

## Policy Brief

# Legal, compliant and suitable: The ECB's Pandemic Emergency Purchase Programme (PEPP)

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#Corona  
#ECB  
#Eurozone

The ECB has announced a 750-billion-euro purchase programme to fight the economic impact of the COVID-19 pandemic. But like all ECB programmes in recent years, the new Pandemic Emergency Purchase Programme (PEPP) will likely be challenged in court. This policy brief assesses whether the PEPP will likely survive a legal challenge. It argues that the PEPP is compatible with EU law because it meets the three criteria the Court of Justice of the EU has established to check the legality of monetary policy measures: First, the PEPP falls within the ECB's mandate. Second, it respects the principle of proportionality. And third, it does not violate the prohibition of monetary financing. This assessment even holds if the ECB were to relax some of the constraints in the PEPP like the issuer limit currently applicable to other bond-buying programmes.

### Introduction

On 18 March 2020, the European Central Bank (ECB) announced a 750 billion euro bond purchase programme called Pandemic Emergency Purchase Programme (PEPP) to address the economic and financial fallout from COVID-19.<sup>1</sup> Under the PEPP, the ECB and national central banks (NCBs) will buy mostly government bonds until the end of 2020, or longer if necessary, and the programme closely follows the rules under which the current Public Sector Purchase Programme (aka: Quantitative Easing or QE) operates. The purchases will eventually follow the capital key of the NCBs by the time the programme comes to an end but will be flexible over time and space. As a result, the PEPP allows the ECB and NCBs to buy government bonds wherever and whenever necessary to ensure that interest rate spreads between the bonds of different member states do not undermine the functioning of monetary policy in the Eurozone. Crucially, the ECB also announced that it would review

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<sup>1</sup> European Central Bank (ECB), ECB announces €750 billion Pandemic Emergency Purchase Programme (PEPP), 18 March 2020, [https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200318\\_1~3949d6f266.en.html](https://www.ecb.europa.eu/press/pr/date/2020/html/ecb.pr200318_1~3949d6f266.en.html).

the limits it has set itself for the PSPP if they undermine PEPP effectiveness. These limits include *inter alia* the rule that the ECB can only buy up to 33% of a country's outstanding debt (issuer limit) and the same share of any individual bond (issue limit).

Every time the ECB adopted a programme to purchase government bonds in the past, this led to legal challenges that ultimately had to be resolved by the Court of Justice of the EU (CJEU) in Luxembourg. This will be similar for the PEPP – with one huge difference: We have two landmark cases by the CJEU against which we can assess the PEPP's legality: In *Gauweiler*, the CJEU confirmed that the Outright Monetary Transactions (OMT) programme did not violate the Treaty due to the conditions set by the ECB; in *Weiss*, the Court stated the limits under which the ECB can buy government bonds of all member states under the PSPP. This brief explains why an assessment based on these two judgments should lead us to the conclusion that the PEPP is legal and well within the ECB's mandate. First, it reviews the main legal considerations that the Court has applied when judging ECB actions, namely the adherence to the mandate, the respect for the principle of proportionality and the respect for the monetary financing prohibition, examining how PEPP meets these two criteria. It then, second, argues why even an increase in the issuer and issue limits would be legal.

### Criteria for assessing the PEPP's legality

Like any other ECB bond purchase programme, the PEPP needs to comply with the pertinent provisions in the EU Treaties and their interpretation by the Court. The CJEU has jurisdiction over challenges to the ECB's monetary policy decisions. And, while the ECB's bond purchase programmes have also been challenged before the German Federal Constitutional Court, it is important to keep in mind that the CJEU has sole powers when it comes to interpreting legal acts by EU institutions based on EU law. This is why, for the first time since Germany joined the European Community, two referrals were made on these issues to the CJEU by the German Federal Constitutional Court.

