

THE IMPORTANCE OF ENVIRONMENTAL PROTECTION CONCEPT IN EUROPEAN CENTRAL BANK LAW**

Summary

The subject of this paper is the introduction of the environmental protection concept in the central banking law to preserve natural resources and contribute to ensuring sustainable economic development. In that sense, the author will attempt to describe the potential contribution of green central bank legislation in managing and mitigating environmental issues, aiming to identify the ecological dimension of the European Central Bank (ECB) mandate, as the supreme monetary institution of the European Union (EU). The following text focuses on the functional analysis of the ECB's potential legal mandate for environmental activities, their scope, limitations, and practical justification where the introduction of these new activities must be carefully managed without creating a collision with its primary task of maintaining monetary and financial stability.

Keywords: central banking law, ECB, *lex monetae*, monetary legislation, environmental protection.

* Associate Professor and Jean Monnet Module for European Monetary Law Academic Coordinator, Chair for Law and Economics, Faculty of Law University of Niš, Serbia.

E-mail: markod1985@prafak.ni.ac.rs

ORCID: <https://orcid.org/0000-0003-4406-9467>

** The research presented in the paper was funded by the Serbian Ministry of Science, Technological development and Innovation under the Agreement Reg. No. 451-03-65/2024-03/200120, dated 5 February 2024.

ZNAČAJ KONCEPTA ZAŠTITE ŽIVOTNE SREDINE U PRAVU EVROPSKE CENTRALNE BANKE

Sažetak

Predmet analize u radu jeste utvrđivanje značaja i opravdanosti koncepta zaštite životne sredine u monetarnoj legislativi Evropske centralne banke (ECB) kao vrhovne monetarne institucije EU zadužene za implementaciju jedinstvene monetarne politike i očuvanje monetarne stabilnosti kao javnog dobra. U tom smislu, u radu se želi ukazati na razloge koji opravdavaju tenedenciju “ozelenjivanja” savremene monetarne legislative na primeru mandata Evropske centralne banke, identifikovanjem potencijalnog pravnog osnova za vršenje ekoloških funkcija, dometa i ograničenja zelenog centralnog bankarstva. Iako se u pravu Evropske centralne banke uočava jasna tendencija širenja njenih nadležnosti, koja se pored cenovne stabilnosti, danas odnosi i na očuvanje opšte finansijske stabilnosti, autor je mišljenja da aktivnosti ECB u rešavanju ekoloških problema ne mogu predstavljati primarno polje njenog delovanja, već sekundarne aktivnosti, ali da se time njena uloga u optimalnom upravljanju ekološkim problemima ne umanjuje i ne isključuje, uzimajući u obzir kompleksnost i dinamičnost događaja u oblasti očuvanja prirode koji impliciraju angažovanje svih institucija iz domena javnog prava gde centralne banke svakako pripadaju. Takođe, Evropska centralna banka svojim aktima i merama usmerava delanje ne samo centralnih banaka država članica, već i centralnih banaka drugih zemalja koje usled saradnje sa njom u međunarodnom monetarnom poretku moraju ne samo da poznaju, već i da prilagođavaju svoja zakonska rešenja po ugledu na akte ECB. U takvim okolnostima ozelenjivanje mandata ECB može poslužiti kao primer dobre prakse i drugim centralnim bankama da ekološke komponente uključe u svoje monetarne strategije i ujedno stvoriti uslove za bolju koordinaciju ciljeva monetarne i ekološke politike u praksi.

Ključne reči: monetarna legislativa, EU, Evropska centralna banka, životna sredina.

1. Introduction

Environmental disasters have direct implications for monetary and economic stability, which has become particularly prominent in the context of greenhouse effects and devastating natural disasters. The authorities in charge of the monetary policy implementation can intervene at the level of both individual institutions and the financial system as a whole (Jovanić, 2022, pp. 1-2). Consequently, international monetary law can no longer be isolated from the environmental framework, and its main agents, such as the International Monetary Fund (IMF), the European Central Bank (ECB), and the World Bank, must make their regulatory contribution to controlling this problem. The role of the ECB in this context is indispensable, considering that only with their monetary authority and *de lege artis* action the monetary policy could be made more “biodiversity friendly”. Today more than ever, economic preferences in the domestic and international context are conditioned by environmental circumstances, and it has to be noted that the central bank competencies are not clearly shaped and should be viewed realistically, leaving ample maneuvering space for extending their competencies beyond those prescribed. The environmental issues facing humanity today justify the introduction of the ecological component in monetary legislation and new central bank powers, which the author claims would only refine the central bank and show it not only as an inviolable monetary law agent, but also as a social institution “defending” the primordial bond between man and nature in conditions of dynamic technological progress and financial globalization. This “ecological” moment in the reshaping of the monetary policy means, instruments, and measures shows that new long-term economic development goals based on the capital market (especially securities and other financial derivatives) can be pursued without renouncing or ignoring the existential prerogatives, such as a healthy life (Dimitrijević, 2023, p. 255).

