – How the Challenges of Today Prepare the Ground for Tomorrow – ECB Legal Conference 2021) 391–395.

¹³ Mate Avbelj, ‘The future of the European Union is now’ (2022) 2(XIII) *Pravni zapisi*, 348.

¹⁴ European Central Bank (2021a), Targeted Longer-Term Refinancing Operations (TLTROs).

of the existing legal interpretations correlating the problem of the decline of differentiated integration and the recognition of cohesion policy. These changes do not fall within the scope of implementation of ECB law but they *de facto* modify the institutional environment in which the ECB performs its tasks.¹⁵ In the field of EU economic policy, there is a noticeable tendency to increase differentiated integration as a form of specific political solutions and institutional mechanisms aimed at shaping arrangements for internal application in the Eurozone member states. These arrangements imply the end of the debate on supplementing the already implemented (emergency) financial aid by creating a true “fiscal capacity of the Eurozone”, which would exist independently of the emergency aid provided through the operation of the European Stability Mechanism (ESM). These actions in the field of monetary management are important in the context of creating conditions for a real macroeconomic dialogue between the ECB and other institutions which would be much more than a verbal compromise, and which would acquire the characteristics of an open method of coordination with the aim of building and nurturing common altruistic monetary values and targets.

Moreover, it reinvigorated the old story about the need to issue Euro bonds, which was strongly opposed by Germany at the time. Germany considered it to be in contravention of Article 125 of the EU Treaty (TFEU), which prohibits the creation of a public debt union and transfer union where (even if such a union is established upon the consent of other member states) the category of common public debt bonds would remain without legal effect on state territory due to a violation of the constitution. For this reason, in the pandemic circumstances, the EU reacted by trying to mend the existing limitations and weaknesses in the field of insufficient fiscal unity by envisaging an economic recovery plan and relevant financial support measures. At this point, there are visible consequences of the fact that the Eurozone is (to some extent) an autonomous organization within the EU.

3. THE SCOPE OF THE COHESION POLICY PRINCIPLES IN THE EMU LEGAL ORDER

The pandemic crisis actualized the issue of reshaping the insufficiently used EU cohesion policy instrument, by making it the dominant instrument of EU action in the macroeconomic environment. The reshaping of the cohesion policy implies that there is a solid legal basis for the prospective permanent and perpetual fiscal capacity for the EU member states in need (not for the Eurozone), which is an issue of crucial importance for the survival and protection of the EU attainments. The economic policy of the EU, which is based on the close coordination of EU member states’ economic policies (Articles. 5(1) and 119(1) of the TFEU), has never corresponded to the actual competencies envisaged in “E” in “EMU”; thus, we may rightly say that the linguistic meaning of the term “coordination” does not correspond to its factual reach in practice.¹⁶ In the pandemic crisis, the aforesaid legal provision turned out to be convenient

¹⁵ Bruno De Witte, ‘The innovative European response to COVID-19: the decline of differentiated integration and reinvention of cohesion policy’ (Continuity and Change – How the Challenges of Today Prepare the Ground for Tomorrow- ECB Legal Conference 2021) 397–398.

¹⁶ The genesis and history of the European economic and monetary integration is not a story of linear evolution according to an ideal abstract system, but one shaped by events and political will. See: Christoph Hermann, Corina Dornacher, *International and European Monetary Law – An Introduction* (Springer 2017).

in practice because the subjects of economic policy were not limited by formal legal enumerations and normative explanations where their jurisdiction begins and ends in the process of harmonizing the economic systems of the member states. In the author's opinion, it provided the economic policy subjects with requisite creative freedom in constructing legal solutions that would ensure the best possible coordination at a specific historical moment. Given that coordination is a dynamic and flexible process, strict, rigid, and exhaustive legal rules on how it should be implemented in practice would probably quickly turn into amortized legal solutions in the founding treaties; thus, it is certainly good that the European legislator did not adopt that approach.

For years, cohesion policy has been synonymous with a means of achieving various policy objectives where there is no clear division of competencies. Chapter 18 of the EU Treaty (dedicated to the issues of economic, social, and territorial cohesion policy) contains a clause on flexibility (in Article 175(3) of the TFEU), which is the legal basis for applying cohesion measures to be adopted by establishing structural support funds. Article 175(3) of the TFEU does not explicitly envisage the provision of financial aid as a cohesion policy measure, but it is not excluded either. In this sense, this article was the basis for establishing the European Recovery and Resilience Fund (by Regulation No 241/2021), which reduced the social and economic effects of the pandemic crisis on the economies of the EU member states and, at the same time, created the initial conditions for transition to a green economy system. This article was also used in prior crisis periods to justify and strengthen cohesion mechanisms, such as the European Union Solidarity Fund, which facilitates the provision of financial support in the event of environmental and other disasters.

