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# Secondary objectives of the European Central Bank and economic growth: A human rights perspective

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## Abstract

This article focuses on the correlation between the secondary objectives of the European Central Bank (ECB) and the right to a healthy environment. Whereas the primary mandate of the ECB is maintaining price stability, the applicable law also envisages secondary objectives, such as supporting economic growth and sustainable development. Crucially, however, there is an emerging scientific literature suggesting a trade-off between economic growth and environmental sustainability. This results in a balancing problem: To what extent environmental protection and sustainability can be balanced with economic growth within the ECB's monetary policy? This article aims to analyse this issue with a specific focus on legal implications in terms of the right to a healthy environment. This study reveals the failure of the member states to comply with the international obligations under the right to a healthy environment in shaping the law of the ECB.

**Keywords:** European Central Bank; degrowth; growth; monetary policy objectives; right to a healthy environment

## 1. Introduction

The relationship between monetary policy and climate change has attracted considerable attention recently.<sup>1</sup> Whereas central bank executives are increasingly pushed to find ways to align monetary policy with climate goals under the Paris Agreement,<sup>2</sup> it is unclear to what extent the overall operation of central banks can be complemented with environmental sustainability. Discussion surrounding the ECB is a case in point. Recently, the issue of climate change has been included in the current strategy review of the ECB, with an aim to explore the ways it relates to monetary policy operations.<sup>3</sup> In the meantime, the ECB has been supporting companies with carbon-intensive activities within the quantitative easing (QE) program and collateral framework. Although, it

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<sup>1</sup>See, for instance, D. D. Bradlow, 'Why Central Banks Need to Take Human Rights More Seriously?', (2019) *SSRN Electronic Journal*, 12 July 2019, available at [papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3417735](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=3417735); D. D. Bradlow and S. K. Park, 'A Global Leviathan Emerges: The Federal Reserve, COVID-19, and International Law', (2020) 114(9) *American Journal of International Law* 657–65.

<sup>2</sup>Paris Agreement, Dec. 1/CP.21 Annex, UN Doc. FCCC/CP/2015/10/Add.1 (2016) ('Paris Agreement').

<sup>3</sup>ECB, 'Questions and answers on the strategy review', 23 January 2020, available at [www.ecb.europa.eu/home/search/review/html/questions.en.html](http://www.ecb.europa.eu/home/search/review/html/questions.en.html).

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raises questions on whether this type of monetary policy is aligned with the Paris Agreement and the European Green Deal (EGD). Indeed, whilst the European Union is committed to having ‘an economy with net-GHG emissions<sup>4</sup> by 2050 with the EGD, Article 2(a) of the Paris Agreement stipulates its purpose as ‘holding the increase in the global average temperature to well below 2°C above pre-industrial levels’.<sup>5</sup>

As it may be, it is unclear to what extent environmental sustainability can be integrated into the monetary policy operations by the ECB. Whilst the primary mandate of the ECB is to maintain price stability, the law envisages secondary objectives, such as supporting economic growth as well as sustainable development. Nonetheless, drawing on scientific climate scenarios, the degrowth approach suggests that climate goals under the Paris Agreement and the EGD cannot be achieved with constant economic growth. This implies a trade-off between economic growth and sustainable development objectives of the ECB. In the meantime, the right to a healthy environment stands as an emerging right in international human rights law, and legal implications of the relationship between those objectives of the ECB need to be examined in terms of the human rights obligations of the EU member states. This article aims to contribute to contemporary debates surrounding the ECB by exploring whether and how one of the two secondary objectives in question can be prioritized vis-à-vis the other. The article, ultimately, analyses the member states’ human rights obligations under the right to a healthy environment in shaping the legal mandate of the ECB.

The article proceeds as follows: Section 2 describes the ECB’s objectives enshrined by law, in addition to the relevance of environmental sustainability within the ECB’s general operation. Moreover, Section 2 will discuss the basis of the trade-off between economic growth and environmental sustainability. The rest of the article consists of two layers of analysis: Section 3 aims to determine whether there is a hierarchy between secondary objectives. Thus, in Section 3, sustainable development and economic growth objectives are respectively assessed according to their roles in both overall Union policies and achieving the ECB’s primary mandate. Section 4, finally, comprises the second layer of the analysis, in which I argue that the member states do not comply with the obligations to respect, protect, and fulfil the right to a healthy environment. I find that, with a particular reference to degrowth literature, it is because of the structural growth imperative that precedes environmental protection in the ECB’s legal mandate and, more generally, in the macroeconomic policy framework of the European Union.

## 2. The mandate of the European Central Bank: A dichotomy between economic and climate objectives?

This section focuses particularly on the European Central Bank’s operation stipulated by relevant law, as well as the trade-off that the ECB faces in that operation. In this respect, I will first describe the applicable law as well as the ECB’s primary and secondary objectives. Later, I explain the relationship between environmental sustainability and the ECB’s operation. In the end, I discuss a particular trade-off between two secondary objectives in order to prove the need for a legal analysis in that context.

### 2.1 Applicable law

Central banks are public institutions, in most cases as a product of national legislation, and have responsibilities in relation to the monetary and financial system of the country that they operate in. Their first and primary task is to issue national money (banknotes and coins) and control its circulation, and, in fact, they have a monopoly on this activity. Indeed, a state’s monopoly in its monetary system is a recognized principle in international law. The Permanent Court of

<sup>4</sup>European Commission, ‘2050 long-term strategy’, available at [ec.europa.eu/clima/policies/strategies/2050\\_en#tab-0-0](https://ec.europa.eu/clima/policies/strategies/2050_en#tab-0-0).

<sup>5</sup>Paris Agreement, Art. 2(a).

International Justice provided in two different cases that ‘a State is entitled to regulate its own currency’.<sup>6</sup> Nonetheless, the ECB is in a particular position among the other central banks because it is a supranational entity, which is empowered to manage the single monetary policy within the Eurozone.

The operation and objectives of the ECB are prescribed by EU law in both the constitutive documents and the Statute of the European System of Central Banks and the European Central Bank. According to the law, the objectives of the ECB can be divided into two categories: primary objective price stability and secondary objectives. Article 127(1) of the Treaty on the Functioning of the European Union (hereafter TFEU) stipulates that ‘the primary objective of the European System of Central Banks . . . shall be to maintain price stability’.<sup>7</sup>

Moreover, there are several secondary objectives that the ECB should pursue ‘without prejudice to the objective of price stability’.<sup>8</sup> Indeed, the most important element of the underlying law of the ECB’s mandate is that all secondary objectives can only be pursued if this does not have a negative impact on the primary objective. Thus, as long as meeting those secondary objectives does not harm price stability, the ECB is obliged to support ‘general economic policies in the Union’<sup>9</sup> and the general Union objectives under Article 3(3) of the Treaty of the European Union (TEU). Those objectives form secondary objectives of the ECB and are clarified under the provision:

The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.<sup>10</sup>

In addition, the Union’s internal market is shaped by the principles of competition and ‘free movement of goods, persons, services and capital’<sup>11</sup> – the four fundamental freedoms of the Union. Article 2 of the Statute of the European System of Central Banks and the European Central Bank, indeed, indicates that ‘the ESCB shall act in accordance with the principle of an open market economy with free competition’.<sup>12</sup> In fact, an overall goal is well summarized under Article 119 of the TFEU, in which the economic policy of the member states and the Union entails,

conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.<sup>13</sup>

## 2.2 Why do ECB’s operations matter for the environment?

Central banking has an unavoidable impact on the environment and climate change. So do ECB’s operations. For example, a recent report has revealed that collateral framework<sup>14</sup> and QE

<sup>6</sup>*Serbian Loans case (France v. Kingdom of the Serbs, Croats and Slovenes)*, PCIJ Rep. Series A Nos 20/21, at 44. *Brazil Loans case (France v. United States of Brazil)*, PCIJ Rep. Series A Nos 20/21, at 122.

<sup>7</sup>Consolidated Version of the Treaty on the Functioning of the European Union, 26 October 2012, OJ C326/47 (“TFEU”).

<sup>8</sup>*Ibid.*, Art. 127(1).

<sup>9</sup>*Ibid.*

<sup>10</sup>Consolidated version of the Treaty on European Union, 26 October 2012, OJ C326/13 (“TEU”).

<sup>11</sup>TFEU, Art. 26(2).

<sup>12</sup>Protocol No. 4 on the Statute of the European System of Central Banks and of the European Central Bank, 26 October 2012, OJ C326/230.

<sup>13</sup>TFEU, Art. 119.

<sup>14</sup>Arts. 17 and 18 of the Statute of the European System of Central Banks and of the European Central Bank suggest that the ECB and the national central banks may ‘conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral’.

programs are some of the areas that the ECB's policy offers to carbon-intensive sectors.<sup>15</sup> Under the collateral, when the ECB lends money to banks as part of its credit operations, it requires some assets as guarantees that must meet a minimum level of credit quality (eligibility). Climate risks, however, are not included in the risk measurements of those guarantees, and, as a result, carbon-intensive assets have a relative advantage against carbon-free assets. Indeed, a recent study demonstrated that 59 per cent of the corporate bonds that are eligible for collateral are issued by the carbon-intensive sector.<sup>16</sup> Likewise, under the Corporate QE program, 63 per cent of corporate bonds that the ECB has purchased belongs to carbon-intensive sectors.<sup>17</sup>

Moreover, the ECB has not integrated environmental considerations into its Targeted Longer Term Refinancing Operations (TLTROs). Under the TLTROs, the ECB provides loans with lower interest rates to commercial and retail banks if they can prove that more money will be channelled to non-financial businesses and households. In other words, 'it is a form of "credit guidance", where lower interest rates are targeted at particular sectors of the economy'.<sup>18</sup> The same problem that exists under the collateral framework also applies to the TLTROs. There is no mechanism favouring low-carbon projects against carbon-related activities in the distribution of credits and, thus, the money that the ECB lends to banks may be used to support, for example, activities in the fossil fuel industry.

In fact, the ECB's blindness to environmental sustainability risks of its monetary policy operation should be considered as part of the global monetary policy agenda. Indeed, the International Monetary Fund (IMF), as the 'permanent institution which provides the machinery for consultation and collaboration on international monetary problems',<sup>19</sup> has been blind to the risks climate change poses to economic and financial stability. For instance, the IMF carries out surveillance (Article IV reports) on 'the international monetary system in order to ensure its effective operation'<sup>20</sup> and identifies relevant global risks every year. The research has revealed that 'the IMF has paid minimal and uneven attention to climate risks in Article IV reports'.<sup>21</sup> Accordingly, a recent report suggested that 'IMF policy advice is undermining a just energy transition and that there does not appear to be a consistent shift in advice since the adoption of the Paris Agreement'.<sup>22</sup>

Nonetheless, climate change remains a threat to financial stability, which is covered by the ECB's mandate. The European Systemic Risk Board (ESRB) suggests that climate change poses two types of risks to financial stability: (i) physical risks, meaning that the economy is unavoidably affected by climate-related events; and (ii) transition risks, meaning that mitigation efforts and policy changes will change economic dynamics within carbon-intensive sectors.<sup>23</sup>

<sup>15</sup>Positive Money Europe et al., 'The ECB and climate change: outlining a vision for success', April 2020, at 4, available at [www.positivemoney.eu/wp-content/uploads/2020/07/ecb-climate-change1a.pdf](http://www.positivemoney.eu/wp-content/uploads/2020/07/ecb-climate-change1a.pdf). In this respect, Nyborg explains the advantage of carbon-intensive sectors due to the impact of the Corporate QE program in the real economy by suggesting that eligibility of certain securities 'can bias ... the allocation of resources in the economy'. See K. G. Nyborg, 'Central Bank Collateral Frameworks', (2015) 15 *Swiss Finance Institute Research Paper Series* 54, at 34.