Today, sustainable development has become an important aim for all states. It has found its place in law as a relatively new concept, which has been developed in the face of challenges relating to global politics, economy, and environmental protection (Rodina, 2022, p. 410). That is best illustrated by a large number of climate change laws that have been passed (Todić, 2023, p. 75). The pandemic crisis has additionally highlighted the importance of timely identifying and implementing sustainable economic development measures, which can only be achieved with an optimized combination of legal and economic instruments in a credible international political environment, with the main goal to provide greater good, such as long-term sustainability, constraining self-interested choice to induce beneficial actions from other players.

The long-standing interest shown by lawyers in this area has resulted in the emergence of new disciplines, such as the central banking law, which deals with this problem focusing on the provision of additional capital for the transition to a greener, more ecologically resistant and circular economy, which must be normatively regulated and encouraged through appropriate instruments. However, considering the scarce public sector funds, there is a need to secure additional financing from the private sector (Pellegrini & Pellegrini, 2022, pp. 37-39). At the international level, the European Bank for Reconstruction and Development (EBRD) has taken significant activities and adopted a very ambitious platform for the period 2021-2025 aiming to revive green banking finance, where the transformation of the classical economic system into an environment friendly economy must not go at the expense of increased costs of other production factors used as inputs in the process. In addition, there is a need for “greening” of the monetary system, due to the increasing insistence on ecologically sustainable and socially responsible investments, where the investor is interested not only in the financial return of the invested funds, but also in their social value, which can be more far-reaching than the financial one (Kilpatrick & Williams, 2021, pp. 395-397). That value includes healthier food production and good business practices in land, air and biodiversity protection that influence positively their reputation. In a general sense, the process of greening the monetary system (monetary finances) is quite similar to greening the financial system (corporate finances) as a broader concept, and as such refers to the introduction of new measures, tools, procedures, and regulations to influence the monetary system to take due account of climate and environmental considerations in financial risk management and, consequently, in investment decision-making. In the field of monetary finances, that usually refers to calculating the environmental risk in bank investments and eco-friendly bank loans for investing in green business.

While the sustainable development concept is fundamentally multi-layered and has legal, economic, and sociological aspects, successfully controlling environmental pollution, which is also a constitutionally protected citizens’ right, and addressing this existential issue requires a joint approach based on synergy (Ekaradt, 2020, p. 241). Until recently, central banking law, understood as the law governing the operation and competencies of central banks (Gortsos, 2023, pp. 1-3), has had no direct or indirect impact on the implementation of the environmental policy goals. Nowadays, the right to a healthy environment is constitutionally protected, and the central bank involvement in this regard is not that unexpected due to the natural resources’ protection being conditioned by monetary stability (which is provided by the central bank as the guardian of monetary sovereignty and the supreme monetary institution) as a public good. While

monetary stability refers, *inter alia*, to the citizens' right to enjoy the benefits of a stable and solid domestic currency, these rights remain a solitude concept in a world where there are no conditions for a healthy life and economy based on environmental concerns, and at the same time protecting the environment and gross domestic product. That is why the right to a healthy environment is, in a certain sense, a prerequisite for the enjoyment of the right to a solid currency.

Climate-related and environmental risks in macroeconomic decision-making are commonly understood to comprise physical risk and transition risk (European Central Bank, 2020, pp. 27-28). While physical risk refers to the financial impact of a changing climate, including more frequent extreme weather events and gradual change in climate, transition risk refers to an institution's financial loss that can result, directly or indirectly, from the adjustment process to a lower-carbon and more environmentally sustainable economy. In addition to the above risks, liability risk describes climatic or environmental risks that arise due to uncertainty regarding potential financial losses and compensation claims for damages caused by climate changes in the form of the so-called ecological hazards (Carney, 2015). That is why institutions that make macroeconomic decisions must determine which climate-related and environmental risks are material in the short, medium, and long term with special regard to their business strategy by using (stress) scenario analyses. There is a real and logical need to adopt a strategic approach to managing and mitigating climate-related and environmental risks in line with the business strategy and adopt policies, procedures, risk limits, and risk management mechanisms accordingly. For example, in the sphere of banking credit risk management, institutions are expected to consider climate-related and environmental risks at all stages of the credit granting process and monitor the risks in their portfolios (European Central Bank, 2020, p. 29).

