The response of the European Central Bank to the current pandemic crisis: monetary policy and prudential banking supervision decisions

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Abstract

Immediately after the outbreak of the current pandemic crisis, the EU developed a (rather) consistent strategy, by taking measures in order to deal with health emergency needs, support economic activity and employment, preserve monetary and financial stability and prepare the ground for recovery; these contain a combination of government fiscal *stimuli* (with extensive resort to the principle of solidarity), emergency liquidity and monetary policy measures and measures relating to financial stability. After briefly reviewing all these measures from a systematic point of view, the present article further analyses the role of the European Central Bank (ECB) during the first phase of this crisis, both in its capacity as a monetary authority within the Eurosystem and in its capacity as prudential banking supervisory authority within the Single Supervisory Mechanism (SSM), with particular emphasis on the treatment of non-performing loans (NPLs). Its specific contribution to financial macro-prudential oversight within European Systemic Risk Board (ESRB) is also highlighted.

Keywords: pandemic crisis, ECB, ESRB, conventional monetary policy measures, unconventional monetary policy measures, SSM, EBA, micro-prudential supervision, NPLs, "Basel III impact", macro-prudential buffers, CRR

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A. General overview

I. The various measures taken at global level and the sub-optimal level of international cooperation

(1) The current COVID-19[2] pandemic (hereinafter the 'pandemic crisis') is an unprecedented, extraordinary challenge, with severe social and economic consequences around the globe. As the General Manager of the Bank for International Settlements ('BIS') eloquently pointed out: *"The Covid-19 pandemic and the induced global lockdown are a truly historic event. Never before has the global economy been deliberately put into an induced coma. This is no normal recession, but one that results from explicit policy choices to avoid a large-scale public health disaster. The unique character of this recession poses unfamiliar challenges"*.[3]

(2) The economic policy response to this crisis was unprecedented as well. All countries affected have immediately undertaken initiatives and, based thereon, taken measures aiming at four (in the author's view, equally important) objectives: dealing with health emergency needs; supporting economic activity and employment; preserving monetary and financial stability; and preparing the ground for recovery. These contain a combination of extensive government fiscal *stimuli*, emergency liquidity and monetary policy measures by central banks and measures relating to the application of financial micro- and macro-prudential regulations.[4] With regard to the focus of fiscal support, four pillars can be identified:

The *first* has expectedly been the provision of funding to address (mainly or concurrently) spending on public healthcare.

Second, direct support of financing for companies in the real sector of the economy, especially for (but not in all cased confined to) SMEs, has also been addressed in a thorough way. This is also the goal (*via* indirect channels) of the monetary policy measures adopted by central banks, the flexibility proposed by supervisory authorities in the application of micro-prudential banking regulations, and the release of capital and liquidity buffers. It is noted in this respect that the guidance on micro-and macro-prudential banking regulations aims at inducing banks to finance the real sector of the economy without allowing (at least in the short-term) for the built-up of conditions of financial instability (which is, indeed, a very delicate exercise).

The *third* pillar of the measures taken and proposed, closely related to the second, is the support of employment.

[2] The coronavirus disease of 2019, named COVID-19 by the World Health Organisation (WHO), is caused by the "Severe Acute Respiratory Syndrome coronavirus-2" (SARS-CoV-2) (previously known as the "2019 novel coronavirus"); see at: https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it.

[3] See Carstens, Aug. (2020): *Countering Covid-19: The nature of central banks' policy response*, Opening remarks at the UBS High-level Discussion on the Economic and Monetary Policy Outlook, Zurich, 27 May (available at: https://www.bis.org/speeches/sp200527.htm), pp. 1-2. On the most recent projections of the International Monetary Fund ('IMF') concerning the impact of the crisis on economic growth, see its June 2020 *World Economic Outlook Update*, available at: https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020?utm_medium=email&utm_source=govdelivery.

[4] *Inter alia*, an online peer-reviewed review to disseminate emerging scholarly work on this pandemic, developed by the Centre for Economic Policy Research (CEPR), is available at: https://cepr.org/content/covid-economics-vetted-and-real-time-papers-0; see also, by way of mere indication, Baldwin, R. and B. Weder di Mauro (2020): *Economics in the time of COVID-19: A new eBook*, 6 March, available at: https://voxeu.org/ article/economics-time-covid-19-new-ebook.

Finally, the *fourth* pillar is the support of economies' recovery in the medium- to long-term.[5]

Their life cycle varies as well: while some are earmarked for the entire (albeit not clear yet) duration of the crisis and would thereafter be discontinued, others have a medium- to long-term horizon.

(3) Nevertheless, even though the nature of measures taken in almost all jurisdictions is quite similar, a coordinated and comprehensive strategy at international level to deal with the above-mentioned economic policy objectives was not put in place effectively, or at least not across the board. Unlike in the case of the recent (2007-2009) Global Financial Crisis ('GFL'), the element of unilateralism is more than evident. The interventions of the G20, at the level of heads of state and government, were comparatively vague,[6] while, in the field of financial regulation, the role of international financial fora (standard setters), such as, mainly, the Financial Stability Board ('FSB') and the Basel Committee on Banking Supervision and, to a lesser extent, the International Organisation of Securities Commissions ('IOSCO') has not been as active as during the GFC;[7] times are different.

It is also noted, in passing, that two additional elements clearly set the current pandemic crisis apart from the GFL: *first*, its root cause: it is a rather genuine "black swan" (*cygnus atratus*) event, which originates in a health disaster, and in any case not a crisis caused by failings of the financial sector; *second*, the first-round focus is on the rescue of companies in the economy's real sector; also, banks, which were at the centre of the GFC, are currently, on a global scale, much better capitalised and with stronger liquidity (the "Basel III impact"[8]).

II. The EU response

1. Introductory remarks

In the European Union ('EU'), by contrast, the degree of cooperation was much higher and resulted to coordinated measures constituting a (rather) consistent strategy, which has taken into account the spill-overs and interlinkages between EU economies and the need to preserve confidence and

[5] For a summary of the measures taken on a global basis, on a comparative basis and continuously updated, see the International Monetary Fund (IMF) Policy Tracker "Policy Responses to COVID-19" (at: https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19) and the Yale Program on Financial Stability's "COVID-19 Financial Response Tracker" (at: https://docs.google.com/spreadsheets/d/1s6EgMa4KGDfFzcsZJKqwiH7yqkhnCQtW7gI7eHpZuqg/edit#gid=0).

[6] There were only two official "G20 Statements on COVID-19", of 12 and 26 March 2020 (available at: https://g20.org/en/media/Documents/G20%20Sherpas%27%20Statement%20on%20COVID-19%20-%20March%2012%2c%202020_v9%20%28clean%29.pdf and https://www.gov.uk/government/news/g20-leaders-summit-statement-on-covid-19-26-march-2020, respectively).

[7] On these international fora, see Gortsos (2019): *The Evolution of European (EU) Banking Law under the Influence of (Public) International Banking Law: A Comprehensive Overview*, available at: https://ssrn.com/abstract=3334493, pp. 60-63, 94-96 and 105-124, respectively. For an overview of all measures taken by international financial fora in relation to the crisis, see the "EBI Report on the 'Pandemic Crisis-Related' Economic Policy and Financial Regulation Measures: International, EU and Euro Area Levels" (updated on a weekly basis), available at: https://ebi-europa.eu/ebi-updated-report-on-the-pandemic-crisis-related-economic-policy-and-financial-regulation-measures-international-eu-and-euro-area-levels.

