THE INDIVIDUAL IN THE ECONOMIC AND MONETARY UNION

A contribution to legal theories of accountability, this book offers pioneering research on the position of the individual in the EU's Economic and Monetary Union. Its premise is that the EU's response to the financial crisis placed undue emphasis on equality of Member States, to the detriment of political equality of citizens. As a remedy, this book reimagines legal accountability as the vehicle for achieving the common interest by presenting a novel understanding of the relationship between solidarity and equality. The author argues that, by carrying out an intensive review of the duty to state reasons, courts can ensure that decision-makers act in the common interest. The book explores judicial review in financial assistance, the monetary policy mechanisms of the European Central Bank, and the Single Supervisory Mechanism. Looking into the future, it tests its theoretical and normative propositions on the newly established Next Generation EU. This title is available as Open Access on Cambridge Core.

Ana Bobić is a référendaire at the Court of Justice of the EU in the cabinet of Advocate General Ćapeta. In 2022, she published her monograph *The Jurisprudence of Constitutional Conflict in the EU* (Oxford University Press). Previously, she worked at the Hertie School on questions of legal accountability in the Economic and Monetary Union (EMU).

The Individual in the Economic and Monetary Union

A STUDY OF LEGAL ACCOUNTABILITY

ANA BOBIĆ

Court of Justice of the European Union





Shaftesbury Road, Cambridge CB2 8EA, United Kingdom

One Liberty Plaza, 20th Floor, New York, NY 10006, USA

477 Williamstown Road, Port Melbourne, VIC 3207, Australia

314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi - 110025, India

103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of Cambridge University Press & Assessment, a department of the University of Cambridge.

We share the University's mission to contribute to society through the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org Information on this title: www.cambridge.org/9781009207973

DOI: 10.1017/9781009207942

© Ana Bobić 2024

This work is in copyright. It is subject to statutory exceptions and to the provisions of relevant licensing agreements; with the exception of the Creative Commons version the link for which is provided below, no reproduction of any part of this work may take place without the written permission of Cambridge University Press.

An online version of this work is published at doi.org/10.1017/9781009207942 under a Creative Commons Open Access license CC-BY-NC-ND 4.0 which permits re-use, distribution and reproduction in any medium for non-commercial purposes providing appropriate credit to the original work is given. You may not distribute derivative works without permission. To view a copy of this license, visit https://creativecommons.org/licenses/by-nc-nd/4.0

All versions of this work may contain content reproduced under license from third parties.

Permission to reproduce this third-party content must be obtained from these third-parties directly.

When citing this work, please include a reference to the DOI 10.1017/9781009207942

First published 2024

A catalogue record for this publication is available from the British Library.

A Cataloging-in-Publication data record for this book is available from the Library of Congress

ISBN 978-1-009-20797-3 Hardback

Cambridge University Press & Assessment has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Für Ole

Contents

Acknowledgements page x		
Table of Cases		
Table of Legislation		
List of Abbreviations		
Introduction	1	
I.1 The Problem	1	
I.2 The Argument	6	
I.3 Structure of the Book	11	
1 The Normative Framework of Legal Accountability	14	
1.1 Introduction	14	
1.2 A Normative Proposal of Legal Accountability	16	
1.2.1 Equality	17	
1.2.2 Solidarity	19	
1.2.3 The Equilibrium	22	
1.3 Applying the Framework to the EMU	24	
1.3.1 On Concepts	26	
1.3.2 The Individual	27	
1.3.3 Equality	32	
1.3.4 Solidarity	37	
1.3.5 The Common Interest	41	
1.4 Concluding Remarks	45	
2 Theorising Judicial Review in the Economic and		
Monetary Union	48	
2.1 Introduction	48	
2.2 Problems with Judicial Review in the EMU	52	