1. The Monetary Legislator's Contribution to Environmental Protection

Although studies on the climate-related financial risks impacting banking operations are only at the initial stage of development, the central bank has already initiated certain activities in this regard. As an indicative example, we can cite the actions of the Bank of England, which has adopted the position in its announcements that the conditions have not yet been met to talk about climate-related financial risks as a special category of financial risks impacting banking operations, but that it is certainly possible to talk about the negative climate impact on the already existing structure of financial risks, including the banking market (Migliorelli & Lamarque, 2022, pp. 188-189).

In the sphere of the so-called cooperative banking, the center of interest is the individual, i.e., the needs of man as an individual (his preferences regarding the provision of a wide range of banking services). The public's expectation that the central bank gets involved in solving environmental problems can also be explained to some extent by its role in creating the conditions for the sound banking framework, where that system also shows the characteristics of a pure public good such as monetary stability. Although this goal has existed since the initial conception of contemporary monetary policy as an area of sovereign action of the central bank, it has always been in the shadow of the primary goal of price stability and has shown elements of a secondary goal. In today's circumstances, the classification of primary and secondary goals is diluted (as these goals often complement each other) and all targets must be achieved simultaneously, or if this is not possible, without a large time gap in implementation (Enoch & Green, 1997, pp. 3-4).

The European Central Bank is the main agent of the European monetary law, which can be defined as a set of EU primary and secondary legal provisions that govern the 'M' of the Economic and Monetary Union (Gortsos, 2023, p. 208). Consequently, the main roles of the ECB traditionally relate to price stability and inflation control, but in the last ten years, there has been a visible tendency of its regulatory competencies evolution (especially in the field of general financial and cohesion policy). That tendency of the ECB to acquire new competencies in various subsystems of economic policy is, on the one hand, natural, because of its expected role in managing economic activity in the EU, while on the other hand, it contradicts the proclaimed principle of narrow determination of jurisdiction, which otherwise is not line with the constitutional principles of the central bank regulations, where it is always determined in a more general way, and which gives enough space for justifying new tasks (Lamandini, Ramos & Solana, 2016, pp. 5-6). It is important to point out that every ECB intervention in new segments of economic policy is not an expression of arbitrariness in action, but a thoroughly organized and complex legal-economic action to preserve monetary stability.

2. Greening the ECB Legislation: Legal Mandate, Scope and Limitations

The importance of finance in green transition is defined by Article 2.1(c) of the Paris Agreement,¹ with the commitment to the goal of reorienting the financial flows framework to mitigate climate change, with green (monetary) finance having become a very subtle legislative priority for the EU in recent years (De

¹ Paris Agreement, O.J. 2016, L 282/4.

Arriba-Sellier, 2021, pp. 1097-1100). This is also shown by the unique (although limited) change in the mandate of the European supervisory authorities. Immediately after the adoption of the Paris Agreement, a special EU expert group created potential mechanisms for business and banking finance development that takes into account the state of the environment and submitted their “green finance” proposals to the Commission, which served as a basis for the first green reforms initiated in the area of general financial policy, opening up space for the issuance of guidelines for the inclusion of ecologically sustainable economic development components in business strategies and financial operations (EU HLEG on Sustainable Finance, 2018).

Due to the global environmental crisis, there has been an evolution of the ECB’s roles, which as the guardian of monetary sovereignty and financial legitimacy in the European Economic and Monetary Union (EMU) must contribute to solving environmental challenges. At this point, we must bear in mind that the ECB’s competence cannot be viewed as a static category because, in practice, it often had to be modified by current circumstances (crises), and at the same time, it has acquired new dimensions determined by the secondary legislation. Environmental disasters that correspond to the previously explained risks to financial and monetary stability are examples of such crisis moments. The ECB’s new measures are aimed at suppressing opportunities for financial crime, and the full implementation of active and passive procedural legitimation (monetary legal disputes) best confirms this, because until recently, the ECB’s position in this area has been only secondary (intermediate), but there are clear indications of a concentration of new competences, as a result of which the ECB will become far more active in that regard. Following the aforementioned changes in the ECB’s regulatory competence, it is not difficult to imagine a greater concentration of competence in the field of environmental policy.