[8] On this aspect, see Section C below, under II.

stability.[9] Even though the cooperation/coordination game is not optimal, it is still predominant and the repeated reference and resort to the principle of solidarity is noteworthy.[10]

2. Monetary policy – prudential banking regulation and supervision

The European Central Bank ('ECB'), in its dual capacity as monetary agency within the Eurosystem and banking supervisory authority within the Single Supervisory Mechanism ('SSM'), has adopted bold monetary policy decisions and measures relating to the application of banking micro- and (mainly) macro-prudential regulations, in the latter case, in close cooperation with the European Banking Authority ('EBA'). These aspects are analytically discussed, in turn, in Sections B and C.

3. Other aspects of financial stability

(1) At euro area level, the Chair of the Single Resolution Board ('SRB'), Elke König, made three interventions in relation to credit institutions' resolution planning on the basis of an approach which is based on two complementary pillars, namely preservation of financial stability and flexibility in the application of the resolution framework: on 1 April, "Letter to banks under the SRB's remit on potential operational relief measures related to the COVID-19 outbreak" and "An extraordinary challenge: SRB actions to support efforts to mitigate the economic impact of the COVID-19 outbreak"; and on 8 April, "COVID-19 crisis: the SRB's approach to MREL targets".[11] Even though this aspect is not the subject of this article, it is worth noting that the ECB's role in resolution is also important to the extent that (basically) it is on the basis of its assessment that a significant credit institution is determined as failing or likely to fail, paving the way for resolution action by the SRB.[12]

(2) The European Securities and Markets Authority ('ESMA') has also taken a series of measures in relation to capital markets regulation, including by prohibiting specific actions and practices (guidance on accounting implications; postponement of publication dates for periodic reports;

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[9] See the Eurogroup's Report of 9 April 2020 entitled "on the comprehensive economic policy response to the COVID-19 pandemic", paras. 1-2 (available at: https://www.consilium.europa.eu/en/press/press-releases/2020/04/09/report-on-the-comprehensive-economic-policy-response-to-the-covid-19-pandemic); this Report is analysed in Gortsos (2020a): *The EU policy response to the current pandemic crisis through the lens of the Eurogroup Report of 9 April 2020: overview and assessment*, available at: https://ssrn.com/abstract=3579010.

[10] For a general overview (as of 10 May 2020), see Busch, D. (2020): "Is the European Union going to help us overcome the COVID-19 crisis?", in Gortsos, Ch.V. and W.G. Ringe (editors): *Pandemic Crisis and Financial Stability*, European Banking Institute (EBI), e-book, no. 1, pp. 3-42, available at: https://ssrn.com/abstract= 3607930. For an overview of all measures taken at EU level in relation to the crisis, see the above-mentioned "EBI Report on the 'Pandemic Crisis-Related' Economic Policy and Financial Regulation Measures: International, EU and Euro Area Levels".

[11] Available, respectively at: https://srb.europa.eu/en/node/965, https://srb.europa.eu/en/node/966 and https://srb.europa.eu/en/node/967.

[12] On this aspect and the overall implications of the current crisis on the application of EU banking resolution framework, see Gortsos, Ch. V. (2020b): "The application of the EU banking resolution framework amidst the pandemic crisis", in Gortsos, Ch.V. and G. Ringe (editors): *Pandemic Crisis and Financial Stability*, *op. cit*., no. 11, pp. 361-390.

measures relating to short selling bans; maintenance of conduct of business obligations under MiFID II; highlighting of challenges for rating Collateralised Loan Obligations).[13]

(3) Finally, of significant importance is also the contribution of the European Systemic Risk Board ('ESRB'), in the field of financial macro-prudential oversight, to address pandemic-related systemic vulnerabilities.[14] Since the ECB is heavily involved in the operation and the decision-making process of the ESRB, it can reasonably be argued that this is yet another field in which the ECB's contribution was significant as well. In this respect it is noted that, on 6 and 27 May 2020, respectively, its General Board took two sets of actions in response to the coronavirus crisis, addressing five major issues:[15] implications for the financial system of fiscal measures to protect the real economy; market illiquidity and implications for asset managers and insurers; impact of large-scale downgrades of corporate bonds on markets and entities across the financial system; system-wide restraints on dividend payments, share buybacks and other pay-outs; and liquidity risks arising from margin calls.

4. Fiscal *stimuli*[16]

4.1 The completed agenda

The main underlying principles on all EU measures taken in this field are five: flexibility in the application of EU fiscal and competition rules and in the use of the EU budget; a blend of targeted and horizontal fiscal measures; differences in time horizon (short-term- *vs*. medium-term- *vs.* long-term-oriented measures and instruments); flexibility in the application *and* re-activation of existing mechanisms and measures; and establishment of selected new instruments and funds. In particular:

(1) *First*, with a view to a flexible application of EU fiscal rules, in its Communication of 20 March 2020 "on the activation of the general escape clause of the Stability and Growth Pact ['SGP']",[17] the Commission assessed, that the conditions for the use of this clause of the EU fiscal framework, namely a severe economic downturn in the euro area or the EU as a whole, are

[13] On this aspect, see Moloney, N, and Conac, P.-H. (2020): "EU Financial Markets and the Covid-19 Crisis", *European Company and Financial Law Review*, 2020, no. 3 (forthcoming), and Enriques, L. and M. Pagano (2020): "Emergency measures for equity trading: the case against short-selling and stock exchange shutdowns", in Gortsos, Ch.V. and W.G. Ringe (editors): *Pandemic Crisis and Financial Stability*, *op. cit.*, no. 13, pp. 413-428.

[14] On the role of the ECB in the ESRB, see Gortsos, Ch.V. (2020c): *European Central Banking Law – The Role of the European Central Bank and National Central Banks under European Law*, Palgrave Macmillan Studies in Banking and Financial Institutions, Palgrave Macmillan, Cham – Switzerland, pp. 371-373.

[15] Available at: https://www.esrb.europa.eu/news/pr/date/2020/html/esrb.pr200514~bb1f96a327.en.html and https://www.esrb.europa.eu/news/pr/date/2020/html/esrb.pr200608~c9d71f035a.en.html, respectively.

[16] For a detailed analysis, see Hadjiemmanuil, Ch. (2020): "European economic governance and the pandemic: Fiscal crisis management under a flawed policy process", in Gortsos, Ch.V. and W.G. Ringe (editors): *Pandemic Crisis and Financial Stability*, *op. cit.*, no. 6, pp. 175-243 (cut-off date 19 May).

[17] COM(2020) 123 final, available at: https://ec.europa.eu/info/sites/info/files/economy-finance/2_en_act_part1_v3-adopted_text.pdf.

fulfilled.[18] Overall fiscal guidance will be provided within this framework and as part of a streamlined "European Semester for economic policy coordination exercise".[19]

Furthermore, pursuant to Commission Communication of 20 March (2020/C 91 I/01) on a "Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak", public support can be extended to companies under more flexible conditions, while ensuring the necessary level playing field in the single market.[20] This framework also applies to credit institutions in relation to their precautionary recapitalisation.[21]

Finally, in terms of flexibility in the use of the EU budget, since 1 April, the European Parliament and the Council have made available, with a view to making best use of existing EU budget resources to fight the pandemic crisis, the "Coronavirus Response Investment Initiative" ('CRII'), which allows Member States to have access to liquidity in order to address spending on healthcare, support to short time work schemes and support to the SMEs' working capital.[22] In addition, as of 1 April as well, the scope of the "European Union Solidarity Fund" ('EUSF'), set up in 2002 to respond to major natural disasters and express solidarity to regions within Europe heavily affected by crises,[23] was also broadened to include major public health crises, allowing the hardest hit Member States to get access to financial support of up to 800 million euros in 2020.[24]

(2) On the basis of Article 122 of the Treaty on the Functioning of the European Union ('TFEU') on "EU economic solidarity", the Council adopted two instruments. Given a broad consensus on the need for a "dedicated COVID-19 instrument" to support the financing of emergency aid, through the provision of grants, in order to, foremost, reinforce EU healthcare systems, on 14 April, it adopted, on the basis of Article 122(1) TFEU, Regulation (EU) 2020/521 "activating the emergency support under Regulation (EU) 2016/369 [of 15 March 2016[25]] and amending its provisions taking into account the COVID□19 outbreak".[26] *In addition*, on 19 May it adopted Regulation (EU) 2020/672 "on the establishment of a European instrument for temporary support

[18] See the "Statement of EU ministers of finance on the [SGP] in light of the COVID-19 crisis", available at: https://www.consilium.europa.eu/en/press/press-releases/2020/03/23/statement-of-eu-ministers-of-finance-on-the-stability-and-growth-pact-in-light-of-the-covid-19-crisis. The 'general escape clause' is laid down in Articles 5(1), 6(3), 9(1) and 10(3) of Council Regulation (EC) 1466/97, as well as in Articles 3(5) and 5(2) of Council Regulation (EC) 1467/97 (both of 7 July 1997 and as in force), namely, the SGP's two pillars.

