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BANKING & FINANCE • COVID-19

Op-Ed: “The European Central Bank’s pandemic bazooka: mandate fulfilment in extraordinary times” by René Smits

Introduction

In the last few weeks we have seen the eruption of a world-wide pandemic of the COVID-19 virus ('coronavirus'). After the outbreak of the disease in Wuhan (China), it spread globally, affecting first thousands, then millions of people whose lives were turned upside-down as they were asked, or compelled, to respect 'social distancing' to prevent contagion, to stay at home, work at a distance, and self-isolate or go into quarantine. The social and economic effects of the pandemic are huge.

Allow this sociologist-cum-lawyer to begin with the social disruption before focusing on the legal issues of the European Central Bank's (ECB) response. Suddenly, values are resurfacing that, in the 'normal' economic life of many, had not figured prominently. For example, the environment and Planet Earth breathed afresh: air quality was **reported** to have **improved** significantly above areas closed down for work and transport, providing a glimpse of the steps mankind needs to undertake to avoid a climate change catastrophe. As **CNBC** reports: 'the pandemic's unintended climate impact offers a glimpse into how countries and corporations are equipped to handle the slower-moving but destructive climate change crisis'. **Simon Kuper**, in his column in the Financial Times, also offered insights on the possible greening of our societies over time (*'Coronavirus could help push us into a greener way of life— For all its horror, the pandemic may change our habits when nothing else could'*).

Other values that are resurfacing include family life; the recognition of the vital roles of cleaners, teachers, health workers and other indispensable people for a society to conduct its business – their social status and earnings dismal compared to those of entrepreneurs, innovators and managers; and the possibilities of working remotely from one's 'home office' for those whose jobs allow them to do so.

One wonders what the effects of this re-evaluation will be over the long term. Of course, any serenity people may feel because of the sudden stillness of their daily lives and the opening of new modes of living only apply to those with the comfort to do so. For people relying on food banks that cease to operate, and for refugees on Lesbos, times have become immeasurably harder.

At policy level, choices that have been mainstream for a long time seem reversible overnight: the idea of 'helicopter money' may have lost its 'taboo status', as [Martin Sandbu](#) describes in the Financial Times's Big Read – *Coronavirus: the moment for helicopter money – Economic taboos are being broken to finance the huge government deficits needed to fight the crisis*, as does [Jonathan Freedland](#) in *The Guardian*, remarking in respect of Great Britain: *As fearful Britain shuts down, coronavirus has transformed everything*. His words are worth being repeated here: '[j]ust as there are no atheists on a sinking ship, there are no free-marketeers in a pandemic'. The same holds for a basic income for all; the history of this idea, once considered mainstream and now utopian, has eloquently been described by [Rutger Bregman](#) in *Utopia for Realists*, 2017 (see <https://www.rutgerbregman.com/books>). The joint issuance of bonds by Euro Area governments is [proposed by German economists](#) in the *Frankfurter Allgemeine Zeitung (FAZ)*: '*Krisen-Anleihen mit einer gemeinschaftlichen Haftung*' (crisis bonds under joint liability) (fn 1), and see also '[A proposal for a Covid Credit Line](#)', research-based policy analysis and commentary from leading economists.

Yet, hitherto national responses have prevailed. One nation goes into 'lockdown', the other belatedly orders social distancing. This may be due to local specificities: the severity of contagion, the availability of intensive care units, and other considerations.

Yet, it seems that governments rely on their own disease control centre's recommendations as if there were no prior experience abroad (in China, Taiwan, Singapore), or closer by (Italy) and as if there is no [European Centre for Disease Prevention and Control \(ECDC\)](#), the website of which publishes a [daily update on the COVID-19 outbreak](#).

In their televised speeches to the nation, neither [Dutch Prime Minister Mark Rutte](#), who said 'all 17 million of us will have to work together to overcome it' ([official English translation](#)) in a [television speech on 16 March 2020](#), nor [German Chancellor Angela Merkel](#), who as I write this, is in quarantine after a doctor who gave her a vaccine tested positive for coronavirus, in an [address to the nation on 19 March 2020](#), mentioned Europe or the need for international cooperation. Each referred to their own public health institutes (the [Robert Koch Institute](#) and the [Rijksinstituut voor Volksgezondheid en Milieu \(RIVM\)](#), respectively).