The concept of cohesion has been significantly expanded in Article 3 of the Regulation on the establishment of the Recovery and Resilience Facility (No 241/2021).¹⁷ In addition to social and economic cohesion, it also includes territorial cohesion, which is included in the six pillars of the Regulation: the green transition, digital transformation, sustainable and inclusive growth, resilience, and crisis response capacity, and good and sustainable policy for the future generations (Art. 3 of Regulation No.241/2021). These issues are not strictly included in the area of cohesion but they are closely and functionally correlated with it. Although it is clear that the cohesion process is an overarching ambition, the Regulation can be seen as a clear confirmation of the trend that was only indicated in previous legal instruments based on Article 175(3) of the TFEU. It is the trend of departing from the cohesion policy values *stricto sensu* (i.e. measures funded from structural funds) and moving towards a much wider domain of EU macroeconomic policy to improve the balance of economic development and protection of the single market.

In the context of creating a fiscal union within the EMU, the Regulation offers a safe and permanent legal tool for supporting fiscal capacity in all parts of the Union; its concrete use in practice will depend on political decisions rather than on legal restrictions because such restrictions are no longer present. After the adoption of the Regulation, there was a kind of transition from the model of "monitoring" fiscal integration to an alternative model of fiscal

17 Regulation (EU) No 241/2021 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, *OJL* 57.

federalism.¹⁸ Such a change is not unexpected because the actions of national and supranational subjects of economic policy did not yield satisfactory results in the first years of the crisis, due to weak fiscal sustainability. With the new models of economic management, the institutional mechanism is aimed at increasing efficiency and reaching macroeconomic goals because the new solutions treat financial stability as a *de facto* and *de jure* goal of the common monetary policy. In this context, the use of complex econometric models confirms the existence of strong compatibility between achieving price stability and other goals aimed at ensuring the sustainability of economic growth.¹⁹ In the economic literature, there is no unified position regarding the optimal policy mix of monetary and fiscal policy in the EU but the prevailing current understandings can be categorized into three groups: 1) the model of monetary conservatism; 2) the model of fiscal policy (in)coordination; and 3) the model of government leadership.²⁰

The model of monetary conservatism is based on the understanding that the problem of time inconsistency in the monetary union provides a good enough basis for the conservative role of the central bank. The model of fiscal policy coordination in the monetary union can have harmful effects that are reflected in reducing the benefits of a unified monetary policy and undermining macroeconomic stability. Such views are also shared by theorists who support the thesis about the negative effects of coordination of national fiscal policies that have an adverse and regressive effect on maintaining price stability and inflation control. Nevertheless, looking at the effects of coordination in modern economic flows of the Union, a growing number of theoreticians support the efforts to shape fiscal cooperation to achieve production stability. Fiscal cooperation implies a mix of informal cooperation and rules which, in conjunction with the actions of central banks, contribute to inflationary stability. On the other hand, the model of government leadership is based on the understanding that, in order to establish a disturbed market balance, the national subjects of economic policy must work on the interaction of monetary and fiscal policy in the form of centralized action. For the success of such a model, it is necessary to recognize the unconditional and credible commitment of the governments of the Eurozone member states to implement joint actions at the national government level. These understandings were the basis for the development of special models that investigate the strategic interconnection between the actions of trade unions, the central bank, and the treasury in the EMU.²¹

The measures taken by the EU in the circumstances of the pandemic crisis redefined the inter-institutional balance in the context of the position of the EU's main bodies, which had already happened ten years earlier when adopting new legal mechanisms for the coordination of economic policy in the circumstances of the debt crisis. In this regard, a significant question was raised about the new institutional dynamics that arose with the implementation of cohesion measures, not in terms of examining the cause-and-effect relationship that conditioned

18 For challenges in EU fiscal federalism see: Brady Gordon, *The Constitutional Boundaries of European Fiscal Federalism* (CUP 2020).

19 Claudiu Tiberiu Albulescu, 'Financial Stability, Monetary Policy and Budgetary Policy in EMU'(2012) 8 (573) *Theoretical and Applied Economics*, 94.

20 Nicola Acocella, Givani Di Bartolomeo and Patricio Tirelli, 'Fiscal Leadership and Coordination in EMU' (2007) *Open Economic Review* 18(3) 281.