The CJEU has reviewed all monetary policy measures that involved the purchase of sovereign debt securities, i.e. the Outright Monetary Transactions (OMT)<sup>2</sup>, the Securities Markets Programme (SMP)<sup>3</sup>, and the PSPP<sup>4</sup>, and confirmed their legality under EU law. Both the *Gauweiler* case (concerning the OMT) as well as the *Weiss* case (concerning the PSPP) focused on compliance with Articles 119, 123(1), 127(1) and (2) of the Treaty of the Functioning of the EU (TFEU) and Articles 17 to 24 of the Protocol on the ESCB (European System of Central Banks) and the ECB.

On the basis of these provisions of primary EU law, the Court essentially established three criteria for a given ECB bond purchase programme to be permissible:

- (i) compliant with the ECB's mandate (2.a),
- (ii) proportionate to the objectives (2.b), and
- (iii) compatible with the prohibition of monetary financing (2.c).

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<sup>2</sup> Case C-62/14, *Gauweiler and Others v. ECB*, 16 June 2015.

<sup>3</sup> Case T-79/13, *Accorinti and Others v. ECB*, 7 October 2015. This case differs from the two other challenges against the ECB bond purchase programmes, since it concerns the legality of the carve-out of ECB bond holdings during the Greek debt restructuring of 2012. However, the General Court at least obiter concluded that the ECB had the legal authority to purchase bonds.

<sup>4</sup> Case C-493/17, *Weiss and Others v. ECB*, 11 December 2018.

The PEPP meets all these criteria:

**a. The PEPP is compliant with the ECB's mandate**

According to the Treaties<sup>5</sup>, the Eurosystem, composed of the ECB and the NCBs of euro area Member States, has the exclusive competence to conduct the monetary policy of the Union, as defined in Article 127 TFEU. When assessing a bond purchase programme's compliance with the ECB's mandate, the CJEU has focused in particular on the *objectives* of the monetary policy measure. The PEPP's stated objective is "to counter the serious risks to the monetary policy transmission mechanism and the outlook for the euro area posed by the outbreak and escalating diffusion of the coronavirus, COVID-19."<sup>6</sup> The PEPP's objectives resemble those of the OMT, which was "geared to repairing monetary policy transmission channels in a way that [the ECB's] standard monetary policy can address its primary objective, i.e. maintaining price stability."<sup>7</sup>

Thus, the CJEU's assessment of why OMT was within the ECB's mandate is a good yardstick. In its *Gauweiler* judgement, the CJEU confirmed that a programme to safeguard the appropriate transmission of monetary policy is likely to contribute to the ECB's price stability objective.<sup>8</sup> The Court further stated that if the monetary policy transmission mechanism is disrupted, ECB decisions are likely to become ineffective, thereby undermining the singleness of monetary policy and the ESCB's ability to guarantee price stability across the Union.<sup>9</sup> Thus, measures to preserve the transmission mechanism are as such within the ECB's mandate.

Thus, if the ECB considers that the COVID-19 pandemic poses a risk to the smooth transmission of monetary policy, it may swiftly intervene in bond markets to fulfil its price stability mandate. Hence, the PEPP fulfils the first criterion: It is within the ECB's mandate.

**b. The PEPP is a proportional measure**

According to pertinent CJEU case law, ECB bond-buying programmes are allowed only if they comply with the proportionality requirement under EU law. This stipulates that a monetary policy measure by the ECB is (i) *suitable* to fulfil the price stability objective and (ii) *necessary* to achieve that objective.<sup>10</sup>

**Suitability**

When assessing the suitability of a bond purchase programme, the CJEU gives the ECB broad discretion:<sup>11</sup> The Court essentially relies on the ECB's own analysis of the relevant economic and financial parameters.<sup>12</sup> As long as the measures adopted by the ECB are not "vitiating by a manifest error of assessment", i.e. are not obviously misguided from

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<sup>5</sup> Article 3(1)(c) in conjunction with Article 282(1) TFEU.