A jointly-decided closure of the [external](#) borders of the Schengen Area (proposed by the Commission on 19 March 2020, in its Communication *COVID-19: Temporary Restriction on Non-Essential Travel to the EU*, [COM\(2020\) 115 final](#)) came after border closures of the hitherto barely visible [internal](#) borders on which Member States allegedly did not inform each other or the Commission prior to the closures (fn 2).

Similarly, on the economic front, there is no European Union or Euro Area fiscal stimulus, but at best a coordinated response (the Polish Prime Minister questioning whether it was really a new effort or just a relabelling of existing money flows: see the Financial Times article [Poland criticises EU 'smoke and](#)

mirrors' coronavirus response – Brussels' measures insufficient and help for workers should be priority, says finance minister).

The **Eurogroup statement of 16 March** sums up national responses and welcomes EU initiatives but did not (could not) release budgetary funds. The envisaged, dismally inadequate **budgetary instrument for convergence and competitiveness** that the Euro Area finally agreed upon last year has not yet been activated.

The EU's response is crucial and forthcoming

As in the 2008 Great Financial Crisis (GFC), and the subsequent sovereign debt crisis in the Euro Area, effective federal action is needed, and still – mostly – lacking. As said, there is no fiscal stimulus from the centre, as there is no competence to enact such a measure which, just as in 2008, shows that Europe cannot act swiftly as the trans-Atlantic currency union (the US) can. In the GFC, the European Commission and the ECB acted in tandem to save the Single Market and single currency as much as possible (fn 3). They have now both acted rapidly, each within their respective fields of competence.

The European Commission adopted a *Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak* which brings back memories of the adoption of its 2008 **Bank Guarantee Communications**, ultimately resulting in the **2013 Banking Communication**, which the Court of Justice interpreted in the *Kotnik (C-526/14)* judgment. The first decisions approving coronavirus outbreak-related state support measures (in favour of two **German state aid schemes**, and one **Italian scheme to support production and supply of medical devices**) were reported yesterday, a Sunday.

On 12 March 2020, the ECB adopted three significant **monetary policy decisions**:

- Increased **provision of liquidity** to the markets through Longer-Term Refinancing Operations (LTROs);
- An increase of 120 billion euros in its programme of asset purchases ('a temporary envelope of additional net asset purchases of €120 billion will be added until the end of the year');
- Extra **favourable conditions** on Targeted Longer-Term Refinancing Operations; under this TLTRO III, funds that banks report to have on-lent to the real economy, notably to Small and Medium-sized Enterprises, can benefit from an interest rate of up to 25 basis points below the average ECB deposit facility rate.

As banking supervisor, the ECB also adopted **measures** on 12 March 2020, allowing banks to use capital buffers, to get relief in the composition of capital for Pillar 2 Requirements (that is, the additional capital a bank needs to hold over the statutory capital under the **Capital Requirements Regulation** as a result of the **Supervisory Review and Evaluation Process (SREP)** pursuant to **Article 97 ff. of the Capital Requirements Directive**). After announcing on 12 March that it would 'consider operational flexibility in the implementation of bank-specific supervisory measures', the ECB followed up on 20 March with new measures to permit 'flexibility in prudential treatment of loans backed by public support measures' and by 'introduc[ing] supervisory flexibility regarding the treatment of non-

performing loans (NPLs)'. Furthermore, the ECB wants banks to avoid the possibly procyclical effects of capital requirements and financial reporting. More importantly perhaps, the ECB postpones – for six months – the enforcement of major supervisory decisions, such as deadlines for remedial actions imposed as a result of on-site inspections, in the context of the [review of internal models](#) to calculate banks' risk-weighted assets, and other supervisory [measures](#).