21 Armin Steibanch, *Economic Policy Coordination in the Euro Area* (Routledge 2014).

the emergence of the measures but in terms of the dynamics of their implementation.²² Formally speaking, the main shortcoming of the cohesion measures undertaken by the EU during the COVID-19 pandemic is reflected in the “lost opportunity” to strengthen the credibility of the cohesion process through broader activities of the national and European parliaments. Like in the case of adopting the first European Semester (2010),²³ the application of cohesion measures does not require the consent of the European Parliament, which would be highly desirable for the approval of large financial assistance by the Recovery and Resilience Facility. Namely, the communication between the European Parliament and the European Commission in the field of implementation of Regulation (No. 241/2021) took place in the form of a basic discussion and exchange of information on the state of recovery, resilience, and adaptation of development capacities in the EU, consideration of plans for recovery and strengthening of the market resilience of specific member states, information on approved loans and their suspensions. Nevertheless, if we compare this “new” position of the Parliament with the one it had in the application of the European Semester (2010), we can notice that, regardless of the mentioned weaknesses, its position is now additionally strengthened; namely, during the dialogue session on recovery and resilience (which are now joined with the economic dialogue procedure and regularly organized in two-month periods). the Parliament is guaranteed the right to demand from the Commission and other relevant bodies the provision of all information relevant to the procedure. National parliaments still largely depend on the national arrangements, which are only indirectly mentioned in the Regulation by instructing Member States to include in their recovery plans the results achieved in the previous process of consultation with local and regional authorities, social partners, civil society organizations, youth organizations, and other interested parties in compliance with the national legal framework.²⁴

Another important initiative aimed at mitigating the consequences of the pandemic crisis concerns efforts to strengthen the earlier initiatives aimed at supporting the framework for solving the problem of high debts in the private and public sectors, the most prominent of which is related to introducing a new collective action, the so-called unique share in the European Stabilization Mechanism, and creating better conditions for the implementation of the EU Directive for the timely prevention of debt restructuring procedures.²⁵ For the sake of comparison, the behavior of the International Monetary Fund (IMF) during the pandemic crisis was very similar to the behavior on the issue of approval of financial support programs, the relativization of the scope of fiscal rules, and the validation of essential elements of the public debt agreement, these two leading subjects of the international monetary order showed an enviable level of solidarity and concern for people’s lives in the circumstances of a public health crisis, which never happened before in the history of monetary transactions.

22 Diane Fromage, ‘Post-COVID-19 E(M)U – Interinstitutional Balance: Assessment and Outlook’ (Continuity and Change – How the Challenges of Today Prepare the Ground for Tomorrow – ECB Legal Conference 2021) 422–424.

23 The European Semester is an integral part of the new economic governance in EMU established during global financial crises. See more: Rosa Maria Lastra, *International Monetary and Financial Law* (OUP 2015).

24 Diane Fromage (n 21) 430.

25 Rhoda Weeks-Brown, ‘The COVID-19 Crisis: a Hamiltonian Moment for Europe?’ (Continuity and Change – How the Challenges of Today Prepare the Ground for Tomorrow – ECB Legal Conference 2021) 435.

4. BROADENING THE CENTRAL BANK LEGITIMIZATION WITHIN A SOCIETY

In the circumstances of the COVID-19 pandemic, contemporary doctrines of economic policy have proven to be quite disputable in terms of their viability in practice. In this period, the dominant doctrine in developed economic countries, the so-called post-Keynesian institutional model of money management in capital flows, proved to be unsustainable and unstable. This model began to develop after World War II in the USA, first in the form of the so-called managerial capitalism, but it reached the highest threshold of application in the late 1980s. The theoretical postulates of this model include: the concrete and measurable contribution of institutional investors to financial flows in terms of determining the way and measuring the effects of their decisions in the macroeconomic system; correctly identifying the cause-and-effect relationship between the value of an individual material investment and uncertainty that such a financial decision inevitably entails (which the investor must count on because the percentage of uncertainty increases simultaneously and linearly with the increase in the amount of money invested and thus shortens the expected time of repatriation of the investment, which ultimately affects the insecure position of workers and their irrational or rational fear; and the impact of the decisions of institutional investors on strengthening “hidden and silent” economic flows that take place alongside with the official and visible ones, and which in the end causally lead to the emergence of the so-called predatory states.²⁶

In the author’s opinion, the unsustainability of existing economic doctrines in the circumstances of one of the largest pandemic crises that humanity has ever faced is not surprising because such a scenario could not be expected even in the macroeconomic forecasts of the most eminent experts. In the circumstances where public health was directly threatened, it was necessary to engage the potentials of all segments of public policy (including monetary policy) that had not had a prior measurable contribution in the area of social cohesion. By contrast, in the pandemic circumstances, we can recognize unambiguous responses of contemporary monetary policy and its main actors to the consequences of the COVID-19 pandemic.