<sup>6</sup> ECB, *supra* note 1.

<sup>7</sup> ECB, *Introductory statement to the press conference (with Q&A)*, Frankfurt am Main (6 September 2012), <https://www.ecb.europa.eu/press/pressconf/2019/html/ecb.is190912~658eb51d68.en.html>.

<sup>8</sup> Case C-62/14, *Gauweiler v. ECB*, at 49-50.

<sup>9</sup> *Ibid.*, at 50.

<sup>10</sup> Under EU law, the necessity analysis also includes an assessment as to whether a given measure is the "least cumbersome means" to achieve the stated objective. I will address this third prong as part of the review of the PEPP's necessity.

<sup>11</sup> Case C-493/17, *Weiss v. ECB*, at 73.

<sup>12</sup> *Ibid.*, at 78.

an economic standpoint, they are suitable to achieve the price stability objective. In the context of the PSPP, for instance, the CJEU accepted the risk of a decline in prices over the medium term as a valid justification.<sup>13</sup> Even more relevant for the PEPP, in *Gauweiler*, the CJEU followed the ECB's reasoning that the high volatility and extreme spreads between euro area countries can give rise to a fragmentation as regards bank refinancing conditions and credit costs, thereby greatly limiting the effects of the ECB's monetary policy impulses.<sup>14</sup>

The PEPP primarily seeks to address the same pressing risk as the OMT programme that was launched at the peak of the euro area crisis, namely risk to the smooth transmission of monetary policy across the Union. The COVID-19 pandemic, and the response by public health authorities to it, has led to an extreme and unprecedented economic shock affecting both the real economy and the financial sector.<sup>15</sup> In the days before the announcement, the spread between Italian and German 10-year sovereign bonds essentially doubled in less than a week. There was a clear and palatable risk to monetary policy transmission that the PEPP sought to address. And as these risks identified by the ECB were, at the very minimum, comparable to those that justified the OMT programme and the PSPP, it is clear that the PEPP can be considered a suitable measure to maintain price stability.

### Necessity

But a bond-buying programme does not only have to be suitable – it must also be necessary to fulfil the ECB's mandate: ECB measures must not “go manifestly beyond what is necessary to achieve [the price stability] objective.”<sup>16</sup> To judge whether a measure goes beyond what is necessary, a useful benchmark from previous judgments is what limits and safeguards the programme contains to ensure proportionality. According to the CJEU, (self-imposed) safeguards “help guarantee that its effects are limited to what is necessary to achieve the objective concerned.”<sup>17</sup> When assessing the PSPP, the CJEU considered the following safeguards sufficient: The ECB's purchases were (i) not selective, (ii) bonds were subject to stringent eligibility criteria, (iii) purchases were temporary in nature, (iv) they were limited in size and risk, and (v) subject to purchase limits per issue and issuer.<sup>18</sup>

The PEPP has very similar features: First, it appears that PEPP purchases will, similarly, not be selective – the ECB will purchase bonds issued by *all* euro area countries.<sup>19</sup> While this means that an OMT-like targeting of only one Member States' bonds is not possible over the full duration of the programme, the PEPP would also not require a country to enter into an ESM (European Stability Mechanism) programme to be eligible. Second,

13 Case C-493/17, *Weiss v. ECB*, at 74-78.

14 Case C-62/14, *Gauweiler v. ECB*, at 72. According to the Court, this is because the (different) interest rates for government bonds across the currency union play a decisive role in the setting of the interest rate applicable to various economic actors. Also see for some bibliography, Chiara Zilioli, *Proportionality as the organising principle of European banking regulation* in Theodor Baums, Hermann Remsperger, Michael Sachs, Volker Wieland (eds.), *Zentralbanken, Währungsunion und stabiles Finanzsystem* (Duncker & Humblot, 2019).