CAMBRIDGE

Cambridge University Press & Assessment
978-1-009-20797-3 — The Individual in the Economic and Monetary Union
A Study of Legal Accountability
Ana Bobić
Frontmatter
More Information

viii	Contents	
	2.2.1 Financial Assistance	FO
	2.2.2 The European Central Bank	53 56
	2.2.3 Soft Law Instruments	50 61
	2.3 Judicial Review as a Tool for Achieving the Political	01
	Equality of Citizens in the EMU	66
	2.3.1 Theoretical Inspiration	66
	2.3.2 On Discretion	70
	2.3.3 What Type of Judicial Review?	73
	2.3.4 On the Division of Judicial Labour	79
	2.4 Conclusion	80
3	Financial Assistance Mechanisms	82
-	3.1 Introduction	82
	3.2 The Legal Framework of Financial Assistance	85
	3.3 Judicial Review at the National Level	87
	3.3.1 Access and Remedies	88
	3.3.2 Solidarity and Equality	92
	3.4 Judicial Review at the EU Level	94
	3.4.1 Access and Remedies	95
	3.4.2 Solidarity and Equality	100
	3.5 On Judicial Interactions	104
4	The Monetary Policy of the European Central Bank	107
	4.1 Introduction	107
	4.2 Monetary Policy and the European System of	
	Central Banks	110
	4.3 Judicial Review at the EU Level	117
	4.3.1 Access and Remedies	117
	4.3.2 Solidarity and Equality	119
	4.4 Judicial Review at the National Level	124
	4.4.1 Access and Remedies	124
	4.4.2 Solidarity and Equality	128
	4.5 On Judicial Interactions	133
5	The Single Supervisory Mechanism	138
	5.1 Introduction	138
	5.2 The Legal Framework of the SSM	140
	5.3 Judicial Review at the EU Level	144
	5.3.1 Access and Remedies	144
	5.3.2 Solidarity and Equality	155

CAMBRIDGE

Cambridge University Press & Assessment 978-1-009-20797-3 — The Individual in the Economic and Monetary Union A Study of Legal Accountability Ana Bobić Frontmatter <u>More Information</u>

Contents	ix
5.4 Judicial Review at the National Level	159
5.4.1 Access and Remedies	159
5.4.2 Solidarity and Equality	163
5.5 On Judicial Interactions	168
Conclusion	171
C.1 Introduction	171
C.2 Financial Assistance Mechanisms	173
C.3 Monetary Policy of the European Central Bank	176
C.4 The Single Supervisory Mechanism	179
C.5 The Common Interest before Courts and Beyond	181
Epilogue	183
The NGEU: Structure and Constitutional Issues	184
Judicial Review at the National Level	189
Judicial Review at the EU Level	195
Final Thoughts	201
Bibliography	203
Index	219

Acknowledgements

When writing a book comes to an end, one is overwhelmed by looking back at the entire process and cannot help but think of all those who provided vital support and encouragement along the way. This book would not exist without the people I want to honour here.

The book is part of the wider research project LEVIATHAN - 'Legal and Political Accountability in "Post-Crisis" EU Economic Governance' (2017-2021) - funded by the European Research Council (ERC) within the framework of the Horizon 2020 research and innovation programme (grant agreement 716923). I am immensely grateful to Mark Dawson, the principal investigator of LEVIATHAN, for entrusting me with one of the work packages of the project. Working with Mark has been an incredible privilege: a brilliant EU law scholar, an encouraging mentor, and supportive beyond measure in the professional and the personal sphere. He has always had time to discuss my research, read my work, and provide constructive and helpful feedback. The four years I spent working with him on the project were some of the most enjoyable and academically enriching times of my career as an EU lawyer. I hope the future will bring many more opportunities for us to work together and I am so lucky to also be able to call Mark, and his husband Pierre, my dear friends. I am also extremely happy that Mark, in selecting his project team, brought Adina Akbik into my life. Her dedication to work, thorough approach to research, and unwavering support have helped me become a better researcher and shaped many of the ideas expressed in this book. She is my dear academic sister and I am grateful for all her support and inspiration. The Hertie School and its Jacques Delors Centre are a wonderful academic community that always challenged and pushed my thinking forward, and I am especially thankful for the multidisciplinary environment these institutions provided. My special thanks go to Markus Jachtenfuchs and Christian Freudlsperger for making political science indispensable in my

xii

Acknowledgements

work. I am also grateful for the help of the research assistants at the LEVIATHAN Project: Evgenija Kroeker, Rebecca Segall, Harry McNeill Adams, Elena Bertolini, and Francesco Lanzone. Writing this book has been less stressful thanks to Cambridge University Press, and in particular Tom Randall, Sharon McCann, and Gemma Smith.

