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European Central Bank's climate change mandate

Introduction

The issue of climate change has appeared before, but it is only in the last decade that this topic has gained prominence. Recent years have been full of studies on the negative predictions resulting from climate change and the role of man in this regard[1]. It seems that climate change is now one of the main threats of the modern world. In the fight against these threats, the integrated activity of governments and legislative bodies of all countries on all continents is needed.

The activities of financial institutions are not insignificant in the above regard. Central banks also have a role to play in this "struggle" – in the framework of monetary and supervisory policy – as is the case with the eponymous European Central Bank (ECB). The activity of public institutions in offsetting the negative effects resulting from climate change must take place within the framework of democratic principles – in accordance with the applicable law. The same is true of central banks, whose activities must be within the framework of the mandates given to them.

The purpose of the paper is to analyze the legal regulations in the area of the ECB's monetary policy and supervisory mandate in relation to the challenges faced by this bank in connection with the risks arising from climate change. In order to realize the purpose of the paper, the author explored the regulations of European Union law in the field of ECB's legitimacy. In addition, he conducted a literature study – especially concerning foreign works – in the title area. The dogmatic-legal research method and the analysis of scientific studies made it possible to formulate a thesis in light of which the ECB has

[1] Specifically within the United Nations – Climate Change, United Nations (accessed: 11.11.2024).

sufficient legal legitimacy to counteract the negative effects resulting from climate change.

Central banks in the face of climate change

Central banks have existed since the 17th century, and their purposes, functions and operations have evolved over the years[2]. While the evolution of central banking is nothing new, the past two decades have seen massive changes in central banks and their practices. These reforms have varied from country to country. In some – the UK, for example – older institutions have been fundamentally restructured. In other countries, entirely new central banks were created. For example, since the fall of the Berlin Wall in 1989, new central banks have been established in countries that were formerly part of the Soviet Union. In Europe, member countries of the European Union have established a supranational central bank to oversee monetary union. In all of these situations, central bank law has been revised or rewritten, while objectives, practices and institutional structures have been changed or created from scratch[3]. In the last decade – especially with climate change – these banks have faced new – unprecedented – challenges.

The Paris Agreement, signed on 12 December 2015 and ratified by 189 countries, launched a global effort to combat climate change by reducing greenhouse gas emissions[4]. In light of Article 2 of the Act, the Agreement seeks to intensify the global response to the threat of climate change, in the context of sustainable development and poverty eradication efforts, including by[5]:

- limiting the increase in global average temperature to well below 2°C above pre-industrial levels, and making efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this will significantly reduce climate change risks and impacts,
- increasing the capacity to adapt to the negative impacts of climate change and promoting climate resilience and low greenhouse gas emission-related development in a way that does not threaten food production,
- ensuring that financial flows are consistent with the path to low GHG emissions and climate-resilient development.

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[2] Ch. Crowe, E. Meade, *Central bank independence and transparency: evolution and effectiveness*, „IMF Working Paper" 2008, Vol. 8(119), p. 3.

[3] Ch. Crowe, E. Meade, *The evolution of central bank governance around the world*, „Journal of Economic Perspectives" 2007, Vol. 21, No. 4, p. 69.

[4] Paris Agreement A9RB768.tmp (accessed: 11.11.2024).

[5] Art. 2 The Paris Agreement to the United Nations Framework Convention on Climate Change, done at New York on 9 May 1992, adopted in Paris on 12 December 2015 (Journal of Laws 2017/36).

It is also pointed out that this Agreement will be implemented in a manner that reflects equity and in accordance with common, albeit differentiated, responsibilities and capacities, in light of different national circumstances.

The signing of the Paris Agreement is therefore a milestone for the World and the global economy. In the wake of which, we are now moving toward a low-carbon society, in which renewable energy and smart technologies enhance our quality of life, stimulating job creation and economic growth – without harming the planet[6].

Anthropogenic, or man-made, climate change may prove to be the greatest challenge of this century[7]. The issue of these changes and the role of central banks in these risks was addressed by Yves Mersch (member of the Executive Board of the ECB)[8] and Sabine Lautenschläger (member of the Executive Board of the ECB)[9] indicating that "we should make every effort to recognize, assess and act on climate change risks within our mandate".