15 According to some forecasts, the world economy went into recession just three weeks after the virus broke out in Europe; see Rahul Karunakar and Shrutee Sarkar, *Global economy already in recession on coronavirus devastation: Reuters poll*, Reuters (19 March 2020), <https://www.reuters.com/article/us-health-coronavirus-global-economy/global-economy-already-in-recession-on-coronavirus-devastation-reuters-poll-idUSKBN21702Y>.

16 Case C-493/17, *Weiss v. ECB*, at 79.

17 *Ibid*, at 82.

18 *Ibid*, at 79-100.

19 ECB, *supra* note 1.

the PEPP will essentially be limited to bonds eligible under the ECB's existing asset purchase programmes and therefore not pose additional risks to its balance sheet.<sup>20</sup> Third, the PEPP's duration is linked to the malfunctioning of the monetary policy transmission mechanism caused by the COVID-19 pandemic and hence is temporary in nature. It does not go beyond what is required. Fourth, the overall volume of PEPP purchases is ex-ante limited to EUR750 billion euros.<sup>21</sup>

However, two aspects of PEPP purchases have not yet been clarified in the press release.<sup>22</sup>

First, whether the ECB intends to emulate the loss-sharing arrangement governing PSPP purchases. The PSPP's loss allocation, which shifted much of the credit risk from bond purchases away from the ECB to the NCBs, was considered an important feature to support the programme's necessity by the Court.<sup>23</sup> A similar operational feature would mitigate immediate credit risks to the ECB's balance sheet, thereby further insulating the PEPP from challenges on necessity grounds.

The second open question is whether the Eurosystem will buy bonds beyond the self-imposed issuer and issue limits that apply to PEPP purchases. The Governing Council hinted already in the PEPP press release that it might need to go further.<sup>24</sup> Since this question is also connected to the PEPP's compliance with the prohibition of monetary financing, and since it warrants a more nuanced technical analysis, it will be further discussed below.<sup>25</sup>

This leads to the preliminary conclusion that, as the PEPP is likely to rely on similar safeguards as the PSPP, it can be considered to abide by what is necessary to achieve the ECB's price stability objective, thus respecting the principle of proportionality.

### c. The PEPP complies with the monetary financing prohibition

The third major legal issue when it comes to PEPP compliance with EU law – or that of any ECB bond purchase programme for that matter – relates to the prohibition of monetary financing under Article 123(1) TFEU.<sup>26</sup> There are overlaps between the assessment of compliance with Article 123(1) TFEU and the proportionality analysis. Therefore, the text will focus in this part on the aspects and implications pertaining only to the monetary financing prohibition.

The prohibition of monetary financing essentially seeks to discourage unsound fiscal policy on the back of ECB money. In the context of Article 123(1) TFEU, the CJEU's applies a two-pronged analysis. First, the ECB may not purchase bonds on the secondary market

<sup>20</sup> Ibid. One difference, according to the ECB's press release, is that Greek sovereign bonds will be included in the universe of eligible bonds.

<sup>21</sup> Ibid.

<sup>22</sup> Van der Sluis reaches the same conclusion, see Marijn van der Sluis, Analysis: "Fighting the fallout: the ECB adopts a purchase programme in response to the coronavirus", EULawLive Blog (24 March 2020), <https://eulawlive.com/analysis-fighting-the-fallout-the-ecb-adopts-a-purchase-programme-in-response-to-the-coronavirus-by-marijn-van-der-sluis/>.

<sup>23</sup> Case C-493/17, *Weiss v. ECB*, at 99.

<sup>24</sup> ECB, *supra* note 1.

<sup>25</sup> See *infra* "Would an increase in the issuer and issue limits be legal?"