<sup>16</sup>Y. Dafermos et al., 'Greening the Eurosystem collateral framework', *New Economics Foundation*, 10 March 2021, at 19, available at [neweconomics.org/2021/03/greening-the-eurosystem-collateral-framework](http://neweconomics.org/2021/03/greening-the-eurosystem-collateral-framework).

<sup>17</sup>See Positive Money et al., *supra* note 15, at 4.

<sup>18</sup>*Ibid.*, at 5.

<sup>19</sup>Articles of Agreement of the International Monetary Fund, 22 July 1944, 60 Stat. 1401, TIAS No. 1501, 2 UNTS 39 (entered into force 27 December 1945), Art. 1(i).

<sup>20</sup>*Ibid.*, Art. 4(3(a)).

<sup>21</sup>K. Gallagher et al., 'El Cambio Climático y La Vigilancia Del FMI. La Necesidad de Tener Ambición', (2021) 18 *Derechos en Acción* 497, at 817.

<sup>22</sup>J. Sward et al., 'IMF Surveillance and Climate Change Transition Risks: Reforming IMF policy advice to support a just energy transition', *Actionaid*, August 2021, at 29, available at [www.actionaidusa.org/publications/imf-surveillance-and-climate-change-transition-risks-reforming-imf-policy-advice-to-support-a-just-energy-transition/](http://www.actionaidusa.org/publications/imf-surveillance-and-climate-change-transition-risks-reforming-imf-policy-advice-to-support-a-just-energy-transition/).

<sup>23</sup>European Systemic Risk Board, *Positively Green: Measuring Climate Change Risks to Financial Stability* (2020), 7.

Despite the ECB's strategy, there are some progressive developments in national central banks' policies regarding environmental protection. For instance, Swedish Riksbank has recently decided to integrate sustainability considerations into its QE program and purchase corporate bonds only if they are issued by companies that meet certain established sustainability criteria.<sup>24</sup> Indeed, the Riksbank has explicitly stated that 'it is more risky to buy bonds issued by companies that are in breach of universal norm-based principles'<sup>25</sup> of sustainability. In fact, whereas the ECB published its climate roadmap after the strategy review in July 2021, it falls short of greening the monetary policy. For instance, there are no changes foreseen in the TLTROs.

Furthermore, even though the ECB plans to introduce climate-related criteria for the Corporate QE program, it does not aim to do so for the collateral framework. Accordingly, it is unclear which international, or EU standards will feed into the criteria. Lastly, in any case, the planned revisions will not be operative by 2023. It implies that the monetary operations will continue benefitting polluting activities in the meantime. Indeed, Reclaim Finance's research revealed that even during its strategy review, the ECB has been purchasing fossil fuel bonds from the five major European polluters: Shell, TotalEnergies, Repsol, Eni, OMV.<sup>26</sup>

Therefore, climate change and, more generally, sustainable development, are unavoidably key aspects of the ECB's policies, both because they represent a risk to financial stability and because they are part of its legal mandate.

### 2.3 Hierarchy, horizontality, and the trade-off between secondary objectives

When it comes to the legal analysis of the ECB's mandate, secondary objectives, which also encompass environmental protection, are envisaged horizontally by the law. In other words, there is no hierarchy between those objectives. The ECB may only prioritize one of the secondary objectives if that is prioritized in overall EU economic policies. In this regard, for instance, the ECB executives explicitly accepted that they have to find ways of supporting objectives of climate action and, more particularly, of the EGD and the Paris Agreement.<sup>27</sup> The EGD is the 'new growth strategy'<sup>28</sup> of the EU. With this political commitment, the European Union's purpose is transforming the EU's economy into an 'economy, where there are no net emissions of greenhouse gases by 2050 and economic growth is decoupled from resource use'.<sup>29</sup>

Nonetheless, there is a trade-off problem that the ECB faces. Whereas both economic growth and sustainable development are parts of its mandate according to the law, scientific evidence proves that those objectives cannot go hand in hand. In fact, this is part of a broader 'growth' and 'degrowth' debate which has currently received considerable attention. Economic growth, initially, can be defined as 'ever increasing levels of industrial extraction, production and consumption, which we measure as Gross Domestic Product'.<sup>30</sup> Indeed, Gross Domestic Product (GDP) is the main indicator of growth. According to *The Economist*, GDP is 'calculated by adding the total

<sup>24</sup>Markets Department, Monetary Policy Department and Financial Stability Department, 'Programme for the Riksbank's asset purchases for monetary policy purposes in 2021', 25 November 2020, available at [www.riksbank.se/globalassets/media/rapporter/ppr/engelska/2020/201126/annex-to-the-minutes-b-programme-for-the-riksbanks-asset-purchases-for-monetary-policy-purposes-in-2021.pdf](http://www.riksbank.se/globalassets/media/rapporter/ppr/engelska/2020/201126/annex-to-the-minutes-b-programme-for-the-riksbanks-asset-purchases-for-monetary-policy-purposes-in-2021.pdf).

<sup>25</sup>*Ibid.*, at 6.

<sup>26</sup>P. Schreiber, 'Spreading the fossil fuel pandemic: How the ECB's Covid quantitative easing is supporting oil and gas expansion', *Reclaim Finance*, October 2021, available at [reclaimfinance.org/site/wp-content/uploads/2021/10/Report-Spreading-the-Fossil-Fuel-Pandemic-ECB-QE.pdf](http://reclaimfinance.org/site/wp-content/uploads/2021/10/Report-Spreading-the-Fossil-Fuel-Pandemic-ECB-QE.pdf).

<sup>27</sup>See, for instance: C. Lagarde, 'Climate change and central banking', 25 January 2021, available at [www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210125~f87e826ca5.en.html](http://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210125~f87e826ca5.en.html); I. Schnabel, 'From green neglect to green dominance?', 3 March 2021, available at [www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210303\\_1~f3df48854e.en.html](http://www.ecb.europa.eu/press/key/date/2021/html/ecb.sp210303_1~f3df48854e.en.html).

<sup>28</sup>European Commission, 'A European Green Deal', available at [www.ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en](http://www.ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en).

<sup>29</sup>*Ibid.*

<sup>30</sup>J. Hickel, *Less Is More: How Degrowth Will Save the World* (2020), at 14.

value of a country's annual output of goods and services'.<sup>31</sup> Economic growth, as a concept, is presented as a necessity for social welfare and full employment.<sup>32</sup> In a 1960 conference on the relationship between price stability and economic growth, W. Allen Wallis emphasized how significant the concept of growth is in a liberal society:

Of course, growth is important; it is and always has been a basic characteristic of American life. High as our level of living is compared with that of other lands, we still count on a doubling of the material standard of living every generation or so.<sup>33</sup>

Wallis was not wrong in its factual contextualization: economic growth has not only been the basic characteristic of American society, but more generally, capitalism has been dependent on growth. Indeed, Hickel claims that 'what makes capitalism different from most other economic systems in history is that it's organized around the imperative of constant expansion, or "growth"'.<sup>34</sup> In this type of economy, companies seek improvement of production efficiency to lower the cost of production and compete better. This results in the need for fewer and fewer employees. The more efficiency is improved, the more production needs to be expanded. Hickel comments on this by claiming that 'this might be OK if GDP were just plucked out of thin air. But it's not. It is coupled to energy and resource use, and has been for the entire history of capitalism'.<sup>35</sup>

Degrowth studies, as can be observed in Hickel's words, argues that constant growth is not a sustainable way of organizing our economies. Degrowth is defined by Kallis as 'a socially sustainable and equitable reduction (and eventually stabilisation) of society's throughput'.<sup>36</sup> The idea of degrowth is based on the evidence that 'there has been a strong correlation between growth and forms of environmental damage' since the beginning of industrialization due to the 'energy over-use'.<sup>37</sup> Therefore, 'a smooth and stable economic downscaling'<sup>38</sup> is needed, which would also require a change in the economic structure and consuming habits. Although, Milanovic, for instance, objects to this approach and even condemns proponents of degrowth as 'magical thinkers'.<sup>39</sup> He instead suggests that a public policy that either (i) will restrict consumption of carbon-intensive goods and services by rationing or (ii) will discourage consumption by implementing high tax rates on carbon-intensive goods and services could fight climate change as well.<sup>40</sup> His proposal is based on the assumption that economic growth is needed for human welfare. Thus, he concludes that a degrowth policy would result in a reduction in Western people's income and, therefore, 'such a proposition is a political suicide'.<sup>41</sup>

Furthermore, Green asserted that actions taken for climate change mitigation in the domestic sphere can be 'nationally net-beneficial' in terms of economic efficiency and as long as the action results in economic growth, it would be in the self-interest of nations.<sup>42</sup> He indicates that 'an

<sup>31</sup>M. Bishop, 'Economics A-Z', available at [www.economist.com/economics-a-to-z/g#node-21529906](http://www.economist.com/economics-a-to-z/g#node-21529906).

<sup>32</sup>See, for instance, J. C. J. M. van den Bergh and G. Kallis, 'Growth, A-Growth or Degrowth to Stay within Planetary Boundaries?', (2012) 46 *Journal of Economic Issues* 909, at 914.

<sup>33</sup>W. A. Wallis, 'Price Stability and Economic Growth', 1960, at 151.

<sup>34</sup>J. Hickel, *supra* note 30, at 24.

<sup>35</sup>*Ibid.*

<sup>36</sup>G. Kallis, 'In Defence of Degrowth', (2011) 70 *Ecological Economics* 873, at 874.

<sup>37</sup>Van den Bergh and Kallis, *supra* note 32, at 912.

<sup>38</sup>*Ibid.*

<sup>39</sup>B. Milanovic, 'Degrowth: solving the impasse by magical thinking', *globalinequality*, 20 February 2021, available at [www.glineq.blogspot.com/2021/02/degrowth-solving-impasse-by-magical.html?spref=tw](http://www.glineq.blogspot.com/2021/02/degrowth-solving-impasse-by-magical.html?spref=tw).