Climate and environmental change are sources of financial risk that create new challenges for central banks, regulators and supervisors. Climate risk is a clear and ongoing threat to the global economy and has extensive implications for the conduct of monetary policy. Through green central banking, central banks can respond to the challenges of climate change. It is up to central banks and supervisors to ensure that the financial system is resilient to these risks. Climate change will affect the global economy, and thus the financial system that supports it. Financial markets are an important channel for the transfer and spread of so-called green attitudes and behaviors, although this should not overlook adverse phenomena such as greenwashing[10].

Climate change poses three risks to the financial system: physical risks, transition risks and liability risks. Physical risks arise from potential economic and financial losses due to climate-related risks. Transition risk can be defined as the risk of economic disruption and financial losses associated with the transition to a low-carbon economy. Transition risk also includes the costs of a possible tightening of carbon policies, for example, through the implementation of carbon pricing or emissions restrictions. Liability risk materializes when it

[6] Final report 2018 by the High-Level Expert Group on Sustainable Finance, p. 2; Final report 2018 by the High-Level Expert Group on Sustainable Finance – Secretariat provided by the European Commission – Financing a sustainable European economy (accessed: 11.11.2024).

[7] Green central banking – options for the ECB on climate change Eóin Flaherty, p. 1.

[8] Climate change and central banking – speech by Yves Mersch, member of the Executive Board of the ECB, workshop discussion: sustainability is becoming mainstream, Frankfurt, 27 November 2018.

[9] Central bankers, supervisors and climate-related risks panel remarks by Sabine Lautenschläger, member of the Executive Board of the ECB, at the Network for Greening the Financial System Conference in Paris, France, 17 April 2019.

[10] A.M. Jurkowska-Zeidler, M. Janovec, *Financial market stability: a key driver of sustainable finance*, „Gdańskie Studia Prawnicze" 2024, No. 1(62), p. 19.

is recognized that companies are legally responsible for physical and climate-related transition losses and must compensate other parties financially[11].

Central banks play an important role in the transition to a zero-carbon economy. First, they can manage the risks to the financial system and the overall economy that arise from climate change. Second, central banks have become market actors themselves and can help channel resources into sustainable investments to finance the green transition. Third, they are sharing their knowledge to encourage behavioral changes[12]. Overall, the legitimacy of central banks pursuing climate change targets through financial stability tools depends on whether the legislature has given a clear financial stability mandate, whether the central bank is legally obligated to take into account the executive's climate or sustainability goals, and whether the banking sector is already relatively resilient to physical or transition risks[13]. Climate change poses risks to individual market participants, but it also poses risks to the financial system as a whole – so-called systemic risk. It is worth noting at this point that even if individual participants correctly take climate risk into account in their own decisions, this does not preclude that climate risks can be a systemic source of risk for financial markets. Central banks are generally responsible for ensuring the stability of the financial system as a whole, and are therefore more concerned about systemic risks than about the risks of individual financial markets[14]. To minimize risks to financial stability from climate change, supervisors, including central banks, must ensure that financial markets correctly reflect climate-related risks in asset prices and that financial institutions most exposed to these risks are adequately recapitalized. A comprehensive and accurate assessment of the climate impacts of associated systemic risks is critical to assessing whether these two conditions are met[15].

Given the huge investments needed to achieve a "green" transition, the financial sector will have to play a key role in allocating resources for a sustainable and green economy and stop financing activities that harm the environment[16].

One justification for central banks' involvement in climate policy is that such considerations are already part of existing mandates. For example, climate change and related policies can affect inflation. Moreover, climate change has

[11] P. Monnin, *Central banks and the transition to a low-carbon economy*, „Council On Economic Policies, Discussion Note" 2018, No. 1, p. 3.

[12] S. Spinaci, M. Höflmayr, L. Hofmann, *Green central banking*, „European Parliamentary Research Service" 2022, September.

[13] R.M. Lastra, Ch. Parajon Skinner, *Sustainable central banking*, „Virginia Journal of International Law" 2023, Vol. 61, p. 420.

[14] P. Monnin, op. cit., p. 3.

[15] Ibidem, p. 5.