Although the consequences of the global financial crisis (2012) cannot be compared to the consequences of the COVID-19 pandemic crisis, the experience of central banks in the field of monetary policy aimed at remedying the consequences of high indebtedness of states could be used as a basis for involving the supreme monetary institutions in regulating the costs caused by the pandemic and applying non-conventional monetary policy measures (such as the already instituted practice of central banks to keep the interest rates at a low level). To achieve inflation control, the ECB used the assets purchase program, the so-called “quantitative easing” as the most prominent form of unconventional monetary policy. Based on the central bank’s experiences during the rehabilitation from the consequences of the debt crisis, the incorporation of non-conventional measures into the current instruments and strategy of monetary policy has become a common standard, especially in the monetary legislation of the USA, EU, and Great Britain.²⁷

²⁶ Charles J. Whalen (ed), *A Modern Guide to Post-Keynesian Institutional Economics* (Edward Elgar 2022).

²⁷ Koen Byttebier, *Covid-19 and Capitalism-Success and Failure of the Legal Methods for Dealing with a Pandemic, Economic and Financial Law & Policy – Shifting Insights & Values* 7 (Springer 2022) 241.

Before the outbreak of the COVID-19 pandemic, highly developed countries had already relied too much on the extensive application of non-conventional measures, for which reason the interest rates were historically at the lowest levels in the monetary history of each of these countries and there was no more room to additionally lower them. On the other hand, a similar situation existed in the field of public loan policy, where fiscal rules (either national or supranational ones in EU monetary law) were temporarily placed *ad acta*, which greatly weakened the banks' positions in choosing the optimal mix of monetary credit and fiscal politics. For this reason, central banks embarked on the practice of adopting special programs called "temporary debt assumption programs". A special challenge in the implementation of these programs is not a misunderstanding of the true purpose they have for the development of economic flows but the discovery and understanding of their legal and economic features.²⁸ In practice, the economic relevance of these programs refers to the fact that the governments of the respective jurisdictions (the FED in the USA, and the ECB in the Eurozone) have shown the political will and resolve to "humanely" support the debts of American and European consumers, companies and the state, to prevent bankruptcies and/or to set clear threshold below which property prices can no longer fall, especially in the real estate market which was most affected.²⁹ Blakely noted that this "new monetary (and also fiscal) approach" simultaneously revealed something deeply disturbing about the nature of modern capitalism.³⁰ The negative aspect of implementing this program is reflected in the state message that the risks of running a good business are "socialized" while the profits remain private, it meant that the corporate world must be saved in a crisis period regardless of the amount of debt accumulated during the period of economic expansion.³¹ Thus, as of March 2020, virtually all companies in the USA and EU to some extent become publicly self-funded enterprises, with protected shareholders and corporate executives living at the expense of already overtaxed taxpayers. The ultimate result of such a program is reflected in the continuous increase of the price of (financial) assets at the expense of money collected through taxes, which further complicates the redistributive function of public finances.

During the pandemic, the ECB reacted relatively quickly to prevent the deepening of the financial consequences of the crisis and started applying a new approach to conducting monetary policy that no longer pursues the neoliberal premises contained in the provisions of the Maastricht Treaty. Before the pandemic, although the prospects for continuing the monetary policy based on low interest rates started demonstrating their weakness in implementation, European financial markets expected short-term interest rates to remain at low levels (well below the average level) for several more years, considering the high borrowing needs of various EU member states.³² To provide an inevitable and urgent impulse to preserve monetary stability, the ECB Governing Board adopted a wide arsenal of (new) monetary policy measures to deal with the economic consequences of the "first wave" of the pandemic. Initially, the legal form of the specialized programs implemented by the ECB during the pandemic crisis generated concerns about the reaction of the German Constitutional Court, considering its decision

28 Grace Blakeley, *The Corona Crash – How the Pandemic Will Change Capitalism* (Verso 2022) 15.

29 Koen Bytteeber (n 27) 243.

30 Grace Blakely (n 28) 16–18.

31 Koen Bytteeber (n 27) 244.

32 *Ibid.* 270.

