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# Fundamental Rights in the Core Business of the ECB ?

## Still no Issue !

### Experience with the EU petition 429/2017 – Part II

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## Content

1	Abstract.....	3
2	The EU Petition 429/2017 .....	4
2.1	Healing Eurosystem's ethical blindness .....	4
2.2	The petition in a nutshell .....	5
3	Moving on with the newly staffed EU Committees .....	7
3.1	Experiences with the Committee on Petitions.....	7
3.2	Experiences with the Committee on Economic and Monetary Affairs .....	15
3.3	Experiences with the European Commission.....	20
4	Additional activities for and by the ECB.....	23
5	An interim conclusion.....	28
6	On the agenda again.....	29
6.1	Discussing the status-quo .....	29
6.2	Again: Waiting for action.....	33
7	Questions and Outlook.....	38
8	Reference List.....	40

# **1 Abstract**

The European Union petition 0429/2017 wants to make the European Central Bank apply the EU Charter of Fundamental Rights in their whole core business consequently. The petition has been brought forward by Harald Bolsinger from Germany. In this second article he describes backgrounds and developments around the petition. The petition, submitted on May the 8th 2017, addressed the investment policy of the ECB. Audits of violations of EU Fundamental Rights, it claimed, should be specifically included into the eligibility for EU owned assets. As Bolsinger explains, the ECB is still involved in violations of the Charter of Fundamental Rights of the European Union through possession and trading of ethically very questionable assets.

## **2 The EU Petition 429/2017**

### **2.1 Healing Eurosystem's ethical blindness**

It is long overdue to oblige the global financial sector to comply with fundamental normative frameworks of humanity. These include, for example, the UN Charter of Human Rights, but also the regional EU Charter of Fundamental Rights and the Paris Climate Agreement. Banks and investment companies have an indirect influence on a large scale on the business conduct of the real economy through the financing of companies and investments in corresponding projects. Central banks have the greatest influence and, at the same time, the greatest responsibility, since they not only serve as role models for commercial banks, but also have a massive influence on their financing and investment behavior and, in addition, conduct transactions on the financial markets themselves. In the European Union, the ECB is an outstanding example of this responsibility of central banks. As an institution of the European Union, the ECB is fully committed to complying with the EU Charter of Fundamental Rights - at least in theory at present, because in practice this commitment and responsibility has still not been reflected in a principled monetary policy of the ECB since its foundation. The monetary policy instruments of this central bank do not operate fully within the guard rails of the EU Charter of Fundamental Rights, but rather ignore ethical controversies and fundamental rights risks inherent in assets in the ECB's portfolio to the greatest extent possible. To change this and not let the Eurosystem contradict the political will of the European Parliament and the Commission, EU petition 0429/2017 was submitted. In the 2021 paper "Fundamental Rights in the Core Business of the ECB: No Issue?! - Experience with the EU Petition 429/2017" in the volume "The European Central Bank as a Sustainability Role Model" (<https://doi.org/10.1007/978-3-030-55450-7>), the background, history, motivation for submitting the petition in 2017 and its status at the end of 2019 were explained. This article picks up there and continues the experiences in the further course of the political handling of the petition until 2022. It continues the picture from the perspective of the petitioner Harald Bolsinger and can be understood as testimony to the fact that all parties involved - the ECB, the European Parliament, and the European Commission - are now aware of the problem in its full extent, not least due to the petition, and could very easily remedy it, which has not happened in the slightest way even after more than four years time.

The original idea that it would be sufficient to point out this easily understandable and obvious grievance of the Eurosystem's ethical blindness to have it politically healed has changed in the meantime. Rather, it requires the genuine will in the hearts of top decision-makers to REALLY

implement European values enshrined in the Charter consistently in all policy areas for the benefit of all citizens. The actual handling of the seemingly politically inconvenient petition has become a yardstick for this attitude of heart because the petition is neither one-sidedly politically colored, nor ideologically charged in one direction. It is quite simply about implementing the fundamental rights that have already been established - without wanting to renegotiate them. Basically, it is about the question of whether all European institutions should work equally to protect and promote the fundamental rights, or whether there should be one institution that can rise above them without restriction with pretextual arguments about price stability - to the detriment of the entire European Union and to its own detriment in terms of credibility. See for yourself what has happened in the context of the petition since the last article. Cited statements in original German language are all translated by the author to English for this article.

## **2.2 The petition in a nutshell**

The original petition was submitted on May 8th, 2017 in German language and can be found in Annex A.1 of the 2021 predecessor article or online under [www.wirtschaftsethik.biz/zentralbank](http://www.wirtschaftsethik.biz/zentralbank). The petition was registered under the number 0429/2017 entitled “Compliance of the European Central Bank with the EU Charter of Fundamental Rights.” on May 15th, 2017. It shows up the simple problem, that has not changed at all since 2017 and that exists since the very first day the ECB started to work: ECBs core business does decisively not examine EU Fundamental Rights violations at all! As an example, for the large-scale influence on the EU citizens – and even the people of the whole world – that must be changed, the petition shows the problem on the base of collaterals. All banks of the Eurozone must obtain credit from the ECB. The ECB provides such credit against collateral. The volume of the “eligible marketable assets” for use as collateral is 16,565.6 billion € end of Q1 2022 (see <https://www.ecb.europa.eu/paym/coll/charts/html/index.en.html>). It includes government securities, bank and corporate bonds, asset-backed securities, and other marketable assets. This means it has an incredibly large influence on the EU single market and the EU citizens. The ECB’s eligibility criteria for collateral and other assets do still not include any an audit for violations of the European Charter of Fundamental Rights, so there is a total ethical blindness in the EU financial market regarding inherent EU values! For the ECB and all European banks! The petition proofs by ESG-controversy scans that about 20% of the ECBs “eligible marketable assets” are involved in severe or very severe ethical controversies! (see [www.wirtschaftsethik.biz/centralbank](http://www.wirtschaftsethik.biz/centralbank)) Based on that the petition asks for simple transparency for potential violations of the European

Charter of Fundamental Rights and actions to stop this monetary policy misalignment, as it really should be possible to achieve price stability without accepting violations of fundamental rights by banks, corporates and governments. The solution is simple: Alignment with EU Fundamental Rights must be specifically included into the eligibility criteria for all ECB owned assets – also the assets that the ECB buys in their purchase programs.

### 3 Moving on with the newly staffed EU Committees

As one can see in the 2021 predecessor article, the political handling of the petition was as exciting as a thriller and the impression comes up, that the political responsible of the electoral term 2014-2019 did not want to act at all in that topic. The Committee on Petitions of the new parliamentary term, on the other hand, had put the issue on the agenda as soon as its business began. So, there was justified hope, that the new EU Committee on Petitions chaired by Dolors Montserrat will bring change together with the new President of the European Commission Ursula von der Leyen and the new ECB President Christine Lagarde, as all of them positioned themselves as advocates of fundamental rights at the beginning of their duty. Let's put an eye on if and how the viewpoints of the new decision makers have changed in accordance with the petition.

#### 3.1 Experiences with the Committee on Petitions

On 11.11.2019 the petition was discussed again in the newly constituted Petitions Committee after an explanation and comments by the petitioner together with Jens Minnemann as one of the actually 78 supporters of the petition. In advance the Petitions Committee has got the following speech script, that made the main points as clear as possible in the shortest possible form:

#### **"The Problem: Still nearly unchanged**

#### **ECBs core business does not take EU Fundamental Rights into account**

- The ECB still seemingly becomes owner of securities that undermine the EU Charter of Fundamental Rights with severe ethical controversies
- volume of the "eligible marketable assets" for use as collateral is at the moment 13.980,9 Billion €(Source: ECB, Data of 10/2019). => Very large influence on the EU single market and EU citizens.
- ECB's **eligibility criteria** for collateral and other assets **do not include compliance with the European Charter of Fundamental Rights.**  
=> Ethical blindness of financial market for EU values.
- ESG-controversy scans prove, that 20 % (Data source for 2017/2018: oekom for 2019: vigeo eiris & imug bond sonar) of the ECBs "eligible marketable assets" are **involved in severe ethical controversies!**  
=> ECB is part of **financing** companies that are defecting fundamental

rights.