[16] U. Volz, *On the role of central banks in enhancing green finance*, „Inquiry Working Paper" 2017, No. 1, p. 4.

implications for financial stability if banks are heavily exposed to assets whose value is threatened by climate change[17]. There has been increasing attention in the literature to determine whether central banks, within their existing mandates, are free to act against climate change, and if so, to what extent. In addition to price stability, which is written into the mandates of all central banks, there is likely to be some leeway to include climate issues in the regulatory toolkit[18].

The European Central Bank's monetary policy mandate from a climate change perspective

Beginning the analysis of EU law regulations in the above regard, it is necessary to refer to Title XX of the Treaty on the Functioning of the European Union (TFEU) entitled *Environment*. Article 191 of that title reads, among other things, that the Union's policy on the environment shall contribute to the achievement of the following objectives: preserving, protecting and improving the quality of the environment, protecting human health, prudent and rational utilization of natural resources, promoting measures at international level to deal with regional or worldwide environmental problems, in particular combating climate change. The Union's environmental policy aims for a high level of protection, taking into account the diversity of situations in the various regions of the Union. It is based on the precautionary principle and the principles of preventive action, repairing damage first at source and the polluter pays principle. In this context, harmonization measures corresponding to environmental requirements include, where appropriate, a safeguard clause that allows Member States to take, for non-economic environmental reasons, provisional measures subject to the Union's control procedure. In developing environmental policy, the Union shall take into account: available scientific and technical data, environmental conditions in the various regions of the Union, the potential benefits and costs that may result from action or inaction, the economic and social development of the Union as a whole and the sustainable development of its regions. Within the scope of their respective competencies, the Union and the Member States shall cooperate with third countries and relevant international organizations. The terms of the Union's cooperation may be the subject of agreements between the Union and interested third parties[19].

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[17] L. Bartholomew, P. Diggle, *Central banks and climate change – the case for action*, https://ssrn.com/abstract=3895605 (accessed: 30.11.2024).

[18] J. Cullen, *Central banks and climate change: mission impossible?*, „Journal of Financial Regulation" October 2023, Vol. 9, Issue 2, p. 180.

[19] Art. 191 Consolidated version of the Treaty on the Functioning of the European Union (Journal of the European Union, 26.10.2012, C 326/132).

It is also appropriate to point out that the ECB is bound by the Paris Agreement on climate change and that this should be reflected in its policies, in full respect of its mandate and independence. This binding follows from the wording of Article 216 TFEU, which indicates that the Union may conclude agreements with one or more third countries or international organizations when the Treaties so provide, or when the conclusion of the agreement is necessary to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or when the conclusion of the agreement is provided for in a legally binding Union act, or when it may affect common rules or alter their scope. Agreements concluded by the Union are binding on the Union's institutions and the Member States[20].

In light of the TFEU, the ECB's primary objective is price stability. The above follows from Article 127 of the cited treaty, which indicates that the primary objective of the European System of Central Banks (ESCB) is to maintain price stability[21]. The aforementioned TFEU article also states that, without prejudice to the objective of price stability, the ESCB shall support general economic policies in the Union in order to contribute to the achievement of the Union's objectives as set forth in Article 3 of the Treaty on European Union[22]. It is the ECB's support of general economic policies and the objectives that guide the EU's creators that indicate the direction of interpretation of European Union law regarding the ECB's involvement in climate change, these include: working 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, and contributing to peace, security, sustainable development of the Earth. From the above, it follows that Article 127 of the TFEU sets out the ECB's two objectives, the primary one of price stability and the secondary one of supporting general economic policies in the EU. In the case of the ECB, its secondary objective under Article 127(1)(2) of the TFEU, in conjunction with Article 3 of the TEU, provides the ECB with a possible legal basis for action related to climate change (although the primary responsibility for environmental policy lies with the EU member states)[23]. This responsibility of the Member States derives from Article 120 of the TFEU in light of which the Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union as set forth in Article 3 of the Treaty on European Union and in the context of the general orientations set forth in Article 121(2). Member States

[20] Art. 216 Journal of the European Union, 26.10.2012, C 326/144.

[21] Art. 127 Journal of the European Union, 26.10.2012, C 326/102.