The potential legal basis for environmental competence stemming from the obligation to support the EU economic policies highlights the importance of the institutional balance issues in the EU. Namely, at the community level, competence for environmental protection is shared by the Commission, the Council and Member States. As Article 3 TFEU stipulates that one of the tasks of the institutions of the Union is preserving the environment, since the adoption of the Treaty of Lisbon, the ECB has been classified as one of those institutions, although its role in the field of environmental policy is not to “create it (as it would not be able to so), but to support it.” When interpreting support for the general economic policies, at first glance, it may seem unclear what is meant by “general”, because the Treaty does not differentiate between social, environmental, and economic policies in the more narrow sense, which forces the conclusion

that the term “general economic policies” also includes the other two terms mentioned, and this becomes clear through the interpretation of Article 127(1-2). At this point, it is important to point out that the European Climate Law regulation, which aims to reduce the effects of harmful gas emissions to net zero levels by the end of 2050, foresees the responsibility and joint action of the European and national institutions.² This law clearly states which institutions participate in its implementation, and while the ECB is not mentioned in any part, there is its indirect involvement through the aforementioned secondary tasks related to the contribution in the field of the general economic policy of the Union.

When it comes to the ECB’s legal mandate to participate more actively in solving environmental issues, it could be found in the provisions of the primary contracts. Namely, according to Article 127(1) TFEU, it is explicitly established that “without prejudice to its primary objective, the ECB shall support the general economic policies of the Union as laid down in Article 3 TFEU”, because the environmental policy is an integral part of the general economic policy. The ECB, acting within the limits of its powers, seeks to create conditions and provide general support for a gradual transition to a low-carbon economy by defining the rules of the game and supporting monetary reforms. It is notable that the ECB strongly supports the ongoing work in various international and European forums aimed at identifying “the production costs of climate change” and the transition risks by simultaneously promoting the reorientation of financial flows towards sustainable and healthy investment products. In addition, the ECB has delegated the right to vote to its proxies for capital investments, which it has committed to under the United Nations principles for responsible investment, which are developed by an international group of institutional investors reflecting the increasing relevance of environmental, social and corporate governance issues to investment practices (United Nations, Principles for Responsible Investment). In addition, the ECB is currently considering specifying the best possible scenario for buying green bonds from a large number of eligible issuers (as long as this does not affect market structure and liquidity).

The greening of the ECB legislation must be carried out on an independent basis. This independence raises the question of guaranteeing the functional independence of central banks, and not only institutional, financial, and administrative independence. The main arguments for such an understanding are based on the need to reduce the influence of the political factor in meeting the citizens’ public needs but with the simultaneous contribution of the central bank to

² Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) 401/2009 and (EU) 2018/1999 (“European Climate Law”), *O.J.* 2021, L 243/1–17.

achieving the previously established goals in the field of public services (specifically, this relates to price stability). In addition, functional independence must have the constitutional foundation, because the central bank is evolving increasingly in the conditions of globalized economic flows, and consequently it also contributes to the maintenance of general financial stability (which has never been its primary goal), which is why today it can also be seen as a special fiscal agent.

Acknowledgment of climate change is increasingly present in all pillars of the European Economic and Monetary Union, which is undergoing a transformation from a market-neutral regime to a market-efficient management. The EMU institutions' mandate pertaining to water, air, land conservation, biodiversity conservation, flora, and fauna should not be interpreted as a competence in the classical sense of the word, but rather as an additional task and activity that contributes to these goals (as no interpretation of the primary and secondary monetary legislation can support of the existence of jurisdiction in the narrower sense). Nevertheless, the legislator must continue to invest additional efforts in creating a soft law framework that can further activate the potential of the ECB in this field. Unlike monetary policy, the contribution of fiscal policy measures and instruments in the EMU is much more immediate, which is why the implementation of the so-called Green Fiscal Deal offers a clearer picture of the contribution expected from changes in the budgetary and tax policy (Steinbach, 2022, pp. 330-332). In addition, the ECB and the European Insurance and Occupational Pensions Authority (EIOPA) have worked together on ways to enhance the insurance for households and companies against climate-related catastrophes such as floods or wildfires.