<sup>40</sup>B. Milanovic, 'Climate change, covid and global inequality', *globalinequality*, 21 February 2021, available at [www.glineq.blogspot.com/2021/02/climate-change-covid-and-global.html](http://www.glineq.blogspot.com/2021/02/climate-change-covid-and-global.html).

<sup>41</sup>B. Milanovic, *ibid.*

<sup>42</sup>F. Green, 'Nationally self-interested climate change mitigation: a unified conceptual framework', (2015) *GRI Working Paper Series* 199, at 4.

action will be nationally self-interested if it increases “the size of the economic pie” that is (theoretically) available for redistribution’.<sup>43</sup> Even from the human rights perspective, the rights to an adequate standard of living and to the continuous improvement of living conditions have been considered in correlation with economic growth.<sup>44</sup> Nonetheless, the UN Independent Expert on foreign debt has recently reiterated that: “These rights cannot be reduced to exponential economic growth and mass consumption of goods and services, and an economic and social model prominently based on such objectives would not contribute to sustainable development in the long term.”<sup>45</sup> Accordingly, empirical data reveals that currently, global energy use is more than what is needed for a decent living. A recent study demonstrated that an energy demand 60 per cent less than contemporary consumption would be enough for a decent living of a population that is ~30 per cent larger than today, in 2050.<sup>46</sup> Likewise, Anderson and Brows-Larkin have claimed since 2013 that, on a global scale, ‘continuing with economic growth over the coming two decades is incompatible with meeting our international obligations on climate change’.<sup>47</sup> Indeed, according to empirical models they have provided, Hickel and Kallis concluded that:

while absolute decoupling of GDP from emissions is possible and is already happening in some regions, it is unlikely to happen fast enough to respect the carbon budgets for 1.5° C and 2°C against a background of continued economic growth. *Growth increases energy demand, making the transition to renewable energy more difficult*, and increases emissions from land use change and industrial processes.<sup>48</sup>

More precisely, a recent report from the European Environment Agency indicates that fossil fuels form the highest portion of all the energy sources and amount to 65 per cent of the energy sources available in the EU.<sup>49</sup> As such, this proportion contributes to almost 80 per cent of total GHG emissions in the Union.<sup>50</sup> Thus the report suggests that “There cannot be a complete decoupling of emissions from economic growth in a fossil fuel-based economy. This is because energy demand, which to date is mostly fossil fuel driven, remains connected to economic growth.”<sup>51</sup> In sum, the report emphasizes that currently, sustainable development cannot be achieved ‘by promoting economic growth’.<sup>52</sup>

Ultimately, scientific evidence reveals that the trade-off between environmental sustainability and economic growth may fail to reach environmental goals. Based on this premise, the question of which one of the secondary objectives can be supported and prioritized is still to be answered.

<sup>43</sup>*Ibid.*, at 4.

<sup>44</sup>See, for instance, V. Khou et al., ‘Role of the Central Bank in supporting economic diversification and productive employment in Cambodia’, (2015) *ILO Employment Working Paper Series* 175, at 5.

<sup>45</sup>J. P. Bohoslavsky, ‘End-of-mission statement by the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights’, *OHCHR*, 15 May 2019, available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24607&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24607&LangID=E).

<sup>46</sup>J. Millward-Hopkins et al., ‘Providing Decent Living with Minimum Energy: A Global Scenario’, (2020) 65 *Global Environmental Change* 102168, at 6.

<sup>47</sup>K. Anderson and A. Bows-Larkin, ‘Avoiding dangerous climate change demands de-growth strategies from wealthier nations’, 25 November 2013, available at [www.kevinanderson.info/blog/avoiding-dangerous-climate-change-demands-de-growth-strategies-from-wealthier-nations/](http://www.kevinanderson.info/blog/avoiding-dangerous-climate-change-demands-de-growth-strategies-from-wealthier-nations/).

<sup>48</sup>J. Hickel and G. Kallis, ‘Is Green Growth Possible?’, (2020) 25 *New Political Economy* 469, at 481 (emphasis added).

<sup>49</sup>European Environment Agency, *The European Environment - State and Outlook 2020* (2019), at 165.

<sup>50</sup>*Ibid.*

<sup>51</sup>*Ibid.*

<sup>52</sup>*Ibid.*, at 17.

### 3. Facing the trade-off

Based on the scientific evidence, as discussed in the previous section, it appears that there is a problem of balancing goals between the ECB's secondary objectives, sustainable development, and economic growth. Due to the fact that those objectives are horizontally prescribed in applicable law, there are two ways to determine whether and how the ECB can prioritize one over the other. First, the ECB may give precedence to a secondary objective if one of those objectives is prioritized in the overall Union policy as well. Second, if a given objective is crucial for achieving the primary objective, this relationship may result in prioritizing one objective vis-à-vis the other. Against this background, this section will first analyse the role of sustainable development in law and the overall economic policy framework of the EU, as well as the relationships between sustainable development and price stability. Similarly, economic growth's role in law and the overall economic policy of the Union will be assessed later, in addition to its relationship with price stability.

#### 3.1 'Sustainable development' in overall EU law and policy

In this section, I examine sustainable development objectives in terms of general EU policy priorities. There are two layers to this examination: first, I will describe the role of sustainable development objectives in the Union law and policy. Regarding the policy dimension, I will focus on the most recent agenda, namely the EGD and its macroeconomic policy implications. Second, I will examine the relationship between price stability and sustainable development objectives so as to highlight to what extent climate action can be included in the primary objective of the ECB.

##### 3.1.1 Legal basis

Sustainable development is an important objective of the Union. As such, environmental protection under the Union's sustainable development objectives is already prescribed in binding (and constituent) legal instruments. When it comes to the term 'sustainable development'<sup>53</sup> in the main EU treaties, Article 3(3) of the TEU clearly emphasizes the importance of these objectives. More specifically, environmental protection is guaranteed by Articles 191 to 193 of the TFEU. While Article 191 elaborates upon the meaning of the environmental policy of the EU, Articles 192 and 193 focus on the roles of the EU institutions and the member states in achieving protection of the environment. Likewise, Article 37 of the Charter of Fundamental Rights indicates that: '[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development'.<sup>54</sup>

In terms of its enforcement under the objective of sustainable development, Article 11 of the TFEU also suggests that necessary measures for the protection of the environment 'must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development'.<sup>55</sup> Likewise, Article 7 obliges the Union and its institutions to 'ensure consistency between its policies and activities'<sup>56</sup> and take into consideration 'all of its objectives'.<sup>57</sup> Thus, like other EU institutions, the ECB is also obliged to integrate

<sup>53</sup>Whereas there is no overall definition of what 'sustainable development' means for the EU, Sustainable Development Goal 13 Climate Action, as part of the UN Sustainable Development Goals (SDGs), is integrated into the Union's sustainable development policy. Indeed, the guiding role of the SDGs is not excluded from any policy areas and, according to the European Commission, they 'lie at the heart of the policymaking on internal and external action across all sectors'. See, European Commission, 'EU holistic approach to sustainable development', available at [ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/eu-holistic-approach-sustainable-development\\_en](https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/eu-holistic-approach-sustainable-development_en).

<sup>54</sup>Charter of Fundamental Rights of the European Union, 26 October 2012, OJ C326/391.

<sup>55</sup>TFEU, Art. 11.

<sup>56</sup>*Ibid.*, Art. 7.

<sup>57</sup>*Ibid.*



sustainable development objectives, with a particular focus on protecting the environment, into its policies and activities. Indeed, this principle is directly integrated into Article 2 of the Statute of the European System of Central Banks and of the European Central Bank:

In accordance with Article 127(1) and Article 282(2) of the Treaty on the Functioning of the European Union, the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119 of the Treaty on the Functioning of the European Union.<sup>58</sup>

When it comes to secondary legislation, the Effort Sharing Regulation (ESR) is a ‘part of the broader shift to a safe and sustainable low-carbon economy’<sup>59</sup> under the objective of sustainable development, and it provides obligations for the ECB as well. The ESR is a key instrument for climate action since, with it, EU member states, based on the Paris Agreement, had committed themselves in 2014 to reduce GHG emissions by at least 40 per cent by 2030. The ESR also prescribes that ‘all sectors of the economy should contribute to achieving these greenhouse gas emission reductions’.<sup>60</sup> In fact, the Commission is currently working on, in light of the proposed Climate Law,<sup>61</sup> amending the ESR and revising it with a 55 per cent reduction in EU emissions instead of the first 40 per cent goal. With the upcoming Climate Law, the Commission aims to make the EGD’s goal of climate neutrality by 2050 binding and introduce the new reduction target in terms of GHG emissions with an at least 55 per cent by 2030. And the Climate Law’s draft proposal reemphasizes the collective responsibility of all economic actors to contribute to enshrined targets, and the ECB is undoubtedly one of the key economic actors.<sup>62</sup> In addition, the ECB is also bound by the Paris Agreement, in which signatory parties have agreed to make financial flows consistent with climate targets such as holding global warming to well below 2°C above pre-industrial levels.<sup>63</sup>

Therefore, according to ‘a straightforward reading of the texts’<sup>64</sup> contained in EU law, as presented above, there is little doubt that sustainable development and environmental protection are significant objectives to be achieved by the Union. More specifically, supporting climate objectives falls within the ECB’s mandate as it is a Union institution with a particularly important role in regulating the economy.

### 3.1.2 Sustainable development policy of the EU: European Green Deal

When it comes to the policy sphere, the EU claims to adopt a holistic approach to sustainable development. The European Commission’s priorities include different policy areas. One of the means to achieve these priorities is the European Green Deal. Arguably, in fact, the EGD should be considered the results of obligations stemming from both the law underlying the EU

<sup>58</sup>Protocol No. 4 on the Statute of the European System of Central Banks and of the European Central Bank, *supra* note 12.

<sup>59</sup>Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013, OJ 2018 L 156/26, para. 12.

<sup>60</sup>*Ibid.*, para 2. See also Art. 15.

<sup>61</sup>Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM/2020/80 (‘European Climate Law’).

<sup>62</sup>*Ibid.*, para. 16.

<sup>63</sup>Paris Agreement, Art. 2(c).