I am incredibly grateful to Paul Dermine for taking the time to read large parts of this book and offering generous and useful feedback, raising important counterarguments, and generally helping me improve the text. It was wonderful having him as a colleague at the Court of Justice and discuss ongoing developments with our academic hats on. My thanks also go to Thomas Reyntjens, for reading parts of this book and challenging my arguments from a practical point of view. I have presented different parts of this book at numerous conferences, and the feedback and discussions that took place there shaped my thinking and significantly improved my work. I am particularly grateful to Anuscheh Farahat, Xabier Arzoz, Joana Mendes, Klaus Tuori, Julian Nowag, and Martijn van den Brink. I am also grateful to the anonymous reviewers who assessed the book proposal and gave valuable suggestions and feedback that made this book better. I am happy to be part of the EU law academic community, and I hope I will be able to pay the same favours forward in the future.

The last stretches of writing were done during my work in the Cabinet of Advocate General Tamara Ćapeta at the Court of Justice of the EU. I am beyond grateful to Tamara for her support and encouragement, for the intense and stimulating exchanges during our cabinet meetings, and for forcing me to think differently about pressing questions of EU law. From day one, working with my colleagues in the cabinet – Nicolaj, Franck, Kathleen, Antonia, Cian, Corinne, Benoît – has been an inspiring and enjoyable experience; the intellectual environment they create has allowed me to continue my academic research alongside my work on pending cases at the Court.

I am grateful to my friends and family for their love and care. Thank you, Jelena and Milan, Bruno and Grga, Lucija and Mislav. Thank you, Lilas, Josephine, Petra, Kristina, Tamara (P), Branka, Selçuk, Alice, and Ulrike und Albrecht.

This book is dedicated to Ole, my partner and my favourite person. He has been by my side since this book was only a proposal, when I had ample time to write it, and when it was most difficult to find the focus and strength to finish it. Thank you, Ole, for being in my life. 'That it now.'

Luxembourg, 21 March 2023

Table of Cases

EUROPEAN UNION

Court of Justice

Case 9/56 Meroni EU:C:1958:7 Case 26/62 van Gend en Loos EU:C:1963:1 Case 13/63 Commission v Italy EU:C:1963:20 Case 6/64 Costa v ENEL EU:C:1964:66 Case 22/70 Commission v Council EU:C:1971:32 Case 39/72 Commission v Italy EU:C:1973:13 Case 128/78 Commission v United Kingdom EU:C:1979:32 Case 804/79 Commission v United Kingdom EU:C:1981:93 Case 244/80 Foglia v Novello EU:C:1981:302 Case 60/81 IBM v Commission EU:C:1981:264 Case 283/81 Cilfit EU:C:1982:335 Case 294/83 Les Verts EU:C:1986:166 Case 34/86 Council v Parliament EU:C:1986:291 Case 314/85 Foto-Frost EU:C:1987:452 Case 151/88 Italy v Commission EU:C:1989:201 Joined Cases C-181/88, C-182/88 and C-218/88 Deschamps EU: C:1989:642 Case C-322/88 Grimaldi EU:C:1989:646 Case C-366/88 France v Commission EU:C:1990:348 Case C-128/89 Commission v Italy EU:C:1990:311 Case C-269/90 Technische Universität München EU:C:1991:438 Case C-303/90 France v Commission EU:C:1991:424 Case C-282/90 Vreugdenhil v Commission EU:C:1992:124