[22] Art. 3 Consolidated version of the Treaty on European Union (Official Journal 26/10/2012, C 326).

[23] R.M. Lastra, Ch. Parajon Skinner, op. cit., p. 403.

and the Union shall act in accordance with the principle of an open market economy with free competition, fostering an efficient allocation of resources, in accordance with the principles set forth in Article 119[24].

Any action by the ECB must be consistent with its treaty mandate. Such activities may fall under the ECB's primary objective of maintaining price stability or its secondary objective of supporting, without prejudice to price stability, general economic policy in the Union to contribute to the achievement of the Union's objectives. These objectives include working for the sustainable development of Europe based on a high level of environmental protection and improvement[25]. This means that the ECB has the legal capacity and should expand its commitment to climate change within its mandate[26] – there is a European legal framework and institutions on which the ECB's activities and initiatives in the above area can be based[27].

There are also other articles in the TFEU that do not fall within the ECB's mandate, but have implications for how the ECB sets monetary policy. For example, Article 11 of the TFEU states that environmental protection is part of all EU policies – environmental protection requirements must be taken into account in the setting and implementation of the Union's policies and actions, in particular to promote sustainable development[28]. This principle is considered "cross-cutting" because it covers all regulations in the EU. As such, it requires policymakers to take environmental quality into account when formulating policies at the EU level[29]. Environmental requirements must be taken into account in the setting and implementation of the Union's policies and actions, particularly to promote sustainable development. In addition, Article 7 TFEU requires the ECB to ensure "consistency" between its policies and activities, taking into account all EU objectives and in accordance with the principle of conferral of powers[30]. According to Article 7, the Union shall ensure consistency among its various policies and activities, taking into account all its objectives and in accordance with the principle of conferral of powers. As indicated earlier, Articles 7 and 11 of the TFEU do not fall within the ECB's mandate in the strict sense, but are relevant to the conduct of monetary policy. However, these

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[24] Art. 120 Journal of the European Union, 26.10.2012, C 326/97.

[25] *Climate change and monetary policy in the euro area*, „Occasional Paper Series" 2021, No. 271, p. 135.

[26] M. Schmidt, *On the role of the ECB in sustainable finance*, [in:] H. Bolsinger, J. Hoffmann, B. Villhauer (eds.), *The European Central Bank as a sustainability role model philosophical, ethical and economic perspectives*, Cham 2021, p. 39.

[27] P. Ehrlich, [in:] H. Bolsinger, J. Hoffmann, B. Villhauer (eds.), *The new sustainability strategy of the ECB*, *The European Central Bank and its role in a sustainable finance system*, Cham 2023, p. 11.

[28] Art. 11 Journal of the European Union, 26.10.2012, C 326/53.

[29] R. Van Tilburg, A. Simić, *Legally green, climate change and the ECB mandates*, „Policy Paper" 2021, p. 15.

[30] *Climate change and monetary policy…*, p. 135.

articles are also more general with respect to the ECB's mandate, while Article 127 TFEU is more specific. The more specific provisions usually take precedence over the more general ones[31].

The ECB's monetary and supervisory decisions are also subject to review by the Court of Justice of the European Union, the CJEU under Article 263 TFEU and Article 35 of the ESCB Statute[32]. In the EU, the legitimacy of monetary policy decisions has been triggered by a rich body of case law. In particular, the *Pringle, Gauweiler* and *Weiss* cases are key to understanding the contours of monetary policy[33]. The CJEU's review of monetary policy decisions made by the ECB is an important accountability mechanism in the EU, particularly given the different jurisdictions of monetary (centralized) and fiscal (decentralized) policy. Accordingly, judicial accountability for the CJEU's monetary policy decisions is an essential element of the ECB's accountable independence[34]. In addition, if the ECB takes climate issues into account in the context of fulfilling its tasks, it must also comply with general principles of EU law – in particular, the principles of proportionality, institutional balance and equal treatment, as well as specific provisions of EU primary law applicable to the ECB, namely the principle of an open market economy and the prohibition on central bank financing[35]. This prohibition is regulated by Article 123 of the TFEU, in light of which it is prohibited for the European Central Bank or the central banks of the Member States to grant deficit loans or any other loans to institutions, bodies, offices or agencies of the Union, central governments, regional, local or other public authorities, other institutions or public undertakings of the Member States, as well as for the European Central Bank or the national central banks to purchase directly from them their debt securities[36].