[19] The European Semester was introduced by Council Regulation (EU) No 1175/2011 of 16 November 2011 (OJ L 306, 23.11.2011, pp. 12-24), which amended Council Regulation (EC) 1466/97.

[20] OJ C 91 I, 20.3.2020, pp. 1-9. This Communication has already been amended twice: on 3 April, to extend the Temporary Framework to cover support for research, testing and production relevant in the fight against the crisis (OJ C 112I, 4.4.2020, pp. 1-9) and on 8 May (OJ C 164, 13.5.2020, pp. 3-15).

[21] See Gortsos, Ch. V. (2020b), *op. cit*., pp. 379-381.

[22] On the CRII, see at: https://ec.europa.eu/regional_policy/en/newsroom/coronavirus-response. On 2 April, the Commission proposed a complementary set of measures to mobilise support against the crisis under the "Coronavirus Response Investment Initiative Plus" ('CRII+'), which will allow the flexible and full mobilisation of all non-utilised support from the European Structural and Investment Funds; see at: https://ec.europa.eu/regional_policy/en/newsroom/news/2020/04/04-02-2020-coronavirus-response-investment-initiative-plus-new-actions-to-mobilise-essential-investments-and-resources.

[23] On this Fund, see at: https://ec.europa.eu/regional_policy/en/funding/solidarity-fund.

[24] See further at: https://ec.europa.eu/regional_policy/en/funding/solidarity-fund/covid-19.

[25] OJ L 70, 16.3.2016, pp. 1-6.

[26] OJ L 117, 15.4.2020, pp. 3-8.

to mitigate unemployment risks in an emergency ('SURE') following the COVID-19 outbreak", on the basis of Article 122(1)-(2) TFEU.[27] This temporary, for the duration of the crisis, loan-based instrument will provide financial assistance in the form of loans granted on favourable terms from the EU to Member States, of up to 100 billion euros;[28] primarily, it will support efforts to protect workers and jobs, while respecting national competences in the field of social security systems, *and* health-related measures.

(3) Given that the European Stability Mechanism ('ESM') is equipped with instruments that could be used, as needed, in a manner adapted to the nature of the symmetric shock caused by the pandemic crisis, the Eurogroup proposed the establishment of a "Pandemic Crisis Support" instrument, based on the existing ESM "ECCL precautionary credit line" and adjusted in light of the crisis, as a relevant safeguard for euro area Member States affected by it. The credit line was made operational by the ESM Board of Governors on 15 May 2020[29] and is available for the duration of the pandemic crisis with standardised terms agreed in advance by ESM Governing Bodies, reflecting the current challenges, on the basis of up-front assessments by EU institutions and in compliance with the provisions of the ESM Treaty. Euro area Member States' access to the credit line is conditional on their commitment to use it in order to support domestic financing of direct and indirect healthcare, cure and prevention related costs due to the crisis. As a benchmark, access granted amounts up to 2% of the requesting Member State's GDP as of end-2019.

(4) It is finally noted that, on 26 May 2020, the Board of Directors of the European Investment Bank ('EIB') agreed on the structure and business model of a "Pan-European guarantee fund" of 25 billion euros, which will support 200 billion euros of financing for companies with a focus on SMEs, throughout the EU, including through national promotional banks.[30] This was deemed to be important in order to preserve the level playing field of the single market in light of national support schemes.

4.2 The uncompleted agenda

The above overview did not touch upon two important aspects of the 'uncompleted agenda' on EU fiscal policy measures:

(1) The creation of a "Recovery Fund" is also deemed necessary to prepare for and support EU recovery; its concrete *modus operandi*, however, still remains subject to political deliberations.[31]

(2) In addition, there are (yet again) discussions on the issuance of stability bonds (also known as Eurobonds or, currently, "Coronabonds"). It is noted in this respect that the introduction of such bonds, apart from the underlying political sensitivity (in view of strongly diverging positions

[27] OJ L 159, 20.5.2020, pp. 1-7.

[28] The "guarantee scheme" under this instrument, based on contributions from Member States to the EU to underpin the financial assistance, is based on Article 122(1), while the organisation and management of the "loan scheme" is on Article 122(2), underpinning the instrument's lending component.

[29] See at: https://www.esm.europa.eu/content/europe-response-corona-crisis.

[30] See at: https://www.eib.org/en/about/initiatives/covid-19-response/index.htm.

[31] On this aspect see, by way of mere indication, Lamandini, M., Ottolenghi, G. and D. Ramos Muñoz (2020): "What recovery fund for Europe? (for a dedicated equity line for business and sound fiscal policy", in Gortsos, Ch.V. and W.G. Ringe (editors): *Pandemic Crisis and Financial Stability*, *op. cit.*, no. 7, pp. 245-264 (with extensive further references).

among Member States), may ultimately be constrained in terms of compatibility with Article 125 TFEU on the "no-bail-out clause".[32]

[32] On the feasibility of introducing stability bonds, under three alternative scenarios and on the basis of a cost-benefit analysis, see the Commission's "Green Paper on Stability Bonds" of 23 November 2011 (COM(2011) 818 final), available at: https://ec.europa.eu/economy_finance/articles/governance/2011-11-23-green-paper-stability-bonds_en.htm. See also the European Parliament resolution of 15 February 2012 on the feasibility of introducing stability bonds (2011/2959(RSP)), available at: https://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-46. Out of a vast existing literature on this issue, see Ubide, Án. (2015): *Stability Bonds for the Euro Area*, Peterson Institute of International Economics, Policy Brief, Number P B 15-19, October (with extensive further references).

B. Monetary policy measures by the European Central Bank (ECB) within the Eurosystem

I. Conventional monetary policy measures (general framework)[33]

1. Introductory remarks

Considering that, due to the pandemic crisis, economic activity across the euro area will inevitably suffer a considerable contraction, the ECB has adopted, since March 2020, bold monetary policy, liquidity-supporting measures, aimed at both preserving the smooth provision of credit to the economy *and* ensuring that all its sectors can benefit from supportive financing conditions in order to absorb the implications of the crisis. They were adopted with a view (and are proportionate) to ensuring the Eurosystem's primary objective of price stability[34] and the proper functioning of the monetary policy transmission mechanism,[35] while also countering the serious risks to the euro area economic outlook. It is also noted that the key interest rates on the main refinancing operations, the marginal lending facility and the deposit facility have been set, with effect from 18 September 2019, at 0%, 0.25% and -0.50%, respectively, and remain since then unchanged. In this respect, the ECB Governing Council ('GC') announced that it *"expects them to remain at these or even lower levels until it has seen the inflation outlook robustly converge to a level sufficiently close to, but below, 2% within its projection horizon, and such convergence has been consistently reflected in underlying inflation dynamics"*.[36]

2. Decisions relating to the third series of targeted longer-term refinancing operations

(1) In order to support bank lending, during the crisis, to small and medium-sized enterprises, the ECB adopted, on 16 March 2020, Decision 2020/407 "amending Decision (EU) 2019/1311 [of 22 July 2019[37]] on a third series of targeted longer-term refinancing operations ['TLTRO-III'] (ECB/2020/13)".[38] In this respect, the GC decided to modify three parameters of TLTRO-III: increase the borrowing allowance from 30% to 50%; modify the maximum bid limit for individual such operations; and, starting from September 2021, offer an early repayment option for amounts borrowed under TLTROs-III twelve (instead of 24) months after the settlement of each operation.