The ECB's main announcement last week was on a new [Pandemic Emergency Purchase Programme](#) (PEPP), [explained](#) by ECB President [Christine Lagarde](#). The ESCB will purchase 'private and public sector securities' in amounts of up to 750 billion euros. Eligible securities are the marketable instruments that can be purchased under the current [Asset Purchasing Programmes](#) (APP). Flexibility is to be the hallmark of the new programme: whereas 'the benchmark allocation across jurisdictions will continue to be the capital key of the national central banks', the buying operations will see fluctuations 'over time, across asset classes and among jurisdictions'. Instruments issued by non-financial companies will be included in the commercial paper purchased under the [Corporate Sector Purchase Programme](#) (CSPP). The 'main risk parameters of the collateral framework' will be adjusted to allow for wider collateral to be posted at the ESCB. A '[whatever it takes](#)' sentence is added, with the necessary reference to the mandate, as in [ECB President Mario Draghi's statement](#) on 26 July 2012 that "Within our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough", made at the Global Investment Conference in London. The ECB states that the 'Governing Council will do everything necessary within its mandate'. This comes right after a wide-ranging statement that includes all sectors of European society:

'The Governing Council of the ECB is committed to playing its role in supporting all citizens of the euro area through this extremely challenging time. To that end, the ECB will ensure that all sectors of the economy can benefit from supportive financing conditions that enable them to absorb this shock. This applies equally to families, firms, banks and governments.'

Below, I will explore what can be said, at this juncture, about the legality of the ECB's PEPP.

PEPP and other ECB measures are legal

The primary law legal basis for the emergency response of the ECB is [Article 127\(1\) and \(2\) TFEU](#). This provision mandates the ESCB to conduct ('define and implement') the monetary policy of the EU (fn 4) and entrusts them to strive for price stability as a primary objective and, as a secondary objective ('Without prejudice to the objective of price stability'), to support the economic policies of the EU 'with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 [TEU]' (see below for the full text of Article 3 TEU with the most relevant terms underlined by me). [Article 3\(1\)\(c\) TFEU](#) makes clear that monetary policy is an exclusive EU competence, just as 'competition rules necessary for the functioning of the internal market' are an exclusive EU competence pursuant to [Article 3\(1\)\(b\) TFEU](#).

The reference to the secondary objective of the ESCB is relevant for several reasons. First, it puts the support of (hitherto largely national) (fn 5) economic policies in a wider, EU perspective. Second, it

makes clear what the EU stands for and which objectives its monetary authority ultimately needs to support, while respecting its prime mandate to maintain price stability. In the current context, special attention is warranted for: the well-being of Europeans (no further explanation needed), their security (which includes physical and mental security, and health – see also, [Article 9 TFEU](#), one of the 'integration clauses', quoted below), full employment and social progress (which are under severe threat now), combatting social exclusion (think food banks and refugees), promoting social justice and protection (relevant in the context of mass unemployment; and the same holds for:) economic and social cohesion. Furthermore, the EU's role on the global stage is set in the perspective of, again, the protection of EU citizens and security, the sustainable development of Planet Earth (which must include conditions that are not conducive to pandemics and which guarantee health for all sentient beings – see [Article 13 TFEU](#) which recognises animals as sentient beings whose welfare requirements need respecting), solidarity and mutual respect among peoples (relevant at this time for international health cooperation) and the protection of human rights (among which is the right to life ([Article 2 Charter](#) of Fundamental Rights of the European Union ('Charter'), and the right of access to health care – see [Article 35 Charter](#) which specifies that '[a] high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and practices').

Article 3 Treaty on European Union

'1. The EU's aim is to promote peace, its values and the well-being of its peoples.

- 2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.**
- 3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.**

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

- 4. The Union shall establish an economic and monetary union whose currency is the euro.**
- 5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the**

rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.'

