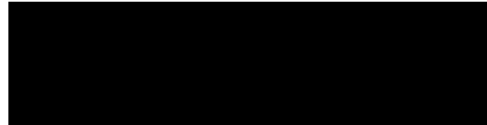


Vorsitzende des Petitionsausschusses

Brussels,
KV/jff[IPOL-COM-PETI D(2021)28611]

D 309220 20.12.2021


To the President of the
European Central Bank
Mrs Christine Lagarde



Subject: Petition No. 0429/2017 by Harald Bolsinger (German) on the compliance of the European Central Bank with the EU Charter of Fundamental Rights

Dear President,

Please be informed that the Committee on Petitions continued to examine petition 0429/2017 in its meeting on 1 December. At the end of the debate, the committee decided to keep the petition open and to forward to you the open letter by the petitioner of 20 October 2020. Please find the letter attached, in which the petitioner requests a personal reply from you as President of the European Central Bank.

We would appreciate any further information and comments you could offer on the matter. Should you require further information, please contact the Secretariat of the Committee on Petitions at 



Yours sincerely,



Dolors Montserrat
Chair
Committee on Petitions

Annex: Open letter by the petitioner of 20/10/2020

Weltethos-Institut

Dolors Montserrat
Chair, Committee on Petitions

Contact

Nuremberg, 20.10.2020

Open letter on the European Central Bank (EU-Petition 0429/2017)

Dear Ms. Montserrat,
Honorable members of the European Committee on Petitions,

as members of the *Weltethos Research Group on Finance and Economics* we are addressing this letter to you, and at the same time to the broader group of responsible people in European institutions, because an urgent course of action regarding the business conduct of the European Central Bank (ECB) must be openly discussed: The ECB is counteracting, with substantial parts of its core business, a sustainable strategy for the future of Europe.

In response to the petition of our research group member Prof. Dr. Harald Bolsinger to the EU Petitions Committee of the European Parliament ("Commitment of the European Central Bank to the EU Charter of Fundamental Rights" of 08.05.2017, Petition 0429/2017), the ECB returned a response letter which was sent on 05.08.2020. This letter clarifies why this issue at the ECB has still not been sufficiently addressed. In September 2020, we analyzed the written reply during a scientific convention with a body of experts from the *Weltethos Research Group on Finance and Economics* and we would like to share our assessment with you:

In the response, it is explicitly acknowledged that the ECB is obliged to respect the EU Charter of Fundamental Rights. It is further claimed that the ECB respects fundamental rights, checks that the principles are respected, and promotes their application: "The ECB respects the rights, observes the principles and promotes the application of the Charter".

This statement is simply wrong, as the ECB itself confirms that it does not carry out any fundamental rights compliance assessments of marketable assets or other securities, arguing that the Charter of Fundamental Rights is not applicable to transactions with private companies. "While the ECB is an addressee of the Charter, it does not automatically have an obligation to enforce the Charter vis-a-vis the issuers of securities it considers eligible for use in its monetary policy operations." The central bank is deliberately turning a blind eye to the evidence presented in the petition. With such a justification, any European institution would be allowed to buy and resell on a large scale, for example, environmentally destructive products made by slaves and produced by corrupt tax evaders, as long as there are no direct violations of the Charter of Fundamental Rights within the institution itself.

It is astonishing that the ECB does not check or presuppose any compliance with fundamental rights for marketable assets, although this would be legally possible in a simple way: "The eligibility of assets as collateral [...] is thus primarily guided by considerations regarding the monetary policy objective and appropriate risk management". "The Eurosystem [...] reserves the right to limit or reject the mobilisation of certain assets".

