ClientEarth

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60 Rue du Trône
(3ème étage), Box 11,
Ixelles, 1050 Bruxelles,
Belgique

Christine Lagarde
President of the European Central Bank
European Central Bank
60640 Frankfurt am Main
Germany

By email (info@ecb.europa.eu)

Copied to Chiara Zilioli, Director General, DG Legal Services, European Central Bank

Dear President Lagarde

The ECB's Monetary Policy Strategy Review Outcome: corporate sector asset purchases, climate change and the ECB's legal obligations

ClientEarth AISBL is an international non-profit making, non-governmental organisation that uses the power of the law to protect people and the planet (**ClientEarth**). We write following our letter to the ECB's Executive Board and Governing Council dated 12 April 2021, the outcome of the ECB's Monetary Policy Strategy Review published on 8 July 2021 (**Strategy Review Outcome**)[1] and the ECB's letter to ClientEarth dated 23 July 2021.

We are pleased to see that the ECB's Governing Council has unanimously accepted the need to incorporate climate change considerations into its monetary policy, recognising that it has not done so to date, and to increase its contribution to addressing climate change.[2] However, the roadmap of climate change-related actions proposed by the ECB in July (**Climate Roadmap**)[3] is too slow, too vague and too narrow in scope, as currently drafted, to mitigate climate-related risks, reduce the impacts of its corporate asset purchase programmes on climate change and human rights, and ensure consistency with EU climate policy.

In relation to the ECB's Corporate Sector Purchase Programme (**CSPP**), you will be aware that ClientEarth's litigation in the Belgian courts – which challenges the Belgian National Bank's (**BNB**) implementation of the CSPP and seeks a preliminary reference to the Court of Justice of the European Union (**CJEU**) questioning the validity of the ECB's decision establishing the CSPP in 2016 (**CSPP Decision**) – continues at pace leading up to the hearing before the President of the French-speaking Court of First Instance in Brussels on 15 November 2021.

The ECB's Climate Roadmap does not affect the ECB's corporate asset purchase programmes – which comprise the CSPP and the corporate sector purchases under the Pandemic Emergency Purchase Programme (**PEPP**), which applies the same eligibility

1 See: ECB, 'The outcome of our strategy review' (2021).
2 See: ECB, 'ECB presents action plan to include climate change considerations in its monetary policy strategy' (July 2021).
3 See: ECB, 'Annex: Detailed roadmap of climate change-related actions' (July 2021).

criteria – as they currently operate, and the six National Central Banks (**NCBs**) implementing the corporate asset purchase programmes continue to purchase assets issued by greenhouse gas-intensive companies as before. Indeed, between April 2020 and September 2021, while the ECB was preparing and promoting its Strategy Review Outcome and Climate Roadmap, the NCBs bought 15 additional bonds from five key European oil and gas majors, thus significantly increasing their support to them, despite these companies' plans for major fossil fuel expansion projects.[4]

Furthermore, it is difficult to see how the Climate Roadmap will have any tangible impact on the (i) composition of, (ii) carbon bias inherent in, or (iii) warming potential of the portfolios of the corporate asset purchase programmes in the near term.

In the months since our last letter, the physical and economic impacts of the climate crisis have been clear to see, including catastrophic floods in Belgium and Germany, extensive forest fires in the US and Greece, and record-breaking heatwaves in Canada and Russia. The contribution of the corporate sector to climate change remains staggering, with one recent report estimating that listed companies' direct greenhouse gas emissions alone (i.e. their Scope 1, but not Scope 2 and 3, emissions) are projected to exceed their remaining emissions budget consistent with keeping warming below 1.5ºC by November 2026, just five years from now.[5]

Time is running out to avoid the worst impacts of the climate crisis; if we are to do so, immediate action is required to align financial flows with the goals of the Paris Agreement and change corporate behaviour. The ECB itself has recognised that there are clear benefits in acting early on climate change[6] and indeed that it has legal obligations to do so.[7] Yet the ECB's Climate Roadmap currently lacks the necessary urgency, as explained below.[8]