=> This stabilizes and **enhances unethical business practices in the EU.**

## The Solution

### **Include compliance with EU Fundamental Rights into eligibility criteria for assets that the ECB can own**

- It is already the duty of the ECB as an EU institution to respect fundamental rights all-encompassing in its business conduct
- Art. 6 (1) TEU: unconditional legal binding nature of the Charter
- Art. 51/52 Charter: unconditional legal binding for the ECB
- **The TFEU does not grant independence of the EU Charter of Fundamental rights!** Respecting fundamental rights is just an existing regulatory **MUST** for all EU institutions. Fundamental rights are the limits of all actions, also for the ECBs actions.
- **Respecting fundamental rights does not violate the institutional independence of the ECB**, is no political instruction and is not a matter of exclusive competence on monetary policy!
- You are the Guardians of the Charter of Fundamental Rights: **Please** help the ECB to comply with these codified European values.

### **Comments to the reply of the European Commission**

- “The Commission cannot take further action as the petition is related to policy areas where the ECB has exclusive competence and is granted independence by the TFEU.”
- ⇒ No EU institution is independent of Fundamental Rights! **The Commission can define eligibility criteria guidelines** for compliance with EU Fundamental Rights.
- “The petition should be addressed to the ECB.”
- ⇒ **Petitions are a matter for the petition committee.** In their answer, the ECB urges political authorities (= the petition committee) to “define, agree and promote” ethical minimum standards to implement in their everyday work.
- “Moreover, it has to be kept in mind that the ECB is accountable for its policies, including through regular reporting and dialogue with the European Parliament (Article 284 TFEU).”
- ⇒ **It should become a standard that the ECB reports on fundamental rights compliance** to the Parliament regularly.

## Comments to the reply of the ECB

- The ECB is aware of the effects of their assets purchase and collateral eligibility: they talk about positive effects by buying good (ecological) assets and therefore know about the negative effects as well. **The ECB even asks for regulation in these aspects in their answer!**

## Summary

- The Lisbon Treaties make the EU Charter of Fundamental Rights a directly applicable primary law in all European institutions. All the ECB's operations as a European institution must therefore comply with the codified values of the Charter of Fundamental Rights. The ECB's response to the petition shows that she is waiting for political action.
- **Please** - the European Parliament, as guardian of fundamental rights, must act based on this petition and persuade the Commission & ECB to finally remedy the biggest systemic error in the European financial market system.”

After an exciting debate of which a video documentation is available online (see <https://www.europarl.europa.eu/streaming/?event=20191111-1500-COMMITTEE-PETI&start=2019-11-11T14:08:49Z&end=2019-11-11T16:29:36Z&language=en>), the Petitions Committee resolved the previous mixing with a completely inappropriate other petition, closed this other petition and kept the fundamental rights petition 429/2017 open - combined with the intention to submit the demands for fundamental rights compliance of the ECB to the other newly constituted European Parliament Committees and the ECB under new leadership for further political treatment and opinion. A renewed inquiry to the ECB was confirmed in a letter from the chair of the Committee on Petitions dated 14.01.2020. Over three months later on 28.04.2020, the Petitions Committee and the two German MEPs (Ms. Müller - FDP and Mr. Jahr - CDU) were asked what the situation was. After a direct follow-up by the MEP office of Peter Jahr on 20.05.2020, the secretariat of the Petitions Committee sent a reprint of the letter to Ms. Lagarde on 27.05.2020 to the petitioner:

“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,

I would like to inform you that members took note of the letter by the European Central Bank, DG International and European Relations, of 22 June 2018 on the above-mentioned petition. Please find attached a reaction on the letter from the petitioner-dated 27 June 2018.

Further, I would like to inform you that, in the meeting of 11 November 2019, the Committee on Petitions has again examined petition 0429/2017. Please find attached the petitioner's presentation that he gave in the meeting. The members of the committee decided that the petition would remain open and asked for an updated opinion from you on the matter raised by the petitioner, in particular on the question of compliance of the European Central Bank with the European Charter of Fundamental Rights.

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 [petisecretariat@europarl.europa.eu](mailto:petisecretariat@europarl.europa.eu)

Yours sincerely”

The letter was sent directly to the President of the European Central Bank Mrs Christine Lagarde on January 14 and included the speech script presented on 11.11.2019 in the Committee on Petitions. In May, according to the Petitions Committee, Christine Lagarde received an email reminder requesting a response. The new Committee on Economic and Monetary Affairs did not revisit the issue. This was raised at the committee meeting on Nov. 11, 2019, but not recorded in the minutes as a decision. A request to the Petitions Committee Secretariat to still do this at their discretion was sent by the petitioner on May 27. Even at the beginning of August 2020, there was still no response from the ECB. Peter Jahr's office inquired again about the status. On August 27, 2020, the Secretariat of the Committee on Petitions forwarded the ECB's reply, dated August 5, 2020, which was not signed by the direct addressee Christine Lagarde, but by the ECB Director General International & European Relations:

“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.

That being said, and as already mentioned in a recent reply to a written question from MEP Daly (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~cee67c7de1.en.pdf](https://www.ecb.europa.eu/pub/pdf/other/ecb.mepletter200619_Daly~cee67c7de1.en.pdf)), 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 insti-

tutions, 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”

The content of ECBs answer contradicts in some points the public pronouncements of Mrs. President Lagarde on the subject, as she was discussing these days considering climate change risk issues in monetary policy. Therefore, in September 2020, the ECB's response letter was analyzed in an academic meeting with a panel of experts from the Weltethos (Global Ethic) Research Group on Finance and Economics, and a recommendation was drawn up for further political consideration as follows:

**“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 22<sup>nd</sup>, 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”

This recommendation was forwarded by the Global Ethic Institute Research Group on Finance and Economics to the Chair of the Petitions Committee as well as to other Members of the EU Parliament including all political group chairs of the European Parliament in October 2020. There was no response to the recommendation from the Committee of Petitions. Nearly a whole year after that - in September 2021 - the Petitions Committee Chair and MEP Peter Jahr were asked for an update. Mr. Jahr had received confirmation from the Petitions Committee Secretariat that the petition was indeed last processed in 2020. He wanted to try putting the petition back on the agenda of the Committee so that it will finally be processed further.

### **3.2 Experiences with the Committee on Economic and Monetary Affairs**

The relevant political groups also ignored the issue by not responding at all to the open letter. Only individual feedback from MEP **Markus Ferber** (CSU) was very informative, as he has been a member of the **Committee on Economic and Monetary Affairs (ECON)** since 2009, was elected first vice-chairman of the committee in 2014 and has been spokesman for the EPP Group in ECON since 2018. In his reply letter of November 3, 2020, he made clear: "The ECB

is first and foremost committed to the objective of price stability and to the principle of market neutrality in its monetary policy actions. All other policy objectives to which the European Central Bank is dedicated must not stand in the way of these principles." In an honorary capacity, Mr. Ferber is also chairman of the Hanns Seidel Foundation, deeply linked to Christian Democracy in Bavaria. Hoping for a rethink that makes him act in the ECON, he received this replica directly from the petitioner combined with an appeal to take action:

“Petition 0429/2017 - Your letter of 3.11.2020.