Relevant for the context of the ECB's mandate are the so-called integration clauses of the TFEU. These provisions call for consistency among EU policies ([Article 7](#)) and notably require adherence to objectives of equality between men and women ([Article 8](#)), employment, social protection and health ([Article 9](#)), non-discrimination ([Article 10](#)), the environment ([Article 11](#)), consumer protection ([Article 12](#)) and animal welfare ([Article 13](#)). This consistency requirement is an additional argument for the ECB's mandate to be interpreted not as 'standing aloof' of the EU's wider objectives. In the current context, [Article 9](#) is especially relevant:

'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health'

This perspective makes it clear that the ECB's mandate includes measures that it considers conducive to the exercise of monetary policy and the support of economic policies with a view to the achievement of the EU's objectives.

A further legal basis for the ECB's PEPP can be found in Article 18.1 of the [ESCB Statute](#) which, as a protocol attached to the TFEU, has Treaty status. It gives the ECB and National Central Banks (NCBs) the power, in order to achieve the ESCB's objectives (Article 127(1) TFEU, Article 2 ESCB Statute) and carry out its tasks (Article 127(2) TFEU) (fn 6), *inter alia*, to buy and sell 'claims and marketable instruments' and to conduct credit operations with credit institutions and other market participants, on the basis of adequate collateral.

There have been precedents for extraordinary monetary policy measures which have been tested in court. In two references by the German Constitutional Court to the CJEU, the mandate of the ESCB to undertake unconventional measures has been explored when (draft) instruments were reviewed. In *Gauweiler* (C-62/14), the ECB's announced [Outright Monetary Policy Transactions](#) (OMT) were held to be within the mandate. In *Weiss* (C-493/17), the Public Sector Purchasing Programme (PSPP) of the ECB was assessed as falling within its mandate. The PSPP is the quantitatively most significant of the Asset Purchasing Programme (APP); the Quantitative Easing (QE) the ECB engaged in rather late compared to other major central banks (the Bank of Japan, the US Federal Reserve System and the Bank of England). Broadly speaking, under the PSPP, NCBs purchase bonds issued by their own Member States and the ECB buys bonds issued by Euro Area supranational organisations. From these judgments, support for the PEPP can be derived.

Let us recall how the Court of Justice described how monetary policy influences the economy at large in paragraph 50 of *Gauweiler*:

'The ability of the ESCB to influence price developments by means of its monetary policy decisions in fact depends, to a great extent, on the transmission of the 'impulses' which the ESCB sends out across the money market to the various sectors of the economy. Consequently, if the monetary policy transmission mechanism is disrupted, that is likely to render the ESCB's decisions ineffective in a part of the euro area and, accordingly, to undermine the singleness of monetary policy. Moreover, since disruption of the transmission mechanism undermines the effectiveness of the measures adopted by the ESCB, that necessarily affects the ESCB's ability to guarantee price stability. Accordingly, measures that are intended to preserve that transmission mechanism may be regarded as pertaining to the primary objective laid down in Article 127(1) TFEU.'

And, in paragraph 65 of *Weiss*: '(...) the transmission of the ESCB's monetary policy measures to price trends takes place via, inter alia, facilitation of the supply of credit to the economy and modification of the behaviour of businesses and individuals with regard to investment, consumption and saving.'

So, the ESCB, having exclusive competence to conduct monetary policy, has a pivotal role to play in the economic conditions of business and individuals, even when economic policies affecting the companies and citizens is primarily in the hands of national governments.

It is important in this context to recall that the Court of Justice wisely commented upon the division of competences, with monetary policy an EU matter and economic policies an issue for the Member States: while each sphere belongs primarily to one level of governance, there is no absolute separation: '(...) the authors of the Treaties did not intend to make an absolute separation between economic and monetary policies' (paragraph 60, *Weiss*).

The case law makes clear that the ESCB's mandate includes the option to ensure that the transmission mechanism functions smoothly: 'the aim of the programme is to safeguard both "an appropriate monetary policy transmission and the singleness of the monetary policy"' (paragraph 47, *Gauweiler*), and: 'the objective of safeguarding an appropriate transmission of monetary policy is likely both to preserve the singleness of monetary policy and to contribute to its primary objective, which is to maintain price stability' (paragraph 49, *Gauweiler*).