CAMBRIDGE

Cambridge University Press & Assessment 978-1-009-20797-3 — The Individual in the Economic and Monetary Union A Study of Legal Accountability Ana Bobić Frontmatter <u>More Information</u>

xiv

Table of Cases

Case C-343/90 Dias EU:C:1992:327 Case C-97/91 Borelli EU:C:1992:491 Case C-325/91 France v Commission EU:C:1993:245 Case C-188/92 TWD Textilwerke Deggendorf GmbH EU:C:1994:90 Case C-415/93 Bosman EU:C:1995:463 Opinion 3/94 EU:C:1995:436 Case C-57/95 France v Commission EU:C:1997:164 Case C-147/96 Netherlands v Commission EU:C:2000:335 Case C-50/00 P UPA EU:C:2002:462 Case C-60/00 Carpenter EU:C:2002:434 Case C-491/01 BAT and Imperial Tobacco EU:C:2002:741 Case C-11/00 Commission v ECB EU:C:2003:395 Case C-27/04 Commission v Council EU:C:2004:436 Case C-392/02 Commission v Denmark EU:C:2005:683 Case C-12/03 P Tetra Laval EU:C:2005:87 Case C-301/03 Italy v Commission EU:C:2005:727 Case C-64/05 P Sweden v Commission EU:C:2007:802 Case C-521/06 P Athinaïki Techniki v Commission EU:C:2008:422 Case C-166/07 Parliament v Council EU:C:2009:499 Case C-362/08 P Internationaler Hilfsfonds v Commission EU: C:2010:40 Joined Cases C-188/10 and C-189/10 Melki and Abdeli EU:C:2010:363 Joined Cases C-78/08 to C-80/08 Paint Graphos and Others EU: C:2011:550 Opinion 1/09 EU:C:2011:123 Case C-34/09 Ruiz Zambrano EU:C:2011:124 Case C-14/10 Nickel Institute EU:C:2011:503 Joined Cases C-463/10 and C-475/10 Deutsche Post and Germany v Commission EU:C:2011:656 Case C-434/11 Corpul National al Politistilor v MAI EU:C:2011:830 Case C-462/11 Cozman v Teatrul Municipal Targoviste EU:C:2011:831 Case C-134/12 MAI et al. v Corpul National al Politistilor EU:C:2012:288 Case C-369/12 Corpul National al Politistilor v MAI EU:C:2012:725 Case C-370/12 Pringle EU:C:2012:756 Case C-399/11 Melloni EU:C:2013:107 Case C-583/11 P Inuit Tapiriit Kanatami EU:C:2013:625 Case C-128/12 Sindicato dos Bancarios do Norte et al. v BPN EU: C:2013:149 Opinion 2/13 EU:C:2014:2454 Case C-31/13 P Hungary v Commission EU:C:2014:70