Dear Mr. Ferber,

Thank you very much for your response to our note on the initiative regarding the ECB. We are very pleased that you are fundamentally concerned with this weighty issue as our representative in Brussels. Of course, we have also brought the issue into the public consultation, in addition to the petition that has been available since 2017.

As an ordoliberal thinker with a Christian background, I am very saddened by the inaction of you in the role of the CSU member. It is not a question of the ECB taking "greater" account of the Charter of Fundamental Rights, but of taking it into account at all. You are trying the principle of "market neutrality" and refer to the European Treaties to boot, not even "questioning" the existing drawbacks. There is no such thing as market neutrality, since every market transaction necessarily has an impact. The existing treaties oblige the ECB in particular to act within the normative framework of the Charter of Fundamental Rights.

If we apply the facts to Bavaria, we could accept that BayernLB would be allowed to disregard the principles of the Bavarian constitution and do business with human traffickers and arms dealers, corrupt tax avoiders and ecological destroyers without any problems and without prior compliance checks. BayernLB, however, is far ahead of the ECB in practice because it is aware "that every investment and financing decision also has a social and environmental dimension." At the same time, it has defined detailed specifications for "critical and controversial business areas [...] which companies and projects [...] are excluded with regard to their negative social and environmental impact". We in Bavaria can show by this example alone in the EU how to do it right. But to do so, we must also be convinced that it is right to apply the existing rules of the game in all institutions without exception.

If you won't stand up for the simple demand to the ECB to live up to its duty of care and scrutiny with regard to the Charter of Fundamental Rights of the European Union, who will? You are a weighty representative in the EU Parliament for the ECON Committee and can put the issue on

the agenda. Mr. Gualtieri has shown for your committee at the time that he has not even read or even understood the petition....

Yours sincerely

Harald Bolsinger“

The reply shows that there are banks out there – here in Bavaria in Germany as an example, that already do voluntarily, what the ECB should do as a role model. The BayernLB is no specialized sustainability bank but tries to do things right by opening their eyes to ethical questions proactively. The communication with politicians in charge about these examples should lead to proactive thematization in the relevant committee of the European Parliament. In this case there was only upon request a reply almost a year later in September 2021, in which Mr. Ferber reiterated that the ECB would be independent in monetary policy decisions within the scope of its mandate because the European Treaties would be clear in the tasks of the European Central Bank. Mr. Ferber even stated that there is "a mandate to politicians to protect this very independence" of the ECB. Working with these answers is difficult, because in the petitions points the European treaties are just shown as not respected and politically responsible persons seem not to mind this with reference to a misinterpreted independence of the ECB. This shows a basic problem of the petition, as there can only be change, when political decision makers start to perceive the problem and rethink seemingly simple truths about the independence of the ECB.

In March 2021, Gabriele Bischoff (SPD) responded to a direct citizen inquiry on the petition, which shows, that there are indeed also decision makers in the ECON perceiving the problem of the petition and working actively on a possible solution. Ms. Bischoff is a deputy member of the Committee on Economic and Monetary Affairs (ECON) and thus currently has a somewhat weightier role. She made it clear that the ECB "should not indirectly participate in the financing of human rights abuses," but also that "as an institution, it is independent from both EU institutions and member state governments." It was through Ms. Bischoff's response that we got to know about a parliamentary question to the President of the ECB in March 2020 to clarify whether the ECB follows the European Charter of Fundamental Rights when buying assets. Unfortunately, the Petitions Committee did not provide the petitioner with any information on this matter, although this inquiry could be traced back to the petition. Ms. Bischoff cited Ms. Lagarde's answer of June 2020 (available online here: [https://www.ecb.europa.eu/pub/pdf/other/ecb.mepletter200619\\_Daly~cee67c7de1.en.pdf](https://www.ecb.europa.eu/pub/pdf/other/ecb.mepletter200619_Daly~cee67c7de1.en.pdf)):

“Like all EU institutions, the ECB is an addressee of the Charter of Fundamental Rights. The ECB respects the rights, observes the principles and promotes the application thereof, in accordance with its powers and respecting the limits of the powers of the Union as conferred on it in the Treaties. This covers all the ECB’s tasks in the fields of monetary policy and banking supervision, in its advisory capacity, as well as its role under the Treaty establishing the European Stability Mechanism (ESM) and Regulation (EU) No 472/2013.<sup>1</sup> Reviewing the compatibility of the ECB’s actions with the Charter is part of our internal legal scrutiny procedures, which are followed for all actions through which the ECB discharges its tasks. In addition, the conformity of the ECB’s actions with the Charter is reviewable by the Court of Justice of the European Union, which has affirmed that the ECB acts in line with the Charter. In this context, I would like to point out that the ECB has a specific mandate and is assigned specific tasks under the Treaties, unlike the Commission, which, as the guardian of the Treaties, is tasked with monitoring the application of EU law in general. The ECB’s accountability to the European Parliament provides an additional channel to ensure such compliance.”

Ms. Bischoffs answer to the citizen included as last point, that the Court of Justice of the European Union had affirmed that the ECB would act in line with the Charter of Fundamental Rights, proven by the judgments in the cases “Frank Steinhoff and Others v European Central Bank, Case T-107/17” and “Alessandro Accorinti and Others v European Central Bank, Case T-79/13”.

This answer to a citizen request suggests that Ms. Bischoff – and with her other members of the ECON – truly believes, that the ECBs securities trading charter compliance would be approved by the Court of Justice of the European Union (ECJ). Ms. Lagarde sentence in her answer to the ECON “the Court of Justice of the European Union, [...] has affirmed that the ECB acts in line with the Charter.” really can make the Committee on Economic and Monetary Affairs (ECON) believe that everything would be alright, and this would have been even proven by the highest EU court. Ms. Lagarde certainly did not intend to mislead ECON with her answer, yet the sentence may lead to it being misinterpreted, as it is worded very unhappily and ambiguously especially in the context of the petition’s issues. When working through the court judgments, that Ms. Lagarde has cited in the footnote of her letter to prove her statement, it turns out to be misleading in the context of the petition's claims. The claim in the context of “Frank Steinhoff and Others v European Central Bank, Case T-107/17” and Vereinigte Raiffeisenbanken Gräfenberg-Forchheim-Eschenau-Heroldsberg eG relates, on the one hand, to a different set of facts (here specifically the problem is about property rights) and, on the other hand, the Court of Justice of the European Union in its reasoning (see <https://eur-lex.europa.eu/legal->

[content/EN/TXT/?uri=CELEX:62017TJ0107](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017TJ0107)) makes quite clear, in the spirit of the petition, that the ECB HAS TO comply with the Charter of Fundamental Rights completely: “Similarly, the special status conferred on the ECB within the institutional framework of the Treaties does not exempt it from the requirement to respect the fundamental rights of the Union or from its duty to contribute to the attainment of the objectives of the Union as set out in Articles 2, 3 and 6 TEU”. The ECJ extend their statement with a remark, that the right to property guaranteed by Article 17(1) of the Charter may be subject to restrictions justified by objectives of general interest, which draws attention to the fact, that a balancing of interests can be acceptable in special cases. Certainly, it is not an objective of general interest of the European Union and of the ECB to promote companies that accept slave labor and child labor, engage in corruption and tax avoidance, or systematically destroy the environment. Regarding the petition, the ECB President's response to ECON is blurred and can result in a misleading nonchalance of the political responsible. Also in the claim “Alessandro Accorinti and Others v European Central Bank, Case T-79/13” (see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62013TJ0079>) named by Ms. Lagarde, there is no reference to the criticism from the petition recognizable. It is simply not about the question that the Parliament had asked, namely the fundamental rights compliance of the securities and assets traded and purchased by the ECB. But it is rather the case that here, too, the ECJ makes clear statements on the binding of the ECB by the Charter with regard to certain articles - here on the principle of equal treatment: “the principle of equal treatment, as enshrined in Articles 20 and 21 of the Charter of Fundamental Rights [...], which the ECB, as an EU institution, is required to observe as a superior rule of EU law protecting individuals.”