<sup>64</sup>G. Várhelyi, ‘EU Taxonomy and the Monetary Policy Prism’, (2021) *ESCB Legal Conference 2020* 144, at 147.

sustainable development objectives and the UN 2030 Agenda. Indeed, the proposed European Climate Law aims to make climate objectives binding, and, in the draft proposal, it is clearly indicated that the legal basis of the proposal is Article 192(1) TFEU, in which the implementation procedure of environmental policy based on Article 191(1) is enshrined.<sup>65</sup> As such, the Communication of the European Commission on the EGD emphasized that ‘the Green Deal is an integral part of this Commission’s strategy to implement the United Nation’s 2030 Agenda and the sustainable development goals.’<sup>66</sup>

The EGD, in terms of its legal form, is primarily a political commitment, and the proposed Climate Law has not yet entered into force.<sup>67</sup> Hence, other than binding provisions for the Paris Agreement’s implementation, the climate objectives of the EGD are not formal legal commitments yet. As things stand, the EGD’s primary purpose is to transform the Union into ‘an economy with net-zero GHG emissions’.<sup>68</sup> The EGD does not only affect the EU long-term strategy for climate action, but also the reduction target in relation to GHG emissions by 2030, which the EGD raises to 55 per cent from 40 per cent. This political agreement will be integrated into legal instruments throughout 2021. In addition, and most importantly for this article’s purposes, the EGD aims to maintain a competitive economy, ‘where economic growth is decoupled from resource use’.<sup>69</sup> Indeed, the European Commission is very ambitious about the EGD’s role in supporting economic growth in the long term, since it states that the EGD ‘will support and accelerate the EU’s industry transition to a sustainable model of inclusive growth’.<sup>70</sup>

### 3.1.3 Implications for macroeconomic policy

The fight against climate change comes with a significant need for change in EU macroeconomic policy. A macroeconomic policy consists of two main elements: fiscal policy and monetary policy. Fiscal policy is directly about the government’s budget, and ‘it comprises public spending and taxation’.<sup>71</sup> Carbon tax, for instance, is presented as one of the fiscal policy instruments to reduce carbon-intensive activities.<sup>72</sup> The ECB describes key aspects of fiscal policies as ‘level and composition of government expenditure and revenue, budget deficits and government debt’.<sup>73</sup> Monetary policy, nonetheless, is ‘what a central bank does to control the money supply, and thereby manage demand’.<sup>74</sup> The ECB’s monetary policy, in this respect, is designed to maintain price stability and keep the ‘inflation rate below, but close to 2%’<sup>75</sup> in the euro area.

**3.1.3.1 Fiscal policy implications** The long-term targets of the EGD are integrated into the EU’s fiscal policy, namely the Multiannual Financial Framework (MFF). The MFF is accompanied by the recovery plan Next Generation EU (NGEU), to which sustainable considerations are integrated. For instance, the Recovery and Resilience Facility is the main pillar of the NGEU, and the RRF Regulation indicates that at least 37 per cent of loans and grants must be channelled to

<sup>65</sup>European Climate Law, *supra* note 61, at 4.

<sup>66</sup>Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of The Regions: The European Green Deal, COM(2019) 640 final, at 3.

<sup>67</sup>The European Parliament and Council have a provisional agreement on the regulation, and it will enter into force when the formal text is written and published on the Official Journal of the Union.

<sup>68</sup>2050 long-term strategy, *supra* note 4.

<sup>69</sup>Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, *supra* note 66, at 2.

<sup>70</sup>*Ibid.*, at 7.

<sup>71</sup>Bishop, *supra* note 31.

<sup>72</sup>L. de Guindos, ‘Shining a Light on Climate Risks: The ECB’s Economy-Wide Climate Stress Test’, *The ECB Blog*, 18 March 2021, available at [www.ecb.europa.eu/press/blog/date/2021/html/ecb.blog210318~3bbc68ffc5.en.html#short](http://www.ecb.europa.eu/press/blog/date/2021/html/ecb.blog210318~3bbc68ffc5.en.html#short).

<sup>73</sup>ECB, ‘Fiscal policies’, available at [www.ecb.europa.eu/mopo/eac/fiscal/html/index.en.html#:~:text=Fiscal%20policies%20have%20a%20significant,pivotal%20element%20of%20macroeconomic%20stability](http://www.ecb.europa.eu/mopo/eac/fiscal/html/index.en.html#:~:text=Fiscal%20policies%20have%20a%20significant,pivotal%20element%20of%20macroeconomic%20stability).

<sup>74</sup>Bishop, *supra* note 31.

<sup>75</sup>ECB, ‘Monetary policy introduction’, available at [www.ecb.europa.eu/mopo/intro/html/index.en.html](http://www.ecb.europa.eu/mopo/intro/html/index.en.html).

environmentally sustainable investments and reforms.<sup>76</sup> The rest of the budget is subjected to the ‘do no significant harm’ principle, according to which that part of the budget cannot go to projects that are harmful to the environmental objectives prescribed in the EU Taxonomy Regulation.<sup>77</sup> In addition to public investments, the Commission has often stressed the important role that the private sector will play to close the gap for necessary funding for the transition to a sustainable economy.<sup>78</sup> In this regard, the Sustainable Europe Investment Plan (SEIP) is defined as ‘the investment pillar of the Green Deal’.<sup>79</sup> In this Plan, more than EUR 1 trillion will be spent on sustainable investments.

Moreover, the SEIP provides proper frameworks to complement both public and private investments that ensure environmental sustainability. For instance, the Taxonomy Regulation lays a framework for defining sustainable economic activities. The Taxonomy Regulation sets out six environmental objectives:

- (i) climate change mitigation; (ii) climate change adaptation; (iii) the sustainable use and protection of water and marine resources; (iv) the transition to a circular economy; (v) pollution prevention and control; (vi) the protection and restoration of biodiversity and ecosystems.<sup>80</sup> Each objective will include technical screening criteria to be developed and introduced by 2023.

For an economic activity to be considered ‘environmentally sustainable’, there are four conditions: either an economic activity

- (i) will contribute to one of the six environmental objectives referred above, (ii) does not significantly harm to any of those objectives, or (iii) complies with technical screening criteria under each objective.<sup>81</sup>

An economic activity that meets one of the requirements also must comply with the minimum safeguards prescribed in Article 18 of the Regulation.<sup>82</sup> Those minimum safeguards are based on the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work, and the International Bill of Human Rights. These safeguards, as further discussed in Section 4, are of particular significance because this is where we can evaluate the extent to which EU action on climate change is compatible with the existing international human rights obligations of its member states.

*3.1.3.2 Do legal frameworks under the SEIP really ensure the environmental sustainability of financial instruments?* The Taxonomy Regulation’s content is significant for both the fiscal and monetary policy strategies of the ECB because it is the guiding framework to determine what is a sustainable economic activity. According to Article 192 TFEU, the European Parliament and the Council have the authority to determine necessary measures to implement EU

<sup>76</sup>Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ 2021 L 57/17, Art. 16.

<sup>77</sup>Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ 2020 L 198/13 (‘Taxonomy Regulation’).

<sup>78</sup>See, for instance, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Green Deal, *supra* note 66.

<sup>79</sup>European Commission, ‘The European Green Deal Investment Plan and Just Transition Mechanism explained’, available at [ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_24](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_24).

<sup>80</sup>Taxonomy Regulation, *supra* note 77, Art. 9.

<sup>81</sup>*Ibid.*, Art. 3.

<sup>82</sup>*Ibid.*

environmental policy. Hence, the ECB cannot create standards for environmental sustainability. Instead, as argued by Várhelyi, the Taxonomy Regulation is to be used by the ECB while determining whether an economic activity is environmentally sustainable or not.<sup>83</sup> Nonetheless, the Taxonomy Regulation does not cover all financial instruments and may not be enough to avoid greenwashing practices while guiding the ECB. Green bond issuance is a case in point because it is one of the areas that are not affected by the Taxonomy Regulation's requirements. A green bond, according to the World Bank, is 'a debt security that is issued to raise capital specifically to support climate-related or environmental projects'.<sup>84</sup> Like traditional bonds, different types of institutions, including financial institutions, corporations, and municipalities, can issue and label green bonds that may attract individual and institutional investors. At the moment, there are no compulsory standards for the 'green-ness' of a bond. In other words, 'the issuer has the discretion to determine what constitutes a successful outcome'.<sup>85</sup> Whereas the Commission is still working to adopt a unified EU Green Bond Standard in order to ensure that the revenue from bonds labelled as 'green' will only be channelled to environmentally sustainable projects, that unified standard is planned to be a voluntary framework. In this respect, the arising problem is that the Taxonomy Regulation will cover neither green bonds under 'financial products' nor bond issuers under 'financial market participant' definitions. The same definitions are valid for the EU Sustainable Finance Disclosure Regulation that obliges financial market participants and financial advisors to be transparent in the way they integrate 'sustainability risks and adverse sustainability impacts in their processes and the provision of sustainability related information with respect to financial products'.<sup>86</sup> Similarly to the Taxonomy Regulation, the EU Disclosure Regulation does not create any obligation for green bond issuers.

Based on historical and contemporary experiences, one could argue that the voluntary character of the upcoming EU Green Bond Standard may result in socially and even environmentally harmful impacts. Indeed, there have been projects that were labelled as 'green' and funded by international financial institutions but resulted in human rights violations with socially and environmentally harmful impacts. For instance, a recent report provided by Counter Balance (a coalition of nine non-governmental organizations within the European Union) indicates that a geothermal project investment in Kenya, presented as a green project and funded by the European Investment Bank (EIB), the World Bank, the French Agence Française de Développement, the German KfW, and the Japan International Cooperation Agency, resulted in the displacement of Maasai indigenous people.<sup>87</sup> Likewise, the EIB provided a loan for the proposed Nenskra hydropower plant in Georgia, and this 'green project' has been criticized for the damage it will inflict on local biodiversity and on the livelihoods of local communities.<sup>88</sup> These examples raise concerns, within the remit of this article, due to the fact that the EU budget will be used as a guarantee against private investors to attract private capital for the EIB projects.<sup>89</sup> In order to avoid these harmful practices in the future, the European Commission is committed to legislating a mandatory human rights corporate

<sup>83</sup>Várhelyi, *supra* note 64, at 151.

<sup>84</sup>World Bank and PPIAF, 'What are green bonds?', 2015, at 5, available at [openknowledge.worldbank.org/handle/10986/22791](https://openknowledge.worldbank.org/handle/10986/22791).

<sup>85</sup>S. K. Park, 'Social Bonds for Sustainable Development: A Human Rights Perspective on Impact Investing', (2018) 3 *Business and Human Rights Journal* 233, at 240.

<sup>86</sup>Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, OJ 2019 L 317/1, Art. 1.

<sup>87</sup>Counterbalance, 'Greenwashing or a banking revolution?', 2020, at 46, available at [counter-balance.org/uploads/files/Reports/Flagship-Reports-Files/2020-EU-Climate-Bank-Report.pdf](https://counter-balance.org/uploads/files/Reports/Flagship-Reports-Files/2020-EU-Climate-Bank-Report.pdf).

<sup>88</sup>Bankwatch, 'Nenskra hydropower plant, Georgia', available at [www.bankwatch.org/project/nenskra-hydropower-plant-georgia](https://www.bankwatch.org/project/nenskra-hydropower-plant-georgia).