(2) Moreover, on 30 April, in order to further support the provision of credit to households and firms, an additional temporary reduction in interest rates applied to all TLTROs-III (under conditions) was introduced by Decision (EU) 2020/614 "amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2020/25)".[39]

[33] For an overview of the framework governing the ECB conventional monetary policy measures ("general framework" in its terminology) (just) before the pandemic crisis, see Gortsos, Ch.V. (2020c), *op. cit*., pp. 286-297.

[34] *Inter alia*, this is laid down in Article 127(1), first sentence TFEU.

[35] On the transmission mechanism of monetary policy effects, *see* European Central Bank (2011): *The Monetary Policy of the ECB*, European Central Bank, third edition, May, pp. 58-62.

[36] See the ECB Press Release of 4 June 2020 "Monetary Policy Decisions", point (6), available at: https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.mp200604~a307d3429c.en.html.

[37] ECB/2019/21; OJ L 204, 2.8.2019, pp. 100-122.

[38] OJ L 80, 17.3.2020, pp. 23-24.

[39] OJ L 141, 5.5.2020, p. 28-36.

3. Implementation of the Eurosystem monetary policy framework and the valuation haircuts applied therein

On 7 April 2020, the GC adopted Decision (EU) 2020/506 "amending Guideline (EU) 2015/510 on the implementation of the Eurosystem monetary policy framework and Guideline (EU) 2016/65 on the valuation haircuts applied in the implementation of the Eurosystem monetary policy framework (ECB/2020/20)".[40] In respect of this legal act, the following is noted:

(1) The aim of the amendments to Guideline (EU) 2015/510 of 19 December 2014 (ECB/2014/60)[41] was to introduce temporary collateral easing measures to facilitate Eurosystem counterparties in maintaining sufficient eligible collateral in order to be able to participate in all liquidity-providing operations. In particular, under the amended Article 93 (on the minimum size of credit claims), for domestic use, credit claims must, at the time of their submission as collateral by the counterparty, meet a minimum size threshold of 0 euros, or any higher amount laid down by the home national central bank ('NCB'). For cross-border use, applicable is a minimum size threshold of 500,000 euros. In addition, in Article 141(1) (on limits with respect to unsecured debt instruments issued by credit institutions and their closely linked entities) the percentage value 2,5% was increased to 10%.[42]

(2) On the other hand, the decision to amend Guideline (EU) 2016/65 of 18 November 2015 (ECB/2015/35)[43] was based on the ECB's decision to temporarily increase its willingness to take on risks to support credit provision through its refinancing operations.[44] In particular, the valuation haircuts applied to collateral were reduced by a fixed factor as follows:

First, further to the valuation haircuts laid down in Article 3 of the Guideline, applicable are also the following *additional* valuation haircuts: (i) a valuation markdown of 4% applies to asset-backed securities, covered bonds and unsecured debt instruments issued by credit institutions that are theoretically valued in accordance with the rules contained in Article 134 of Guideline (EU) 2015/510; (ii) an additional valuation haircut of 6,4% (applied to the value of debt instruments allocated to credit quality steps 1-2) and 9,6% (applied to the value of such instruments allocated to credit quality step 3) applies to "own-use" covered bonds.[45]

Second, non-marketable retail mortgage-backed debt instruments are subject to a valuation haircut of 25,2%.[46]

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[40] OJ L 109, 8.4.2020, pp. 1-6. To react promptly to the pandemic situation, these amendments should be made by a Decision, which takes effect on the date of notification to the NCBs, and be published without delay in the *OJ* (Decision (EU) 2020/506, recital (7)).

[41] OJ L 91, 2.4.2015, pp. 3-135.

[42] Decision (EU) 2020/506, Article 1.

[43] OJ L 14, 21.1.2016, pp. 30-35.

[44] Decision (EU) 2020/506, recital (5).

[45] If this additional valuation haircut cannot be applied with respect to a collateral management system of an NCB, triparty agent or TARGET2-Securities for auto-collateralisation, it will be applied in such systems or platform to the entire issuance value of the covered bonds that can be own used (*ibid.*, Article 2(1), amending Article 4 of Guideline (EU) 2016/65). "Own-use" covered bonds are those issued or guaranteed by the counterparty itself or by any other entity with which that counterparty has close links as determined in accordance with Article 138 of Guideline (EU) 2015/510.

[46] *Ibid*., Article 2(2), amending Article 5(5) of Guideline (EU) 2016/65.

II. Unconventional monetary policy measures (temporary framework)[47]

1. Establishment of the "Pandemic Emergency Purchase Programme" (PEPP)

(1) This new (and separate) Asset Purchase Programme ('APP') was established by virtue of Decision (EU) 2020/440 of the ECB of 24 March 2020 "on a temporary pandemic emergency purchase programme (ECB/2020/17)."[48] This Program of EUR 750 billion[49] entered into force on 25 March and is governed by the following:

First, Eurosystem central banks can, in principle, purchase the following types of assets:[50] eligible marketable debt securities in accordance with ECB Decision (EU) 2020/188 of 3 February 2020 "on a secondary markets public sector asset purchase programme ['PSPP'] (ECB/2020/9)";[51] eligible corporate bonds and other marketable debt instruments in accordance with ECB Decision (EU) 2016/948 of 1 June 2016 "on the implementation of the corporate sector purchase programme ['CSPP'] (ECB/2016/16)";[52] eligible covered bonds in accordance with ECB Decision (EU) 2020/187 of 3 February 2020 "on the implementation of the third covered bond purchase programme (ECB/2020/8)" (recast);[53] and eligible asset-backed securities ('ABS's) in accordance with ECB Decision (EU) 2015/5 of 19 November 2014 "on the implementation of the asset-backed securities purchase programme (ECB/2014/45)".[54]

Second, in order to be eligible for purchase under the PEPP, marketable debt securities must have a minimum remaining maturity of 70 days and a maximum remaining maturity of 30 years at the time of their purchase; instruments with a remaining maturity of 30 years and 364 days are eligible for the sake of facilitating smooth implementation.[55]

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[47] For an overview of unconventional monetary policy measures and the framework governing such ECB monetary policy measures (the "temporary framework" in its terminology) (just) before the pandemic crisis, see Gortsos, Ch.V. (2020c), *op. cit*., pp. 12-14 and 297-300, respectively (with extensive further references).

[48] OJ L 91, 25.3.2020, pp. 1-4. On this program, see details in Grund, S. (2020): *The Legality of the European Central Bank's Pandemic Emergency Purchase Programme*, available at: https://ssrn.com/abstract=3558677, Lastra, R. and K. Alexander (2020): *The ECB Mandate: Perspectives on Sustainability and Solidarity*, In-depth analysis, Monetary Dialogue Papers, European Parliament, June, available at: https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/648813/IPOL_IDA(2020)648813_EN.pdf, pp. 17-19 (also briefly discussing some of the other recent monetary policy measures), and Smits, R. (2020): *The European Central Bank's pandemic bazooka: mandate fulfilment in extraordinary times*, EU Law Live, Banking & Finance, COVID-19, Op-Ed, 23 March, available at: https://eulawlive.com/op-ed-the-european-central-banks-pandemic-bazooka-mandate-fulfilment-in-extraordinary-times-by-rene-smits.