Due to these reasons, the petitioner called attention on 29.09.2021 in a message to Mrs. Bischoff directly, that Ms. Lagarde's answer to the ECON is misleading in the context of the petition's claims and that there is no holistic compliance with the Charter of Fundamental Rights certified by the ECJ at all. Also, the citizen, that was in correspondence with Ms. Bischoff has sent out the following three clear questions to ECON-members in March 2022 to make sure, that they really reflect on the points of the petition:“

- Why are unethical issuers accepted by the ECB in the marketable assets and no fundamental rights conformity of the assets is checked at all, although according to Mrs. Lagarde the EU Charter of Fundamental Rights "applies to all tasks of the ECB in the areas of monetary policy"?

- When will you, as the responsible committee in the European Parliament, demand detailed information from the ECB for the first time on the conformity with fundamental rights of all assets & securities held by the ECB?
- As can be seen from the course of the petition at <https://www.wirtschaftsethik.biz/central-bank>, so far you seem to have received only general insubstantial answers from Ms. Lagarde. You have never yet demanded an assessment of all securities held by the ECB, such as the petitioner has already sought at his own expense in 2017 for all marketable assets. Are you not the guardians of fundamental rights with a duty to demand real transparency?

I would appreciate answers to my three questions. Thank you very much for your efforts.”

By this time at the latest, all ECON members can be said to be informed about the problem.

### **3.3 Experiences with the European Commission**

Great hope for the petition’s cause was placed in the appointment of Mairead McGuinness as Commissioner for Financial Stability, Financial Services and Capital Markets. In January 2021 she was encouraged with this letter signed by Harald J. Bolsinger, Johannes Hoffmann, Ndidi Nnoli-Edozien, Bernd Villhauer and Benedikt Hoffmann for the whole Weltethos Research Group Members on Finance and Economics, to create transparency about the ECB's fundamental rights compliance:

“[...] dear Ms. McGuinness,

aligning the financial system with sustainability is still in its infancy. We are convinced that you play a key role in the necessary change, as we intensively read about your actions for the green deal.

As members of the Weltethos Research Group on Finance and Economics we are addressing this letter to you, because an urgent course of action regarding the business conduct of the European Central Bank (ECB) must be openly discussed: The ECB is counteracting a sustainable strategy for the future of Europe with substantial parts of its core business. In response to the petition 0429/2017 ("Commitment of the European Central Bank to the EU Charter of Fundamental Rights") of our research group member Prof. Dr. Harald Bolsinger to the EU Petitions Committee, the ECB returned a response letter which shows, that itself confirms that it does not carry out any fundamental rights compliance assessments of marketable assets or other securities.

We recommend that the European Commission and the Parliament's Committee on Petitions work together to ensure that the ECB is required, for the first time in its history, to provide 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”.

Sustainability worthy of its name includes the abandonment of externalization of costs to environmental, social and cultural commons. We need to make sure, that at least our financial markets stop financing destructive and with the EU Charter of Fundamental Rights non-compliant business actions.

We would love to hear you raising your voice to address this problem in general and the petition in particular. What is your position to petition 0429/2017? Would it be possible to invite you as a speaker to a scientific conference in Frankfurt in October this year?”

As it can be seen from the last sentence, Mairead McGuinness was asked to participate in the scientific conference planned for October 2021 that should take place in Frankfurt together with leading members of the Club of Rome. This conference is the basis for the present volume on the topic and should give her a chance to address the petitions claims in a suitable context. End of August 2021 – seven months later – we received a cancellation, that did not include any political position to the petition. In a reply the conference committee asked for any representation or a simple video message as a contribution to the conference – but not even that had been made possible. Additionally, regarding transparency about the ECB's fundamental rights compliance we have not become aware of any activities of the European Commission and its relevant commissioner until today. It was surprising and deeply disappointing, that the new Commission continued the poor performance for the petitions claims of their predecessors, because Ursula von der Leyen had praised in her application phase in her political guidelines for the next European Commission 2019 – 2024 an “European Green Deal” and “An economy that works for people” (see [https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf)). As new President of the European Commission she staged her inauguration exactly on the 10th anniversary of the Treaty of Lisbon and had held up the Charter of Fundamental Rights of the EU to the cameras of the news channels together with the President

of the European Council Charles Michel, the in January 2022 deceased President of the EU Parliament David Sassoli, and the new ECB President Christine Lagarde. (see <https://www.tagesschau.de/multimedia/video/video-628293.html> as an example of the German Tagesschau on 1.12.2019) Doing nothing about a fundamental complaint like the petition 429/2017 and even repeating the answer of the predecessor Commission in the style of “we are not responsible and cannot do anything” are embarrassing statements about the real importance of fundamental rights in the Eurosystem to the top decision makers in the acting European Commission.

## 4 Additional activities for and by the ECB

On 15.10.2019, the German Sustainability Council adopted in its recommendation to the Federal Government in point 10 the demand for a regulation of the ECB in the sense of the petition. The idea originates from the results of the Second Sustainable Finance Summit Germany in Frankfurt in 2018. The Sustainability Council went beyond the existing fundamental rights obligation and even demanded that the ECB must be bound by the principle of sustainability. (see [https://www.nachhaltigkeitsrat.de/wp-content/uploads/2019/10/2019-10-15\\_Stellungnahme\\_Sustainable\\_Finance\\_Strategie\\_der\\_Bundesregierung.pdf](https://www.nachhaltigkeitsrat.de/wp-content/uploads/2019/10/2019-10-15_Stellungnahme_Sustainable_Finance_Strategie_der_Bundesregierung.pdf)) The point was discussed in a roundtable on that summit. Normally you should be able to retrace the origin of such thoughts by publicly available documentation as background information about that roundtable. Its contribution was available on the website of the German Hub for Sustainable Finance some time. Unfortunately, all website content of all contributors to the Hub for Sustainable Finance so far have been deleted in the meantime. With the establishment of the Sustainable Finance Advisory Board, the German Council for Sustainable Development had decided to close that initiative. The offer to take over the content of the hub website and thus also the documentation of this topic as a permanent dialog offering on the website of the Sustainable Finance Advisory Board was rejected. The value of third-party contributions to this core topic appears to be very low against this background. A request from September 2020 on behalf of the Research Group Finance and Economics of the Global Ethic Institute to make the emergence of the topic visible to the management of the new association Green and Sustainable Finance Cluster Germany e. V. was not answered even after two requests.

On October 20, 2020, members of the Research Group Finance and Economics of the Global Ethic Institute participated in the public **ECB Strategy Review ("The ECB is listening")** and a research group member drew attention to fundamental rights violations with the following text in German language: "By not respecting the EU Charter on Fundamental Rights in its core business (marketable assets, purchase programs, etc.), the ECB's monetary policy actively promotes the expansion of economic practices that do not comply with fundamental rights by financing or assisting in financing them. This is of great concern to me and has therefore been addressed in the form of EU Petition 0429/2017 (Commitment of the European Central Bank to EU Charter on Fundamental Rights). Documentation see here: [www.wirtschaftsethik.biz/zentralbank](http://www.wirtschaftsethik.biz/zentralbank)" Thus, the petition has also come to the attention of the strategy review body of the ECB and could have been included in the submission to Ms. Lagarde. Originally, the Research Group Finance and Economics of the Global Ethic Institute

would have liked to participate in the live discussion with Ms. Lagarde, but this was not approved.