in the case about the mandate of the ECB to adopt the previously implemented bond purchase program in the public sector.³³ However, in its judgment of 5 May 2020, the European Court of Justice (ECJ)³⁴ rejected the claim stating that the application of that program effectively circumvents Article 123 of the TFEU, which prohibits monetary financing. However, deviating from the assessment of the ECJ, the German Constitutional Court initially found that the decision of the ECB Governing Board insufficiently considered the fulfillment of the proportionality requirement, thus exceeding the powers of the ECB. The German Constitutional Court also expressed a concern that the implementation of the program would lead to disproportionate effects in the field of national fiscal policies, as a result of which the Bundesbank would not be able to further participate in the program implementation (as it would have to sell already purchased bonds from its portfolio). Nevertheless, the different circumstances in all EU member states during the pandemic were differently reflected in the field of monetary policy. Above all, it also affected the conduct of the German judicial authorities which had closely observed the developments of the Union's secondary monetary legislation before the outbreak of the COVID-19 pandemic and alerted the public about certain discrepancies and challenges (if needed).

At the outset of the COVID-19 pandemic, the ECB implemented actions defined by the assets purchase program: quantitative easing and long-term refinancing operations (LTRO), aimed at creating conditions for adjusting the monetary policy, supporting the stabilization of financial markets to preserve mechanisms transmission of monetary policy, and ensuring sufficient liquidity, especially in order to maintain the smooth flow of bank loans.³⁵ Long-term refinancing operations are designed to have a dual impact: to increase the banks' liquidity and to ensure a lower yield on the total national debt. In terms of technical aspects of law, these operations are initiated through the standard mechanism of a public tender (auction sale). After announcing the auction, the ECB determines the amount of auctioned liquidity by respecting commercial banks' desires and conditions, where the loan interest rates can be defined in the form of a fixed rate or a variable rate.³⁶ In essence, the mechanism entails the commercial banks' competition for access to a fixed amount of liquidity. Over time, the program has been amended several times to immediately provide additional liquidity to commercial banks so that they could act as a safety net in the event of further deterioration of conditions in the money market.

Since 2014, the ECB has implemented long-term financing in the form of so-called targeted long-term refinancing operations (TLTROs, TLTROs II & TLTROs III) to further stimulate the liquidity of the financial market. These targeted operations provide long-term financing to credit institutions on favorable terms, which improves the conditions for lending to the real economy. The ECB found the rationale for this mechanism in the fact that commercial banks are reluctant to lend money to third parties due to the deterioration of the economic climate and the credit risk accompanying such loans. In recent monetary developments, the

33 Guideline (EU) 2019/1032 of the European Central Bank of 10 May 2019 amending Guideline (EU) 2015/510 on the implementation of the Euro system monetary policy framework (ECB/2019/11), *OJ L* 167.

34 Judgment of 5 May 2020, 2 BvR 859/15, 2 BvR 980/16, 2 BvR 2006/15, 2 BvR 1651/15.

35 European Central Bank (2020b), Decision (EU) 2020/440 of The European Central Bank of 24 March 2020 on a temporary pandemic emergency purchase program.

36 Koen Bytтеbier (n 27) 249–250.

first round of TLTROs (consisting of a total of eight operations) was announced on 5 June 2014, the second round (TLTROs II) on 10 March 2016, and the third round (TLTROs III) on 7 March 2019. It should be noted that commercial banks that met the lending goals from previously defined operations were allowed to borrow more money for new subsequent operations, while the banks that did not meet the goals were asked to repay their TLTRO I loans even before the due date.

When it comes to the structure of TLTRO II, it consisted of four operations, but lower interest rates were offered to commercial banks whose net loans managed to exceed previous expectations, which were determined based on clear benchmarks and indicators.³⁷ The last program from these measures, TLTRO III, included a series of seven operations, where each operation had a maturity of three years (starting from September 2019). The program also determined that the borrowing rates for each operation should be lower by 50 basis points (BPS) when compared to the average deposit interest rate for the period from 24. 06. 2020 to 23. 06. 2022 and in any case lower than the average interest rate of the deposit line during the remaining life of the corresponding TLTRO III.³⁸ The ECB defined eligible loans to third parties as those that would be granted to non-financial corporations and households in the Eurozone (except mortgage loans). To determine the starting point, commercial banks were assessed based on net eligible loans which the banks approved in the period from 1 April 2018 to 31 March 2019.³⁹ In devising the conceptual framework of these programs, the ECB took a step further by adopting the so-called Pandemic Emergency Longer Term Refinancing Operations (PELTROs) program, which enabled refinancing under very favorable conditions in the form of tender with fixed interest rates and a wider effect on the stabilization of the banking sector and the financial market.⁴⁰