When it comes to the ECB's role in the field of environmental policy, Zilioli and Ioannidis consider that it should be clearly emphasized that the ECB does not have the mandate to determine what is an environmental goal and what is not, as that can be decided only by competent expert bodies, and that its role in that field is only supplementary, considering that, in accordance with the provisions of the founding acts, undertaking environmental policy measures and instruments remains the exclusive competence of Member States (Zilioli & Ioannidis, 2022, pp. 363-366). Considering the seriousness of the consequences of global environmental crisis, the additional competencies, i.e., contributions, are much more desirable than the non-undertaking of any activities by the institutions, as the time of "monetary nihilism" remained only a relic of monetary history and a period when it seemed that central banks existed for their own sake as untouchable and self-sustaining institutions of the state. With respect to the ECB's role in environmental protection, it is important to emphasize that the ECB cannot be

an environmental co-legislator and bear the responsibility that the Treaties place on the Union and Member State political institutions in environmental concerns. However, that does not mean that the ECB should not be environmentally conscious and persistent and try to make prudent use of natural resources, to preserve the quality of the environment, and protect human health in the production and supply of euro banknotes. Its task in the field of environmental policy is secondary, but every contribution to environmental protection is equally important and that is why the author is of the opinion that the distinction between primary and secondary tasks is not that relevant in practice in this area. In addition, we must remember that the influence of soft legislation in the international monetary management was crucial in times of crises (financial, economic, and pandemic) because it is more flexible to the actual problems and effective for fulfilling legal gaps. Without the ECB's soft legislation, the consequences of the financial crises would have been much greater, and its influence in the field of environmental protection might be important as well.

Currently, the most prominent influence of environmental factors on the common monetary policy is reflected in the purchase of corporate bonds issued by the non-financial sector, which the Eurosystem purchases under the corporate sector purchase program. The Eurosystem buys bonds in an amount that is generally proportional to the outstanding qualified bonds. The issuers of these bonds must meet certain minimum eligibility requirements to protect the central bank's balance sheet. These purchases represent a form of market capitalization aimed at preserving the stability of the market mechanism, and initially did not take into account the impact of climate risks, but this has changed after the ECB's announcement of the adaptation of the program to entities that prefer production that is less dependent on carbon dioxide emissions and exhibit a strict environmental awareness in their business operations. This announcement has had significant legal repercussions, as the question arose as to who would define the environmental criteria for the application of the program, whether the ECB had the mandate to do so on its own, and why, in the circumstances of the pandemic crisis, is it important to create only environmental criteria, and not the other criteria that are essential for sustainable and humane economic development.

The answers to these questions imply a far-reaching normative analysis of the provisions regulating the legal basis for the ECB's competence. Namely, taking into account its main task, i.e. maintaining price stability, and the previous judicial practice, the question arises as to whether environmental risks could be a precondition for the performance of that task (the European Court of Justice has found in several judgments that the ECB, when implementing its main objective, also takes into account the preconditions that may have direct or indirect

connections with it). If the ECB considers that climate risk could affect the implementation of its tasks, by applying the proportionality principle under Article 127 TFEU and the provisions of its Statute, and taking into account that the precondition is the implementation of the free-market economy principles, it would ensure that there is no obstacle to “greening” of its mandate.

The ECB’s role in the field of environmental policy is most evident in the second pillar of the banking union, i.e., in the sphere of application of the Single Rulebook and the provisions of the Capital Requirements Directive (CRD) IV, Article 114 TFEU, which directs its activities to preserve the integrity of the single market and ensure equality in the banking sector. Nevertheless, the ECB’s role in the field of green policy (at least for the moment) cannot produce any epoch-making effects, as the ECB is not sovereign in the field of supervisory function and performs its tasks together with the national central banks of Member States. In addition, the ECB cannot require the banks in Member States to include environmental standards in their operational regulations as there is no adequate legal basis that would allow it to do so. It is still not entirely clear what the order of taking into account environmental standards should be, that is, who should be the first to notice their importance and insist on their integration into the monetary norms (either the ECB or national central banks), and that needs to be determined and regulated as soon as possible in the coming period.