[49] Decision (EU) 2020/440, Article 1(1).

[50] *Ibid*., Article 1(3).

[51] OJ L 39, 12.2.2020, pp. 12-18. The discussion of the (multidimensionally important) recent (May 2020) Ruling of the German Constitutional Court on this programme in the so-called "Weiss case" is beyond the scope of this paper.

[52] OJ L 157, 15.6.2016, pp. 28-32.

[53] OJ L 39, 12.2.2020, pp. 6-11.

[54] OJ L 1, 6.1.2015, pp. 4-7.

[55] Decision (EU) 2020/440, Article 2. Despite the requirements set forth in Article 3(2) of Decision (EU) 2020/188, euro-denominated marketable debt securities issued by the central government of the Hellenic Republic are eligible for purchases if they comply with the criteria for purchases as set out in Article 3(4) of that Decision (*ibid*., Article 3).

Third, purchases are carried out to the extent deemed necessary and proportionate to counter the threats posed by the extraordinary conditions on the Eurosystem's ability to fulfil its mandate.[56]

Fourth, the allocation of cumulative net purchases of marketable debt securities issued by eligible governments and recognised agencies across euro area eligible jurisdictions is guided, on a stock basis, by the respective NCBs' subscription to the ECB's capital (Article 29 of the Statute of the European System of Central Banks and of the ECB ('ESCB/ECB Statute'); purchases must be conducted in a flexible manner allowing for fluctuations in the distribution of (purchase) flows over time, across asset classes and among jurisdictions.[57]

Finally, the Eurosystem can make securities purchased under the PEPP available for lending, including repos, with a view to ensuring the effectiveness of the Program.[58]

(2) At its meeting of 4 June 2020, the GC decided to increase the PEPP's envelope to a total of 1,350 billion euros with a view to further easing the general monetary policy stance. Purchases continue to be conducted in a flexible manner over time, across asset classes and among jurisdictions. The horizon for net purchases under this Program has been extended to the end of June 2021, while the GC will conduct net asset purchases until it judges that the crisis phase is over. The maturing principal payments from securities purchased under the PEPP will be reinvested until at least the end of 2022.[59]

2. Amendments to the corporate sector purchase programme (CSPP)

Pursuant to Decision (EU) 2020/441 of the ECB of 24 March 2020 "amending [the above-mentioned] Decision (EU) 2016/948 "on the implementation of the corporate sector purchase programme (ECB/2020/18)",[60] the range of eligible assets under the (above-mentioned) "Corporate Sector Purchase Programme" (CSPP) was extended to non-financial commercial papers, making all commercial papers of sufficient credit quality eligible for purchase thereunder. In particular:

first, in accordance with the new point (2) of Article of ECB Decision (EU) 2016/948, the minimum remaining maturity for marketable debt instruments with an initial maturity of 365/366 days or less will be 28 days at the time of its purchase by the relevant Eurosystem central bank;

on the other hand, if their initial maturity is 367 days or more, the minimum remaining maturity shall be 6 months and the maximum remaining maturity 30 years and 364 days at the time of its purchase by the relevant Eurosystem central bank.

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[56] For the sake of effectiveness, the consolidation of holdings under Article 5 of Decision (EU) 2020/188 (ECB/2020/9) does not apply to PEPP holdings (*ibid*., Article 4).

[57] *Ibid*., Article 5(1)-(2). The Executive Board has been given the power to set the appropriate pace and composition of PEPP monthly purchases; the purchase allocation may be adjusted to allow for fluctuations in the distribution of purchase flows, over time, across asset classes and among jurisdictions (*ibid*., Article 5(3)). Article 6 governs disclosure requirements.

[58] *Ibid*., Article 7.

[59] See the (above-mentioned) ECB Press Release of 4 June 2020 "Monetary Policy Decisions", points (1)-(3).

[60] OJ L 91, 25.3.2020, pp. 5-6.

3. Additional temporary measures relating to Eurosystem refinancing operations and to eligibility of collateral

(1) With a view to mitigating the adverse impact on collateral availability of potential severe rating downgrades resulting from the pandemic crisis, on 7 April 2020 the ECB adopted Guideline (EU) 2020/515 "amending Guideline ECB/2014/31[61] on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (ECB/2020/21)".[62] This legal act lays down collateral easing measures, including by reducing the valuation haircuts applied to certain collateral assets, to facilitate Eurosystem counterparties in maintaining and mobilising sufficient collateral in order to be able to participate in its liquidity-providing operations. Hence, participation in these operations will be based on amended collateral eligibility criteria and risk control measures.[63]

The additional measures set out in the amendments introduced under the Guideline apply temporarily and the need for extending any of these should be re-assessed by the GC before the end of the year to ensure an appropriate monetary policy transmission mechanism. In doing so, the GC must also take into account the need of Eurosystem counterparties that are, or will be, participating in TLTROs conducted under (the above-mentioned) ECB Decision (EU) 2019/1311.[64]

(2) Further to the above collateral easing measures, the ECB adopted on 7 May 2020 its Guideline (EU) 2020/634 "amending Guideline ECB/2014/31 on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral (ECB/2020/29)".[65] The new measures aim at mitigating the adverse impact on Eurosystem collateral availability of potential rating downgrades resulting from the economic fallout of the pandemic crisis and, *in globo*, at ensuring that Eurosystem counterparties remain able to maintain and mobilise sufficient collateral in order to be able to participate in its liquidity-providing operations. Accordingly, participation in these operations with this collateral should be based on temporarily amended collateral eligibility criteria and risk control measures.[66] In this respect, the GC made three considerations:[67]

first, marketable assets and their issuers that fulfilled minimum credit quality requirements on 7 April 2020 should temporarily continue to be admitted as collateral, despite a deterioration in the credit ratings decided by the credit rating agencies accepted in the Eurosystem, as long as the ratings remain above a certain quality level;

[61] Guideline 2014/528/EU of the ECB of 9 July 2014 "on additional temporary measures relating to Eurosystem refinancing operations and eligibility of collateral and amending Guideline ECB/2007/9 (ECB/2014/31)", OJ L 240, 13.8.2014, pp. 28-38.

[62] OJ L 110, 8.4.2020, pp. 26-29. It is noted that the amendments to Guideline (EU) 2015/510 were made (yet again) by a Decision in order react promptly to the pandemic crisis.

[63] Guideline (EU) 2020/515, recitals (3)-(4). The GC also assessed the need to alleviate pressures stemming from the pandemic crisis on Greek financial markets, taking into account, *inter alia*, the commitments undertaken by the Hellenic Republic in the context of the enhanced surveillance under Regulation (EU) No 472/2013 of the European Parliament and of the Council and the monitoring of its implementation by EU institutions, where the ECB is also involved, and the fact that the Hellenic Republic had regained market access (*ibid*., recital (5)).

[64] *Ibid*., recital (6).

[65] OJ L 148, 11.5.2020, pp. 10-15.

[66] Guideline (EU) 2020/634, recital (2).

[67] *Ibid*., recitals (4)-(5).

second, the eligibility criteria for outright purchases under the ECB's asset purchase programme ('APP') should not be affected; and

third, in order to ensure an appropriate monetary policy transmission mechanism, and taking into account the need of Eurosystem counterparties that are, or will be, participating in its liquidity providing operations to maintain sufficient collateral for these operations, these measures will apply until the first early repayment date under the (above-mentioned) TLTRO-III.