Notwithstanding the above considerations, it should be emphasized that the primary responsibility for leading the environmental transition rests with elected governments, which have more direct tools and legislative authority to make the necessary changes. Since there are important complementarities between these policies and monetary policy, the ECB stands ready to offer support by providing technical analysis and advice. This knowledge sharing

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[31] R. Van Tilburg, A. Simić, op. cit., p. 15.

[32] Art. 263 Journal of the European Union, 26.10.2012, C 326/162. Art. 35 Protocol No. 4 on the Statute of the European System of Central Banks and of the European Central Bank (Journal of the European Union, 26.10.2012, C 326/245).

[33] See: T. Knepka, *„The never-ending story": reflections on the powers of the European Central Bank*, „Gdańskie Studia Prawnicze" 2024, Vol. 28, No. 1; idem, *The significance of the 5 May 2020 Judgment of the Constitutional Court of the Federal Republic of Germany (Weiss II) for the process of integration of the European Union financial market*, „Financial Law Review" 2023, No. 32(4).

[34] R.M. Lastra, Ch. Parajon Skinner, op. cit., p. 441.

[35] *Climate change and monetary policy…*, p. 135.

[36] Art. 123 Journal of the European Union, 26.10.2012, C 326/99.

is part of the ECB's core mandate, as other policies, by mitigating climate change risks, will allow monetary policy instruments to more effectively protect price stability[37].

The European Central Bank's supervisory policy mandate from a climate change perspective

Since the 2008 global financial crisis, central banks' mandates with price stability as their primary objective have either been explicitly expanded by new legislation to include financial stability as a "dual mandate", and with it the scope of supervisory functions. In 2012, EU member states voted unanimously in the Council, on the basis of Article 127(6) TFEU, to grant the ECB supervisory powers over credit institutions (banking groups). The ECB's responsibilities under the Treaty also include oversight of the payment and settlement system, which is also a core task of the ECB under Article 127(2) TFEU. The ECB's broad powers lead to the important question of the extent to which its powers can support the Union's overall economic policy[38].

The Treaty legal basis for the ECB's supervisory powers is Article 126(6). In light of this provision, the Council, acting by means of regulations in accordance with a special legislative procedure, unanimously and after consulting the European Parliament and the European Central Bank, may entrust the European Central Bank with specific tasks concerning policies in the field of prudential supervision of credit institutions and other financial institutions, with the exception of insurance institutions[39]. The ECB's supervision of banks within the European Banking Union (EBA) exercised as the Single Supervisory Mechanism (SSM) is an important institutional and legal element contributing to the transition to a low-carbon economy[40].

Climate change affects the security of the banking sector through physical risks, such as extreme weather events, and transition risks, such as the uncertainties associated with the transition to a low-carbon economy. As the supervisor of European banks, the ECB works to ensure that banks properly detect, manage and disclose risks, including those arising from climate change.

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[37] Europe's tragedy of the horizon: the green transition and the role of the ECB – speech by Piero Cipollone, member of the Executive Board of the ECB, at the Festival dell' Economia di Trento, Trento, 26 May 2024.

[38] R.M. Lastra, K. Aleksander, *The ECB mandate: perspectives on sustainability and solidarity*, [in:] *The ECB's mandate: perspectives on general economic policies*, Study Requested by the Econ Committee Monetary Dialogue, June 2020, p. 14.

[39] Art. 126 Journal of the European Union, 26.10.2012, C 326/102.

[40] 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 (Official Journal of the European Union, L 287/63).

Through this engagement with the ECB, banks become more resilient to climate shocks and the transition, which in turn contributes to the safety and good functioning of the eurozone banking sector and the financial system as a whole[41].