<sup>26</sup> Article 123(1) states the following: "Overdraft facilities or any other type of credit facility with the European Central Bank or with the central banks of the Member States (hereinafter referred to as „national central banks“) in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments."

that would have an equivalent effect to that of a direct purchase of bonds by Member States. Second, the ECB must build in sufficient safeguards to keep incentives to follow a sound budgetary policy in place.<sup>27</sup>

### The PEPP is not equivalent to bond purchases on primary markets

Secondary market purchases are allowed by the Treaties, as long as they are not equivalent to a measure granting financial assistance to a Member State.<sup>28</sup> The PEPP, like the PSPP, would not amount to such direct assistance to Member States because it enshrines both programme's safeguards, including a blackout period, the possibility of ad hoc deviations in the allocation of securities bought under the PEPP, the purchase of securities across the entire yield curve, and the restrictions on the publication of granular information on Eurosystem bond holdings. The ECB has already announced that "PEPP purchases will be conducted in a flexible manner, which allows for fluctuations in the distribution of purchase flows over time, across asset classes and among jurisdictions."<sup>29</sup>

### The PEPP does not undermine incentives for sound budgetary policies

Article 123(1) prohibits the ECB from providing any impetus to Member States to pursue unsound fiscal policies. However, there seems to be widespread agreement among experts across the political spectrum that the appropriate response to the current economic shock is an expansionary fiscal policy.<sup>30</sup> The European Commission as the guardian of the EU's fiscal rules has proposed the activation of the general escape clause under the Stability and Growth Pact, a measure approved by the ECOFIN Council on 23 March. The signal could not be clearer that budgetary policy has shifted into crisis mode, and with it the definition of what a "sound" fiscal policy is. Indeed, it would arguably be irresponsible for any euro area government to stick rigidly to its fiscal policies in the face of an economic shock of the scale triggered by the COVID-19 pandemic.

This has important implications for the PEPP's legality. If the only "sound" policy is to deploy huge fiscal programmes, the argument that the PEPP could weaken Member States' resolve to follow sound budgetary policies fails to convince. European Governments and their Parliaments have already (re)set the fiscal parameters before the Eurosystem has acquired a single bond under the PEPP and the Commission as the chief authority over EU economic governance rules has given its green light. And even if one were to (falsely) claim that a "sound" budgetary policy is necessarily contractionary, there is still little or no evidence that the ECB has given such a steer. Indeed, many national authorities adopted more expansionary fiscal policies before the ECB's Governing Council announced the PEPP.<sup>31</sup> Challenging the legality of the PEPP on the basis of Article 123(1) TFEU will thus prove even more difficult than with regard to the OMT and the PSPP.

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<sup>27</sup> Case C-493/17, *Weiss v. ECB*, at 106-107.

<sup>28</sup> Case C-62/14, *Gauweiler v. ECB*, at 103.

<sup>29</sup> Christine Lagarde, *Our response to the coronavirus emergency*, The ECB Blog by Christine Lagarde, President of the ECB (19 March 2020), <https://www.ecb.europa.eu/press/blog/date/2020/html/ecb.blog-200319~11f421e25e.en.html>.

<sup>30</sup> E.g. Martin Sandbu, *Huge fiscal spending is needed to fight the coronavirus downturn*, Financial Times (17 March 2020), <https://www.ft.com/content/9963f71e-67b2-11ea-800d-da70cff6e4d3>; Maria Demertzis, André Sapir, Simone Tagliapietra and Guntram B. Wolff, *An effective economic response to the coronavirus in Europe*, Bruegel Policy Contribution Issue no 6, March 2020, <https://www.bruegel.org/wp-content/uploads/2020/03/PC-06-2020-130320.pdf>.

<sup>31</sup> See Sonia Sirletti, John Follain, and Flavia Rotondi, *Italy Announces \$28 Billion Plan to Cushion Virus-Hit Economy*, Bloomberg (10 March 2020), <https://www.bloomberg.com/news/articles/2020-03-10/content-calls-on-ecb-to-do-whatever-it-takes-against-coronavirus>.

Therefore, we can conclude that the PEPP also meets the third criterion of the CJEU as it complies with the monetary financing prohibition.