A significant step on that path is the judgment of the EU Court in the case of *Crédit Mutuel Arké* (General Court of the European Union, 2017)³, establishing the right of the ECB to broadly consider the field of potential risks, which ultimately includes climate risks. Namely, this case relates to the appeal filed by the French decentralized bank group *Crédit Mutuel* against the decision of the ECB, which determined in the prudential supervision procedure that the banking group failed to fulfill its obligations relating to reserve requirements, ordering it to do so within the clearly specified deadlines. The Court found that the ECB has the right to exercise prudential supervision over the operations of all financial institutions that are established and operate in the EU, regardless of whether they have the status of credit institutions or not because the provision regulating the subject of audit uses only the generic term “financial entity”. On that occasion, the Court emphasized that the ECB may control, monitor, and evaluate all types of risks that may appear as potentially problematic for the performance of the functions of the financial market as a whole, which points to the conclusion that their explicit non-enumeration and nomenclature is not a matter of the legislator’s omission, but leaves room for the inclusion of new risks that do not only

³ Joined Cases C-152/18 P and C-153/18 P *Crédit Mutuel Arkéa v. European Central Bank* [2019] EU:C:2019:810.

have a direct economic nature but can also be ecological or social (which, viewed in a broader context, can also have economic shocks as indirect consequences).

Despite the Single Rulebook not having a binding effect, the ECB insists very strongly on its application. In addition, the so-called macroeconomic climate controls have indicated a high risk that the greenhouse effect will have a significant impact on the banking finance sphere, which is why it will continue its activities in that direction (De Arriba-Sellier, 2021, p. 1140). Thus, it becomes clear that, although in the field of the ECB law there has not been a real genuine change that *de jure* obligates monetary subjects to take into account environmental risks under the threat of sanctions, in practice, nevertheless, the ECB takes this seriously and assumes its environmental responsibility, which it successfully attaches to the financial supervision function.

3. Green Central Banking Concept Justification and Rollout

Surely the preservation of monetary stability as a public good must remain the main objective of the monetary law agents. However, this cannot be achieved in isolation, nor can it be meaningful in a world where there are no basic conditions for life and health. While greening the monetary policy and law may at first glance seem controversial, it has to be emphasized that the newly established function of the last resort bank was prohibited by the hard law provisions. The new green competencies of monetary entities are best illustrated by the amendments to the law on the operations of the central banks in China, the Netherlands, and France, specifying for the first time the term and category of the financial risks that are directly caused by climate change (and all to prevent investor lawsuits similar to those in the case of the Australian central bank). In this sense, there is a need to emphasize the great contribution of the Bank of England in promoting the link between monetary-fiscal and environmental policy. This is best demonstrated by the formation of a special research department for analysis and monitoring of climate change and green finance trends (Dimitrijević & Golubović, 2021, p. 1156). An example of good practice, *inter alia*, is the Irish central bank, which in the coming period plans to include the problem of the spread of pollution caused by excessive carbon emissions in its monetary strategy, as it is increasingly becoming a determinant of macroeconomic results (Lane, 2019, pp. 1-10).

The concept of central banking that respects environmental conditions (the so-called green central banking) is based on a system in which the central bank in its operations respects and takes into account when shaping and adopting the monetary strategy the relevant environmental risks (especially climate-related

risks) that have a material influence on the short-term and long-term macro-economic decision-making and the financial sector development (Dikau & Volz, 2018, pp. 1-9). The monetary law theory makes a distinction between the central bank's direct and indirect role in implementing the environmental policy goals. The direct role relates to encouraging green investments and greening the domestic economic system, while the indirect role relates to the inclusion of environmental factors in the traditional monetary strategies (Dafe & Volz, 2015, p. 2).

While central banks may have a potentially large number of instruments that influence the allocation of capital for green investments, they should not be asked to do everything they can in the field of environmental policy, as this competence cannot be interpreted too extensively. There is a need to find the right measure of environmental responsibility for central banks, which must not be overemphasized because, as it has been stated many times, monetary stability must remain the central bank's main task. Analyzing the existing central bank mandates (which differ between countries and monetary regions) with full respect for the factor of tradition, the question that necessarily arises regards organizing a public and transparent discussion on the extent to which central banks should support their government's sustainable development policies. The outcomes of such discussions are likely to differ in different countries and will depend on institutional legacies and citizens' reactions to potential "new" competencies.

In December 2017, the European Central Bank, together with the British, French, Belgian, Spanish, and Dutch central banks, identified the objectives of the Network, which currently has 47 members (central banks and other financial institutions). The Network is one of the most influential monetary legislation greening initiatives to date and gathers the most reputable monetary and regulatory institutions under the declared common goal of supporting the transition to "greener" economies. The Network's objectives could hypothetically be included in the work of the existing international regulatory bodies to enrich the existing competencies with ecological dimensions. The diverse membership within the Network enables close coordination between various ongoing international initiatives on issues of common interest. To this end, the Network establishes and nurtures close contacts with similar entities such as the Sustainable Banking Network, the Sustainable Insurance Forum, and the recently launched Sustainable Finance Network (Network for Greening the Financial System – NGFS, 2019, pp. 4-5).