1 Flaws in the ECB's Climate Roadmap

The ECB's Climate Roadmap is a high level document indicating the Governing Council's broad consensus, covering the period 2021 to 2024. Read alongside related commentary, it gives some initial signals for how the ECB plans to integrate climate change risks into the CSPP.[9]

The ECB has set out a staged process. First, it will further expand its analytical capacity in macroeconomic modelling and develop statistical indicators and new tools to assess the

4 See: Reclaim Finance, 'Spreading the fossil fuel pandemic' (October 2021).
5 See: MSCI, 'The MSCI Net-Zero Tracker' (October 2021) at p.8.
6 See: de Guindos, 'Shining a light on climate risks: the ECB's economy-wide climate stress test' (March 2021) and ECB, 'Firms and banks to benefit from early adoption of green policies' (September 2021).
7 See: ECB, 'Occasional Paper Series - The mandate of the ECB: Legal considerations in the ECB's monetary policy strategy review' (September 2021).
8 For further evaluations of the ECB's Climate Roadmap, see van Tilberg and Grunewald, 'ECB is obliged to support the low-carbon transition' (September 2021); Reclaim Finance, 'The ECB takes a raincheck on urgent climate action' (July 2021); and Positive Money Europe, 'A race against time: the implications of the ECB climate action plan' (August 2021).
9 While changes to the PEPP are not envisaged in the Climate Roadmap, it is assumed that to the extent purchases still continue under the PEPP at that time, the changes to the CSPP will have an impact on the PEPP purchases given they use the CSPP eligibility criteria.

implications of climate change for monetary policy transmission and price stability. Second, it will introduce environmental sustainability disclosure requirements for eligibility for the CSPP. Third, it will adapt the CSPP for climate-related risks.[10]

According to the Climate Roadmap, the ECB will not publish its proposals for adapting the CSPP framework until mid-2022, and it will not start to adapt the framework until H2 2022. We note that 'adapting the framework' does not necessarily mean that any changes will come into force in 2022 or even 2023, as the changes may not be operationalised within that timeframe and there are likely to be adaptation periods for issuers (such as for the proposed eligibility requirement on disclosures – see further below). As far as ClientEarth can ascertain, there have to date been no changes to the bonds purchased under the CSPP on climate grounds as a result of the Strategy Review Outcome. Until such time as meaningful changes are made to the CSPP, billions of euros will continue to subsidise greenhouse gas-intensive issuers each month.

From a procedural standpoint, there are several shortcomings with the ECB's approach which raise concerns as to how long it will be until we see any real action on climate by the ECB. The ECB has not specified:

1. What its proposals for adapting the CSPP may or will include, with some limited exceptions;
2. Whether there will be a consultation period so issuers, civil society and other stakeholders can provide input on the ECB's proposals;
3. What approval processes at the ECB and EU institution level those changes will have to go through;
4. When any changes to the CSPP would actually come into force and start affecting which issuers and assets are eligible, and consequently have an impact on which assets are purchased; or
5. Whether changes that go beyond those already specified in the Climate Roadmap will only be considered during, and implemented after, the next Strategy Review scheduled for 2025.

In terms of the content of the possible future changes to the CSPP, insofar as set out in the Climate Roadmap, there are a number of problem areas, as explained below.

1.1 Publication of climate-related disclosures by the ECB covering the CSPP

Climate-related disclosures covering the CSPP are vital both for the ECB and its stakeholders to understand the ECB's climate-related risks and impacts, its level of alignment with the Paris Goals at present and its progress going forward. However, the ECB only intends to prepare this information by the end of Q1 2023.[11] This is far too slow and defers the necessary transparency and accountability regarding the ECB's monetary policy.

[10] See: Lagarde and de Guindos, 'Opening remarks' (July 2021).
[11] See: ECB, 'Annex: Detailed roadmap of climate change-related actions' (July 2021).

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By way of comparison, the Bank of England started publishing climate-related disclosures for its corporate asset purchase programme in June 2020, almost three years before the ECB plans to publish its disclosures.[12] The Dutch National Bank also published its first climate-related disclosures in March 2021.[13]

ClientEarth urges the ECB to issue a report in line with the Recommendations of the Task Force on Climate-Related Financial Disclosures (**TCFD**) annually, starting in 2022 alongside the ECB's 2021 Annual Report, disclosing its current level of alignment with the Paris Goals and EU emissions reduction targets.