The smooth functioning of the monetary policy transmission channels is core to these weeks' market disturbances. ECB executive directors have squarely tackled this issue in their comments. 'We will not tolerate any risks to the smooth transmission of our monetary policy in all jurisdictions of the euro area,' wrote ECB Executive Board Member Philip Lane, in the ECB Blog on 12 March 2020. In her interview with the *Frankfurter Allgemeine Zeitung* (FAZ) published on 21 March 2020, his colleague Isabel Schnabel said:

"Our actions are always determined by our mandate of price stability. And for this we need a functioning transmission mechanism so that monetary policy is passed on to the real economy. That mechanism had recently become impaired, as manifested by the sudden rise in euro area government bond yields. It was affecting all euro area countries, even Germany. When that happens, monetary policy has to step in" (emphasis added).

Later in the interview, she reiterates that "[t]he central bank must act (...) when the transmission of monetary policy to the real economy is at risk". Isabel Schnabel's reasoning may indicate that the ECB's motivation of the PEPP is still squarely within the first leg of the ESCB's mandate (price stability). My approach would be to consider that the secondary mandate is also clearly supportive of the PEPP.

Speaking of reasoning, we have to await the legal instruments that the ECB will adopt (at the time of writing these had not yet been published) to evaluate the reasons behind drawing up the PEPP. The case law makes clear that such reasoning will be scrutinised by the Court of Justice based on the preamble of the relevant legal act(s) but can also be found in other communication from the ECB:

'(...) the successive decisions of the ECB relating to the PSPP have consistently been clarified by the publication of press releases, introductory statements of the President of the ECB at press conferences, accompanied by answers to the questions raised by the press, and by the accounts of the ECB Governing Council's monetary policy meetings, which outline the discussions within that body.' (paragraph 37, *Weiss*; see, also, paragraph 39 with references to press conferences of the ECB President).

On legal acts to be adopted and possibly reviewed by the Court of Justice, it is noteworthy to remark that it has interpreted a press release before, and has assessed draft legal acts on the OMT, as well as also having previously based its findings on non-published ECB legal acts in the context of the PSPP. This is clear from paragraph 71, *Gauweiler*:

'Although an examination of whether the obligation to provide a statement of reasons has been satisfied may be undertaken only on the basis of a decision that has been formally adopted, in this case it must nonetheless be found that the press release, together with draft legal acts considered during the meeting of the Governing Council at which the press release was approved, make known the essential elements of a programme such as that announced in the press release and are such as to enable the Court to exercise its power of review' (see, also paragraph 28 on the admissibility of a request for a preliminary ruling based on a press release).

This is also clear from the *Weiss* judgment which refers to an unpublished ECB Guideline adopted in the context of the PSPP (fn 7). As one may feel uncomfortable with the judiciary basing its findings on unpublished legal acts of an active programme such as the PSPP, one may expect the ECB to publish the full array of legal acts supporting the PEPP.

There is currently no indication that the PEPP will be used in a selective manner, namely to affect interest rates in certain jurisdictions of the Euro Area in particular. The only State-specific measure announced concerns the eligibility of Greek government bonds (for which a waiver will be granted according to the *ECB's press release* of 18 March 2020), hitherto excluded from the PSPP (fn 8). Should this become so, the case law (paragraph 55, *Gauweiler*) provides a precedent to support such an outcome:

'As regards the selective nature of the programme announced in the press release, it should be borne in mind that the programme is intended to rectify the disruption to the monetary policy transmission mechanism caused by the specific situation of government bonds issued by certain Member States. In

those circumstances, the mere fact that the programme is specifically limited to those government bonds is thus not of a nature to imply, of itself, that the instruments used by the ESCB fall outside the realm of monetary policy. Moreover, no provision of the FEU Treaty requires the ESCB to operate in the financial markets by means of general measures that would necessarily be applicable to all the States of the euro area.'