The Network's objectives relate to performing micro-prudential supervision, macro-prudential supervision, and encouraging and directing green investments where bank loans and tax investment credits can appear as suitable monetary and fiscal policy implementation instruments (NGFS, 2019, p. 6). The point of conducting micro-prudential supervision also lies in recognizing current

supervisory practices, encouraging the disclosure of climate-related risks, and defining the differences in financial risk between “green” and “brown” (understood in the context of ordinary) assets. Generally, the tasks of central banks within the Network traditionally relate to price stability, general financial stability, and harmonization of the national fiscal framework with the international financial standards.

Already in the first years of its operation, the Network adopted six recommendations addressed to central banks, audit bodies, public policymakers, and other financial institutions to better meet environmental standards in their operations. (NGFS, 2019, pp. 9-10). The recommendations refer to integrating climate risks into the monitoring of financial stability and micro-prudential supervision, integrating sustainability factors into the management of one’s portfolio of actions, bridging gaps in data, strengthening awareness and intellectual capacities through encouraging technical assistance and knowledge exchange, achieving robust and international consistent climate and environmental policies, and discovering and supporting the development of the taxonomy of economic activities. While the recommendations are not legally binding, they are respected in practice considering the strength of their resulting moral components and the authority of the agent who adopted them. The importance of these recommendations lies in the fact that they provide the best way to facilitate the financial sector’s role in environment protection and partially substitute the incapacity of even the best-developed macro-economic models to accurately predict the economic and financial impact of climate change. Implementation of these recommendations is important both on a macro and micro level. On the macro level, the states should intensify their efforts to implement effective policies that foster sustainable practices, while on the micro level, companies should develop business strategies and risk management controls that ensure sustainability in the long term.

4. Conclusion

The ECB law can undoubtedly provide a visible contribution to resolving and managing environmental challenges, taking into account the flexibility of its provisions and new tendencies in the development of the regulation on monetary transmission mechanisms, which again points to unused potential on that front. Of course, its task in this context can never be its primary task, but that does not mean that it should be abandoned, as even the smallest contribution in regulating environmental issues, in cohesion with all other contributions, however large or small, can ensure the much-needed balance in the use of these sensitive resources

in every society in the world today. Although the extensive interpretation of the provisions on the ECB's economic policy goals can provide a solid basis for its interventions in the field of nature conservation, one has to keep in mind that the addition of new competences must never undermine the primary task of the central bank. Therefore, the primary aim should be to support the already established priorities, and that is where more open economic dialogue with other institutions is particularly important, as a form of open coordination and exchange of opinions, experiences, and attitudes about the planned and achieved results. Therefore, the soft law provisions could potentially specify the activities on that level, with the emphasis on the provision that the central bank cannot be responsible for all economic challenges that might arise in a country.

The hybridization of the competencies of the main European monetary law agencies stems from their involvement in the global environmental management system and as such does not present an obstacle in the implementation of the main monetary targets. Although studies on the relationship between monetary law and environmental issues are still in the early stages of development, it is important to note that the ECB is intensively increasing efforts toward a clearer identification of cause-and-effect mechanisms that will serve as a potential justification for the adoption of green monetary legal frameworks in the future.

References

- Carney, M. 2015. Breaking the Tragedy of the Horizon – Climate Change and Financial Stability. London. Available at: www.bankofengland.co.uk/publications/Pages/speeches/2015/844.aspx (20. 7. 2023).
- Dafe, F. & Volz, U. 2015. *Financing Global Development: The Role of Central Banks*. The Briefing Paper 8. Bonn: German Development Institute. <https://dx.doi.org/10.2139/ssrn.2797226>
- De Arriba-Sellier, N. 2021. Turning Gold into Green: Green Finance in the Mandate of European Financial Supervision. *Common Market Law Review*, 58(4), pp. 1097–1140, <https://dx.doi.org/10.2139/ssrn.3792975>
- Dikau, S. & Volz, U. 2018. *Central Banking, Climate Change and Green Finance*. ADBI Working Paper 867. ADB Institute.
- Dimitrijević, M. & Golubović, S. 2021. O tendenciji ozelenjivanja međunarodnog monetarnog prava. Zbornik radova Pravnog fakulteta Novi Sad, 55(4), pp. 1155-1172. <https://doi.org/10.5937/zrpfns55-34249>
- Dimitrijević, M. 2023. *Pravo Evropske centralne banke*. Niš: Centar za publikacije Pravnog fakulteta u Nišu.
- Ekaradt, F. 2020. *Sustainability – Transformation, Governance, Ethics, Law*. Munich: Springer. <https://doi.org/10.1007/978-3-030-19277-8>