In November 2020, the ECB published the *Guide to Climate Risks and Environmental Risks Supervisory Expectations for Risk Management and Disclosure*. In the aforementioned document, the ECB indicated, 13 expectations as a European supervisor for supervised entities[42]:

- institutions are expected to recognize the impact of climate and environmental risks on the business environment in which they operate, in the short, medium and long term, in order to make informed strategic and business decisions;
- when defining and implementing business strategy, institutions should take into account climate and environmental risks that may affect their business environment in the short, medium or long term;
- the governing body is expected to take climate and environmental risks into account when developing the institution's overall business strategy, business objectives and risk management framework, and to exercise effective oversight of climate and environmental risks;
- institutions are expected to explicitly include climate and environmental risks in their risk exposure assessment framework;
- institutions are expected to assign responsibility for managing climate and environmental risks within the organizational structure;
- for internal reporting purposes, institutions should report aggregate risk data that reflects their exposure to climate and environmental risks to enable the governing body to make informed decisions;
- institutions are expected to include climate and environmental risks as drivers of existing risk categories in their risk management framework to manage, monitor and mitigate them over a sufficiently long time horizon, and to review their findings regularly. Institutions are expected to identify and quantify these risks as part of their overall capital adequacy process;
- as part of their credit risk management, institutions are expected to consider climate and environmental risks at all relevant stages of the lending process and to monitor the risks in their portfolios;
- institutions are expected to take into account how climate and environmental events may adversely affect business continuity and the extent to which the nature of their operations may increase reputational and/or liability risks;

[41] Climate change and banking supervision, https://europa.eu (accessed: 15.09.2024).

[42] Guide on climate-related and environmental risks. Supervisory expectations relating to risk management and disclosure, European Central Bank, November 2020, Guide on climate-related and environmental risks (accessed: 18.11.2024).

• institutions are expected to monitor the impact of climate and environmental factors on their current market risk positions and future investments on an ongoing basis and develop stress tests that take climate and environmental factors into account;

• institutions exposed to significant climate and environmental risks are expected to assess the validity of their stress tests with a view to including them in baseline and adverse scenarios;

• institutions are expected to assess whether material climate and environmental risks could result in net cash outflows or depletion of liquidity buffers and, if so, to take these factors into account in their liquidity risk management and calibration of liquidity buffers;

• for regulatory disclosure purposes, institutions are expected to publish relevant information and key indicators on climate and environmental risks that they consider material, with due regard to the European Commission's Non-Financial Reporting Guidelines.

In 2022, the ECB indicated that institutions have made clear progress in various areas in the context of the above expectations of the European supervisor. The ECB also indicated that most institutions still need to make significant efforts to transparently disclose their exposure to climate and environmental risks, and to further improve their related disclosure practices[43].

In addition, the ECB has identified climate-related risks as a key risk factor for the eurozone banking system. As the ECB points out, institutions should take a strategic, forward-looking and comprehensive approach to considering climate and environmental risks[44]. In addition, in the context of the 2024–2026 supervisory priorities of the unified supervision mechanism, supervised institutions will primarily be required to strengthen their resilience to direct macro-financial and geopolitical shocks, as well as to accelerate the effective remediation of governance and C&E (*climate related/environmental risk*) deficiencies, and to make further progress in digital transformation and building a robust operational resilience framework[45]. These supervisory priorities are summarised in the table below.

