1. **General Principles of European Law applicable to exercise (all groups)**

**Article 3 TFEU** – *Union Exclusive competence in context*

1. The Union shall have exclusive competence in the following areas:

(a) customs union;

(b) the establishing of the competition rules necessary for the functioning of the internal market;

(c) monetary policy for the Member States whose currency is the euro;

(d) the conservation of marine biological resources under the common fisheries policy;

(e) common commercial policy.

2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

**Article 5 TEU** (ex Article 5 TEC) – *principles of subsidiarity and proportionality*

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of **subsidiarity and proportionality**.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

**NOTES**

1. **The preliminary reference mechanism (judges primarily)**

Article 267 - (ex Article 234 TEC) – *Preliminary reference mechanism*

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court. If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

**NOTES:**

1. **Treaty Articles relevant to questions asked by referring court (all groups)**

Article 119 - (ex Article 4 TEC) – Euro and single monetary policy

1.   For the purposes set out in Article 3 of the Treaty on European Union, the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

2.   Concurrently with the foregoing, and as provided in the Treaties and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.

3.   These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

Article 123 - (ex Article 101 TEC) – *prohibition on purchase of debt instruments*

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

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the European Central Bank as private credit institutions.

*Article 127 - (ex Article 105 TEC)* – *primary objective of ESCB*

1.   The primary objective of the European System of Central Banks (hereinafter referred to as ‘the ESCB’) shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in

Article 119.

2.   The basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Union,

- to conduct foreign-exchange operations consistent with the provisions of Article 219,

- to hold and manage the official foreign reserves of the Member States,

- to promote the smooth operation of payment systems.

3.-6 REDACTED

Article 130 TFEU (ex Article 108 TEC) - *European System of Central Banks*

When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

Article 282

1.   The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks (ESCB). The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union.

2.   The ESCB shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the ESCB shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives.

3-5 REDACTED

**NOTES**

1. **The ECB ESCB Protocol**

CHAPTER IV - MONETARY FUNCTIONS AND OPERATIONS OF THE ESCB

*Article 17 -* **Accounts with the ECB and the national central banks**

In order to conduct their operations, the ECB and the national central banks may open accounts for

credit institutions, public entities and other market participants and accept assets, including book

entry securities, as collateral.

*Article 18 -* **Open market and credit operations**

18.1. In order to achieve the objectives of the ESCB and to carry out its tasks, the ECB and the

national central banks may:

— operate in the financial markets by buying and selling outright (spot and forward) or under

repurchase agreement and by lending or borrowing claims and marketable instruments, whether

in euro or other currencies, as well as precious metals;

— conduct credit operations with credit institutions and other market participants, with lending

being based on adequate collateral.

18.2. The ECB shall establish general principles for open market and credit operations carried out

by itself or the national central banks, including for the announcement of conditions under which

they stand ready to enter into such transactions.

*Article 19 -* **Minimum reserves**

REDACTED

*Article 20 -* **Other instruments of monetary control**

REDACTED

*Article 21 -* **Operations with public entities**

21.1. In accordance with Article 123 of the Treaty on the Functioning of the European Union,

overdrafts or any other type of credit facility with the ECB or with the national central banks in

favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other

public authorities, other bodies governed by public law, or public undertakings of Member States

shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of

debt instruments.

21.2. The ECB and national central banks may act as fiscal agents for the entities referred to in

Article 21.1.

21.3. The provisions of this Article shall not apply to publicly owned credit institutions which, in

the context of the supply of reserves by central banks, shall be given the same treatment by national

central banks and the ECB as private credit institutions.

*Article 22 -* **Clearing and payment systems**

**REDACTED**

*Article 23 -* **External operations**

*REDACTED*

*Article 24 -* **Other operations**

REDACTED

1. **ECB Press release (evidence of ECB decision)**

‘*As announced on 2 August 2012, the [Governing Council] has today taken decisions on a number of technical features regarding the Eurosystem’s [OMTs] in secondary sovereign bond markets that aim at safeguarding an appropriate monetary policy transmission and the singleness of the monetary policy. These will be known as [OMTs] and will be conducted within the following framework:*

***Conditionality***

*A necessary condition for [OMTs] is strict and effective conditionality attached to an appropriate European Financial Stability Facility/European Stability Mechanism (EFSF/ESM) programme. Such programmes can take the form of a full EFSF/ESM macroeconomic adjustment programme or a precautionary programme (Enhanced Conditions Credit Line), provided that they include the possibility of EFSF/ESM primary market purchases. The involvement of the IMF shall also be sought for the design of the country-specific conditionality and the monitoring of such a programme.*

*The Governing Council will consider [OMTs] to the extent that they are warranted from a monetary policy perspective as long as programme conditionality is fully respected, and terminate them once their objectives are achieved or when there is non-compliance with the macroeconomic adjustment or precautionary programme.*

*Following a thorough assessment, the Governing Council will decide on the start, continuation and suspension of [OMTs] in full discretion and acting in accordance with its monetary policy mandate.*

***Coverage***

*[OMTs] will be considered for future cases of EFSF/ESM macroeconomic adjustment programmes or precautionary programmes as specified above. They may also be considered for Member States currently under a macroeconomic adjustment programme when they will be regaining bond market access.*

*Transactions will be focused on the shorter part of the yield curve, and in particular on sovereign bonds with a maturity of between one and three years.*

*No ex ante quantitative limits are set on the size of [OMTs].*

***Creditor treatment***

*The Eurosystem intends to clarify in the legal act concerning [OMTs] that it accepts the same (pari passu) treatment as private or other creditors with respect to bonds issued by euro area countries and purchased by the Eurosystem through [OMTs], in accordance with the terms of such bonds.*

***Sterilisation***

*The liquidity created through [OMTs] will be fully sterilised.*

***Transparency***

*Aggregate [OMT] holdings and their market values will be published on a weekly basis. Publication of the average duration of [OMT] holdings and the breakdown by country will take place on a monthly basis.*

***Securities Markets Programme***

*Following today’s decision on [OMTs], the Securities Markets Programme (SMP) is herewith terminated. The liquidity injected through the SMP will continue to be absorbed as in the past, and the existing securities in the SMP portfolio will be held to maturity.’*

1. **Question asked by the Referring Court as a preliminary reference (abridged for the purpose of the exercise)**

**(1)       Is the decision of the Governing Council of the ECB of 6 September 2012 on Technical features of Outright Monetary Transactions incompatible with Article 119 TFEU and Article 127(1) and (2) TFEU and with Articles 17 to 24 of the Protocol on the ESCB and the ECB because it exceeds the monetary policy mandate of the ECB laid down in the abovementioned provisions and encroaches upon the competence of the Member States?**