1.2 Potential review of the 'market neutrality' concept

The ECB has already indicated its concerns with the 'market neutral' approach[14] and acknowledged that the concept is not prescribed by the EU Treaties.[15] Analysis by academics and civil society also evidences the carbon bias that this approach causes.[16] Yet the ECB has not concluded whether the market neutrality approach needs to be replaced, and if so what it would be replaced with.

The ECB says that in 2021 it will assess potential biases in the market allocation amid market inefficiencies, and the pros/cons of alternative allocations. In 2022, it will make proposals for alternative benchmarks, including for the CSPP.[17] This proposed timeline will delay the reform of the CSPP, which hinges on the important question of what alternative benchmark should replace 'market neutrality' – such as the 'market efficiency' principle suggested by Isabel Schnabel[18] – so that the CSPP can be reformed to align with EU climate policy.

ClientEarth urges that this exercise be prioritised and an alternative benchmark designed as soon as possible, on which the ECB can base its proposals to adapt the CSPP.

1.3 Use of climate-related disclosures by issuers as a new eligibility criterion or as a basis for differentiated treatment

The ECB is proposing that publication of climate-related disclosures becomes an eligibility requirement for the CSPP, or is the basis for differentiated treatment of issuers. Whilst ClientEarth supports this proposed eligibility requirement, the fact that it is not coupled with a requirement for a credible transition plan suggests a misunderstanding by the ECB of the value of disclosures.

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[12] See: Bank of England, 'The Bank of England's climate-related financial disclosure 2020' (June 2020).
[13] See: De Nederlandsche Bank, 2020 Annual Report.
[14] See for example: Schnabel, 'From market neutrality to market efficiency' (June 2021).
[15] See interview with Frank Elderson on 12 May 2021 available at: ECB Podcast, 'Tackling climate change as a central bank: Between motivation, obligation and limitation' (May 2021) at 31 minutes 55 seconds); see also ECB, 'Occasional Paper Series - The mandate of the ECB: Legal considerations in the ECB's monetary policy strategy review' (September 2021) at p.28.
[16] See for example Dafermos et al, 'Decarbonising is easy: beyond market neutrality in the ECB's corporate QE' (October 2020).
[17] See: ECB, 'Annex: Detailed roadmap of climate change-related actions' (July 2021).
[18] See: Schnabel, 'Climate change and monetary policy' (August 2021).

The mere fact that an issuer makes climate-related disclosures does not mean it is not a carbon-intensive issuer nor indicate that it has a credible plan for transitioning its business to net zero, and any disclosures made may not be sufficiently clear, granular or consistent with tangible action to implement carbon emissions reduction goals (to the extent any such goals are stated).[19]

It should also be recalled that (i) only a sub-set of companies across the Eurozone are eligible for the CSPP in any event, (ii) the majority of these are in carbon-intensive sectors which are already at the forefront of climate-related disclosures, whether as a result of investor pressure or otherwise, although are not currently aligned with the Paris Goals[20] and (iii) these companies are getting a valuable benefit from being eligible for the CSPP in the form of improved financing conditions, so having to produce disclosures in order to remain eligible is not an unreasonable expectation.

In terms of the timeline for introducing the climate-related reporting requirement, the ECB has stated that until the end of 2022 it will be designing the necessary policies and conducting legal and operational preparations.[21] However, this requirement is not intended to come into force until 2024, after an adaptation period for issuers in 2023.[22]

In addition, the ECB acknowledges the significant caveat that this proposed timeline is entirely dependent on an external legislative timetable. The current expectation is that 2021 and 2022 will see the proposal and adoption of the EU disclosure regulation, which will come into force in 2023, with the first regulatory disclosures published in 2024.[23]

The legislative timeline is entirely outside the ECB’s control and numerous legislative agendas have already seen delays due to the pandemic. The ECB focuses too much on how it will ‘echo’ EU legislation, and ignores the advances already made across the economy – and particularly in Europe – through voluntary initiatives on climate-related reporting.[24] The ECB is not incorporating climate considerations, aligning with EU climate objectives and policies, or reducing its support to polluting companies if it merely echoes legislative changes;