Table of Cases XV Case C-264/12 Sindicato Nacional dos Profissionais de Seguros e Afins v Fidelitate Mundial EU:C:2014:2036 Case C-333/13 Dano EU:C:2014:2358 Case C-665/13 Sindicato Nacional dos Profissionais de Seguros e Afins v Via Directa EU:C:2014:2327 Case C-62/14 Gauweiler EU:C:2015:400 Case C-67/14 Alimanovic EU:C:2015:597 Case C-526/14 Kotnik EU:C:2016:570 Joined Cases C-8/15 P to C-10/15 P Ledra Advertising and Others v Commission EU:C:2016:701 Case C-41/15 Dowling EU:C:2016:836 Joined Cases C-105/15 P to C-109/15 P Mallis EU:C:2016:702 Case C-201/15 AGET Iraklis EU:C:2016:972 Case C-243/15 Lesoochranáske zoskupenie EU:C:2016:838 Case C-258/14 Florescu EU:C:2017:448 Case C-589/15 P Anagnostakis EU:C:2017:663 Joined cases C-643/15 and C-647/15 Slovakia and Hungary v Council EU: C:2017:631 Case C-16/16 P Belgium v Commission EU:C:2018:79 Case C-64/16 Associação dos Juízes Portugueses EU:C:2018:117 Case C-219/17 Berlusconi EU:C:2018:1023 Case C-493/17 Weiss EU:C:2018:1000 Case C-621/18 Whigtman EU:C:2018:999 Case C-450/17 P Landeskreditbank EU:C:2019:372 Joined Cases C-663/17 P, C-665/17 P and C-669/17 P Trasta Komercbanka EU:C:2019:923 Joined Cases C-152/18 P and C-153/18 P Crédit Mutuel Arkéa EU: C:2019:810 Joined Cases C-202/18 and C-238/18 Rimšēvičs EU:2019:139 Case C-35/19 Belgian State (Indemnité pour personnes handicapées) EU: C:2019:894 Case C-686/18 OC and Others v Banca d'Italia and Others EU:C:2020:567 Case C-575/18 P Czech Republic v Commission EU:C:2020:530 Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P Chrysostomides EU:C:2020:1028 Case C-785/18 Jeanningross EU:C:2020:46 P BTB Case C-148/19 Holding Investments and Duferco Participations Holding v Commission EU:C:2020:354 Joined Cases C-225/19 and C-226/19 R.N.N.S. & K.A. EU:C:2020:951 Case C-316/19 Commission v Slovenia EU:C:2020:1030

xvi

Table of Cases

Case C-571/19 P EMB Consulting SE v ECB EU:C:2020:208 Case C-423/20 P(R) Council v Sharpston EU:C:2020:700 Case C-424/20 P(R) Representatives of the Governments of the Member States v Sharpston EU:C:2020:705 Case C-501/18 Balgarska Narodna Banka EU:C:2021:249 Case C-848/19 P Germany v Poland EU:C:2021:598 Joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19 Asociația 'Forumul Judecătorilor din România' EU:C:2021:1034 Case C-911/19 Fédération bancaire française EU:C:2021:599 Case C-408/20 P Poggiolini EU:C:2021:806 Case C-817/19 Ligue des droits humains EU:C:2022:491 Case C-616/20 M2Beauté Cosmetics GmbH EU:C:2022:781 Case C-673/20 Préfet du Gers EU:C:2022:449 Case C-45/21 Banka Slovenije EU:C:2022:670 Case C-156/21 Hungary v Parliament and Council EU:C:2022:97 Case C-157/21 Poland v Parliament and Council EU:C:2022:98 Case C-397/21 HUMDA EU:C:2022:790 Case C-430/21 RS EU:C:2022:99 Case C-443/21 Avicarvil Farms EU:C:2022:899

Advocate General Opinions

- Opinion of Advocate General Maduro in Case C-141/02 P Commission v max-mobil EU:C:2004:646
- Opinion of Advocate General Léger in Case C-40/03 P Rica Foods EU: C:2005:93
- Opinion of Advocate General Maduro in Case C-411/06 Commission v Parliament and Council EU:C:2009:189
- Opinion of Advocate General Kokott in Case C-13/07 Commission v Council EU:C:2009:190
- Opinion of Advocate General Bot in Case C-166/07 Parliament v Council EU:C:2009:213
- Opinion of Advocate General Sharpston in Case C-34/09 *Ruiz* Zambrano EU:C:2010:560

Opinion of Advocate General Mengozzi in Case C-401/09 P Evropaïki Dynamiki v ECB EU:C:2011:31

Opinion of Advocate General Trstenjak in Case C-539/09 Commission v Germany EU:C:2011:345