4. Further announcements of the ECB's Governing Council of 4 June 2020

On 4 June, the GC (further) announced that net purchases under the APP will continue at a monthly pace of 20 billion euros, together with the purchases under the additional 120 billion euros temporary envelope until the end of the year, expecting monthly net asset purchases to run for as long as necessary to reinforce the accommodative impact of its policy rates and to end shortly before it starts raising the key ECB interest rates. Reinvestments of the principal payments from maturing securities purchased under the APP will continue, in full, for an extended period of time past the date when the GC starts raising the key ECB interest rates and, in any case, for as long as necessary to maintain favourable liquidity conditions and an ample degree of monetary accommodation.[68]

III. Statistical information

In accordance with Regulation (EU) 2020/533 of the ECB of 15 April 2020 "on the extension of deadlines for the reporting of statistical information (ECB/2020/23)",[69] since the pandemic crisis can pose a significant challenge for statistical reporting agents, there may be a need to allow, swiftly and efficiently, for an extension of the deadlines for certain reporting of statistical information for a fixed period of time. In this respect, the GC delegated to the Executive Board two powers: *first*, to extend the deadlines for the reporting of statistical information required pursuant to the ECB Regulations listed in the Annex,[70] taking into account several aspects (such as reporting frequency and urgency of data collection), as well as the advice of the ESCB's Statistics Committee in its standard composition;[71] and *second*, to extend the deadlines for transmitting the above-mentioned statistical information by NCBs to the ECB pursuant to its relevant decision.[72]

[68] See the (above-mentioned) ECB Press Release of 4 June 2020 "Monetary Policy Decisions", points (4)-(5).

[69] OJ L 119, 17.4.2020, pp. 15-17. Its legal bases being Articles 5.1 and 12.1 ESCB/ECB Statute and Article 5 of Council Regulation (EC) No 2533/98 of 23 November 1998 "concerning the collection of statistical information by the European Central Bank" (OJ L 318, 27.11.1998, pp. 8-19) (as in force), this legal act is closely linked to monetary policy.

[70] Listed are Regulation (EU) No 1409/2013 of 28 November 2013 "on payments statistics (ECB/2013/43)" (OJ L 352, 24.12.2013, pp. 18-44), Regulation (EU) 2018/231 of 26 January 2018 "on statistical reporting requirements for pension funds (ECB/2018/2)" (OJ L 45, 17.2.2018, pp. 3-30) and Regulation (EU) No 1374/2014 of 28 November 2014 on statistical reporting requirements for insurance corporations (ECB/2014/50) (OJ L 366, 20.12.2014, pp. 36-76).

[71] Regulation (EU) 2020/533 (ECB/2020/23), Article 1(1)-(3). An extension of the deadlines for the reporting of statistical information may only relate to reporting falling due on or before 31 December 2020 and the deadlines for such reporting may not be extended beyond 30 June 2021 (*ibid*., Article 1(4)-(5)).

[72] *Ibid*., Article 1(8).

C. Financial stability-related measures taken by the ECB within the Single Supervisory Mechanism (SSM) and by the European Banking Authority (EBA)

I. Overview

The prudential regulatory framework governing credit institutions, based (mainly) on Regulation (EU) No 575/2013 "on prudential requirements for credit institutions and investment firms" ('CRR') and Directive 2013/36/EU "on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, (…)" ('CRD IV'), both of the European Parliament and of the Council of 26 June 2013,[73] provides certain elements of 'flexibility'. On the basis of the consideration that making full use of this flexibility is essential to overcome the financing pressures faced by firms and households, the ECB, as a banking supervisory authority within the SSM by virtue of Council Regulation (EU) No 1024/2013 of 15 October 2013 "conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions"[74] ('SSMR'), adopted specific supervisory measures to ensure that credit institutions have the capacity to foster credit flows to households and businesses in a flexible way during (at least the initial phase of) the pandemic crisis.[75] In that respect:

first, it adopted measures on temporary capital and operational relief, with the relaxation of some buffers and the adaptation of the composition of specific capital requirements (see below, under II);

second, it applied flexibility regarding, mainly and *inter alia*, the treatment of non-performing loans ('NPLs'), supported by the EBA (under III (1)); it is also supportive of the upcoming Regulation amending the main EU legislative act (as in force) governing credit institutions' prudential requirements (under III (2)), and

third, it recommended the adoption of transitional rules on the international accounting (reporting standard 'IFRS 9' on the classification and measurement of financial instruments).[76]

Noteworthy is, finally, its Recommendation on the temporary banning of the payment of dividends by credit institutions (see below, under IV).

II. Macro-prudential measures – buffers

(1) An important element of flexibility in the application of the regulatory framework was the release of capital and liquidity buffers embedded in the micro- and macro-prudential banking

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[73] OJ L 176, 27.6.2013, pp. 1-337 and 338-436, respectively.

[74] OJ L 287, 29.10.2013, pp. 63-89. This legislative act was adopted on the basis of Article 127(6) TFEU,

[75] On the equivalent initiatives undertaken at global level by the Basel Committee on Banking Supervision, see its Report of 3 April 2020 "Measures to reflect the impact of COVID-19" (available at: https://www.bis.org/bcbs/publ/d498.htm).

[76] On this accounting standard and its implications on financial stability, see European Systemic Risk Board (2017): *Financial stability implications of IFRS 9*, July, available at: https://www.esrb.europa.eu/pub/pdf/reports/20170717_fin_stab_imp_IFRS_9.en.pdf.

regulatory framework. In this respect, in its announcement of 12 March,[77] the ECB provided for the following:

> *First*, credit institutions are allowed temporarily to operate below the level of capital defined by the Pillar 2 Guidance ('P2G'), under the Supervisory Review and Evaluation Process ('SREP') framework,[78] the capital conservation buffer ('CCB') and the liquidity coverage ratio ('LCR'),[79] considering that these temporary measures will be enhanced by the appropriate relaxation of the institution-specific countercyclical capital buffer ('CCyB') by the national macro-prudential authorities.[80]
>
> *Second*, they are also allowed to partially use capital instruments that do not qualify as Common Equity Tier 1 ('CET1') capital, i.e. Additional Tier 1 or Tier 2 instruments,[81] in order to meet the (additional) Pillar 2 Requirements ('P2R'), under the SREP framework as well.[82]

These macro-prudential measures were complemented and reinforced by measures swiftly taken by several euro area macro-prudential authorities, which amounted to more than 20 billion euros of CET1 capital held by euro area credit institutions, facilitating the absorption of credit losses and supporting lending to the real sector of the economy.[83]

(2) In this respect, noteworthy is the critical importance of the capital and liquidity buffers built-up by credit institutions on the basis of the regulatory framework developed since the (2007-2009) GFL, which are currently available to allow them to effectively contribute to the short- and longer-term financing of economic activity and recovery in the EU.[84] This is the so-called "Basel III impact", namely the fact that credit institutions benefited, in terms of both capital and liquidity adequacy, from having implemented the above-mentioned buffers, which were introduced, at global level, by the Basel Committee on Banking Supervision's 'Basel III regulatory framework'.[85]

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[77] See "ECB Banking Supervision provides temporary capital and operational relief in reaction to coronavirus", 12 March 2020, available at: https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm. pr200312 ~43351ac3ac.en.html).

[78] This process is governed by Articles 97-101 CRD IV.

[79] The CCB is governed by Article 129 CRD IV and the LCR by Article 412 CRR.

[80] This buffer is governed by Article 130 CRD IV.

[81] All these instruments are defined in Articles 28(1)-(4), 29(1)-(5) or 31(1), Article 52(1) and Article 63 CRR, respectively.