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[19] ClientEarth’s analysis of the annual reports of the 250 largest LSE-listed companies shows that misinformation and lack of clarity on tangible action by issuers is pervasive across sectors, even where companies purport to already report in line with TCFD: see ClientEarth, 'Accountability Emergency: A review of UK-listed companies' climate change-related reporting 2019-2020' (February 2021) and ClientEarth, Letter to the Financial Conduct Authority (August 2021). Carbon Tracker also recently found that 70% of some of the world’s biggest corporate emitters failed to disclose the effects of climate risk in their 2020 financial statements: see Carbon Tracker, 'Flying blind: The glaring absence of climate risks in financial reporting' (September 2021).

[20] See for example the analysis of Climate Action 100+, the world's leading investor-led initiative to ensure that the world's largest greenhouse gas emitting companies take the necessary action to tackle climate change, whose Net-Zero Benchmark assesses the world's largest corporate greenhouse gas emitters on their progress in the transition to the net zero future: Climate Action 100+ webpage, 'Net-Zero Company Benchmark'.

[21] See: ECB, 'Annex: Detailed roadmap of climate change-related actions' (July 2021).

[22] Ibid.

[23] Ibid; see also ECB, 'ECB presents action plan to include climate change considerations in its monetary policy strategy' (July 2021).

[24] Already over 2,600 organisations have endorsed the TCFD recommendations on climate-related financial disclosures, with Europe being the leading region for such disclosures (see FSB, '2021 Status Report: Task Force on Climate-related Financial Disclosures' (October 2021)) and more than 13,000 companies disclose under the CDP framework including the majority of large corporates in Europe (FT, 'Regulate us: big businesses call for government climate rules').

theoretically, the ECB would not need to change the CSPP criteria at all, as many issuers will already be legally required to make those disclosures by then.

It is also unclear what will happen if an issuer or asset becomes ineligible for the CSPP due to its lack of, or poor quality, climate-related reporting. We would expect the ECB in this situation to immediately divest its holdings, on the basis that this would help to reduce climate risk in its portfolio and would prevent it from continuing to implicitly subsidise companies that are exacerbating the climate crisis by not transitioning swiftly enough. This is a consideration that will be relevant for any new eligibility criteria or tilting that the ECB may in future impose. The ECB has also indicated that these disclosure requirements may be used as a basis for differentiated treatment.[25] This is highly concerning, as assets from companies that do not disclose (or do not make adequate disclosures) could still remain eligible for purchase, at a time when disclosure will be the norm, if not the law.

ClientEarth agrees that the ECB should require climate-related disclosures from issuers as a condition of eligibility for the CSPP – but it should make this a condition from January 2022 (at least from companies in carbon-intensive sectors, if not across the market as a whole). Indeed, it is of paramount importance that the ECB has access to the corporate emissions data and other climate-related information that will be included in these disclosures as soon as possible, so that it has sufficient information to design robust proposals to adapt the CSPP framework (which it plans to publish in mid-2022) and to operationalise the new framework going forward. Furthermore, as explained below, climate-related disclosures alone are not enough.

1.4 Use of credit ratings by the ECB

The ECB has said it will consider how climate change risks are reflected in the credit ratings provided by the external credit assessment institutions the ECB uses to determine issuers' eligibility for the CSPP. Between 2021 and the end of H1 2022, the ECB will assess external rating agencies' disclosures and seek to understand how they incorporate climate risk in ratings. Between H2 2022 and the end of 2024, the ECB may introduce minimum standards into the Eurosystem Credit Assessment Framework (**ECAF**) targeted to climate change risk, if warranted.[26]

It has already been acknowledged by the Network of Central Banks and Supervisors for Greening the Financial System (**NGFS**) that central banks' usage of ratings provided by external credit rating agencies is not sufficient to capture climate-related risks, as it would require those agencies to take climate-related risks into account more explicitly in their methodologies, which may be difficult given the shorter time horizon considered for credit risk compared to transition risk.[27] It is therefore concerning that the ECB is not committing to introduce requirements into the ECAF on climate change risk.