When confronted with extraordinary, once-in-a-century circumstances, it is clear that the discretion which the Court of Justice allows policy-makers will be widely drawn. In paragraphs 24, 30, 73, 91 and 92 of *Weiss*, the Court made five references to the ESCB's 'broad discretion'. Discretion also figured in *Gauweiler*, in paragraphs 68, 69 and 75. Such broad discretion will not prevent the judiciary from exercising review, when asked. Judicial review will include – beyond adequate reasoning – whether there has been a manifest error of assessment, or a misuse of powers, and whether proportionality has been upheld. Article 5(4) TEU provides: '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.'

In both *Gauweiler* in paragraphs 67 to 92, and *Weiss*, in paragraphs 72 to 100, the Court of Justice extensively explored the proportionality of the measures, recognising in this review the ECB's broad discretion: '(...) the principle of proportionality requires that acts of the EU institutions be appropriate [should be suitable] for attaining the legitimate objectives pursued by the legislation at issue and do [should] not go beyond what is necessary in order to achieve those objectives' (paragraph 67, *Gauweiler*; paragraph 72, *Weiss*, with [slightly different wording] between square brackets).

On proportionality, Isabel Schnabel rightly points out that this is a core issue when assessing the legality of measures (fn 9).

Conclusion

This analysis bodes well for the legality of the ECB's response to the coronavirus pandemic. One hopes that the Court of Justice will not be requested to assess this legality, by a Member State or by concerned citizens who have access to constitutional review mechanisms. This is not the time for legal quibbling. Yet, the legality is core to the idea of a society under the rule of law (See *The ECB and the rule of law*, ECB Legal Conference 2019). And it will co-determine the next steps to take: when extraordinary times allow for extraordinary measures they also must lead to reflection on the next steps to avoid a recurrence of unpreparedness. This applies to the health policies: as already set out by Daniel Sarmiento, the protective clause to keep health care a national prerogative may have to be amended. The contours of an EU Health Union might include not only common standards for medical professions but, also, extensive interactions on health research, making the ECDC an authoritative and effective agency in times of health hazards, ensuring the availability of medicines across Europe, and a joint approach to the pharmaceutical industry in price-setting and the availability of medicine for all EU citizens alike, while acknowledging the necessarily local character of health care, close to those very citizens.

But let me stick to my field of expertise, the law of the Economic and Monetary Union. Unfinished business is to be taken up once the crisis is over:

- How to treat sovereign risk on banks' balance sheets equitably and prudently;
- Adopting a [European Deposit Insurance System](#), stalled in the Council;
- Revamping and extending the [European Stability Mechanism](#) (ESM), beyond the current [revamp](#) and, ultimately, integration of the ESM in the Union legal framework, [proposed](#) but, again, [stalled](#).

History will not judge lightly those who, between the crises, have organised obstruction to the construction of a stronger union (for example, joint action in the fiscal field to allow automatic stabilisers to work across the currency union and linking deposit insurance and unemployment insurance schemes) (fn 10), or those *outré-Rhin* who choose to be deaf to Emmanuel Macron's recurrent [insistence on shaping European sovereignty](#), including in EMU affairs. But quarantine has odd effects on the self-reflection of people who suddenly find themselves isolated, '*en exil*' as [Albert Camus](#) eloquently describes in *La Peste* (1947). Redemption is still possible. Will the [Bundesverfassungsgericht](#) (German Constitutional Court, *BVerfG*) wish to mark the 75th anniversary of the end of the Second World War to issue its sequel judgment to *Weiss* by finding that massive buying of government bonds is outside the mandate of the ECB, or of the [Bundesbank](#), or undermines German constitutional identity, as the *BVerfG's* [deferral of its judgment from 24 March to exactly 5 May](#) lets one surmise? Beyond Europe, as [Yuval Noah Harari](#) rightly points out in an [article](#) in the Financial Times, the pandemic leaves us two choices, 'between totalitarian surveillance and citizen empowerment' and 'between nationalist isolation and global solidarity'. Thus, beyond Europe, solidarity and cooperation are paramount, now and in the face of climate change. A return to core value of the European integration project (fn 11) is called for.