In an online conversation with the European Policy Centre in November 2020, Christine Lagarde confirmed the legality of the steering option through the selection of marketable assets, which was most likely first brought into play by the petition. (see “EPC Thought Leadership Forum with Christine Lagarde” of 30.11.2020 on youtube [https://youtu.be/9\\_Uc70bC\\_2U](https://youtu.be/9_Uc70bC_2U)) She referred to the application of the taxonomy for sustainable investments of the EU Commission, but proved that she would be able to implement the corrections demanded in the petition immediately on the basis of existing legal foundations - as the EU Charter of Fundamental Rights has already been for 10 years.

Under the umbrella of the New Economics Foundation, the study “GREENING THE EU-ROSYSTEM COLLATERAL FRAMEWORK - How to decarbonise the ECB's monetary policy” of Yannis Dafermos, Daniela Gabor, Maria Nikolaidi, Adam Pawloff and Frank van Lerven was published in March 2021. Similarly to argumentation in the petition, the study shows that the assets accepted by the European Central Bank as loan collateral contain a disproportionately high number of climate-damaging companies and that these also benefit from lower discounts in the risk assessment.

On April 13, 2021, the environmental protection organization ClientEarth filed its first lawsuit in Belgium against the Belgian central bank, as an example for all central banks of the Eurosystem, in order to stop the central bank's bond purchases as a vicarious agent of the ECB, which are incompatible with the climate goals of the European Union. (see <http://climate-casechart.com/climate-change-litigation/non-us-case/clientearth-v-belgian-national-bank/>) Attached is a request for referral to the European Court of Justice with reference to the EU Charter of Fundamental Rights. ClientEarth explained the background of the lawsuit the day before in a request to Christine Lagarde to finally stop the breaches of law. (see <https://www.clientearth.org/latest/documents/letter-from-clientearth-to-christine-lagarde-president-of-the-european-central-bank/>) The further course of the lawsuit will be significant for the implementation of the claims of the petition, because all other provisions of the Charter of Fundamental Rights are also actionable and relevant - not only climate protection, which is singled out in that case in isolation.

In June 2021, Dr. Roda Verheyen (Judge at the Constitutional Court of Hamburg and co-founder and board member of Green Legal Impact Germany e.V.) published a legal opinion in German language together with Greenpeace, from which the obligation of the ECB to consider

climate objectives in its activities emerges. On p. 21 f., the expert opinion also substantiates the ECB's fundamental rights charter obligation (see <https://www.greenpeace.de/klimaschutz/zentralbanken-handeln> and [https://www.greenpeace.de/publikationen/2021-6-09\\_gutachten\\_ezb\\_final\\_2.pdf](https://www.greenpeace.de/publikationen/2021-6-09_gutachten_ezb_final_2.pdf) ) and argues in a comparable way like Marian Szidzek and Dr. jur. Christian Szidzek at the 2019 conference of the Global Ethic Research Group on Finance and Economics, that was published in the volume "The European Central Bank as a Sustainability Role Model" ([https://link.springer.com/chapter/10.1007/978-3-030-55450-7\\_5](https://link.springer.com/chapter/10.1007/978-3-030-55450-7_5)) p. 43 ff.

In July 2021, the ECB communicated for the first time an “action plan to include climate change considerations in its monetary policy strategy”. Some demands of the petition, which had previously been rejected with flimsy arguments, seem to be suddenly being implemented in that plan, but only selectively for climate protection aspects and not for all aspects of the EU Charter of Fundamental Rights. The following plans became particularly relevant (see ECB press release [https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr210708\\_1~f104919225.en.html](https://www.ecb.europa.eu/press/pr/date/2021/html/ecb.pr210708_1~f104919225.en.html) ): "Disclosures as a requirement for eligibility as collateral and asset purchases. The ECB will introduce disclosure requirements for private sector assets as a new eligibility criterion or as a basis for a differentiated treatment for collateral and asset purchases. Such requirements will take into account EU policies and initiatives in the field of environmental sustainability disclosure and reporting and will promote more consistent disclosure practices in the market, while maintaining proportionality through adjusted requirements for small and medium-sized enterprises. The ECB will announce a detailed plan in 2022. [...] Collateral framework. The ECB will consider relevant climate change risks when reviewing the valuation and risk control frameworks for assets mobilised as collateral by counterparties for Eurosystem credit operations. [...] Corporate sector asset purchases. The ECB has already started to take relevant climate change risks into account in its due diligence procedures for its corporate sector asset purchases in its monetary policy portfolios. Looking ahead, the ECB will adjust the framework guiding the allocation of corporate bond purchases to incorporate climate change criteria, in line with its mandate. These will include the alignment of issuers with, at a minimum, EU legislation implementing the Paris agreement through climate change-related metrics or commitments of the issuers to such goals. Furthermore, the ECB will start disclosing climate-related information of the corporate sector purchase programme (CSPP) by the first quarter of 2023 [...]."

This proves once again that the ECB is fully aware of its shaping power and its responsibility towards the Charter of Fundamental Rights, but only wants to live up to it selectively and al-

gusto. Aspects such as child labor (Art. 32), environmental protection even beyond climate risks (Art. 37) or human rights violations (Art. 5) such as forced labor but also tax avoidance and corruption or even the production of outlawed weapons continue to be deliberately ignored. For the first time in history the fact that market neutrality is neither possible nor necessary is demonstrated by the ECB's own decisions now. The ECB shows herself that monetary policy always has an impact on the real world – also on climate change.

As shown in a press release on the web on March 9, 2022 (see <https://insights.issgovernance.com/posts/iss-esg-provides-climate-related-data-and-reporting-under-eurosystem-central-banks-framework-agreement/>), ISS ESG provides climate-related data for use within the Eurosystem's central banks framework agreement. With this framework agreement, the ECB refutes once again its own argument that rating assessments by private companies like ISS could not be used by the ECB. In May 2022, the Office of the Committee on Petitions was informed about that by the petitioner, because it might be relevant for the Committee on Legal Affairs, that the ECB is purchasing climate change data about companies from ISS via the Deutsche Bundesbank, thus following the proposal of the 2017 petition.

In January 2022, staff of the ECB responded to a direct citizen inquiry on the core of the petition. The correspondence of the ECB's Directorate General Communication with the citizen is extremely revealing and shows the prevailing understanding of transparency and credibility in the European Central Bank's communication practice on the subject. In October 2021, the citizen asked the ECB Visitor Centre by e-mail in German language to answer the question "Should the ECB deliberately ignore human rights violations and participate in the financing of outlawed weapons and the destruction of the environment and the exploitation of people? Can price stability only be achieved by supporting crime?" The Directorate General of Communications (Internal Communications and Public Affairs) then responded to the citizen in November 2021: "With reference to your questions, we would like to refer to the comments made by ECB President Christine Lagarde in her letter to Clare Daly, Member of the European Parliament: [...] Like all EU institutions, the ECB is an addressee of the Charter of Fundamental Rights. The ECB respects the rights, observes the principles and promotes the application thereof, in accordance with its powers and respecting the limits of the powers of the Union as conferred on it in the Treaties. This covers all the ECB's tasks in the fields of monetary policy and banking supervision, in its advisory capacity, as well as its role under the Treaty establishing the European Stability Mechanism (ESM) and Regulation (EU) No 472/2013.1. Reviewing the compatibility of the ECB's actions with the Charter is part of our internal legal scrutiny procedures, which are followed for all actions through which the ECB discharges its tasks. In addition, the

conformity of the ECB's actions with the Charter is reviewable by the Court of Justice of the European Union, which has affirmed that the ECB acts in line with the Charter. In this context, I would like to point out that the ECB has a specific mandate and is assigned specific tasks under the Treaties, unlike the Commission, which, as the guardian of the Treaties, is tasked with monitoring the application of EU law in general. The ECB's accountability to the European Parliament provides an additional channel to ensure such compliance."