It is also unclear when such changes, if any, would take effect and what impact this might have on the composition of the CSPP portfolio. It is not a certainty that ratings for carbon-

[25] See: ECB, 'ECB presents action plan to include climate change considerations in its monetary policy strategy' (July 2021).
[26] See: ECB, 'Annex: Detailed roadmap of climate change-related actions' (July 2021).
[27] See: NGFS, 'Adapting central bank operations to a hotter world' (March 2021) at p.29.

intensive issuers or specific issuers would be downgraded on the basis of any new requirements, such that they would no longer be eligible for the CSPP. Even if they were, the ECB has not stated whether such assets would be divested at the point of the downgrade or whether the ECB would continue to hold them.

While ClientEarth welcomes the ECB's consideration of whether rating agencies adequately take into account climate risk, we caution that this alone is unlikely to have a significant impact on the composition of the CSPP portfolio in the absence of other measures. The NGFS has indicated that in the absence of reliable and commonly agreed ways of putting a price tag on climate-related risks, central banks may consider using non-financial climate risk metrics as a pragmatic way of capturing them and designing potential adjustments to their operational framework.[28]

Climate-related risks are characterised by a radical uncertainty, making it inherently challenging to measure and predict them. Waiting until there is more certainty and generally accepted measurement approaches would mean postponing climate action until a later date, if not indefinitely, and would lead to the accumulation of climate risk in the CSPP portfolio. The ECB can and should use the information that is currently available and take a precautionary approach to climate risk in order to take immediate action.[29] We would encourage the ECB to take this approach, and the next section sets out our proposals in this regard.

1.5 Necessary reform of the CSPP beyond climate-related reporting and credit ratings

It is plain from the above that requiring climate-related reporting from issuers and trying to better capture climate risk in credit ratings is not going to make a material impact on the composition of the CSPP portfolio in the near term, without further action.

There have been some high-level and non-committal indications that the ECB might consider further changes to the CSPP in the future, such as tilting purchases towards issuers that commit to the Paris Goals or disclose transition plans.[30]

The ECB should certainly consider further changes to the CSPP, in a proportionate, precautionary and evidence-based way. It should propose robust requirements that do not leave room for issuers to commit to Paris-alignment, while not making real or adequate progress towards that goal and still being involved in activities that are incompatible with limiting global warming to 1.5ºC. In particular, the ECB should have reference to the best available science and the analysis of experts, including the annual iterations of the UN

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28 Ibid, at p.28.

29 See: BIS and Banque de France, 'The Green Swan' (January 2020) at p.8, and Chenet et al, 'Finance, climate change and radical uncertainty: Towards a precautionary approach to financial policy' (2021).

30 See: ECB, 'ECB presents action plan to include climate change considerations in its monetary policy strategy' (July 2021); Lagarde and de Guindos, 'Opening remarks' (July 2021); and Schnabel, Interview with Focus (August 2021).

Environment Programme's (**UNEP**) Production Gap Report,[31] and the International Energy Agency's (**IEA**) Net Zero Roadmap[32] and World Energy Outlook.[33]

ClientEarth continues to believe that in order to mitigate climate-related risks and align with the EU's climate objectives and policies, the ECB must:

1. Immediately exclude from its corporate asset purchase programmes bonds issued by companies whose activities are incompatible with achieving the Paris Goals[34] and/or are associated with high transition risk, including activities relating to (i) coal, (ii) unconventional oil and gas, and (iii) any new exploration or development of fossil fuels and associated infrastructure.[35]
2. Exclude bonds or restrict asset purchases from companies unless the issuing company adopts by January 2023 a credible[36] Paris-aligned strategy to transition to net zero.

1.6 Sole focus on climate risks

The ECB's Climate Roadmap is clearly focused on mitigating climate-related risks to price stability and to the value of the CSPP portfolio. It is unclear to what extent the ECB will take action not only to mitigate climate risk but also to reduce the impact the CSPP is having on climate change and its contribution to systemic climate risks, and to align the CSPP with EU climate policy.

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31 See: UNEP et al, 'The Production Gap' (2021).

32 See: IEA, 'Net Zero by 2050' (2021).

33 See: IEA, 'World Energy Outlook' (2021).

34 The "**Paris Goals**" include (i) holding the increase in the global average temperature to well below 2ºC above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5ºC above pre-industrial levels, and (ii) making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development: Article 2(1)(a) and (c) of the Paris Agreement.