The ECB is therefore knowingly failing to complete its basic due diligence and has confirmed so. Furthermore, it claims that it is not subject to this basic due diligence at all. From our point of view, this is a scandal and unworthy of the European Union. Since the ECB itself does not carry out the check for fundamental rights compliance, the answer claims, as a precaution, that it also could not refer to external sustainability ratings from established rating agencies. „ECB cannot defer the eligibility of assets [...] to the opinion of a private entity regarding issuers' compliance with the Charter". This contradicts the fact that the ECB obtains ratings and services from Standard & Poor's, Moody's, BlackRock, etc. itself, or takes them into account in its risk assessments - especially when assessing marketable assets or even commercial banks. Furthermore, this statement suggests that the sustainability ratings of globally recognized rating agencies would not be reliable from the ECB's point of view, which is completely at odds with EU practice in relation to the new EU taxonomy for sustainable activities, as presented by the European Commission.

From our perspective, the response by the ECB's Director General of International & European Relations contradicts the public statements made by President Lagarde that sustainability issues - especially in connection with climate change - will be taken into account in monetary policy practice in the future. This is the most important point, since successful central bank action in the long term is based on consistent, uniform communication to ensure credibility. **Since the reply to the EU Committee on Petitions was not signed directly by the President**, but only by the Director General International & European Relations, **we recommend to directly address Mrs. Lagarde, with a request for a personal reply and statement, especially because she was directly and personally addressed in the Committee on Petitions' inquiry.**

In addition, the answer we received also contradicts public statements of other ECB leaders, such as those of Isabel Schnabel (Member of the Executive Board of the ECB). In her speech at the European Sustainable Finance Summit end of September 2020, Ms. Schnabel adopted the solution proposed by our research group member from the 2017 petition as a way for the ECB to counter climate change and literally said: **"we could consider linking the eligibility of securities as collateral in our refinancing operations to the disclosure regime of the issuing firms.** Then the Eurosystem would only accept collateral if it is able to fully assess climate-related risks".

These inconsistencies between the public announcements of ECB leaders and the response of the Director General of International & European Relations on such an important issue suggest a conflict within the ECB regarding potential changes in policy towards climate risk mitigation and, by extension, fundamental rights compliance risks. We therefore consider it essential to have an immediate and broad public political discussion on this issue, especially now.

We recommend that the European Parliament's Committee on Petitions works to ensure that the ECB is required, for the first time in its history, to provide Parliament with transparency on fundamental rights compliance regarding all traded securities and assets – in particular for the \$15 trillion of securities recognized as marketable collateral – and then, in a second step, to respond to the call made by the ECB under the leadership of President Mario Draghi in its June 22nd, 2018 reply to the Committee on Petitions, where it itself states, „it is up to political authorities to define, agree and promote appropriate measures to address such issues. In this sense, the ECB welcomes the European Commission's action plan on financing sustainable growth".

As the ECB's answers have so far impressively demonstrated, the ECB can only be persuaded to finally implement the Charter of Fundamental Rights in its operations, as all other European institutions have long since done, with the help of targeted commitments by the European Parliament and the European Commission. This does not contradict the mandate of the ECB, on the contrary, it is the only way to fulfill it properly.

With kind regards


Prof. Dr. Harald Bolsinger
(Weltethos Research Group, Member of the Board)

For the Weltethos Research Group: Prof. em. Dr. Johannes Hoffmann, Frank H. Wilhelmi, Dr. Hans-Albert Schneider, Prof. Dipl. Heribert Schmitz, Dr. Bernd Villhauer.

More information on the petition in German language can be found at: www.wirtschaftsethik.biz/zentralbank



EUROPEAN CENTRAL BANK

EUROSYSTEM

██████████
Directorate General International & European Relations

████████████████████
Chair
Committee on Petitions
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 5 August 2020

Re: Petition No 0429/2017 by Harald Bolsinger (German) on the compliance of the European Central Bank with the EU Charter of Fundamental Rights

Honourable Member of the European Parliament, dear Ms Montserrat,

Thank you for your letter seeking further information from the European Central Bank (ECB) regarding its reply to Petition No 0429/2017 by Harald Bolsinger (German) on the compliance of the ECB with the Charter of Fundamental Rights of the European Union (hereafter "Charter").