The citizen replied in January 2022 as follows, referring to the website [wirtschaftsethik.biz/zentralbank](http://wirtschaftsethik.biz/zentralbank): "Regarding Ms. Lagarde's quote, the following question: Why are unethical issuers accepted in the 'marketable assets' by the ECB and no fundamental rights compliance is checked at all, if the Charter applies to 'all the ECB's tasks in the fields of monetary policy'? I would appreciate a response on this. Thank you very much for your efforts." Two days later, the citizen received this sobering reply: "Please understand that the European Central Bank does not comment on media articles or quotes. We therefore have nothing to add to our previous reply." Thereupon, the citizen expressed his understanding and had only asked for an answer to his concrete and simple question without commenting on the 'media article': "therefore, I only ask for a simple answer to my concrete question: Why are unethical issuers accepted in the 'marketable assets' by the ECB and no fundamental rights compliance is checked at all, if the Charter applies to 'all the ECB's tasks in the fields of monetary policy'? I would appreciate an answer to this." The ECB's final response to this came 10 days later January 25, 2022 - obviously some internal clarification was needed after all: "thank you very much for your e-mail of January 15, 2022. Please understand that we have nothing to add to our reply of January 10, 2022. Yours sincerely".

## 5 An interim conclusion

Even after 4 years, the status was still alarming: protracted, inadequate responses and a large lack of understanding of high decision-makers showed how bad the situation for fundamental rights in the European financial markets still was. Since the last meeting of the EU Committee of Petitions in Brussels 2019 talking about the petition, the following weighty points had developed in the spirit of the petition:

- The ECJ confirmed in a 2019 ruling that "the special status accorded to the ECB in the institutional set-up of the Treaties does not exempt it from compliance with the fundamental rights of the Union or from its duty to contribute to the achievement of the Union's objectives as set out in Articles 2, 3 and 6 TEU."
- Another legal opinion on the obligation to take climate protection into account in ECB monetary policy became available, which also refers to the EU Charter of Fundamental Rights.
- Another study demonstrated negative effects in terms of climate protection due to the ECB's collateral policy, thus continuing the revelations of the petition.
- A first lawsuit became pending in Belgium aiming at climate protection and arguing in the spirit of the petition.
- The ECB itself announced a strategy adjustment in climate protection that follows the petition's argumentation and thus itself demonstrated that market neutrality is neither possible nor legally required or even politically expedient.

Some parliamentarians in relevant EU Parliament Committees seemed neither to understand all the presented facts nor their significance, and some still hide behind simple arguments about market neutrality and the ECB's unlimited independence. Parliamentarians seeking transparency and change became too easily satisfied with inadequate answers from the ECB. The EU Petitions Committee had again been inactive for too long and had once again left the handling of the petition in abeyance for another year. But the President of the ECB as well as the European Commission and all relevant Committees of the European Parliament were demonstrably informed about the problems identified in the petition and options to remedy them. Inaction of all relevant actors can therefore no longer be excused by unknowingness.

## 6 On the agenda again

To get the public discussion going Weltethos (Global Ethic) Research Group on Finance and Economics was once again organizing another high-profile conference with experts in the field on October 13, 2021 in Frankfurt “Die Europäische Zentralbank und ihre Rolle in einem nachhaltigen Finanzsystem – Probleme und Chancen (The European Central Bank and its role in a sustainable financial system - problems and opportunities)”. (see <https://www.wirtschaftsethik.biz/vortrag/die-glaubwuerdigkeit-der-ezb-auf-dem-pruefstand-13102021/>) The contributions and discussions were mainly in German language, but Dr. Mamphele Ramphela and Peter Blom from the Club of Rome enriched the conference in English language with a global perspective on the role of the ECB in the worldwide transformation. Directly after that conference the petition was put back on the agenda of the Petitions Committee on 1st December 2021 on the initiative of MEP Peter Jahr.

### 6.1 Discussing the status-quo

At 1.12.2021 the further procedure was discussed in the Committee of Petitions in Brussels after a live statement by Harald Bolsinger and Jens Minnemann at 16:45. The Petitions Committee again got an updated speech script, that made the main points as clear as possible in the shortest possible form:”

## The Problem: Still unchanged!

### ECBs core business does still not take EU Fundamental Rights into account

- The ECB still seemingly becomes owner of assets that undermine the EU Charter of Fundamental Rights with severe ethical controversies
- All eligible marketable assets (16 trillion € in Q3/2021) and all asset purchases lack the securing of fundamental rights at all!

=> ECB is still part of **financing** fundamental rights violations.

=> This stabilizes and **enhances injustice in the EU**.

## Change & Insights: Justice needed!

### Int. conference of Global Ethic Institute with the Club of Rome at Goethe University Frankfurt on 13.10.2021

- Latest ECB strategy change shows by climate risk consideration, that ...

- ... the ECB knows about their power to impact real world actions by strategic assets purchase (there is no such thing like “market neutrality”)
- ... only a fragment of the whole normative responsibility of the ECB is considered selectively by them
- The mandate of striving for price stability must not override other EU regulations (e.g., also the Paris Climate Agreement)

## Bring justice into the Eurosystem: By detailed Transparency to the Parliament.

### **Make the ECB report on fundamental rights compliance explicitly of all their assets to the EU Parliament regularly**

- You are the Guardians of the Charter of Fundamental Rights: **Please** inform yourself in detail if ECBs assets comply with our codified European values.
  - “ECB is accountable for its policies, including through regular reporting and dialogue with the European Parliament (Article 284 TFEU).”
- ⇒ **It must become a standard, that the ECB reports on fundamental rights compliance explicitly of all their assets to the Parliament regularly.**
- ⇒ This has still never happened before! Is it irrelevant to political decision makers?”

The petitioner underlined the main points in his speech that is reproduced here correspondingly with the most important parts: “The ECB still seemingly becomes owner of assets that undermine the EU Charter of Fundamental Rights with severe ethical controversies. All eligible marketable assets (16 trillion €in Q3/2021) and all asset purchases lack the securing of fundamental rights at all! So ECB is still part of financing fundamental rights violations and this stabilizes and enhances injustice in the EU. [...] We again held a conference together with our friends of the Club of Rome and the Global Ethic Institute at Frankfurt University - exactly seven weeks before this meeting today. We have discussed the petition in the light of the current ECB strategy change and a broad international perspective. I must confess that we were particularly taken by the points of the Co-President of the Club of Rome Dr. Mamphela Ramphela, a former managing director of the World Bank. Mamphela opened us the eyes for the real problem. It is not only a matter of sustainability ratings for fundamental rights compliance of assets, to go against the glaring injustice of the ECB. It’s a matter of the heart of the decision makers! They

must realize first by themselves that they are ignoring EU's fundamental rights in their core business! This is the only way for a real and long-lasting change.

The hearts of the ECB board and especially Christine Lagarde seem to have softened a little bit in that respect. They decided to respect climate risk in their daily business in the future. But that is not even half the battle! And what is more – this decision was even not theirs to make! It was, is and will always be a decision of the EU Parliament, in what framework the ECB must act independently. It is the representatives of the nations and all citizens who have already decided on that. They decided to make the Charter of Fundamental Rights binding for all European Institutions – including the ECB. Now it's high time for justice - twenty years after this decision! The ECB cannot just pick out individual aspects as it sees fit!