Table	of	Cases
-------	----	-------

View of Advocate General Kokott in Case C-370/12 Pringle EU: C:2012:675 Opinion of Advocate General Szpunar in Case C-113/14 Germany v Parliament and Council EU:C:2016:279 Opinion of Advocate General Wahl in Case C-526/14 Kotnik EU: C:2016:102 Opinion of Advocate General Wahl in Joined Cases C-8/15 P to C-10/15 P Ledra EU:C:2016:290 Opinion of Advocate General Wathelet in Joined Cases C-105/15 P to C-109/15 P Mallis EU:C:2016:294 Opinion of Advocate General Szpunar in Joined Cases C-360/15 and C-31/16 College van Burgemeester en Wethouders van de gemeente Amersfoort EU:C:2017:397 Opinion of Advocate General Mengozzi in Case C-589/15 P Anagnostakis EU:C:2017:175 Opinion of Advocate General Bobek in Case C-16/16 P Belgium v Commission EU:C:2017:959 Opinion of Advocate General Campos Sánchez-Bordona in Case C-219/17 Berlusconi EU:C:2018:502 Opinion of Advocate General Hogan in Case C-450/17 P Landeskreditbank Baden-Württemberg EU:C:2018:982 Opinion of Advocate General Wathelet in Case C-493/17 Weiss EU: C:2018:815 Opinion of Advocate General Kokott in Joined Cases C-202/18 and C-238/ 18 Rimšēvičs EU:C:2018:1030 Opinion of Advocate General Kokott in Joined Cases C-663/17 P, C-665/17 P and C-669/17 P Trasta Komerchanka EU:C:2019:323 Opinion of Advocate General Pitruzzella in Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P Chrysostomides EU:C:2020:390 Opinion of Advocate General Campos Sanchez-Bordona in Case C-848/19 P Germany v Poland EU:C:2021:218 Opinion of Advocate General Bobek in Case C-911/19 Fédération bancaire française EU:C:2021:294 Opinion of Advocate General Capeta in Case C-500/20 ÖBB-Infrastruktur Aktiengesellschaft EU:C:2022:79 Opinion of Advocate General Richard de la Tour in Case C-624/20 E.K. v Staatssecretaris van Justitie en Veiligheid EU:C:2022:194

Opinion of Advocate General Capeta in Case C-721/20 DB Station & Service EU:C:2022:288

xvii

xviii

Table of Cases

Opinion of Advocate General Ćapeta in Case C-268/21 Norra Stockholm EU:C:2022:755

Opinion of Advocate General Emiliou in Case C-389/21 P ECB v Crédit Lyonnais EU:C:2022:844

Court of First Instance/General Court

Case T-139/99 AICS v Parliament EU:T:2000:182 Case T-18/10 Inuit EU:T:2011:419 Case T-262/10 Microban EU:T:2011:623 Case T-450/12 Anagnostakis v Commission EU:T:2015:739 Case T-79/13 Accorinti and Others v ECB EU:T:2015:756 Case T-122/15 Landeskreditbank EU:T:2017:337 Case T-247/16 Fursin and Others v ECB EU:T:2017:623 Case T-680/13 Chrysostomides EU:T:2018:486 Case T-680/13 Chrysostomides EU:T:2019:353 Case T-504/19 Crédit lyonnais v ECB EU:T:2021:185 Case T-913/16 Fininvest and Berlusconi v ECB EU:T:2022:279 Case T-502/19 Corneli v ECB EU:T:2022:627 Case T-709/21 WhatsApp Ireland Ltd EU:T:2022:783

MEMBER STATES

Estonia

Supreme Court

Constitutional Judgment 3-4-1-6-12 (ESM Treaty), 12 July 2012

Germany

Federal Constitutional Court

- 2 BvR 2134/92 and 2159/92 *Maastricht Treaty* Judgment of 12 October 1993
- 2 BvR 2/08 Lisbon Treaty Judgment of 30 June 2009
- 2 BvR 2661/06 Honeywell Order of 06 July 2010
- 2 BvR 987/10 ESM Treaty Judgment of 07 September 2011
- 2 BvR 615/09 and 2 BvR 535/09 Judgment of 21 November 2011
- 2 BvR 1390/12 ESM Treaty II Judgment of 12 September 2012