These are contemplations for the longer term, reflecting on what the coronavirus crisis teaches us as Europeans and as global society, also by way of 'dress rehearsal' for the incisive changes in the economy, in transport and food patterns, in short: in our daily living, that the ongoing climate change catastrophe will forcefully invite us to make soon. For now, still in the midst of the COVID-19 crisis, Europe's two federal executive institutions implement their mandates strongly and in a timely manner. Focusing on the ECB's pandemic purchasing programme, in as far as it is known on the basis of the press release, its mandate of implementation is firmly within the law of the European Union.

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(1) J. Südekum, G. Felbermayr, M. Hüther, M. Schularick, C. Trebesch, P. Bofinger, S. Dullien, *Europa muss jetzt finanziell zusammenstehen – Die Starken müssen den Schwachen helfen. Jetzt ist der Moment, wo die oft beschworene Schicksalsgemeinschaft Europa Flagge zeigen muss. Ein Aufruf führender Ökonomen* ('Europe must now stand financially together – the strong must help the weak.

Now is the time when Europe, often implored to be a community of destiny, has to fly the flag. A call from leading economists'), *Frankfurter Allgemeine Zeitung*, 21 March 2020.

(2) An overview of border closures carried out by Member States under the [Schengen Borders Code](#) is [here](#).

(3) See my contribution in 'European supervisors in the credit crisis: issues of competence and competition', in Mario Giovanoli and Diego Devos (eds.), [International Monetary and Financial Law in the light of the Global Crisis](#), 2010, pp. 305–327.

(4) In the context of the non-adherence to the monetary union of Denmark, which has an opt-out ([Protocol \(No 16\)](#) on certain provisions relating to Denmark), and of eight other Member States that have a derogation under [Article 140 TFEU](#) or their respective accession treaties, for 'Union' read: 'Euro Area'. [Article 139 TFEU](#) and Article 42 ESCB Statute regulate the applicability of EMU law provisions to the 'opt-out' Member States.

(5) Articles [2 \(3\)](#) and [5 TFEU](#) make clear that economic policies are coordinated at EU level while national (that is, State) competences remain prevalent. These competences are exercised in the context of a number of EU provisions (Articles [120](#) and [121 TFEU](#)) and prohibitions (Articles [123–125 TFEU](#)) and procedures ([Articles 126](#) and, for the Euro Area, [136 TFEU](#)). Post-crisis economic governance strengthening has shifted the balance somewhat towards EU competences which, nevertheless, are focused on overseeing national policies.

(6) See, also, Articles [127\(4\)](#) and [\(5\)](#) and [Article 128 TFEU](#); Article 3 ESCB Statute; see, also Articles [4](#), [5](#), [16](#) and [25](#) ESCB Statute.

(7) Paragraphs [85](#), [88](#), [95](#), [114](#), [115](#), [119](#), [121](#), [125](#), [135](#), [137](#), [139](#), [142](#), [148](#) refer to the Guideline on a secondary markets public sector asset purchase programme (ECB/2015/NP3).

(8) See the [letter](#) of 16 January 2019 from ECB President Mario Draghi to MEP Stelios Kouloglou referring to [Guideline \(EU\) 2015/510](#) of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (ECB/2014/60) as the relevant legal instrument to determine whether Greek government bonds meet the minimum credit requirements, specifying that 'eligibility for the PSPP is a decision for the ECB Governing Council to take on the basis of its own independent debt sustainability assessment and other risk management considerations. In this regard, a central precondition for PSPP eligibility of Greek government securities is that they fulfil the ECB's minimum credit requirements'.

(9) When the FAZ asks: "The German Constitutional Court might put a spanner in the works when it rules on the legality of the bond purchases in May", she answers: "Against this backdrop, it's important that our measures are proportionate. (...)".

(10) Dutch Finance Minister [Wopke Hoekstra](#) is quoted in the [Financial Times](#), [3 December 2018](#), and in [parliamentary proceedings](#) of 12 December 2018, to have boasted that the proposed budgetary capacity for the Eurozone was an elephant that he managed to turn into a mouse, and a caged mouse at that.