- Enoch, C. & Green, J. H.(eds.). 1997. *Banking Soundness and Monetary Policy*. Washington: IMF Press.
- Gortsos, C. V. (2023). *The European Banking Regulation Handbook, Volume I: Theory of Banking Regulation, International Standards, Evolution and Institutional Aspects of European Banking Law*. Cham: Palgrave Macmillan. <https://doi.org/10.1007/978-3-031-32859-6>
- Jovanić, T. 2022. Rizici povezani sa klimatskim promenama i nova uloga centralnih banaka. U: Radović, V. (ed.), *Tematski zbornik radova „Usklađivanje poslovnog prava Srbije sa pravom Evropske unije“*. Beograd : Pravni fakultet Univerziteta u Beogradu, pp. 155-189.
- Kilpatrick, A. & Williams, K. 2021. *Transforming Markets, A Development Bank for the 21st Century A History of the EBRD Volume 2*. Budapest: Central European University Press. <https://doi.org/10.7829/9789633864128>
- Lamandini, M., Ramos, D. & Solana, J. 2016. The European Central Bank (ECB) as Catalyst for Change in EU Law, Part 1: The ECB's Mandate. *Columbia Journal of European Law*, 23(2), pp. 1-54.
- Lane, P. R. 2019. Climate Change and the Irish Financial System. *Economic Letter Central Bank of Ireland*, 1, pp. 1-15.
- Migliorelli, M. & Lamarque, E. 2022. *Contemporary Trends in European Cooperative Banking –Sustainability, Governance, Digital Transformation, and Health Crisis Response*. Munich: Springer. <https://doi.org/10.1007/978-3-030-98194-5>
- Pellegrini, B. C. & Pellegrini, L. 2022. *Climate Change Adaptation: Governance and New Issues of Value Measuring the Impact of ESG Scores on CoE and Firm Performance*. New York: Palgrave Macmillan.
- Rodina, A. (2022). Interaction of Sustainability and Environment in the Case Law of the Latvian Constitutional Court. *Strani pravni život*, 66(4), pp. 410-429. https://doi.org/10.56461/SPZ_22404KJ
- Steinbach, A. 2022. The Greening of the Economic and Monetary Union. *Common Market Law Review*, 59(2), pp. 329-362. <https://doi.org/10.54648/COLA2022028>
- Todić, D. 2023. Zakoni o klimatskim promenama – potreba ili normativno pomoćarstvo (primer Srbije i Hrvatske). *Strani pravni život*, 67(1), pp. 75-89. https://doi.org/10.56461/SPZ_23105KJ
- Zilioli, C. & Ioannidis, M. 2022. Climate Change and the Mandate of the ECB: Potential and Limits of Monetary Contribution to European Green Policies. *Common Market Law Review*, 59(2), pp. 363-394. <https://doi.org/10.54648/COLA2022029>

Legal sources

General Court of the European Union. 2017. The ECB may exercise prudential supervision of the Groupe Crédit Mutuel through the Confédération nationale du Crédit Mutuel, including in respect of the Crédit Mutuel Arkéa, Press Release No 135/17 Luxembourg, 13 December 2017 Judgment in Cases T-712/15 and T-52/16 Crédit Mutuel Arkéa v ECB.

- EU HLEG on Sustainable Finance. 2018. Financing a Sustainable European Economy – Final Report.
- European Central Bank. 2020. Banking Supervision. Guide on climate-related and environmental risks Supervisory expectations relating to risk management and disclosure.
- Joined Cases C-152/18 P and C-153/18 P *Crédit Mutuel Arkéa v European Central Bank* [2019] EU:C:2019:810.
- Network for Greening the Financial System (NGFS). 2019. A Call for Action Climate Change as a Source of Financial Risk, Executive summary, First Comprehensive Report.
- Paris Agreement, *O.J.* 2016, L 282/4.
- Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) 401/2009 and (EU) 2018/1999 (“European Climate Law”), *O.J.* 2021, L 243/1–17.

Internet Sources

- United Nations, Principles for Responsible Investment. Available at: <https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment> (23. 7. 2023).