We – and the ECB in particular – also need to respect environmental risks as a whole and also health risks, slavery risks, the risk of forced labour and child labour, discrimination risks, social risks, the risk of unfair and unjust working conditions, the risk of corruption and tax avoidance on a large scale, the risk of losing human dignity, the risk to undermine any or all of our fundamental rights and therefore the perpetuation of injustice all over the European Union. You are the Guardians of the Charter of Fundamental Rights: Please inform yourself in detail if ECBs assets comply with our codified European values. It must become a standard, that the ECB reports on fundamental rights compliance explicitly of all their assets to the Parliament regularly. This has still never happened before! We really wish that your hearts also become stirred. This injustice is not only a matter of courts.

In the last monetary dialogue of the Committee on Economic and Monetary Affairs on 15. November 2021 “The European Parliament considers that improvements to the ECB accountability framework could, and should, be made”. This is the right way! We have to “paint the dragon red” – we have to make visible what is really going on with ECBs assets to all members of the European Parliament. You can easily make Christine Lagarde report publicly to the European Parliament about the fundamental rights compliance of every single asset owned by the ECB. This is very easy, as I did the same rating by myself 2017 and 2019 and it does not imply any intervention into the independency of the ECB's monetary policy. It is just a detailed report what effects are triggered in the real world with the support of ECBs firepower. This should be published regularly by the ECB – including, but not limited to climate risk.”

After the appeal to the Committee to finally bring justice to the Eurosystem by demanding at least in a first step transparency of the ECB on fundamental rights controversies on all its assets, clear voices were also heard in the Committee:

- The representative of the European Commission underlined the importance of the petition and meanwhile agreed that all EU institutions were bound by the Charter of Fundamental Rights, BUT THE ECB WAS ALONE RESPONSIBLE IN THE EU IN "THESE THINGS" AND THEREFORE ALONE THE RESPONSIBLE PARTNER. THE ECB IS RESPONSIBLE AND NOT THE COMMISSION. Thus, even under Ursula von der Leyen, the European Commission maintains the opinion that the ECB can simply continue to do whatever it wants regarding the observance of fundamental rights.
- Peter Jahr for the EPP pointed out that independence always has limits that must be precisely balanced - this also would apply to the ECB. However, the experts for the issue of the petition were in the ECON, which is why, in his opinion, that Committee should continue to deal with it. Christine Lagarde should also be asked once again directly to give the ECB's opinion on the petition to the EU Parliament.
- The Vice-President of the Petitions Committee, Yana Toom, active for the Renew Europe Group, brought the bureaucratic handling of the petition to the point: The ECB would quote the answer of the European Commission and the Commission in turn would quote itself with the result that the answer would be exhausted in the sense of a 'Well, there is nothing we can do!' Ms. Toom does not accept a zero reply to the important question of the petition, which would be passed on like a hot potato for years without any result. Therefore, she asked to keep a special eye on concrete answers and to insist on an answer, for example, from the ECON.
- The President of the Petitions Committee, Dolors Montserrat, finally decided that the petition would not be passed on to the ECON again, as a response had already been received. Only once again a letter should go to the ECB, with a renewed request for opinion by the President.

Peter Jahr's reference to the ECON was correct but dealing with the issue had already taken place there without any significant follow-up, as the information provided by Gabriele Bischoff already showed. Above all Ms. Toom's evaluation encouraged us that the claims of the petition should be discussed nevertheless still seriously with the responsible decision-makers without excuses. The decision of the Chairwoman of the Petitions Committee to write to the ECB requesting its opinion seems to be the lowest common denominator of this meeting, on which all hope for justice in the Eurosystem now continues to rest. (The video documentation of the

whole meeting is available as a stream here: [https://multimedia.europarl.europa.eu/en/event\\_20211201-1645-COMMITTEE-PETI\\_vd?start=20211201155114&end=20211201163030](https://multimedia.europarl.europa.eu/en/event_20211201-1645-COMMITTEE-PETI_vd?start=20211201155114&end=20211201163030) )

## **6.2 Again: Waiting for action**

There was still no discernible initiative after the discussion in the Petitions Committee to establish transparency for the European Parliament on the fundamental rights compliance of the ECB's entire assets. But another important action taken was a letter of the Committee to Christine Lagarde, that was sent to the ECON as an imprint, so the ECON can itself launch activities to bring light into the ethical darkness of the ECBs assets. Promptly on 12/17/2021, the Chairwoman of the Petitions Committee informed about the letter she has sent to directly to Christine Lagarde:”

Vorsitzende des Petitionsausschusses

D 309220 20.12.2021 Brussels, KV/jf[IPOL-COM-PETI D(2021)2861 J]

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 o/20/10/2020”

The open letter that was in the annex was no longer quite up to date, as the ECB has changed its strategy in the meantime, but we were curious to see whether the President's response now includes concrete actions and whether ECON will take up the issue again with the demand for real transparency from the ECB.

In April 2022, the Office of the Committee on Petitions was asked whether the ECB's response was now available. This was not yet the case at that time. However, the Office of the Committee on Petitions informed about forwarding the petition to the Committee on Legal Affairs of the European Parliament in order to have due diligence standards clarified. This indicates that the Committee on Petitions really wants to answer the petitions questions deeply and in a finalized way, this time. In September 2022, again the Office of the Committee on Petitions was asked whether the ECB's response was now available at last. This was now the case and the Office of the Committee on Petitions forwarded the reply of the ECB of 21 July 2022 to Ms Dolors Montserrat, again not coming from President Lagarde directly, but only from the deputy directors general “international and european relations” and “legal services”:

“Honourable Member of the European Parliament, dear Ms Dolors Montserrat,

Thank you for your letter regarding Petition No 0429/2017 on the compliance of the European Central Bank (ECB) with the European Union (EU) Charter of Fundamental Rights (the Charter).

The ECB's previous letter replying to this petition, dated 5 August 2020, explained the objectives and the limits established by EU law with regard to the ECB's actions. While reiterating those considerations, in reply to the specific point on sustainability raised by the petitioner, recent developments in ECB policies and actions may merit further clarification. The petitioner refers to statements made by members of the Executive Board – the ECB recognises the urgency and importance of climate change and has committed to actively contributing to efforts at the EU level in this regard. Reflections on climate change and environmental sustainability therefore featured prominently in our monetary policy strategy review of 2020-21.[...] As a result, the Governing Council of the ECB decided on a comprehensive action plan to systematically incorporate climate change considerations into our monetary policy framework, in line with the

ECB's mandate. This action plan includes expanding our analytical capacity in macroeconomic modelling, statistics and monetary policy with regard to climate change, as well as incorporating climate change considerations into monetary policy operations in the areas of disclosure, risk assessment, the collateral framework and corporate sector asset purchases. [...] The ECB, together with the Eurosystem, has worked intensely over the last year to deliver on the commitments set out in the action plan. On 4 July 2022, the ECB announced its decision to account for climate change in our corporate bond purchases. collateral framework, disclosure requirements and risk management.