All the measures taken by the ECB during the pandemic circumstances are explicitly envisaged in the provisions of the founding acts. Specifically, Article 18 of the Statute of the ESCB and ECB clearly states that, in order to perform their duties, the ECB and national central banks may open accounts for credit institutions, public institutions, and other market participants and accept property and appropriate securities as collateral. To this end, the ECB can operate on the financial markets by buying and selling (spot and term) or by reverse buying and selling, by lending and borrowing market instruments denominated in Euro, other currencies, or precious metals, and by concluding credit transactions with credit institutions and other market participants, while the approval of loans is based on appropriate insurance.⁴¹ The taken crisis measures follow the dynamics of the unified monetary policy objectives; their temporary, targeted, and proportionate nature is indicated. All measures are designed to pre-

37 European Commission (2021), Directorate-General for Budget, The EU's 2021-2027 Long-term Budget and Next Generation EU: Facts and Figures, Publications Office of the European Union, 2021.

38 European Central Bank (2019a), ECB announces details of new targeted longer-term refinancing operations (TLTRO III).

39 European Central Bank (2019b), Monetary policy decisions of March 7, 2019.

40 European Central Bank (2020d) Pandemic emergency longer-term refinancing operations (PELTROs). <https://www.ecb.europa.eu/home/search/html/pandemic_emergency_longerterm_refinancing_operations_peltros.en.html>.

41 Consolidated version of the Treaty on the Functioning of the European Union Protocol (no 4) on the Statute of the European System of Central Banks and of the European Central Bank, OJ C 202, 7. 6. 2016, pp. 230–250 and Statute of ECB, art. 18–19 (EN).

serve the functioning of the market and the free formation of price mechanisms.⁴² The crisis measures applied by the ECB enabled the strengthening of the concept of cooperative banks, which base their operations on the values of democracy, provision of services to their citizens, transparency, and a sense of closeness to the individual. These banks have to constantly adjust their operations to the conditions of not only financial but also environmental and sustainability crises.⁴³ The concept of cooperative banks is essentially based on the sense of social solidarity and undertaking collective actions in the regulation of global problems. After the pandemic, it seems that the ECB stepping outside the 'comfort zone' in monetary policy concepts and measures has been inspired by gaining the trust of the people who can see that all the implemented monetary measures and monetary actions were in their best interest, taken with intention to offer solid resilience to every circumstance that may endanger the quality of daily life, which also represents the ECB's strong social commitment (answer) to people's needs in times of hardship. In addition to the pandemic, we may certainly mention the previously reviewed activities of the ECB in the field of preserving natural resources and environmental protection. The author of this paper also believes that, during the pandemic, the ECB showed its willingness to fully respect solidarity as a European value and motive for action. In this regard, we must not forget that the EU is a union of people and interdependent nation-states but, at the same time, EU citizens have a consolidated moral obligation to support each other at all times, whenever there is a need to translate solidarity into concrete mutual assistance.⁴⁴

5. CONCLUSION

In the circumstances of a major pandemic crisis, we can note that the monetary legislation was selflessly placed in the function of saving not only the economy but also the entire society, even at the cost of (temporarily) abandoning the previously agreed trajectory of the movement of monetary norms in the provisions of hard monetary legislation. Such decisions of monetary authorities were frequently subject to fierce criticism and fervent reactions from the professional and scientific public (e.g. the negative public reactions to the ECB's ESM and OMT program). However, the initial resistance gradually subsided due to the growing awareness and understanding of the benefits of the new monetary solutions. In particular, it refers to the time required for the application of the monetary norm in extraordinary circumstances and the clear observation of the benefits of the new *modus operandi*. In the development of human civilization, resistance to innovations was a common, inevitable, and regular occurrence, and every progress was initially exposed to such challenges.

In the author's opinion, the contribution of soft law to monetary management undoubtedly has all the elements of monetary law progress, both in the technical and operational parts. Yet, it does not mean that the incorporation of soft law into the process of monetary transactions

42 Yves Mersch, 'Legal Aspects of the ECB's Response to the Coronavirus Pandemic: An Exclusive but Narrow Competence' (*ESCB Legal Conference 2020*) 9–18.

43 Marco Migliorella and Eric Lamarque (eds), *Contemporary Trends in European Cooperative Banking Sustainability, Governance, Digital Transformation, and Health Crisis Response* (Palgrave Macmillan 2022).