### Would an increase in issuer and issue limits be legal?

The announcement of the PEPP also contained an important sentence about a possible further change to its setup: “To the extent that some self-imposed limits might hamper action that the ECB is required to take in order to fulfil its mandate, the Governing Council will consider revising them to the extent necessary to make its action proportionate to the risks that we face.” The ECB is signalling here that it might relax some of the safeguards discussed above to ensure the programme remains an effective tool. This concerns in particular the issuer and issue limits: these both stand at 33%, but might need to be raised at some point to make sure the ECB and the NCBs can still buy bonds according to the capital key once it hits these limits for a number of member states, in particular Germany. The question then is: Would the legal assessment above hold true even with higher issuer and issue limits? The answer is yes, and here is why:

Under the PSPP, the ECB may not purchase more than 33% of a single PSPP-eligible security (issue share limit) and not more than 33% of a Member States’ total outstanding securities (issuer limit).<sup>32</sup> When the PSPP was launched, the justification for the two self-imposed limits was (i) to ensure that the Eurosystem did not reach a blocking minority for the purposes of collective action clauses (CACs) and (ii) to safeguard market functioning and price formation.<sup>33</sup> But does this also hold for the PEPP?

First, it is important to remember that the PSPP was the first programme with pre-defined issuer and issue limits – the SMP and the OMT programmes, both of which passed the CJEU’s assessment, had no such features. To be sure, sovereign bonds had no CACs when the SMP and the OMT programmes were launched. But the CJEU could have still demanded ECB measures to “safeguard market functioning and price formation” – it did not. Second, even in the context of the PSPP, the Court did not prescribe that the purchase limits need to be of a specific amount. Rather, it emphasised that, since the Eurosystem “is not permitted to buy either all the bonds issued by such an issuer or the entirety of a given issue of those bonds, [...] a private operator necessarily runs the risk of not being able to resell them to the ESCB on the secondary markets [...]”.<sup>34</sup> The PEPP would follow the same logic. While the 33% limits from the PSPP might not be suitable for the PEPP’s objectives, the Eurosystem would never purchase an entire series of bonds, yet alone all bonds issued by a Member State. And since the Court does not focus on the exact amount of the limits but on private investors’ inability to resell their securities with certainty to the Eurosystem, a proportionate deviation from the PSPP limits is, therefore, unlikely to render the PEPP unlawful.

Moreover, aside from the fact that the PEPP is a different programme with different objectives, keeping the PSPP’s purchase limits might also be unnecessary for two other reasons:

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<sup>32</sup> See ECB, *Public sector purchase programme (PSPP) - Questions & Answers*, 2 December 2019, <https://www.ecb.europa.eu/mopo/implement/omt/html/pspp-qa.en.html>.

<sup>33</sup> For an analysis, see Sebastian Grund and Filip Grle, *The European Central Bank’s Public Sector Purchase Programme (PSPP), the Prohibition of Monetary Financing and Sovereign Debt Restructuring Scenarios*, 41(6) *European Law Review* 795 (2016).

<sup>34</sup> Case C-493/17, *Weiss v. ECB*, at 125.

First, the main reason why some argue that issuer limits are necessary is because the Eurosystem will always have to vote against any debt restructuring to avoid a breach of the monetary financing prohibition. Therefore, the argument goes, it should not have a blocking minority in any bond issue. However, this is short-sighted: it is far from clear that the Eurosystem would always be better off in terms of actual losses and hence of the amount of monetary financing in a restructuring case if it always were to block an orderly sovereign debt restructuring. Let's imagine, as has been the practice in previous debt workouts, that a country decides to only repay those creditors that participate in debt negotiations and agree to a haircut.<sup>35</sup> Indeed, if Eurosystem central banks would, as most creditors do, accept a restructuring, they might incur significantly fewer losses than with an uncompromising holdout strategy.<sup>36</sup> It would be hard to qualify this as "monetary financing."