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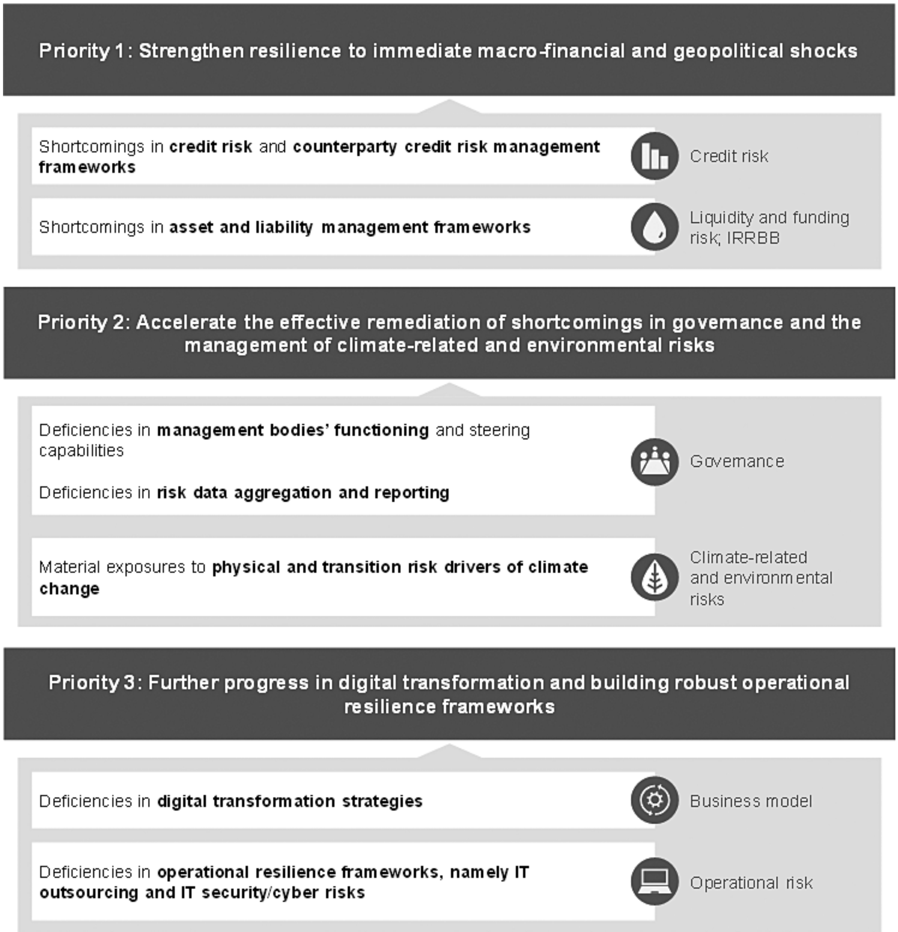
[43] Supervisory assessment of institutions' climate-related and environmental risks disclosures ECB report on banks' progress towards transparent disclosure of their climate-related and environmental risk profiles, European Central Bank, March 2022, p. 2/6. Supervisory assessment of institutions' climate-related and environmental risks disclosures (accessed: 18.11.2024).

[44] Guide on climate-related and environmental risks…, p. 3.

[45] ECB Banking Supervision: SSM supervisory priorities for 2024–2026 (accessed: 18.11.2024).



Source: ECB Banking Supervision: SSM supervisory priorities for 2024–2026 (accessed: 18.11.2024).

Conclusions

In light of the above – the thesis posed at the beginning of the paper, indicating that the ECB has sufficient legal authority to address the negative impacts resulting from climate change – is tenable. Several conclusions support this position.

First, the interpretation of the ECB's mandate set forth in the TFEU should be done with reference to the purposive interpretation of EU law. Such an approach allows decoding from EU regulations the secondary – essential – purpose of the ECB in the context of mitigating the negative effects resulting from climate change by means of promoting economic policy towards the purpose for which the EU was established.

Second – as the CJEU's judgments in recent years accusing the ECB of going beyond its primary mandate have shown – the bank has considerable latitude in interpreting its legitimacy – even with the autonomous use of an expansive interpretation – which consequently allows it to be proactive with regard to climate change.

Third, the ECB is protected by the Treaty principle of its independence under Article 130 TFEU, which indicates, among other things, that the ECB shall neither seek nor take instructions from the institutions, bodies, offices or agencies of the Union, the governments of the Member States or any other body. The institutions, bodies, offices and agencies of the Union, as well as the governments of the Member States, undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or the national central banks in the performance of their tasks. This independence of the bank is of utmost importance with regard to the ECB's execution of its mandate in both monetary, economic and supervisory policy areas – measuring up to the global threat of climate change.

Fourth, the challenges that the ECB faces as a European supervisor also arise from emerging differences in the organization of financial market supervision in European Union countries. For example – as indicated by Michał Mariański – the separation of an auxiliary pillar of financial market supervision in France in the form of the *Autorité de contrôle prudentiel et de résolution* is a solution very similar to the model that functioned in Poland in 2006–2008. Like the then Banking Supervision Commission, the ACPR is closely linked to the central bank, which is intended to contribute to a coordinated yet more specialized supervision of the sector[46].