44 Michael Kaeding, Senem Aydin-Düzgita and Johannes Pollak (eds), *European Solidarity in Action and the Future of Europe – Views from the Capitals* (Munich 2022).

could have been more skillful and “artistically-inclined“, without directive features and a noticeable defiance of primary law (designated as outdated). Ultimately, none of these undermines the strength of soft law in practice. In the past decade, the ECB has unequivocally confirmed its position as a pioneer and the key innovator of monetary law solutions not only in European but also in the international monetary discourse. These new legal solutions fill in the legal gaps in the provisions of the primary monetary legislation that need to be urgently resolved in times of crisis. In this regard, the evolution of the regulatory responsibilities of the European Central Bank is accompanied by their hybridization. Thus, the current scope of the ECB decisions and actions refers not only to the sphere of monetary credit policy and monetary legislation but also to general fiscal policy to preserve financial stability. It also refers to other public policy subsystems that do not have an economic character but can have economic consequences.

The European Central Bank, as the supreme monetary institution of the EU, is not only the “bank of all banks” but also “the bank of all citizens”. Both in the pandemic and post-pandemic circumstances, the ECB has provided irreplaceable incentives, measures, and programs to preserve the citizens’ living standards and to protect the scope of their personal and public consumption by internalizing the social costs of the crisis. It has also promoted the need for more humane behavior in macroeconomic management because the monetary stability and credibility of the monetary system *per se* do not mean much in a world where citizens’ existence is threatened. The ECB’s cohesive programs place individual preferences in the center of monetary reality in a direct and decisive manner. It confirms the absence of classical technocracy in monetary management in the traditional sense of the word and, concurrently, emphasizes the monetary legislator’s concern for the well-being of monetary users and sustainable development in all its aspects.

BIBLIOGRAPHY

1. Acocella N, Di Bartolomeo G and Tirelli P, ‘Fiscal Leadership and Coordination in EMU’(2007) 18(3) *Open Economic Review* 281–289.
2. Albulescu TC, ‘Financial Stability, Monetary Policy and Budgetary Policy in EMU’(2013) XVIII 8(573) *Theoretical and Applied Economics* 85–96.
3. Avbelj M, ‘The future of the European Union is now’ (2022) 2 (XIII) *Pravni zapisi* 347.
4. Blakley G, *The Corona Crash – How the Pandemic Will Change Capitalism* (Verso 2022).
5. Bradlow D, ‘Why Central Banks Need to Take Human Rights More Seriously?’ (American University Washington College of Law, *Articles in Law Reviews & Other Academic Journals* 2019).
6. Bummer C, *Soft Law, and the Global Financial System: Rule Making in the 21st Century* (CUP 2021).
7. Byttembier K, *Covid-19 and Capitalism-Success and Failure of the Legal Methods for Dealing with a Pandemic, Economic, and Financial Law & Policy – Shifting Insights & Values* 7 (Springer 2022).
8. Christoph H and Dornacher C, *International, and European Monetary Law – An Introduction* (Munich 2017).
9. De Witte B, ‘The innovative European response to COVID-19: the decline of differentiated integration and reinvention of cohesion policy’ (Continuity and Change – How the Challenges of Today Prepare the Ground for Tomorrow – ECB Legal Conference 2021) 397–398.
10. Dimitrijević M, *Pravo Evropske centralne banke* (Medinvest 2023).

11. Dimitrijević M and Golubović S, 'About the Legal Responsibility of the Central Bank in Monetary Law' (2020) 1 (XLIV) TEME 1–16.
12. Freitag R and Omlor S, *The Euro as Legal Tender, A Comparative Approach to a Uniform Concept* (de Gruyter 2020).
13. Fromage D, 'Post-COVID-19 E(M)U – Interinstitutional Balance: Assessment and Outlook' (Continuity and Change – How the Challenges of Today Prepare the Ground for Tomorrow - ECB Legal Conference 2021) 422–424.
14. Gordon B, *The Constitutional Boundaries of European Fiscal Federalism* (CUP 2022).
15. Gortsos CV, *European Central Banking Law: The Role of the European Central Bank and the National Central Banks under European Law* (Palgrave Macmillan 2020).
16. Kaeding M, Pollak J and Schmidt P (eds), *European Solidarity in Action and the Future of Europe – Views from the Capitals* (Springer 2022).
17. Lastra RM, *International Monetary and Financial Law* (OUP 2015).
18. Liang Y and Whalen CJ, *A Modern Guide to Post-Keynesian Institutional Economics* (Edward Elgar 2021).
19. Mersch Y, 'Legal Aspects of the ECB's Response to the Coronavirus Pandemic: An Exclusive but Narrow Competence' (*ESCB Legal Conference 2020*) 9–18.
20. Migliorelli M, Lamarque E (eds), *Contemporary Trends in European Cooperative Banking Sustainability, Governance, Digital Transformation, and Health Crisis Response* (Palgrave Macmillan 2022)
21. Skogly S, *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Cavendish Publishing 2021).
22. Smets F, 'The COVID-19 Crisis: a Hamiltonian Moment for Europe' (Continuity and Change – How the Challenges of Today Prepare the Ground for Tomorrow - ECB Legal Conference 2021) 391–395.
23. Steinbach A, *EU Economic Policy Coordination in the Euro Area* (Routledge 2014).
24. Van Cleynenbreugel P, 'Confidentiality behind Transparent Doors: The European Central Bank and the EU Law Principle of Openness', 2018 Vol 25 (1) *Maastricht Journal of European and Comparative Law* 52–76.
25. Villard Duran C, 'The Framework for the Social Accountability of Central Banks: the Growing Relevance of the Soft Law in Central Banking' (2015) 8(2) *European Journal of Legal Studies* 97–125.
26. Weeks-Brown R, 'The COVID-19 Crisis: a Hamiltonian Moment for Europe?' (Continuity and Change – How the Challenges of Today Prepare the Ground for Tomorrow – ECB Legal Conference 2021) 436–450.
27. Zilioli C and Selmayr M, *The Law of European Central Bank* (Oxford Hart 2001).
28. Zilioli C and Wojcik KP, *Judicial Review in the European Banking Union* (Edward Elgar 2022).