The Governing Council has decided to adjust corporate bond holdings in the Eurosystem's monetary policy portfolios, to introduce limits on carbon-intensive corporate assets in its collateral framework, to introduce climate-related disclosure requirements and to enhance its risk management practices in relation to climate change. Corporate bond holdings in the Eurosystem's monetary policy portfolio will be tilted towards issuers with better climate performance, through the reinvestment of the sizeable redemptions expected over the coming years. The share of assets issued by corporate entities with a high carbon footprint that can be pledged as collateral by individual counterparties in Eurosystem credit operations will be limited. Furthermore, for marketable assets and credit claims from companies and debtors subject to the Corporate Sustainability Reporting Directive (CSRD) - once fully implemented - the Eurosystem will only accept them as collateral in Eurosystem credit operations if these entities comply with the CSRD's requirements. The Eurosystem will further enhance its risk assessment tools and capabilities to better include climate-related risks by urging credit rating agencies (CRAs) to be more transparent about how they incorporate climate risks into their ratings and to be more ambitious in their disclosure requirements on climate risks, and through common minimum standards for the inclusion of climate-related risks in national central banks' in-house credit assessment systems.

These measures are designed in full accordance with the Eurosystem's primary objective of maintaining price stability. They aim to better take into account climate-related financial risk in the Eurosystem balance sheet and, with reference to our secondary objective, support the green transition of the economy in line with the EU's climate neutrality objectives. Moreover, our measures provide incentives to companies and financial institutions to be more transparent about their carbon emissions and to reduce these emissions. [...]

These steps are an example of how the ECB, within the limits of its mandate, is participating in the efforts made by the competent authorities to take action in an important area that is also covered by the Charter.

With regard to compliance with the Charter more broadly, the Eurosystem's monetary policy framework is based on clear and transparent rules which are available to Eurosystem counterparties, issuers of Eurosystem eligible collateral, other interested stakeholders and the general public. The principles of an open market economy with free competition, favouring an efficient allocation of resources, proportionality and equal treatment are particularly important in the implementation of the ECB's mandate. On the specific point of the collateral framework referred to by the petitioner, as already explained, the eligibility of assets as collateral for credit operations is primarily guided by considerations regarding the monetary policy objective and appropriate risk management, in order to shield the Eurosystem from potential losses. Ensuring the adequacy of collateral is explicitly required by Article 18.1 of the Statute of the ESCB, which expresses the broader principle of sound management of public finances. The risk management tools include well-established credit assessments produced by accepted external CRAs, alongside other sources. Each accepted CRA must fulfil a number of regulatory and operational requirements and is subject to regular checks by the Eurosystem to dynamically assess its performance in correctly assessing credit risks. Such checks are based on objective (quantitative) data on credit events that provide a basis for statistical tests rather than on broader assessments of the issuer's economic activities. By contrast, no such mechanism exists for ethical or sustainability criteria including those reflecting the Charter, which by their very nature involve broader assessments and balancing acts that go beyond credit risk assessment. Moreover, as mentioned in the previous letter replying to this petition, in line with the principles of institutional balance and the conferral of powers, the ECB cannot replace other authorities responsible for ensuring the compliance of private parties with their legal obligations. In addition, the ECB cannot take action to extend the Charter's scope of application.

In summary, to the extent clear and uniform disclosure and reporting obligations exist, the ECB, within the scope of its mandate, will consider them. On precisely this point, the Eurosystem will urge CRAs to be more transparent about how they incorporate climate risks into their ratings and to be more ambitious in their disclosure requirements on climate risks. However, at this stage the precise definition of compliance with the wide-ranging set of legal requirements indicated in the letter from the petitioner can hardly be assessed using the instruments at the disposal of the ECB. An authoritative assessment of such compliance can only be made by the

competent authorities, including national and EU courts, which offer specific remedies for potential violations. Hence, the ECB does not see a contradiction between its acceptance of CRAs and the fact that it cannot defer the hypothetical checks of issuers compliance with the Charter to the findings of private selfauthenticated sources such as those proposed by the petitioner.

We trust that the above considerations, in addition to those provided in the reply of 5 August 2020, further clarify the ECB's position on the matter and address the concerns raised in the letter from the petitioner.

Yours sincerely, [...]"

The significance of the petition's question at the ECB still does not seem to be high enough, so that the President deems it necessary to respond personally to the petitions committee. In terms of content, the answer remains at the same level as the previous answers. The ECB defends its selective consideration of climate risk and claims that all other risks of systematic undermining of EU fundamental rights do not have to be on its agenda or that it cannot quantify them. At the same time, it paradoxically claims to take them into account as far as necessary. EU fundamental rights violations by companies will not lead to the ECB refusing their bonds as collateral or refusing to purchase them. The ECB summarizes: "An authoritative assessment of such compliance [with the Charter of Fundamental Rights] can only be made by the competent authorities, including national and EU courts, which offer specific remedies for potential violations." With this final sentence the ECB makes clear, that she does not see herself as a "competent authority" that can verify the extent to which potential violations of the Charter of Fundamental Rights have occurred. Rather, the ECB sees courts in the duty doing that. It is a real indictment of a European institution to refer to courts in the year 2022 instead of implementing their own obligation to respect EU fundamental rights in all its actions – including in monetary policy instruments, which should have happened since 1999.

After this answer and the course of the petition so far it seems obvious that the ECB will only take care of this problem when sued before the ECJ or if the EU Commission and the EU Parliament intervene politically in another strong way.

## 7 Questions and Outlook

Jens Minnemann gives an overview about credibility in the financial market in a practical perspective in “Credibility in the financial market - a practical perspective”. Against the background of his aspects and the answers that the ECB gave in the context of this petition, the credibility of the ECB appears to be fraught with many questions:

1. Focus on core mission and core competence (expertness): There seems to be a political and scientific controversy about the objectives and the scope for monetary actions of the ECB – although the European treaties including the Charter of Fundamental Rights have clear answers to that already! Does the ECB know what its core mandate really is and within what limiting values framework this may be pursued? Is the ECB an ethical blind technocrat for price stability in the Eurozone or is it a values-bound European institution among other European institutions that serve the European people with monetary policy?
2. Honest and clear communication (trustworthiness): Is there real transparency about the whole impact of monetary policy decisions or do the decision makers obfuscate real world impact of their actions? What data must the ECB collect, check and report to minimize negative impacts on European core values codified in the Charter of Fundamental Rights? Who must assess the reports and discuss them politically?
3. Alignment with the needs of the customer (expertness): Who must the ECB serve and how exactly? The EU Parliament, European nations, the population, financial market actors, ... ?
4. Fair (fairness): Is it fair to invest in injustice by ignoring real world impact and violations of fundamental rights? Can the ECB be a role model for commercial banks or is it ok to demand from them something that the ECB does not deliver herself? Are there trade-offs or red lines between “market neutrality” and EU values?
5. Compliance with legal requirements and framework conditions (trustworthiness): What about the European Treaties: Is the ECB above the EU Fundamental Rights Charter? What are the limits of ECBs independence? Who must enforce fundamental rights compliance of monetary policy?

Summing up the experienced up to now, there is still a real opportunity to politically counter the Eurosystem's ethical blindness in the current election period. Even when one could gain the

impression that there would be a political blanket of silence on the petition since the beginning in 2017, it gives hope, that the Committee on Petitions has put the petition on the agenda again end of 2021.

It remains a central question for the credibility of the EU Charter of Fundamental Rights of the European Union how this petition ends and with what justifications for action or no action. The EU Commission and the relevant EU Parliaments Committees are still not positioned in a clear way what weight and role the Charter of Fundamental Rights of the European Union has in European financial markets. The same can be said also for the credibility of the ECB. As it was made clear in this article, there is still a discussion about a hypothetical controversy and about an alleged problem of priorities. It is the shade discussion about a nowhere derivable unlimited independence of the ECB and about the supposed conflict of objectives between sustainability and price stability. The solution to all existing and future conflicts exists! It is the simple conformity to fundamental rights as guardrails in every decision of every European institution. Credible is who really respects fundamental rights and protects them in all aspects of his business, instead of discussing the limits of the charter for ages...

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