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Ultra vires review of the ECB's policy of quantitative easing: An analysis of the German Constitutional Court's preliminary reference order in the PSPP case.

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B. National Courts

Ultra vires review of the ECB's policy of quantitative easing: An analysis of the German Constitutional Court's preliminary reference order in the *PSPP* case.

Bundesverfassungsgericht, Order of July 18 2017, BvR 859/15 etc., *PSPP*.

1. Introduction

The precarious judicial dialogue about the legal limits on actions of the European Central Bank between two of the most influential courts in Europe, the German Federal Constitutional Court (hereinafter "FCC") and the ECJ, enters its next episode.[1] The stakes are high: only one year after the FCC finally resolved the uncertainty over the legality of the ECB decision on Outright Monetary Transactions ("OMT"),[2] the FCC again calls into question a central pillar of the ECB's financial crisis policy – this time, a policy with far greater practical implications. The preliminary reference concerns the ECB's policy of quantitative easing pursued under the Public Sector Assets Purchase Programme ("PSPP").[3] While the ECB's OMT Decision was never actually put into practice,[4] the European System of Central Banks ("ESCB") had already purchased the enormous amount of almost 1.9 trillion euros of bonds

1. See on the judicial dialogue between the ECJ and the FCC, e.g. Kumm, "Who is the final arbiter of constitutionality in Europe: Three conceptions of the relationship between the German Federal Constitutional Court and the European Court of Justice", 36 CML Rev. (1999), 351–386; Payandeh, "Constitutional review of EU law after *Honeywell*: Contextualizing the relationship between the German Constitutional Court and the EU Court of Justice", 48 CML Rev. (2011), 9–38; Goldmann, "Constitutional pluralism as mutually assured discretion: The Court of Justice, the German Federal Constitutional Court, and the ECB", 23 MJ (2016), 119–135; Folz, *Demokratie und Integration: Der Konflikt zwischen Bundesverfassungsgericht und Europäischem Gerichtshof über die Kontrolle der Gemeinschaftskompetenzen* (Springer, 1999); Büdenbender, *Das Verhältnis des Europäischen Gerichtshofs zum Bundesverfassungsgericht* (Carl Heymanns, 2005); Proelß, *Bundesverfassungsgericht und überstaatliche Gerichtsbarkeit* (Mohr Siebeck, 2014).

2. 2 BvR 2728/13 et al., *OMT II*, BVerfGE 142, 123, Judgment of 21 June 2016, ECLI:DE:BVerfG:2016:rs20160621.2bvr272813 (hereafter: "*BVerfG OMT II*").

3. 2 BvR 859/15 etc., *PSPP*, Order of July 18 2017, ECLI:DE:BVerfG:2017:rs20170718.2bvr085915 (hereafter: "*BVerfG PSPP*"). At the ECJ it is Case C-493/17, *Weiss et al.*, pending.

4. Cf. *BVerfG OMT II*, para 9.

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