REGULATIONS AND DOCUMENTS

1. Consolidated version of the Treaty on the Functioning of the European Union Protocol (no 4) on the Statute of the European System of Central Banks and of the European Central Bank (2016) OJ C 202/230.
2. Guideline (EU) 2019/1032 of the European Central Bank of 10 May 2019 amending Guideline (EU) 2015/510 on the implementation of the Euro system monetary policy framework (ECB/2019/11) OJ L 167/64.

3. Protocol on the Statute of European System of Central Banks and of the European Central Bank (1992) OJ C 191/1.
4. Regulation (EU) No 241/2021 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (2021) OJ L 57/17.

JUDGMENTS AND OTHER DECISIONS

1. 2 BvR 859/15, 2 BvR 980/16, 2 BvR 2006/15, 2 BvR 1651/15 (May 5 2020).
2. European Central Bank (2020b), Decision (EU) 2020/440 of the ECB of 24 March 2020 on a temporary pandemic emergency purchase program (2020) OJ L 91/1

INTERNET SOURCES

1. European Central Bank (2019a), ECB announces details of new targeted longer-term refinancing operations (TLTRO III). <<https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.pr190606~d1b6e3247d.en.html>> accessed 10 January 2024.
2. European Central Bank (2019b), Monetary policy decisions of March 7, 2019. <<https://www.ecb.europa.eu/press/pr/date/2019/html/ecb.mp190307~7d8a9d2665.en.html>> accessed 19 November 2023.
3. European Central Bank (2020d) Pandemic emergency longer-term refinancing operations <https://www.ecb.europa.eu/home/search/html/pandemic_emergency_longer-term_refinancing_operations_peltros.en.html> accessed 01 December 2024.
4. European Central Bank (2021a), Targeted Longer-Term Refinancing Operations (TLTROs) <<https://www.ecb.europa.eu/mopo/implement/omo/tltro/html/index.en.html>> accessed 04 November 2023.
5. European Commission (2021), Directorate-General for Budget, The EU's 2021–2027 Long-term Budget and Next Generation EU: Facts and Figures, Publications Office of the European Union (2021).

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VAŽNOST VRIJEDNOSTI KOHEZIJSKE POLITIKE U PRAVU EUROPSKE SREDIŠNJE BANKE

Sažetak

Predmet analize u radu sagledavanje je i utvrđivanje promjena u diskursu prava Europske središnje banke, shodno vrijednostima i principima politike kohezije koje su u okolnostima pandemijske krize znatno redefinirale postulate suvremenog monetarnog zakonodavstva Europske unije. U tom smislu u radu se želi analitički ukazati na obilježja i kvalitativni utjecaj tzv. tendencije humanizacije suvremene monetarne legislative, kao i na sofisticirani *modus operandi* javnopravnog uobličavanja monetarne vlasti u arhitekturi Europske ekonomske i monetarne unije (EMU). Primjenom dogmatske, logičke i komparativno-pravne metode u radu se nastoji ukazati na najveće dileme s kojima se europski zakonodavac suočava u kontekstu prilagođavanja regulatorne aktivnosti Europske središnje banke i njezinih primarnih zadataka principima politike kohezije.

Ključne riječi: monetarno pravo, monetarna jurisdikcija, monetarni suverenitet, monetarni poredak, politika kohezije, Europska unija, Europska središnja banka



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