(11) René Smits, [The Invisible Core of Values in the European Integration Project](#), (2018) 45 *Legal Issues of Economic Integration*, Issue 3, pp. 221–227.

Areas of Practice

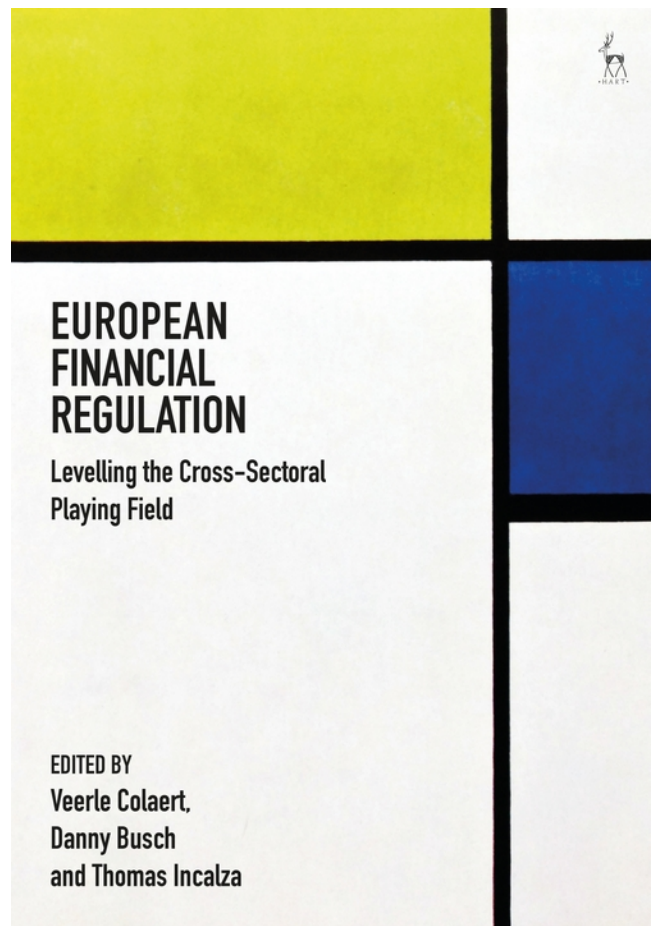
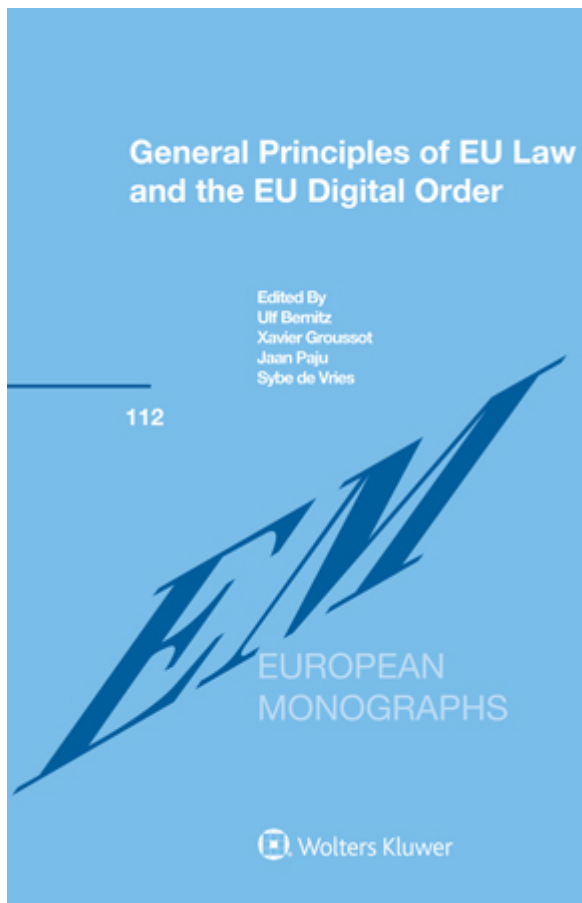
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- **INSTITUTIONAL LAW**
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