The ECB's primary objective, as mandated by the Treaty on the Functioning of the European Union (the Treaty), is to ensure price stability over the medium term. In order to achieve this primary objective, the ECB and the national central banks of the Eurosystem have at their disposal a number of tools as indicated in the Statute of the ECB and ESCB (hereafter the "Statute"). Credit operations with credit institutions and other market participants are one of these core tools, as stated in Article 18 of the Statute. The eligibility of assets as collateral for such credit operations is thus primarily guided by considerations regarding the monetary policy objective and appropriate risk management – to shield the Eurosystem against potential losses. The Eurosystem ensures that collateral assets serve the monetary policy objective and that the Eurosystem is adequately protected against risks, and reserves the right to limit or reject the mobilisation of certain assets. Under Article 19 of the Statute, and within the limits set by the Council as referred to in this Article, the Eurosystem may require credit institutions to hold minimum reserves in pursuance of monetary policy objectives. Minimum reserves are not collateralised since they constitute a deposit made by credit institutions which are subject to the Eurosystem's minimum reserve requirements with their respective Eurosystem national central banks. No counterparty is obliged to hold collateral as a result of it being subject to minimum reserves.

Address
European Central Bank
Sonnemannstrasse 20
60314 Frankfurt am Main
Germany

Postal Address
European Central Bank
60640 Frankfurt am Main
Germany

Tel: +49-69-1344-0
Fax: +49-69-1344-7305
Website: www.ecb.europa.eu

That being said, and as already mentioned in a recent reply to a written question from MEP Daly¹, the ECB is an addressee of the Charter of Fundamental Rights within the limits of Article 51 thereof. The ECB respects the rights, observes the principles and promotes the application of the Charter, in accordance with its powers and respecting the limits of the powers of the Union as conferred on it in the Treaties (Treaty on European Union and Treaty on the Functioning of the European Union). At the same time, the precise and limited mandate and powers conferred on the ECB by the Treaties, as well as the limits to the powers of the Union conferred on it by the Treaties, imply that while the ECB is an addressee of the Charter, it does not automatically have an obligation to enforce the Charter vis-à-vis the issuers of securities it considers eligible for use in its monetary policy operations. While recognising that the matter may be complex, the following considerations help to substantiate this view.

- First, private corporations such as the issuers named by the Petitioner in his initial petition do not fall directly within the scope of the Charter, which specifies that it is addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. These corporations, however, are instead subject to certain rules applicable to their conduct within the relevant jurisdictions, which may include rules set out in directly applicable EU regulations or other legal acts. The ECB cannot subject the eligibility of collateral to conditions which would effectively extend the scope of the Charter beyond the limits set in Article 51 thereof, and its own powers beyond the mandate established in the Treaties.
- Second, the authoritative assessment of alleged breaches of fundamental rights under the Charter, or other rules in EU legal acts that may be linked to the protection of these fundamental rights, falls within the remit of the relevant regulatory authorities and, ultimately, the competent national and EU courts, not within those of the ECB or of private self-authenticated institutions. The ECB cannot substitute itself for competent EU or national courts and authorities by assessing and, as the case may be, indirectly sanctioning EU corporations – to which the Charter does not even apply directly – for alleged breaches. The ECB also cannot simply defer to the findings of private self-authenticated sources such as those proposed by the Petitioner.

Therefore, the ECB cannot defer the eligibility of assets in its monetary policy operations to the opinion of a private entity regarding issuers' compliance with the Charter, as proposed by the Petitioner.

Yours sincerely,



¹ See letter from the ECB President to Ms Clare Daly, MEP, on the Charter of Fundamental Rights, available at https://www.ecb.europa.eu/pub/pdf/other/ecb_mepletter200619_Daly-ccc67c7de1_en.pdf?13b06eff8eb93dda5d33096c35e15089

Address
European Central Bank
Sonnemannstrasse 20
60314 Frankfurt am Main
Germany

Postal Address
European Central Bank
60640 Frankfurt am Main
Germany

Tel: +49-69-1344-0
Fax: +49-69-1344-7305
Website: www.ecb.europa.eu