<sup>89</sup>See The European Green Deal Investment Plan and Just Transition Mechanism explained, *supra* note 79.

due diligence framework. It is the plan for now that it will apply to financial service and product providers, too, meaning that, for example, the EIB will be included. The draft by the European Parliament Committee on Legal Affairs proposed to cover the obligation to respect the environment under the right to a healthy environment. If so, this would be in line with what Chiara Macchi claims concerning the relationship between international environmental law and human rights due diligence:

nothing prevents a holistic interpretation of HRDD under the UNGPs based on all relevant norms of international law, and that such a holistic approach, combining mutually reinforcing principles of international human rights law, environmental law and climate law, actually constitutes the most coherent in the light of the stated aims of the UNGPs' normative framework.<sup>90</sup>

Consequently, both short and long-term climate objectives are integrated into the EU budget framework for the period between 2021–2027. Nonetheless, the case of green bonds demonstrates that existing legal frameworks are not yet designed with an aim to ensure environmental sustainability in every economic activity. In other words, the transition process may still be accompanied by environmentally harmful activities.

**3.1.3.3 Monetary policy implications** Monetary policy implications directly concern the ECB. As explained above, when discussing the applicable legal framework, there is no doubt that environmental objectives under the EGD are an important part of the ECB's mandate. The main question to be answered, then, is whether climate action falls under the price stability mandate of the ECB or under its secondary objectives. In other words, should the European Central Bank support climate objectives because it is inherent to maintaining price stability?

The ECB has recognized possible risks to financial stability that can result from climate change in case of insufficient pricing of the risks in the market. In line with this, it included climate change-related risks into its financial stability monitoring and banking supervision operations. In terms of financial stability monitoring, simply, the ECB is analysing the climate change-related physical and transition risks in the future financial stability scenarios.<sup>91</sup> This process is indeed in line with the European Systemic Risk Board's predictions. Luis de Guindos, vice-president of the ECB, explains the first observations:

Preliminary results show that, in the absence of further climate policies, the costs to companies arising from extreme events increase substantially. The results also show that there are clear benefits in taking action early: the short-term costs of adapting to green policies are significantly lower than the potentially much higher costs arising from natural disasters in the medium to long term.<sup>92</sup>

When it comes to the banking supervision field, however, despite some steps taken, there is no binding measure. The ECB has published the *Guide on Climate Related and Environmental Risks* for supervisory purposes that describes its expectations from institutions on how to manage and disclose these types of risks. Lagarde, president of the ECB, suggested that 'institutions are expected to adopt a comprehensive, strategic and forward-looking perspective in managing

<sup>90</sup>C. Macchi, 'The Climate Change Dimension of Business and Human Rights: The Gradual Consolidation of a Concept of Climate Due Diligence', (2021) 6 *Business and Human Rights Journal* 93, at 118.

<sup>91</sup>M. Giuzio et al, 'Climate Change and Financial Stability', (2019) *Financial Stability Review May 2019*, available at [www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr201905~266e856634.en.html](http://www.ecb.europa.eu/pub/financial-stability/fsr/html/ecb.fsr201905~266e856634.en.html).

<sup>92</sup>L. de Guindos, *supra* note 72.

and disclosing climate-related and environmental risks'.<sup>93</sup> Likewise, the ECB has included 'bonds with coupon structures linked to certain sustainability performance targets'<sup>94</sup> in its collateral framework as eligible, as long as those bonds are under other eligibility criteria too. As the basis of assessment regarding the greenness of sustainability bonds, it uses the Taxonomy Regulation and the SDGs related to climate change. It may therefore be that, after all, the ECB's monetary policy is not green at all due to its collateral framework and QE program's inclusion of carbon-intensive assets. This is because it still remains unclear for the ECB what the role of sustainable development is in achieving its primary objective.

In fact, the relationship between the objectives of price stability and environmental sustainability in the Eurozone is a complex one. From a legal point of view, as long as environmental policies are not identified as inherent to maintaining price stability, the ECB has a justified authority to support carbon-intensive activities if this is deemed necessary to achieve a medium-term inflation target. Whilst the ECB has not needed to take any necessary measures against the impacts of climate change on prices so far, this may change soon. For example, Cœuré, a member of the ECB's Executive Board, suggested that 'more frequent climate-related shocks may increasingly blur the analysis of the medium-term inflationary pressures relevant for monetary policy'.<sup>95</sup> He also identified the risks on inflation that can stem from 'uncertainties surrounding the speed and scope of the transition towards a low-carbon economy'.<sup>96</sup> Indeed, a recent study has proved that disasters affect the inflation rate in emerging and developing economies, and in some cases, that impact may continue even three years after the disaster.<sup>97</sup> Similarly, based on the impact of floods in the Vallée de la Roya and Vallée de la Vésudie on the French economy in 2020, Várhelyi suggested that 'unaddressed climate change risks clearly represent an imminent threat to price stability and, in any event, a threat that is quantifiable within the medium term just like the ECB's price stability objective'.<sup>98</sup>

Consequently, one can argue that tackling climate action is becoming inherent to the ECB's primary objective. Yet, the ECB executives have emphasized that there is a need for further research focusing on the Eurozone in this context.

### 3.2 Economic growth's fundamental role in EU economic governance

In this section, I will examine to what extent economic growth is significant in the ECB's mandate. This section will follow the same structure as the previous one: I will first discuss economic growth as a secondary objective and, therefore, the need to determine its importance in the general economic policies of the Union. I will then discuss economic growth's role in achieving the primary objective of price stability, with references to relevant literature in economics.

#### 3.2.1 Legal basis for economic growth

To begin with, economic growth is one of the two main objectives of the EU's economic and fiscal policy. Indeed, it is explicitly stated in the Union treaties and policies. More generally, the Union is tasked under Article 3(3) of the TEU to promote 'sustainable development of Europe based on balanced economic growth and price stability'.<sup>99</sup> Likewise, while Article 126 TFEU prohibits

<sup>93</sup>C. Lagarde, 'Letter from the ECB President to several MEPs, on climate change', 26 March 2021, available at [www.ecb.europa.eu/pub/pdf/other/ecb.mepletter210326\\_Lalucq\\_and\\_others~b360962c80.en.pdf](http://www.ecb.europa.eu/pub/pdf/other/ecb.mepletter210326_Lalucq_and_others~b360962c80.en.pdf).

<sup>94</sup>ECB, 'ECB to accept sustainability-linked bonds as collateral', 22 September 2020, available at [www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200922~482e4a5a90.en.html](http://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200922~482e4a5a90.en.html).

<sup>95</sup>B. Cœuré, 'Monetary policy and climate change', *European Central Bank*, 8 November 2018, available at [www.ecb.europa.eu/press/key/date/2018/html/ecb.sp181108.en.html](http://www.ecb.europa.eu/press/key/date/2018/html/ecb.sp181108.en.html).

<sup>96</sup>*Ibid.*

<sup>97</sup>M. Parker, 'The Impact of Disasters on Inflation', (2018) 2 *Economics of Disasters and Climate Change* 21, at 25.

<sup>98</sup>Várhelyi, *supra* note 64, at 147.

<sup>99</sup>TEU, Art. 3(3).

‘excessive government deficits’ in the fiscal and economic governance of member states, the inter-governmental conference that shaped the current Treaty declared that ‘raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy of the Union and the member states’.<sup>100</sup>

The annexed declaration to the Treaty adds that the member states would ‘take all necessary measures’ in order to increase ‘the growth potential of their economies’.<sup>101</sup> Moreover, the member states are obliged to shape their economic policies with the aim of supporting the overall Union objectives under Article 120 TFEU. To ensure this harmony within the Union, Article 121 obliges the member states to consider ‘their economic policies as a matter of common concern’<sup>102</sup> and establishes a framework for the surveillance and co-ordination of budgetary policies within the Union. This mechanism is the Stability and Growth Pact (hereafter the Pact) as one pillar of the European Semester framework. More broadly, the European Semester is a mechanism that ensures the co-ordination of economic policies within the Union. The main pillars of the framework are: (i) the Pact in which the budgetary surveillance is regulated; and (ii) the mechanism for the co-ordination regarding macroeconomic imbalances.<sup>103</sup> The Pact, initially, consisted of several legislations. For instance, Regulation 1466/97, which shapes the content of the surveillance and co-ordination of budgetary and economic policies, defines the purpose of the mechanism as ‘supporting the achievement of the Union’s objectives for growth and employment’.<sup>104</sup> Another regulation on the excessive deficit procedure describes the main objective of the Pact as achieving ‘sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth’.<sup>105</sup> More recently, the Regulation on the effective enforcement of budgetary surveillance emphasizes that the Pact and the complete economic governance framework ‘should complement and be compatible with the Union strategy for growth and jobs’.<sup>106</sup>

A similar emphasis can be observed in the second pillar that consists of the Regulations on macroeconomic imbalances in the euro area. The Regulations on prevention and correction of macroeconomic imbalances provide that ‘the improved economic governance framework should rely on several interlinked and coherent policies for sustainable growth and jobs’.<sup>107</sup> As such, whereas it is not a Union regulation but rather an external treaty among the member states, the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union aims to strengthen the first pillar of the European Semester and prescribes that the main aim of the Contracting Parties in their economic policy co-ordination is to guarantee ‘the proper functioning of the economic and monetary union and economic growth’.<sup>108</sup>

Recent policy responses to the economic hardship resulting from the COVID-19 pandemic demonstrate the fundamental and inherent significance of the growth objective in the Union’s overall economic strategy. Indeed, it appears that there can be no economic policy that harms the economic growth objective in the Union. To demonstrate that, my analysis regarding

<sup>100</sup>TFEU, at 349.

<sup>101</sup>*Ibid.*, at 350.

<sup>102</sup>*Ibid.*, Art. 121.

<sup>103</sup>European Commission, ‘The European Semester explained’, available at [www.ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/european-semester-explained\\_en](http://www.ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/european-semester-explained_en).

<sup>104</sup>Council Regulation (EC) No 1466/97 of 7 July 1997 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, OJ [1997] L 209, Art. 1.

<sup>105</sup>Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, OJ [1997] L 209, para.2.

<sup>106</sup>Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area, OJ 2011 L 306/1, para.5.

<sup>107</sup>Regulation (EU) No 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, OJ 2011 L 306/25, para. 4.

<sup>108</sup>2012, Treaty on Stability, Coordination and Governance In The Economic and Monetary Union, available at [www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A42012A0302%2801%29](http://www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A42012A0302%2801%29).

theoretical underpinnings of the economic structure of the Union will follow the section concerning policy implications of the law below.

### 3.2.2 Recent policy implications of legal frameworks

According to Article 121(2) TFEU, the Council, based on the suggestions communicated to the Commission, establishes economic policy guidelines for a co-ordinated and common strategy in the Union. In the Commission recommendation for a Council recommendation concerning the period of 2021–2022, the current primary problem in the Union’s economy is measured based on the growth rate and presented as ‘a series of large demand and supply side shocks translating into an expected decline of GDP by 7.8% in 2020’.<sup>109</sup> In line with the identification of the problem, the primary purpose of policy responses was identified as ‘to avoid negative consequences on potential economic growth’.<sup>110</sup> Similarly, Next Generation EU (NGEU) as the main policy response to the COVID-19 crisis was described with an aim ‘to restart economic growth’.<sup>111</sup> The EU growth objectives, therefore, were identified as key to the implementation of the NGEU.