[82] On the P2G and the P2R, see at: https://www.bankingsupervision.europa.eu/press/publications/newsletter/2016/html/nl161116.en.html.

[83] See ECB (26 May 2020): "Macroprudential measures taken by national authorities since the outbreak of the coronavirus pandemic", available at: https://www.ecb.europa.eu/pub/financial-stability/macroprudential-measures/html/index.en.html. For details on all these macro-prudential measures, see Joosen, B. (2020): "Balancing macro- and micro-prudential powers in the SSM during the COVID-19 crisis", in Gortsos, Ch.V. and W.G. Ringe (editors): *Pandemic Crisis and Financial Stability*, *op. cit.*, no. 10, pp. 339-360.

[84] In this respect, the quarterly Risk Dashboard of the European Banking Authority (EBA) of 14 April 2020, which covers data of the 4th quarter of 2019 and summarises the main risks and vulnerabilities in the EU banking sector, notes that, ahead of the current crisis, EU banks' capital ratios and asset quality have improved, even though return on equity has worsened. This dashboard is available at: https://eba.europa.eu/eu-banks-sail-through-corona-crisis-sound-capital-ratios.

[85] On the Basel III framework see, by way of mere indication, Gortsos (2012): *Fundamentals of Public International Financial Law*, Nomos Verlagsgesellschaft, Baden-Baden, pp. 250-281 and McNamara, Ch.,

III. Micro-prudential measures

1. Measures by the ECB and the EBA

(1) An equally important element of flexibility in the application of the regulatory framework was the interpretation and application of the micro-prudential regulatory requirements under the current exceptional circumstances. In this respect, and on the basis of its above-mentioned announcement of 12 March 2020, the ECB provided operational flexibility in the implementation of bank-specific supervisory measures as a response to the pandemic crisis, a flexibility further extended on 20 March.[86] This was followed by an announcement, of 16 April, to provide temporary relief for capital requirements against exposure to market risk.[87]

(2) The EBA's stance was complementary. On 12 March, it made a statement on actions to mitigate the impact of COVID-19 on the EU banking sector and then, on 25 and 31 March, it provided clarity to credit institutions and consumers on the application of the prudential framework in light of COVID-19 measures.[88] Further guidance on the use of flexibility was provided on 22 April; in this statement, nevertheless, the EBA called for heightened attention to ensuing risks.[89] On 12 March, as well, the EBA decided to postpone the 2020 EU-wide stress test exercise to 2021.[90]

In addition, and in accordance with Article 16 of its founding Regulation (EU) No 1093/2010,[91] the EBA also issued a set of Guidelines. Its Guidelines "on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis" (EBA/GL/2020/02)[92] were adopted on 2 April; on 18 June, the EBA made use of the option to extend their application – to 30 September.[93] In the meantime, on 2 June, it had issued its Guidelines "to address gaps in reporting data and public information in the context of COVID-19" (EBA/GL/2020/07).[94]

Wedow, M. and A. Metrick (2014): *Basel III B: Basel III Overview*, Yale Program on Financial Stability Case Study 2014-1B-V1, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2576939.

[86] See "ECB Banking Supervision provides further flexibility to banks in reaction to coronavirus", 20 March 2020 (available at: https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200320~4cdbbcf466.en.html).

[87] Available at: https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200416~ecf270bca.en.html.

[88] See at: https://eba.europa.eu/eba-statement-actions-mitigate-impact-covid-19-eu-banking-sector; https://eba. europa.eu/eba-provides-clarity-banks-consumers-application-prudential-framework-light-covid-19-measures; and https://eba.europa.eu/eba-provides-additional-clarity-on-measures-mitigate-impact-covid-19-eu-banking-sector.

[89] See at: https://eba.europa.eu/eba-provides-further-guidance-use-flexibility-relation-covid-19-and-calls-heightened-attention-risks.

[90] See at: https://eba.europa.eu/sites/default/documents/files/document_library/General%20Pages/Coronavirus/EBA%20Statement%20on%20Coronavirus.pdf.

[91] OJ L 331, 15.12.2010, pp. 12-47.

[92] See at: https://eba.europa.eu/eba-publishes-guidelines-treatment-public-and-private-moratoria-light-covid-19-measures.

[93] See at: https://eba.europa.eu/eba-extends-deadline-application-its-guidelines-payment-moratoria-30-september.

[94] See at: https://eba.europa.eu/eba-issues-guidelines-address-gaps-reporting-data-and-public-information-context-covid-19.

2. The upcoming Regulation amending the CRR and the CRR II

With a view to maximising the capacity of credit institutions to support households and businesses to recover from the current crisis by providing credit and, to a certain extent, fully embed into the regulatory framework the above-mentioned initiatives by the ECB and the EBA, the Commission submitted on 28 April a Proposal for a Regulation of the European Parliament and the Council amending the CRR and Regulation (EU) 2019/876[95] (which substantially amended in 2019 the CRR, 'CRR II') "as regards adjustments in response to the COVID-19 pandemic".[96] This proposed legislative act, which was fully supported by the ECB in its Opinion of 20 May[97] and was politically adopted by the two EU co-legislators(on 19 and 24 June, respectively), contains targeted provisions relating to (on the basis of the initial proposal) the following aspects:

first, the transitional arrangements relating to the implementation of the IFRS 9 will be extended by two years, allowing credit institutions to mitigate the potential negative impact of a likely increase in their provisions for expected credit losses;[98]

second, the minimum capital requirements for NPLs under the so-called "prudential backstop" will be amended so as to extend the preferential treatment of NPLs guaranteed by export credit agencies also to publicly guaranteed loans, subject to EU State aid rules;[99]

third, the calculation of credit institutions' leverage ratio will be modified on a targeted basis[100] and the date of application of the leverage ratio buffer for global systemically important institutions ('G-SIIs') will be postponed (by 1 year) to January 2023;[101]

finally, the date of application of the specific, preferential treatment (in terms of capital deduction measures) envisaged for certain loans backed by pensions or salaries, for non-defaulted SME exposures (the 'SME supporting factor') and for exposures to entities operating or financing physical structures or facilities, structures and networks providing or supporting essential public services (the 'infrastructure supporting factor') will be advanced with a view to encouraging related credit flows.[102]

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[95] OJ 150, 7.6.2019, pp. 1-225.

[96] COM/2020/310 final, available at: https://ec.europa.eu/finance/docs/law/200428-banking-package-proposal_en.pdf.

[97] Opinion of the ECB "on amendments to the Union prudential framework in response to the COVID-19 pandemic (CON/2020/16)" 2020/C 180/04, *OJ C 180, 29.5.2020, pp. 4-9.*

[98] Extended amendments to Article 473a CRR (Article 1, point (2) of the proposal).

[99] Insertion of (new) Article 500a CRR, applying by derogation from Article 47c(3) (Article 1, point (3) of the proposal).

[100] The ratio is governed by Articles 429-429g CRR; amendments will be made to Article 429a (Article 1, point (2) of the proposal).

[101] This buffer is governed by Article 92(1a) CRR (Article 2, point (2) of the proposal).

[102] Amendments to Articles 123, 501 and 501a CRR, respectively (Article 2, point (1) of the proposal).