Second, the risk of distortions in price formation channels from central bank bond purchase programmes may be overstated. For instance, as regards the Corporate Sector Purchase Programme (CSPP), the ECB may buy up to 70% per bond issue. Pertinent economic research did not find any price dislocations for bonds eligible under the CSPP.<sup>37</sup> Similarly, sovereign bond purchases, if sufficiently split along the yield curve, may not result in any local deformations.<sup>38</sup> Indeed, appropriate operational parameters and a certain degree of flexibility can have significant positive effects on the price discovery mechanism, even with regard to large-scale asset purchase programmes.<sup>39</sup>

In sum, these arguments should lead us to the conclusion that even an increase in the issuer and/or issue limits would not undermine the PEPP's compliance with EU law.

### Conclusions and implications for the PEPP'S Design

The announcement of the PEPP marks an unprecedented step in the history of European monetary integration. But it is an appropriate response to the global public health emergency that the COVID-19 outbreak poses as well as the financial and economic shock that it has triggered. The legality of the PEPP can be defended in the light of both these extraordinary macroeconomic circumstances as well as the CJEU's assessment of previous ECB bond purchase programmes. As this policy brief shows, the Court's *Gauweiler*<sup>40</sup> and *Weiss*<sup>41</sup> decisions have defined the boundaries within which the ECB may design its monetary policy measures. And the PEPP does not transgress these boundaries.

However, in order to mitigate the risk of any *ex-post* legal challenges, the legal act on which the PEPP is based should underscore the following principles, which are informed

<sup>35</sup> See for an overview of the sovereign debt restructuring process Lee Buchheit, Guillaume Chabert, Chanda DeLong and Jeromin Zettelmeyer, *How to Restructure Sovereign Debt: Lessons from Four Decades*, Peterson Institute for International Economics Working Paper No. 19-8, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3387455](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3387455).

<sup>36</sup> For a discussion of the ECB's involvement in sovereign debt restructurings, see Grund and Grle, *supra* note 33.

<sup>37</sup> Benjamin Grosse-Rueschkamp, Sascha Steffen, and Daniel Streitz, *A capital structure channel of monetary policy*, 133 *Journal of Financial Economics* 357 (2019).

<sup>38</sup> William Arrata and Benoît Nguyen, *Price impact of bond supply shocks: Evidence from the Eurosystem's asset purchase program*, Banque de France Working Paper 623 (March 2017).

<sup>39</sup> Felix Hammermann, Kieran Leonard, Stefano Nardelli and Julian von Landesberger, *Taking stock of the Eurosystem's asset purchase programme after the end of net asset purchases*, *Economic Bulletin* Issue 2, 2019, [https://www.ecb.europa.eu/pub/economic-bulletin/articles/2020/html/ecb.ebart202002\\_03~13fd3ff790.en.html](https://www.ecb.europa.eu/pub/economic-bulletin/articles/2020/html/ecb.ebart202002_03~13fd3ff790.en.html).

<sup>40</sup> Case C-62/14, *Gauweiler v. ECB*.

<sup>41</sup> Case C-493/17, *Weiss v. ECB*.



by pertinent CJEU jurisprudence:

1. The PEPP's objectives are proportional because they address a malfunctioning of the smooth transmission of monetary policy signals across the currency area triggered by the sudden stop in economic activity, thereby undermining the singleness of monetary policy.
2. The PEPP's design is proportional because it entails the following safeguards: bond purchases are (i) restricted to EUR750 billion, (ii) limited in time to periods of malfunctioning monetary policy transmission channels, (iii) not selective, (iv) limited to securities with stringent eligibility criteria, and (v) subject to a limited loss-sharing arrangement.
3. The PEPP does not breach the monetary financing prohibition because it (i) has no equivalent effect to bond purchases on primary markets (due to the safeguards mentioned in 2.) and (ii) does not incentivize Member States to pursue „unsound“ budgetary policies.

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