Another policy guide of the Union is the Annual Sustainable Growth Strategy (ASGS). The ASGS 2021 identifies the issue based on the contract and growth expectations.<sup>112</sup> And similar to the Commission recommendation, it identified the Recovery and Resilience Facility (RRF) as the main pillar of the policy response under the NGEU, which is designed to support growth potentials in line with the Union’s objectives.<sup>113</sup> The RRF is planned to provide a total amount of EUR 672.5 billion loans and grants to the member states for their recovery efforts.<sup>114</sup> The ASGS suggests that appropriate measures taken based on the NGEU can result in 2 per cent of additional GDP until 2024, and at the same time, support the green transition.<sup>115</sup> In fact, the ASGS 2021 is framed based on four principles identified in the ASGS 2020, and those principles are guiding for recovery and resilience policies. Those principles comprise environmental sustainability, productivity, fairness, and macroeconomic stability.<sup>116</sup> Hence, environmental sustainability is identified as one of the priorities within the Union’s contemporary economic policy.

Nonetheless, none of those guiding principles is the primary objective. All of the policy responses to current economic shocks, at the end of the day, shall serve economic growth. The ASGS 2021 indicates that ‘our recovery instruments must therefore put the economy on the right track to long-term sustainable growth’.<sup>117</sup> Indeed, how the NGEU and RRF are shaped proves that neither environmental sustainability nor green transition is the primary objective under the current economic policy. Instead, they must serve the objective of economic growth. While the RRF is subjected to the ‘do no significant harm’ principle, the RRF Regulation considers projects that include natural gas as eligible for funding. Indeed, under two conditions, the funding can be channelled to natural gas projects: (i) if a coal-based heating system is replaced by a gas-based heating system for climate mitigation purposes; and (ii) for distribution and transport of natural gas substituting coal.<sup>118</sup> This inclusion of natural gas projects raises serious questions regarding the environmental sustainability

<sup>109</sup>Recommendation for a Council Recommendation on the economic policy of the euro area, COM(2020) 746 final, para. 1.

<sup>110</sup>*Ibid.*, para. 5.

<sup>111</sup>*Ibid.*, para. 3.

<sup>112</sup>Annual Sustainable Growth Strategy 2021, COM(2020) 575 final, at 1.

<sup>113</sup>*Ibid.*

<sup>114</sup>*Ibid.*

<sup>115</sup>*Ibid.*, at 2.

<sup>116</sup>Annual Sustainable Growth Strategy 2020, COM(2019) 650 final, at 1.

<sup>117</sup>Annual Sustainable Growth Strategy 2021, *supra* note 112, at 3.

<sup>118</sup>Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, *supra* note 76, at 65.



of economic activities considered eligible under the RRF. As a compromise to support investments on a wider scale, eligibility of natural gas projects is justified in the European Commission's technical guidance regarding RRF project criteria based on the fact that replacement of more carbon polluting energy resources with natural gas may result in a 'large and rapid reduction in GHG emissions'.<sup>119</sup> Similarly, the first delegated act of the Taxonomy Regulation indicates that natural gas activities will be considered as environmentally sustainable, 'where no technologically and economically feasible low carbon alternative exists'.<sup>120</sup>

Furthermore, a recent report revealed that the EU, in addition to the recovery strategy, continues building gas infrastructure that would result in a 35 per cent rise in 'gas import capacity'.<sup>121</sup> The report also identified the risk stemming from the gas infrastructure concerning the medium-term target of 55 per cent reduced GHG emissions by 2030. Indeed, according to the European Commission's scenario, to be able to reach the medium-term goal, final energy consumption needs to decline 36–37 per cent by 2030.<sup>122</sup> Expanding gas import capacity is clearly not in line with this scenario. The International Energy Agency's last report argues that 'no new oil and natural gas fields are needed in our pathway' for net-zero GHG emissions by 2050.<sup>123</sup> Arguably this natural gas compromise is only for the sake of economic growth. Indeed, some studies have indicated that there is a positive correlation between the consumption of natural gas and GDP.<sup>124</sup>

The above analysis means that the realization of the transition to a low-carbon economy is still envisaged with a reliance on fossil fuels, a fact that has triggered wide criticism by scientists.<sup>125</sup> In addition, the creation of RRF demonstrates that environmental sustainability is not the primary objective at the heart of the economic recovery of the Union. I argue that this is indeed consistent with the current economic strategy of the EU, in which economic objectives remain of primary importance compared to environmental objectives. In the Annual Growth Strategy 2020, when the EGD was presented as a 'new growth strategy' of the Union, it was clear that all the climate concerns and sustainability efforts would be channelled towards one primary aim: economic growth. The new growth model was presented as one that 'will respect the limitations on our natural resources'.<sup>126</sup> All of the climate policies that would support the realization of the UN SDGs were explicitly aimed to carry Europe to the 'forefront of future economic growth'.<sup>127</sup> Indeed, it could not be clearer in the ASGS 2020 that economic growth is eventually the only primary goal in the overall EU economic policy. In a key sentence, it is indicated that 'the growth opportunities arising from a stronger focus on environmental sustainability are central to Europe's economic agenda'.<sup>128</sup>

<sup>119</sup>Technical guidance on the application of "do no significant harm" under the Recovery and Resilience Facility Regulation, C(2021) 1054 final, at 8.

<sup>120</sup>Commission Delegated Regulation supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives, C(2021) 2800/3 final, at 14.

<sup>121</sup>G. Aitken et al., 'Europe Gas Tracker Report 2021', April 2021, at 3, available at [globalenergymonitor.org/report/europe-gas-tracker-report-2021/](https://globalenergymonitor.org/report/europe-gas-tracker-report-2021/).

<sup>122</sup>*Ibid.*, at 8.

<sup>123</sup>IEA, 'Net Zero by 2050 A Roadmap for the Global Energy Sector', May 2021, at 23, available at [www.iea.org/reports/net-zero-by-2050](https://www.iea.org/reports/net-zero-by-2050).

<sup>124</sup>See, for instance N. Apergis and J. E. Payne, 'Natural Gas Consumption and Economic Growth: A Panel Investigation of 67 Countries', (2010) 87 *Applied Energy* 2759.

<sup>125</sup>In addition to the IEA's report, also see T. Loomis, 'Why Natural Gas Isn't a Bridge Fuel to a Low Emissions Economy?', 2018, at 15, available at [www.researchgate.net/publication/327230654\\_Why\\_Natural\\_Gas\\_isn't\\_a\\_Bridge\\_Fuel\\_to\\_a\\_Low\\_Emissions\\_Economy](https://www.researchgate.net/publication/327230654_Why_Natural_Gas_isn't_a_Bridge_Fuel_to_a_Low_Emissions_Economy).

<sup>126</sup>Annual Sustainable Growth Strategy 2020, *supra* note 116, at 1.

<sup>127</sup>*Ibid.*

<sup>128</sup>*Ibid.*, at 5.

Consequently, legal frameworks underpinning the overall Union economic policies shaped the current economic, and more particularly, sustainable growth strategy. Now I will analyse the concept of growth in relation to the primary price stability objective of the ECB to examine whether price stability requires the achievement of economic growth.

### 3.2.3 Price stability and economic growth

The literature on the relationship between price stability and economic growth in economics has generally focused on the benefits of stable prices for growth and output.<sup>129</sup> Indeed, macroeconomic policy has both short and medium-term impacts on economic output and employment. Whelan criticized the approach that considers monetary policy and economic policy as absolute separate concepts and argued that ‘monetary policy is part of economic policy’.<sup>130</sup> The Court of Justice of the European Union (CJEU) confirmed this relationship and the unavoidable impact of the ECB’s operation on the ‘real economy’ in the *Weiss* judgment by providing that:

in order to exert an influence on inflation rates, the ESCB necessarily has to adopt measures that have certain effects on the real economy, which might also be sought – to different ends – in the context of economic policy.<sup>131</sup>

In line with this approach, it is contemporarily believed that ‘price stability is the most powerful tool the central bank has to promote economic growth’.<sup>132</sup> The ECB takes the same approach and explicitly suggests that maintaining price stability ‘is the best contribution monetary policy can make to economic growth’.<sup>133</sup>

In addition to price stability, central banks can support economic growth as an independent objective through macroeconomic policy instruments. For instance, if a central bank expands the money supply by lowering interest rates or trading securities, the credit market will be able to provide more loans for investments, which would result in growth. Or in their reserve requirement policies, central banks decide how much money commercial banks must deposit at the end of the day in the central bank’s reserves. This, in turn, changes the amount of money that those commercial banks can have in hand and lend out for new investments or expenditures. Another example is the Targeted Longer-Term Refinancing Operations (TLTRO) program of the ECB. By providing loans with a lower interest rate to some commercial banks, it helps to boost new investments in eligible areas.

The ECB has defined price stability quantitatively as keeping inflation rates only slightly below 2 per cent over the medium term.<sup>134</sup> This medium-term objective leaves space for taking into consideration output and employment fluctuations. Indeed, too much inflation means slower growth because prices become too high and money circulation decreases. Deflation means, on the contrary, a decrease in the prices of goods and services. However, it has a similar negative impact on economic growth because, while prices are reducing, consumers postpone expenditures to purchase goods and services with less amount of money in the future. Thus, inflation rates have a direct effect on the output of an economy, and the ECB takes into account these factors too.

<sup>129</sup>See, for instance, Wallis, *supra* note 33; P. Fortin, ‘Can Monetary Policy Make a Difference for Economic Growth and Inequality?’, (2003) 29 *Canadian Public Policy/Analyse de Politiques* 223.

<sup>130</sup>European Parliament, *The ECB’s Mandate: Perspectives on General Economic Policies*, Study for the Committee on Economic and Monetary Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2020, at 47.

<sup>131</sup>CJEU judgment of 11 December 2018, *Weiss and others*, C-493/17, ECLI:EU:C:2018:1000, para. 66.

<sup>132</sup>W. Poole and D. C. Wheelock, ‘Stable Prices, Stable Economy’, *The Regional Economist*, 1 January 2018, at 6.

<sup>133</sup>ECB, ‘Why are stable prices important?’, 8 May 2017, available at [www.ecb.europa.eu/explainers/tell-me-more/html/stableprices.en.html](http://www.ecb.europa.eu/explainers/tell-me-more/html/stableprices.en.html).

<sup>134</sup>*Ibid.*

In fact, in addition to the impact of stable prices on growth capacity, economic growth and price stability objectives converge at the level of the primary objective. By stipulating its primary objective as maintaining price stability, the law of the ECB serves as the economic growth pillar of the Union's general economic policy. Solans suggested in this context that:

Stability implies efficient allocation of resources, competitiveness, lower interest rate risk premiums, investment. All these factors are preconditions for economic growth or, in other words, preconditions for the fulfilment of the secondary objective of the ESCB. In securing its objective of stability, the Eurosystem creates the necessary conditions to comply with the European Union's objective of economic growth. There is clearly no greater fertiliser for economic growth than price stability, and nothing is more refractory to economic growth than inflation.<sup>135</sup>

Going even further, Wren-Lewis, in a recent survey for the ECB's macroeconomic policy review, claimed that economic growth could be made the primary objective 'subject to achieving an inflation target within some time horizon'.<sup>136</sup> Similarly, Lastra and Alexander suggested that the ECB should 'also support a sustainable growth rate that is defined as such over the long-term',<sup>137</sup> besides price stability.