IV. Temporary ban on the payment of dividends by credit institutions

(1) On 27 March 2020, the ECB issued a Recommendation "on dividend distributions during the COVID-19 pandemic and repealing Recommendation (ECB/2020/1) (ECB/2020/19)".[103] Pursuant to this legal act, which is addressed to significant supervised entities and significant supervised groups, the ECB recommends that, at least until 1 October 2020, no dividends (of any form) should be paid out by credit institutions and no irrevocable commitment to pay out dividends should be undertaken for the financial years 2019 and 2020, and that these should refrain from share buy-backs aimed at remunerating shareholders. On the basis of the "comply or explain principle", credit institutions which are unable to comply with the Recommendation, should immediately explain the underlying reasons to their joint supervisory team.[104] The Recommendation is also addressed to national competent and designated authorities with regard to less significant supervised entities and less significant supervised groups, which are expected to apply it to these entities and groups, as deemed appropriate.[105]

(2) This temporary ban on the payment of dividends was reinforced by the EBA, in its (above-mentioned) statement of 31 March, urging *"banks to follow prudent dividend and other distribution policies, including variable remuneration"*.[106]

D. Conclusions and assessment

(1) The main purpose of this article was to provide an overview of the measures taken by the ECB, in its dual role as monetary agency within the Eurosystem and as a banking supervision authority within the SSM amidst the pandemic crisis. This was undertaken after a brief general account of all measures taken globally and then, on a more focused basis, in the EU,[107] which also served to recall that the ECB's role is also important in (at least) two other aspects relating to financial stability in the euro area, namely in triggering the resolution of significant credit institutions and in financial macro-prudential oversight within the ESRB.[108]

(2) In relation to its monetary policy measures, the ECB's response was very close to that of all major central banks all over the world,[109] taking into account its primary objective of price stability, the instruments at its disposal and the limitations set by the TFEU,[110] by applying both its interest rate and its balance-sheet policies. In particular:

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[103] OJ C 102I, 30.3.2020, pp. 1-2.

[104] Recommendation (ECB/2020/19), points I and II. According to point IV, the ECB will further evaluate the economic situation and consider whether further suspension of dividends is advisable beyond 1 October 2020.

[105] *Ibid*, point III.

[106] On this aspect, see Sciaronne Alibrandi, A. and Frigeni, G. (2020): "Restrictions on Shareholder's Distribution in the COVID-19 crisis", in Gortsos, Ch.V. and W.G. Ringe (editors): *Pandemic Crisis and Financial Stability*, *op. cit.*, no. 14, pp. 429-454.

[107] See Section A above, under I and II, respectively.

[108] *Ibid*., under II 3(1) and 3(3).

[109] See Carstens, Aug. (2020), *op. cit*., pp. 2-4.

[110] E.g., the monetary financing of fiscal policy (by the purchase of government bills and bonds in the primary market) is prohibited by virtue of Article 123.

First, in the course of its conventional monetary policy, it retained the key interest rates on the main refinancing operations, the marginal lending facility and the deposit facility at historically low levels, and took specific measures relating to targeted longer-term refinancing operations, the implementation of the Eurosystem monetary policy framework and the valuation haircuts applied therein.

On the other hand, in the course of its unconventional monetary, it established a new temporary Asset Purchase Programme of private *and* public sector securities (the “Pandemic Emergency Purchase Programme” (PEPP)), introduced amendments to its 2016 corporate sector purchase programme (CSPP) and adopted some targeted additional temporary measures relating to Eurosystem refinancing operations and to eligibility of collateral.[111]

Finally, it decided, by applying a flexible approach, to extend the deadlines for certain reporting of statistical information for a specific period of time.[112]

Its exit strategy from all these measures, which are designed as temporary, will be dictated by the duration of the crisis and macroeconomic developments in the course of the coming months.

(3) With regard to the financial stability-related measures taken by the ECB within the SSM, complemented by the EBA, it is evident that its role has also been decisive, especially in ensuring credit institutions’ capacity to foster credit flows to households and businesses in a flexible way during (at least the initial phase of) the pandemic crisis. In that respect, it adopted measures relating to the relaxation of some buffers and the adaptation of the composition of specific capital requirements, it introduced flexibility regarding, mainly, the treatment of NPLs and has been supportive of the upcoming Regulation amending the CRR (as in force).[113] On the other hand, it recommended to credit institutions (on the basis of the “comply or explain principle”) to temporarily ban the payment of dividends by credit institutions.[114]

The exit strategy in this case is much more complicated. The above-mentioned measures are designed as temporary as well. As a consequence of the current crisis, the rate of NPLs, which during the last years has, on average, significantly decreased, is expected to increase again across the board (and in certain cases exponentially) in almost all Member States (including within the euro area). As already noted by the author in a recent paper,[115] the flexibility provided to credit institutions to prolong the periods for the classification of loans as non-performing, in a period during which demand for bank credit on the part of businesses and households has surged, is justified to the extent that it supports the financing of the fragile real sector of the economy at this phase of the pandemic crisis. It nevertheless risks accumulating problems after the lapse of the ‘moratorium’ period, the extent of which will vary, both among Member States and among credit institutions in each Member State.

[111] See Section B above, under I and II.

[112] *Ibid*., under III.

[113] See Section C above, under II and III.

[114] *Ibid*., under IV.

[115] See Gortsos, Ch. V. (2020b), *op. cit*., pp. 367-368.

Among all other EU institutions and agencies involved (including the EBA), the ECB is already alert on this front[116] and it will have to safely navigate credit institutions under its prudential supervision and the economic system in general in appropriately balancing two of the primary objectives of the current agenda, which may, nevertheless, in the medium-term become conflicting ones: *on the one hand*, supporting financially the real sector of the economy (and hence employment) and, *on the other*, preserving financial stability.[117]

The role of credit risk management and the quality of prudential banking supervision will be of primary importance in that respect. In addition, the creation of a European Asset Management Company ('bad bank'), which would be set up in order to absorb a significant stock of NPLs, has already been proposed as an alternative solution to this emerging problem.[118] Nevertheless, relevant discussions are at an early stage and such an entity would not become operational in the short-term (provided that a decision could be reached at all given the existing divergent approaches).

(4) In her recent (3 April 2020) article with the Financial Times entitled "The pandemic is a portal",[119] the acclaimed author Arundhati Roy concluded: *"Historically, pandemics have forced humans to break with the past and imagine their world anew. This one is no different. It is a portal, a gateway between one world and the next".* Read through the lens of the topic analysed in this article, this indicates that new stances will need to be adopted in order to deal with the fallout of the current pandemic crisis; and, in turn, this can largely guide the stance to be taken, *inter alia*, by the ECB in its effort to fully address the challenges posed by the crisis to the EU economy. But although, as correctly noted by Professor Wolf-Georg Ringe in a recent article, this is *"no time for lawyers"*,[120] some limitations set by the EU Treaty framework may hinder such a stance and, hence, prompt us to seriously consider its revision, albeit in the medium-term.

[116] See, by way of mere indication, its recent reports: *Pandemic increases risks to financial stability*, 26 May (available at: https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200526~cbbd04bd5d.en.html) and *COVID-19 and non-performing loans: lessons from past crises*, 27 May, (available at: https://www.ecb.europa.eu/pub/economic-research/resbull/2020/html/ecb.rb200527~3fe177d27d.en.pdf).

[117] On this crucial issue and a set of nine joint IMF-World Bank "Recommendations to guide bank supervisors in their response to the pandemic" (mainly addressed to economically developing countries), see Adrian, T. and C. Pazarbasioglu (2020): *Combating COVID-19: How Should Banking Supervisors Respond?*, available at: https://www.caribbeannewsglobal.com/combating-covid-19-how-should-banking-supervisors-respond.

[118] A similar proposal was aired in 2017 by the (then) Chair of the EBA (currently Chair of the ECB Supervisory Board), Andrea Enria, which nevertheless has not been formalised.

[119] Available at: https://www.ft.com/content/10d8f5e8-74eb-11ea-95fe-fcd274e920ca.

[120] See Ringe, W.-G. (2020): "COVID-19 and European banks: no time for lawyers", in Gortsos, Ch.V. and W.G. Ringe (editors): *Pandemic Crisis and Financial Stability*, *op. cit.*, no. 2, pp. 43-62.