35 It should be noted in particular that the IEA's Net Zero Roadmap published in May 2021 confirmed that, beyond projects already approved as at the date of the report, its roadmap allows for no new oil and gas fields, no new coal mines or mine extensions and no new unabated coal plants (IEA, 'Net Zero by 2050' (2021) at page 21); by way of example of exclusions, see the criteria proposed by Reclaim Finance (Reclaim Finance, 'Quantitative easing and climate: the ECB's dirty secret' (May 2020) at p.5), the exclusion criteria and thresholds for coal, oil and gas companies adopted by the Banque de France (Banque de France, 'Responsible investment policy: reinforcing exclusions with regard to fossil fuels' (January 2021)), the activity exclusions adopted for EU Paris-aligned Benchmarks (Commission Delegated Regulation EU 2020/1818 of 17 July 2020 as regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks at Article 12), the Global Coal Exit List which includes divestment criteria for screening coal companies from investor portfolios (Urgewald, 'Global Coal Exit List' (2021)) and the Global Oil & Gas Exit List (Urgewald, 'Global Oil & Gas Exit List' (2021)).

36 To be 'credible', a company's Paris-aligned strategy must at least: (i) be based on a 1.5°C pathway with no or low overshoot; (ii) include short, medium and long-term targets for emissions reductions; and (iii) not rely on unproven or uncosted negative emissions technologies. For fossil fuel companies, any credible plan should include a year on year steep and sustained reductions in fossil fuel production and use, as underlined in the UNEP et al, 'The Production Gap' (2021). While there is currently no market standard alignment methodology, there are a number of methodologies available (see: Portfolio Alignment Team of the COP 26 Private Finance Hub, 'Measuring Portfolio Alignment' (2020), which includes an overview of methods at p.48). The ECB's Climate Centre can assess the robustness of existing tools as part of developing its own assessment process.

With this sole focus, the ECB risks neglecting its legal requirements to:

1. Address the impact of the CSPP on climate change and support a smooth transition to net zero;[37]
2. Support EU economic policies and contribute to the achievement of the EU's objectives, including a high level of protection and improvement of the quality of the environment with a view to achieving sustainable development;[38]
3. Integrate environmental protection requirements into its monetary policy;[39]
4. Ensure consistency between monetary policy and EU climate policy;[40]
5. Comply with the principle of proportionality;[41] and
6. Take into account the linked human rights risks associated with the climate impacts of the CSPP.[42]

The EU has committed to the Paris Goals, the European Green Deal and 2030 and 2050 emissions reduction targets, thus the transition to a net zero economy is a vital part of EU policy. The ECB must ensure the CSPP does not jeopardise the achievement of these policies or undermine a swift and orderly transition to net zero, but rather it must support them.

By focusing solely on climate risks, the ECB also disregards the EU's recognition of the 'double materiality' inherent in climate-related financial risks – here, that the ECB's own operations are having an impact on climate change and contributing to those risks.[43] In this respect, the ECB's Climate Roadmap lags behind the Bank of England's more sophisticated plans for modifying its corporate bond purchase scheme that go beyond climate risk to the Bank of England's bond portfolio to take account of the impact that issuers may have on the environment by considering their emissions targets, transition plans and climate performance, and using the scheme to incentivise the transition.[44]

We reiterate that the ECB should immediately stop its support of activities that are clearly incompatible with achieving the Paris Goals, and to issuers that are not credibly transitioning their businesses to net zero. We have provided concrete recommendations above for how it should do so.

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37 Article 127(1) and 282(2) TFEU. The ECB must do its part to mitigate climate change and support a smooth transition to net zero – recognising the 'double materiality' inherent in climate-related financial risks, that the ECB's own operations are also having an impact on climate change and contributing to those risks.

38 Article 127(1) and 282(2) TFEU and Article 3(3) TEU. Frank Elderson of the ECB has acknowledged that these provisions stipulate "a duty, not an option, for the ECB to provide its support": Elderson, 'Greening monetary policy' (February 2021).