When it comes to the benefits of economic growth for price stability, Claeys argued that the ECB could achieve price stability by maintaining overall macroeconomic stability, which embodies growth as well. He ultimately suggests that economic growth is one of the 'necessary conditions to achieve price stability in the medium term'.<sup>138</sup> As such, in its recent strategy review, the ECB emphasized the negative role of slow economic growth in regulating monetary policy. It is suggested that lowering interest rates in order to support economic activities and correct the inflation rate has become more difficult due to slow growth.<sup>139</sup>

Thus, price stability and economic growth objectives reinforce each other in the ECB's mandate. On the one hand, economic growth is a precondition for price stability over the medium term. On the other hand, a medium-term price stability eventually serves to the achievement of economic growth in the Union. In line with Solans' suggestion, price stability and economic growth are inseparable objectives, and the ECB's mandate cannot be understood as distinguishing those concepts.

#### 4. Implications for the right to a healthy environment

The analysis carried out so far in this article has proved that sustainable development is not a prioritized secondary objective over economic growth, and even less so the primary objective of the ECB. In light of this premise, an important question arises: Why is this important, and why is it problematic from the perspective of international human rights law? This section's purpose is to answer these questions by examining EU member states' obligations in terms of the right to a healthy environment in shaping the legal mandate of the ECB.

##### 4.1 An emerging right: Right to a healthy environment

The human right to a safe, clean, healthy, and sustainable environment (or shortly, right to a healthy environment) is an emerging self-standing right in international human rights law. Whereas it is not a

<sup>135</sup>E. D. Solans 'Should the ECB have broader objectives beyond price stability?', 24 May 1999, available at [www.ecb.europa.eu/press/key/date/1999/html/sp990524.en.html](http://www.ecb.europa.eu/press/key/date/1999/html/sp990524.en.html).

<sup>136</sup>E. Ilzetki 'Rethinking the ECB's inflation objective?', *European Central Bank*, 16 November 2020, available at [www.voxeu.org/article/rethinking-ecbs-inflation-objective](http://www.voxeu.org/article/rethinking-ecbs-inflation-objective).

<sup>137</sup>The ECB's Mandate: Perspectives on General Economic Policies, *supra* note 130, at 9.

<sup>138</sup>*Ibid.*, at 124.

<sup>139</sup>ECB, 'Strategy review', available at [www.ecb.europa.eu/home/search/review/html/index.en.html](http://www.ecb.europa.eu/home/search/review/html/index.en.html).

formally adopted right under the UN mechanisms, the former Special Rapporteur on human rights and the environment, John H. Knox, has reported the ‘Framework principles on human rights and the environment’<sup>140</sup> based on existing human rights obligations of States. In fact, the right has already been recognized in several regional human rights mechanisms.<sup>141</sup> As such, the right has emerged along with a progressive evolution of the interpretation of existing rights at regional and national levels, as well as with the recognition of procedural rights relating to the environment. In this respect, Knox emphasized the need to recognize the given right formally and explicitly, and suggested that:

Environmental harm interferes with the full enjoyment of a wide spectrum of human rights, and the obligations of States to respect human rights, to protect human rights from interference and to fulfil human rights apply in the environmental context no less than in any other.<sup>142</sup>

Indeed, Framework principle 1 stipulates that ‘States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights’.<sup>143</sup> Likewise, five UN human rights treaty bodies published a joint statement on human rights and climate change in 2019 and suggested that:

climate change poses significant risks to the enjoyment of the human rights protected by the International Convention on the Elimination of all Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child, and the International Convention on the Rights of Persons with Disabilities.<sup>144</sup>

The treaty bodies have emphasized particularly harmful impacts on the right to life, the right to adequate food, the right to adequate housing, the right to health, the right to water, and cultural rights. The statement confirmed that states have obligations to ‘take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm’.<sup>145</sup> More importantly, those obligations entail that states must ‘ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development’.<sup>146</sup> Even more progressively, on the regional level, the Inter-American Court of Human Rights (IACtHR) issued an Advisory Opinion in 2017 and considered the right to a healthy environment as an autonomous right under Article 26 of the American Convention on Human Rights, in addition to Article 11 of the Protocol of San Salvador.<sup>147</sup> The IACtHR provided that the right requires the protection of ‘the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals’.<sup>148</sup> Accordingly, the IACtHR firstly applied those requirements under the right

<sup>140</sup>J. H. Knox, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/37/59 (2018), at 7.

<sup>141</sup>See, for instance, African Charter on Human and Peoples’ Rights, Art. 24; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Art. 11; Arab Charter on Human Rights, Art. 38; ASEAN Human Rights Declaration, Art. 28.

<sup>142</sup>UN Doc. A/HRC/37/59 (2018), *supra* note 140, at 4.

<sup>143</sup>*Ibid.*, at 7.

<sup>144</sup>OHCHR, ‘Five UN human rights treaty bodies issue a joint statement on human rights and climate change’, 16 September 2019, available at [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998#\\_edn9](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998#_edn9).

<sup>145</sup>*Ibid.*

<sup>146</sup>*Ibid.*

<sup>147</sup>*The Environment and Human Rights*, Advisory Opinion of 15 November 2017, [2017] IACHR OC-23/17, para. 62.

<sup>148</sup>*Ibid.*, para. 62.

to a healthy environment in a case in 2020 and found a violation of the right of indigenous communities resulted from Argentina's ineffective actions to prevent environmentally harmful activities, including livestock farming, installation of fences, and illegal logging.<sup>149</sup>

Accordingly, the interdependence of environmental protection and human rights protection has become an important principle in the European context too. For instance, the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) Article 1 describes the main purpose under the Convention as contributing 'to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being'.<sup>150</sup> Whilst Regulation No 1367/2006 prescribes rules for the implementation of the Aarhus Convention at the EU level, it confirms that the Union's environmental policy 'aims to contribute *inter alia* to preserving, protecting and improving the quality of the environment and protecting human health',<sup>151</sup> based on TFEU Article 191. Similarly, although the right to a healthy environment is not a formally included right in the European Convention on Human Rights (ECHR), the European Court of Human Rights (ECtHR) found a violation of the right to respect for private and family life in *Tatar v. Romania* case, 'on account of the Romanian authorities' failure to protect the right of the applicants . . . to enjoy a healthy and protected environment'.<sup>152</sup> The case law of the ECtHR demonstrates that its approach 'is generally not about protecting the environment for its own sake, but rather protecting individuals and their interests, including their privacy, home and well-being'.<sup>153</sup> Most recently, the German Federal Constitutional Court found that future emission reductions 'have an impact on practically every type of freedom' and, thus, the legislators should take 'precautionary steps to mitigate these major burdens in order to safeguard the freedom guaranteed by fundamental rights'.<sup>154</sup> This decision may indeed be a stronger sign of the increasing role of the EU courts in enforcing the right to a healthy environment because 'the Court . . . concludes that judges must scrutinize with increasing urgency and rigor activities and policies that exacerbate warming'.<sup>155</sup> In fact, this decision was in line with the findings of the Supreme Court of the Netherlands in 2018. In the *Netherlands v. Urgenda* case, drawing on the ECtHR's jurisprudence regarding the rights to life and to family and private life, the Supreme Court of the Netherlands decided that the state failed to take sufficient measures to achieve the targets under the Paris Agreement and prevent harmful impacts of climate change on human rights.<sup>156</sup> Accordingly, the Committee on Legal Affairs of the European Parliament suggested in its

<sup>149</sup>*Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment of 6 February 2020, [2020] IACHR (Ser. C), para. 289.

<sup>150</sup>1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 38 ILM 517 (1999), Art. 1.

<sup>151</sup>Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ 2006 L 264/13, at 1.

<sup>152</sup>*Tatar v. Romania*, Judgment of 27 January 2009, [2009] ECHR, para. 112.

<sup>153</sup>D. Lasalle et al., 'Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment', December 2013, at 4, available to download at [www.ohchr.org/sites/default/files/Documents/Issues/Environment/Mappingreport/14.ECHR-EU-report-24-June-2014.docx](http://www.ohchr.org/sites/default/files/Documents/Issues/Environment/Mappingreport/14.ECHR-EU-report-24-June-2014.docx).

<sup>154</sup>See judgment of the German Federal Constitutional Court (*Bundesverfassungsgericht*) of 24 March 2021, 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20.

<sup>155</sup>C. Rodríguez-Garavito, 'Litigating the future: climate rights before the German Constitutional Court', *OpenGlobalRights*, 4 June 2021, available at [www.openglobalrights.org/litigating-the-future-climate-rights-before-the-german-constitutional-court/](http://www.openglobalrights.org/litigating-the-future-climate-rights-before-the-german-constitutional-court/).

<sup>156</sup>*Urgenda v. the Government of the Netherlands (Ministry of Infrastructure and the Environment)*, Judgment of 20 December 2019, 19/00135, Supreme Court of the Netherlands, para. 73.

recommendations on the mandatory human rights corporate due diligence legislation to explicitly recognize the right to a healthy environment based on the UN Special Rapporteur's report.<sup>157</sup>

Therefore, the jurisprudence of national and regional courts, as well as the interpretations on the UN level, prove that the EU member states have obligations to respect, protect, and fulfil the right to a safe, clean, healthy, and sustainable environment, due to their existing human rights obligations.

#### **4.2 Making monetary policy compliant with the right to a healthy environment**

According to Special Rapporteur Knox's report, existing human rights obligations require states to comply with the right to a healthy environment in their activities in other fields of international law, 'such as agreements for economic cooperation and international finance mechanisms'.<sup>158</sup> Indeed, Framework principle 13 prescribes that: 'States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.'<sup>159</sup>

The ECB is a supranational entity, meaning that it is an EU institution founded by the member states' agreement under TEU Article 13. Thus, the member states have an obligation to protect the rights of people in their jurisdiction while shaping the legal operation of the ECB. Indeed, the International Law Commission (ILC) has emphasized in the draft guidelines on the protection of the atmosphere that international agreements from different fields of law should 'be identified, interpreted and applied . . . with a view to avoiding conflicts',<sup>160</sup> because 'human activities governed by other fields of law have a bearing on the atmosphere and its protection'.<sup>161</sup> Although, in case of normative conflicts, the ILC solely refers to the relevant rules of the Vienna Convention on the Law of Treaties and, thus, it does not identify protection of the atmosphere as a peremptory norm of international law.