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[46] M. Mariański, *Uprawnienia i kompetencje francuskiego pomocniczego organu nadzoru nad rynkiem finansowym Autorité de contrôle prudentiel et de résolution*, „Przegląd Prawa Handlowego" 2023, No. 4, pp. 38–44.

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Summary

European Central Bank's climate change mandate

Keywords: European Central Bank law, climate change, legal mandate.

Climate change is now one of the main threats to the modern world. An integrated activity of governments and legislative bodies of all countries on all continents is needed to combat this threat. Central banks also have a role to play in this "fight" – as part of monetary and supervisory policy – as is the case with the eponymous European Central Bank (ECB). The activity of public institutions in offsetting the negative effects resulting from climate change must take place within a framework of democratic rules, following the applicable law. The same is true for central banks, whose activities must be within the framework of their mandates. The article aims to analyze the legal regulations in the ECB's monetary and supervisory mandate concerning the challenges faced by this bank in the context of changes resulting from climate change. During an exploration of European Union legal regulations and literature studies – especially foreign studies – the author has come to the thesis that the ECB has sufficient legal mandate to counteract the negative effects resulting from climate change. In support of the above thesis, the author pointed out, among other things, the following conclusions: the interpretation of the ECB's mandate as defined in the TFEU should be done concerning the purposive interpretation of EU law, such an approach allows decoding from EU regulations the secondary – essential – purpose of the ECB in the context of mitigating the negative effects resulting from climate change through supporting economic policy towards the purpose for which the EU was established. Moreover, as the CJEU rulings of recent years have shown, in which the ECB has been accused of going beyond its primary mandate – the bank has considerable leeway in interpreting its legitimacy – even with the autonomous use of an expansive interpretation – which consequently allows it to be proactive concerning climate change.

Streszczenie

Mandat Europejskiego Banku Centralnego na rzecz zmian klimatu

Słowa kluczowe: prawo Europejskiego Banku Centralnego, zmiany klimatu, mandat prawny.

Zmiany klimatu stanowią obecnie jedno z głównych zagrożeń współczesnego świata. W walce z tym zagrożeniem potrzebna jest zintegrowana aktywność rządów i organów legislacyjnych wszystkich państw na wszystkich kontynentach. Banki centralne mają również w tej „walce" do odegrania swoją rolę w ramach polityki pieniężnej i nadzorczej – jak to jest w przypadku tytułowego Europejskiego Banku Centralnego (ang. *European Central Bank* – ECB). Aktywność instytucji publicznych w niwelowaniu negatywnych skutków wynikających ze zmian klimatu musi odbywać się w ramach demokratycznych zasad, zgodnie z obowiązującym prawem. Podobnie jest z bankami centralnymi, których działalność powinna mieścić się w ramach przyznanych im mandatów. Celem artykułu jest analiza regulacji prawnych w obszarze mandatu ECB w zakresie polityki pieniężnej oraz nadzorczej w odniesieniu do wyzwań stojących przed owym bankiem w związku ze zmianami wynikającymi ze zmian klimatu. W toku eksploracji regulacji prawna Unii Europejskiej oraz studiów literaturowych, szczególnie opracowań zagranicznych, autor postawił tezę, w świetle której EBC posiada wystarczające umocowanie prawne do przeciwdziałania negatywnym skutkom wynikającym ze zmian klimatu. Na poparcie powyższego wskazano m.in. następujące wnioski: interpretacja mandatu EBC określonego w traktacie o funkcjonowaniu UE powinna odbywać się w odniesieniu do wykładni celowościowej prawa UE. Takie ujęcie pozwala na

odkodowanie z regulacji unijnych drugorzędnego – istotnego – celu EBC w kontekście niwelowania negatywnych skutków wynikających ze zmian klimatu za pomocą wspierania polityki gospodarczej w kierunku celu do jakiego UE została powołana. Ponadto, jak pokazały wyroki Trybunału Sprawiedliwości UE z ostatnich lat, w których zarzucano EBC wykraczanie poza swój podstawowy mandat, bank ten ma znaczną swobodę w interpretowaniu swojej legitymacji – nawet przy autonomicznym wykorzystaniu wykładni rozszerzającej, co w konsekwencji pozwala na aktywność w odniesieniu do zmian klimatu.