39 Article 11 TFEU and Articles 37 and 51 EU Charter of Fundamental Rights.

40 Article 7 TFEU.

41 Article 5(4) TEU.

42 Articles 2, 7, 37 and 51 EU Charter of Fundamental Rights.

43 See European Commission, 'Guidelines on reporting climate-related information' (2019) at p.6-7 and European Commission, 'Q&A: Corporate Sustainability Reporting Directive proposal' (2021). See also: Dikau et al, 'Climate-neutral central banking: how the ESCB can support the transition to net-zero' (May 2021) and Dafermos, 'Climate change, central banking and financial supervision: beyond the risk exposure approach' (September 2021).

44 See: Bank of England, 'Greening our Corporate Bond Purchase Scheme' (November 2021).

1.7 Timing of changes to the CSPP framework

As set out above, it appears that no changes to the CSPP are likely to be implemented before 2023, there will be long adaptation periods to allow firms to comply with any new criteria, and the ECB's progress will be dependent on external legislative timeframes.

This is unacceptably slow. It should be noted that the Bank of England proposed in March 2021 to modify its corporate bond purchase programme to take account of the impact that issuers may have on the environment.[45] A detailed set of proposals, aimed at removing polluting corporate bonds from the Bank of England's portfolio and contributing to the transition to a zero-emissions economy, was drawn up and put out to consultation in May 2021,[46] and the new approach started to be implemented in November 2021.[47]

ClientEarth believes that there is nothing to prevent the ECB from moving more quickly to integrate environmental protection considerations into its monetary policy operations and comply with its obligations under the EU treaties. We urge the ECB to make its first step the immediate exclusion of bonds issued by companies whose activities are incompatible with achieving the Paris Goals and/or are associated with high transition risk, including activities relating to (i) coal, (ii) unconventional oil and gas, and (iii) any new exploration or development of fossil fuels and associated infrastructure, as set out above. The ECB certainly cannot wait until 2023 – or the next strategy review in 2025 – to take more ambitious action.

1.8 Conclusion

In view of the above factors, there is considerable uncertainty as to the timetable for implementing the ECB's Climate Roadmap and any real change to the (i) composition of, (ii) carbon bias inherent in, or (iii) warming potential of the portfolios of its corporate asset purchase programmes is in any event unlikely to take place for several years. The ECB must ensure it does not implicitly subsidise the companies that are continuing to exacerbate the climate crisis by not transitioning swiftly enough.

The ECB must not delay while it "expands its analytical capacity in macroeconomic modelling and develop statistical indicators and new tools."[48] Based on the extensive body of research that already exists, it can and must immediately take steps towards decarbonising the portfolios of its corporate asset purchase programmes, as outlined above.

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[45] Ibid.

[46] See: Bank of England, 'Options for greening the Bank of England's Corporate Bond Purchase Scheme' (May 2021).

[47] See: Bank of England, 'Greening our Corporate Bond Purchase Scheme' (November 2021).

[48] See: Lagarde and de Guindos, 'Opening remarks' (July 2021).

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2 Action required by the ECB

ClientEarth continues to believe that in order to mitigate climate-related risks and impacts, and align with the EU's climate objectives and policies in a proportionate, precautionary and evidence-based way, the ECB must:

1. **Immediately exclude from its corporate asset purchase programmes bonds issued by companies whose activities are incompatible with achieving the Paris Goals and/or are associated with high transition risk, including activities relating to (i) coal, (ii) unconventional oil and gas, and (iii) any new exploration or development of fossil fuels and associated infrastructure.**
2. **Exclude bonds or restrict asset purchases from companies <u>unless</u> the issuing company adopts by January 2023 a credible Paris-aligned strategy to transition to net zero.**
3. **Set a comprehensive strategy to align its monetary policy portfolios and activities with the Paris Goals and EU emissions reduction targets, and issue a report in line with the Recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD) annually, starting in 2022 alongside the ECB's 2021 Annual Report, disclosing its current level of alignment.**

We remain available to discuss the contents of this letter with you at your convenience.

Yours sincerely,

Anaïs Berthier

Head of EU Affairs

+32 (0)2 808 34 68

ABerthier@clientearth.org

www.clientearth.org