In this respect, the Guiding Principles on Human Rights Impact Assessments for Economic Reform Policies,<sup>162</sup> a soft law document drafted by the UN Independent Expert on foreign debt, provides the appropriate guidance for the member states to shape fiscal and monetary policies in the Union in line with their human rights obligations. The Guiding Principles aim to 'provide guidance for economic policymaking, in compliance with international human rights obligations to respect, protect and fulfil all human rights'.<sup>163</sup> They are shaped based on all core international human rights instruments<sup>164</sup> and the interpretations of those instruments that have been provided by authoritative organs. Indeed, for instance, in line with the framework provided by Knox during his mandate as UN Special Rapporteur, the right to a healthy environment is recognized under Principle 11. Principle 11(f) suggests that: 'Proposed economic reform measures should be informed by and align with individual and collective State measures to facilitate national and global environmental protection, *recognizing the interdependence between human rights and a healthy environment*.'<sup>165</sup>

<sup>157</sup>European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability, (2020/2129(INL)), at 20.

<sup>158</sup>UN Doc. A/HRC/37/59 (2018), *supra* note 140, at 16.

<sup>159</sup>*Ibid.*, at 15.

<sup>160</sup>Report of the International Law Commission, UN Doc. A/76/10 (2021), at 12.

<sup>161</sup>*Ibid.*, at 39.

<sup>162</sup>J. P. Bohoslavsky, Guiding principles on human rights impact assessments of economic reforms, UN Doc. A/HRC/40/57 (2018).

<sup>163</sup>*Ibid.*, at 4.

<sup>164</sup>Those instruments are, in particular; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination against Women; and the Convention on the Rights of Persons with Disabilities.

<sup>165</sup>UN Doc. A/HRC/40/57 (2018), *supra* note 162, at 11 (emphasis added).

In fact, Principle 11 emphasizes the role of policy coherence among state-based institutions in respect of integrating human rights obligations into decision-making processes. More specifically, Principle 11(c) refers to the monetary policy and suggests that its aim should be ‘respecting, protecting and fulfilling human rights’.<sup>166</sup>

It is clear that in respect of the right to a healthy environment, the member states have failed in shaping the monetary policy objectives of the ECB. Indeed, according to Principle 13, the member states have an ‘obligation to provide international assistance and cooperation in order to facilitate the full realization of all rights’.<sup>167</sup> In fact, the failure is not only related to the ECB’s legal mandate but can also be observed in the overall fiscal and economic policy framework. Whereas Principle 12 stipulates that debt sustainability should go hand in hand with human rights impact assessment and ‘debt sustainability is only achieved when debt service does not result in violations of human rights and human dignity and does not prevent the attainment of international development goals’,<sup>168</sup> neither the European Semester framework nor the recent policy responses to the COVID-19 pandemic includes a certain human rights impact assessment. Furthermore, enforcement of fundamental rights within the EU appears to be problematic. As explained in Section 3, the ECB is bound by Article 11 of the TFEU and Article 37 of the Charter of Fundamental Rights of the European Union. On this matter, the CJEU has provided that:

the special status conferred on the ECB within the institutional framework of the Treaties does not exempt it from the requirement to respect the fundamental rights of the Union or from its duty to contribute to the attainment of the objectives of the Union as set out in Articles 2, 3 and 6 TEU.<sup>169</sup>

In line with this ruling, Bolsinger argues that: ‘Compliance with EU Fundamental Rights must be specifically included into the eligibility criteria for ECB owned assets’.<sup>170</sup> In his view, nonetheless, the European Commission and the European Parliament have not successfully enforced this obligation. In terms of judicial enforcement, Article 35 of the Statute of the European System of Central Banks and of the European Central Bank stipulates that ‘the acts or omissions of the ECB’ are subject to judicial review of the CJEU.<sup>171</sup> Although, the national central banks can be held liable based on ‘their respective national laws’. On this legal basis, ClientEarth has recently sued the Belgian National Bank (NBB) before the Brussels’ French-Speaking Court of First Instance.<sup>172</sup> ClientEarth lawyers claim that the NBB’s participation in the Corporate QE program of the ECB was illegal because the Corporate QE program violates Article 11 of the TFEU and Article 37 of the Charter of Fundamental Rights of the European Union by channelling money to polluting sectors, as explained in Section 2. Therefore, the applicants demand the case be referred to the CJEU for a preliminary ruling. The CJEU’s decision will not have an impact only on the implementation of the Charter of Fundamental Rights of the European Union. Still, it will also decide whether the member states must be ‘mobilizing domestic resources in ways compatible

<sup>166</sup>*Ibid.*

<sup>167</sup>*Ibid.*

<sup>168</sup>*Ibid.*

<sup>169</sup>CJEU judgment of 23 May 2019, *Frank Steinhoff and Others v. European Central Bank*, T-107/17, ECLI:EU:T:2019:353, para. 98.

<sup>170</sup>H. J. Bolsinger, ‘Fundamental Rights in the Core Business of the ECB: No Issue?!’, in H. J. Bolsinger, J. Hoffmann and B. Villhauer (eds.), *The European Central Bank as a Sustainability Role Model* (2021), 19, at 23.

<sup>171</sup>Protocol No. 4 on the Statute of the European System of Central Banks and of the European Central Bank, *supra* note 12.

<sup>172</sup>ClientEarth, ‘Why ClientEarth is suing the central bank of Belgium for climate failings’, 13 April 2021, available at [www.clientearth.org/latest/latest-updates/news/why-clientearth-is-suing-the-central-bank-of-belgium-for-climate-failings/](http://www.clientearth.org/latest/latest-updates/news/why-clientearth-is-suing-the-central-bank-of-belgium-for-climate-failings/).

with environmental sustainability<sup>173</sup> in their monetary policies, ‘so that they are deliberately directed towards the realization of human rights’,<sup>174</sup> in line with Principle 9.

If the member states were to follow the Guiding Principles for a legal solution and respect fundamental rights, they should change the legal frameworks that apply to the ECB’s operation. For instance, even if the primary objective of the ECB is the maintenance of price stability, this goal may be subjected to the ‘do no significant harm’ principle with reference to the Taxonomy Regulation. More precisely, the TFEU Articles 127(1) and 282(2), as well as Article 2 of the Statute of the European System of Central Banks and of the European Central Bank, could be revised with the addition of the following article:

The European System of Central Banks must not significantly harm any of the environmental objectives set out in Article 9 of the Regulation (EU) No 2020/852 (Taxonomy Regulation), including when carrying out given tasks in order to achieve its primary objective.

In fact, this revision would be in line with Framework principle 8 of the right to a healthy environment, according to which ‘[s]tates should require the prior assessment of the possible environmental impacts of proposed projects and policies’.<sup>175</sup> Accordingly, the revision would not violate the principle of conferral of powers due to its reference to the Taxonomy Regulation concerning relevant EU environmental objectives. Moreover, while this revision would accordingly result in the exclusion of carbon-intensive activities and assets from the QE program and collateral frameworks, it would still be in accordance with the principle of an open market economy with free competition. Indeed, in light of the EGD’s goal to transform the economy into ‘an economy with net-zero GHG emissions’,<sup>176</sup> there is an assumption that a renewed open market economy will inherently favour sustainable economic activities. In other words, the goal by 2050 is to maintain free competition in an open market economy, in which only sustainable activities are allowed. Similarly, even under current market conditions, it would not violate the principle of equal treatment that every Union institution is obliged to comply with. Indeed, while the principle of equal treatment enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, according to the European Court of Justice’s interpretation, requires that ‘comparable situations must not be treated differently’,<sup>177</sup> Várhelyi argues that distinction of economic activities based on the Taxonomy Regulation’s criteria will ‘enable a distinction between assets without constituting discrimination as the situation of these assets will no longer be comparable’.<sup>178</sup>

The proposed revision, however, would come with its challenges. For instance, as discussed in Section 3, controversial technical screening criteria under the Taxonomy’s delegated acts would raise questions concerning the identification and screening of environmentally harmful economic activities. More importantly, there is also a structural challenge. The ECB’s operation is shaped based on the convergence of price stability and economic growth. It, in fact, overlaps with the EGD’s main trajectory of growth too. And the answer to the question ‘whether we can reduce emissions fast enough to stay within the carbon budgets for 1.5°C or 2°C, as per the Paris Agreement, while still continuing economic growth’,<sup>179</sup> must be answered in the negative, as discussed in Section 2. Therefore, even though underlying legal frameworks could make monetary policy ‘greener’, as long as the growth imperative is not abandoned within the macroeconomic

<sup>173</sup>UN Doc. A/HRC/40/57 (2018), *supra* note 162, at 9.

<sup>174</sup>*Ibid.*

<sup>175</sup>UN Doc. A/HRC/37/59 (2018), *supra* note 140, at 11.

<sup>176</sup>European Commission, *supra* note 4.

<sup>177</sup>CJEU judgment of 13 July 2018, *Dr. K. Chrysostomides & Co. LLC and Others v. Council of the European Union and Others*, T-680/13, ECLI:EU:T:2018:486, para. 441.

<sup>178</sup>Várhelyi, *supra* note 64, at 156.

<sup>179</sup>Hickel and Kallis, *supra* note 48, at 8.



policy strategy, it would not be green enough to prevent harmful impacts of climate change on the human right to a healthy environment. This is also why Bolsinger's suggestion for human rights due diligence in the ECB's operations is insufficient for a 'high level of environmental protection'.<sup>180</sup>

## 5. Conclusion

This article, overall, challenged 'neoliberal economics' prioritisation of economic growth over human rights goals<sup>181</sup> by particularly focusing on monetary policy objectives in the context of the ECB. Indeed, the legal interpretation of relevant law and policy frameworks has demonstrated that economic growth precedes environmental sustainability, both as part of the primary objective price stability and overall economic policy framework of the European Union. In other words, whereas economic growth has been stipulated as a secondary objective in the European Central Bank law, it is inherent to the contributions that the primary objective is aimed to make. In addition, the key role of economic growth can be observed in even current existing and proposed legal frameworks that can guide the ECB to integrate sustainability considerations in the monetary policy. Thus, legal frameworks governing the European Central Bank's operation do not respond to the obligations under the human right to a healthy environment. This demonstrates the failure of the member states to comply with their human rights obligations. Whereas there may be suggestions to revise the law of the ECB, economic growth is a structural imperative in the European Union's social market economy<sup>182</sup> that is now given a 'green' orientation, and revisions in legal frameworks would have a limited impact on achieving environmentally sustainable central banking. And such efforts in the legal scholarship should not ignore this structural reality that affects the ECB's operations.

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<sup>180</sup>TEU, 3(3).

<sup>181</sup>A. Nolan and J. P. Bohoslavsky, 'Human Rights and Economic Policy Reforms', (2020) 24 *International Journal of Human Rights* 1247, at 1248.

<sup>182</sup>See for further analysis on the Christian-influenced German origin of this body of thought, C. Watrin, 'The Principles of the Social Market Economy - its Origins and Early History', (1979) 135 *Journal of Institutional and Theoretical Economics* 3, 405–25.