Table of Cases

- 2 BvR 2728/13 Gauweiler Order of 14 January 2014
- 2 BvR 2735/14 Mr R. Order of 15 December 2015
- 2 BvR 2728/13 Gauweiler Judgment of 21 June 2016
- 2 BvR 859/15, 2 BvR 980/16, 2 BvR 2006/15, 2 BvR 1651/15 Weiss Order of 18 July 2017
- 2 BvR 1685/14 and 2 BvR 2631/14 Banking Union Judgment of 30 July 2019
- 2 BvR 859/15, 2 BvR 980/16, 2 BvR 2006/15, 2 BvR 1651/15 Weiss Judgment of 5 May 2020
- 2 BvR 547/21 Decision of 26 March 2021
- 2 BvR 547/21 Order of 15 April 2021
- 2 BvR 1651/15 and 2 BvR 2006/15 Order of 29 April 2021
- 2 BvR 547/21 and 2 BvR 798/21 Own Resources Decision Judgment of 6 December 2022

Portugal

Constitutional Tribunal

Ruling N. 353/12 of 5 July 2012

The Netherlands

Hague Civil Court

Wilders and Others v the Dutch State, case no. 419556 / KG ZA 12-523, Judgment in summary proceedings of 1 June 2012

Other Jurisdictions

United Kingdom

Secretary of State for Education and Science v Tameside MBC [1976] UKHL 6

Miller & Anor, R (On the Application Of) v The Secretary of State for Exiting the European Union (Rev 1) [2016] EWHC 2768 (Admin)

Miller & Anor, R (on the application of) v Secretary of State for Exiting the European Union (Rev 3) [2017] UKSC 5

United States

James B. Beam Distilling Co. v Georgia 501 US 529 (1991), Concurring Opinion of Justice Scalia

Obergefell v Hodges 576 US 644 (2015), Dissenting Opinion of Justice Scalia

xix

Table of Legislation

EUROPEAN UNION LAW

Primary Law

Treaty Establishing the European Community (TEC) [1992] OJ C224/1 Consolidated version of the Treaty on European Union [2016] OJ C202/13 Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/47

Charter of Fundamental Rights of the European Union [2016] OJ C202/

Statute of the European System of Central Banks and of the European Central Bank. Protocol No 4 to the Lisbon Treaty (OJ 2016 C202/230)

Secondary Law

- Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage (OJ 1976 L278/5)
- Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ 1977 L26/1)
- Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ 2010 L118/1)

xxii

Table of Legislation

- Council Regulation (EU) 1177/2011 of 8 November 2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ 2011 L306/33)
- Council Directive 2011/85/EU of the Council of 8 November 2011 on the requirements for budgetary frameworks of the Member States (OJ 2011 L306/41)
- Regulation (EU) 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area (OJ 2011 L306/1)
- Regulation (EU) 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area (OJ 2011 L306/8)
- Regulation (EU) 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies (OJ 2011 L306/12)
- Regulation (EU) 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances (OJ 2011 L306/25)
- Regulation (EU) 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability (OJ 2013 L140/1)
- Regulation (EU) 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area (OJ 2013 L140/11)
- Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/ 2012 (OJ 2013 L176/1)
- Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L176/338)
- Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L287/63)

Table of Legislation

- Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (ECB/2014/17) (OJ 2014 L141/1)
- Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/ EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, (OJ 2014 L173/190)
- ECB Decision 2015/774 of 4 March 2015 on a secondary markets public sector asset purchase programme (OJ 2015 L121/20)
- Decision 2015/2101 of 5 November 2015 amending Decision (EU) 2015/ 774 on a secondary markets public sector asset purchase programme (OJ 2015 L303/106)
- Decision 2015/2464 of 16 December 2015 amending Decision (EU) 2015/ 774 on a secondary markets public sector asset purchase programme (OJ 2015 L344/1)
- Decision 2016/702 of 18 April 2016 amending Decision (EU) 2015/774 on a secondary markets public sector asset purchase programme (OJ 2016 L121/24)
- Decision (EU) 2017/100 of 11 January 2017 amending Decision (EU) 2015/774 on a secondary markets public sector asset purchase programme (OJ 2017 L16/51)
- Council Decision (EU, Euratom) 2018/994 of 13 July 2018 (OJ 2018 L 178/1)
- Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union (OJ L193/1)
- Decision 2020/440 of the ECB of 24 March 2020 on a temporary pandemic emergency purchase programme (OJ 2020 L91/1)
- Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L433 I/23)
- Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L424/1)

xxiii

xxiv

Table of Legislation

- Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ $L_{433}I/1$)
- Interinstitutional Agreement (IIA) of 16 December 2020 between the EP, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources, (OJ L433I/28)
- Regulation (EU) 2021/241 of the European Parliament and of the council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L57/17)

Other Documents

- Technical features of Outright Monetary Transactions, 6 September 2012, <www.ecb.europa.eu/press/pr/date/2012/html/ pr120906_1.en.html>
- European Parliament's Committee on Constitutional Affairs 'Article 136 TFEU, ESM, Fiscal Stability Treaty Ratification requirements and present situation in the Member States', June 2013, available at <www.europarl.europa.eu/meetdocs/2009_2014/documents/afco/dv/2013-06-12_pe462455-v16_/2013-06-12_pe462455-v16_en.pdf>
- Communication from the Commission on the application, from 1 August 2013, of State aid rules to support measures in favour of banks in the context of the financial crisis (OJ 2013 C 216/1)
- Communication from the Commission to the European Parliament, the Council, the European Central Bank, the Economic and Social Committee, the Committee of Regions and the European Investment Bank, 'Making the Best Use of the Flexibility within the Existing Rules of the Stability and Growth Pact' COM (2015) 12 final
- Conclusions of the Special meeting of the European Council (17 to 21 July 2020) <www.consilium.europa.eu/media/45109/210720-euco-final-conclusions-en.pdf>
- Court of Auditors, Opinion No 6/2020 concerning the proposal for a regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility (COM(2020) 408) (OJ C 350/1)
- Presentation by Commissioner Hahn of the NextGenerationEU, 14 April 2021 https://ec.europa.eu/commission/presscorner/detail/en/speech_21_1743

Table of Legislation

European Parliament legislative resolution of 3 May 2022 on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision (2020/2220(INL) – 2022/0902(APP))

'SRB, EBA and ECB Banking Supervision statement on the announcement on 19 March 2023 by Swiss authorities'. Press Release of 20 March 2023. Available at <www.srb.europa.eu/en/content/srb-ebaand-ecb-banking-supervision-statement-announcement-19-march-2023swiss-authorities#:~:text=The%20Single%20Resolution%20Board%2C% 20the,order%20to%20ensure%20financial%20stability>

International Law

Charter of the United Nations, 24 October 1945, 1 UNTS XVI Treaty Establishing the European Stability Mechanism T/ESM 2012-LT/ en 1

XXV

Abbreviations

- ABoR Administrative Board of Review
- ABSSP Asset-Backed Securities Purchase Programme
- APP Asset Purchase Programme
- CBPP3 Bond Purchase Programme
- CJEU Court of Justice of the European Union
- EBA European Banking Authority
- EC European Community
- ECB European Central Bank
- EEA European Economic Area
- EFSF European Financial Stability Facility
- EFSM European Financial Stabilisation Mechanism
- EMU Economic and Monetary Union
- ESCB European System of Central Banks
- ESM European Stability Mechanism
- EU European Union
- EURI European Union Recovery Instrument
- IMF International Monetary Fund
- MoU Memorandum of Understanding
- NCA National Competent Authority
- NGEU Next Generation EU
- OMT Outright Monetary Transaction Mechanism
- ORD Own Resources Decision
- PEPP Pandemic Emergency Purchase Programme
- PSPP Public Sector Purchase Programme
- RRF Recovery and Resilience Facility

xxvii

xxviii	List of Abbreviations
SRM	Single Resolution Mechanism
SSM	Single Supervisory Mechanism
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union