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<b>Case name:</b>	<b>Party 1</b>	<ul style="list-style-type: none"> <li>• Dr W</li> <li>• Dr H</li> <li>• Dr A</li> </ul>		
	<b>Party 2</b>			
	<b>Party 3</b>			
	<b>Party 3 role:</b>			
<b>Additional case name:</b>	<b>Name type:</b>	Joining		
	<b>Party 1</b>	<ul style="list-style-type: none"> <li>• Prof Dr L</li> <li>• Prof Dr h c H</li> <li>• Prof Dr S</li> <li>• Mr K</li> <li>• Mr T</li> <li>• 1, 729 other complainants</li> </ul>		
	<b>Party 2</b>			
	<b>Party 3</b>			
	<b>Party 3 role:</b>			
<b>Additional case name:</b>	<b>Name type:</b>	Joining		
	<b>Party 1</b>	<ul style="list-style-type: none"> <li>• Dr G</li> </ul>		
<b>Additional case name:</b>	<b>Name type:</b>	Joining		
	<b>Party 1</b>	<ul style="list-style-type: none"> <li>• Prof Dr S</li> <li>• Prof D H</li> </ul>		

		<ul style="list-style-type: none"> <li>• Mr M</li> <li>• Mr E</li> <li>• Dr G</li> <li>• Ms M</li> <li>• Dr H</li> <li>• Dr S</li> <li>• Prof Dr K</li> </ul>		
<b>Other case name:</b>	<b>Name</b>	PSPP Judgment		
	<b>Name type</b>	Nickname		
<b>Date:</b>	5 May 2020			
<b>Jurisdiction/Court/Chamber:</b>	Germany, <u>Federal Constitutional Court</u> , Second Senate			
<b>Judge(s):</b>	<b>Name</b>	<b>Nationality</b>	<b>Role</b>	<b>Opinion</b>
	Andreas Voßkuhle			
	Peter M Huber			
	Monika Hermanns			
	Peter Müller			
	Sibylle Kessel-Wulf			
	Doris König			
	Ulrich Maidowski			
Christine Langenfeld				
<b>Procedural stage:</b>	Final judgment			
<b>Previous stages:</b>	<ul style="list-style-type: none"> <li>• <u>*Order of the Federal Constitutional Court, Second Senate</u>; 18 July 2017*</li> </ul>			
<b>Subsequent stages:</b>				
<b>Related developments:</b>	<ul style="list-style-type: none"> <li>• <u>*Decision of the Governing Council of the European Central Bank, Decision on an Expanded Asset Purchase Programme</u>; ECB/2015/10, 22 January 2015*</li> <li>• <u>*Decision [EU] 2015/774 on a secondary markets public sector asset purchase programme</u>, European Central Bank, 4 March 2015*</li> <li>• <u>*Judgment of the European Court of Justice; Weiss and Others</u>, C-493/17, EU:C:2018:1000, 11 December 2018*</li> </ul>			
<b>Key subject:</b>	Public International Law			

<b>Keywords:</b>	<ul style="list-style-type: none"> <li>• International economic law</li> <li>• European Union (EU)</li> <li>• European Court of Justice (ECJ)</li> <li>• International judgments, recognition and enforcement</li> <li>• Proportionality and immediacy</li> </ul>
<b>Core issues:</b>	<p>1 Whether the decision of the European Court of Justice in <i>*Weiss and Others*</i> had been rendered <i>ultra vires</i> for not having identified the flaws of the decisions of the European Central Bank ('ECB') to implement the Public Sector Asset Purchase Programme ('PSPP'), and thus had no binding effect in Germany.</p> <p>2 Whether the decisions of the ECB to implement the PSPP were <i>ultra vires</i> acts because they did not satisfy the principle of proportionality.</p> <p>3 Whether the PSPP constituted an <i>ultra vires</i> act, given the ECB's failure to substantiate that the programme was proportionate.</p>
<b>Facts:</b>	<p>F1 On 22 January 2015 the Governing Council of the European Central Bank adopted a decision on an Expanded Asset Purchase Programme (<u><i>*Decision of the Governing Council of the European Central Bank, Decision on an Expanded Asset Purchase Programme*</i></u>; ECB/2015/10, 22 January 2015*). On 4 March 2015 the European Central Bank ('ECB') adopted a Decision (<u><i>*Decision [EU] 2015/774 on a secondary markets public sector asset purchase programme*</i></u>, European Central Bank, 4 March 2015*) on a secondary markets public sector asset purchase programme, with subsequent amendments. Against this Public Sector Asset Purchase Programme ('PSPP') several individual complaints were lodged before the Federal Constitutional Court ('FCC').</p> <p>F2 By Order of 18 July 2017, the Second Senate suspended the proceedings and referred a series of questions to the European Court of Justice ('ECJ') for a preliminary ruling pursuant to <u><i>*Article 267(1) of the Treaty on the Functioning of the European Union*</i></u>, Official Journal C 326, 26 October 2012, p 47* ('TFEU'). This request was decided by the ECJ on 11 December 2018 (<u><i>*Weiss and Others, Judgment, C-493/17, EU:C:2018:1000, 11 December 2018*</i></u> ('<i>Weiss judgment</i>'). On 30 and 31 July 2019, the Second Senate of the FCC conducted an oral hearing in which the parties amended and further specified their submissions.</p> <p>F3 At the time of writing, this was the latest decision of the FCC in a series of judgments known as the '<i>Solange</i>' jurisprudence—the <u><i>*Solange I Case, Individual constitutional complaint procedure*</i></u>, BVerfGE 37, 271, 29 May 1974*; the <u><i>*Solange II Case, Individual constitutional complaint procedure*</i></u>, BVerfGE 73, 339, 22 October 1986*; the <u><i>*Maastricht Case, Individual constitutional complaint procedure*</i></u>, BVerfGE 89, 155, 12 October 1993* ('<i>Maastricht judgment</i>'); the <u><i>*Banana Market Case, Individual constitutional complaint procedure*</i></u>, BVerfGE 102, 147; ILDC 430 (DE 2000), 7 June 2000*; the <u><i>*Gauweiler Case, Individual constitutional complaint procedure*</i></u>, BVerfGE 123, 267; ILDC 1364 (DE 2009), 30 June 2009*</p>

(*Lisbon judgment*); and the *Honeywell Case, Individual constitutional complaint procedure*, BVerfGE 126, 286, 6 July 2010\* (*Honeywell judgment*).

F4 At the core of this procedure stood the PSPP. This programme formed part (and was the most consistent element) of the Expanded Asset Purchase Programme ('EAPP') of the European System of Central Banks ('ESCB'). The EAPP served to increase money supply and thereby to bring inflation rates closer to 2 percent, a level retained to be ideal for a healthy economy. As a bond-buying programme it was an 'unconventional instrument' of monetary policy to which the ECB decided to resort in view of the inefficacy of the traditional tools of monetary policy (particularly the discount rate) in a situation that, according to Keynes, could be called a 'liquidity trap'.

F5 On the basis of this programme, the ECB Governing Council decided to buy large amounts of securities: from March 2015 to December 2017, the monthly purchases averaged EUR 60 billion. From January 2018 to September 2018 purchases took place at a reduced rate of EUR 30 billion in view of signs of rising inflation. From October 2018 to December 2018 they further reduced purchases to EUR 15 billion. The asset purchasing programme was ended by 31 December 2018 but again restarted for a monthly amount of 20 billion as of 1 November 2019. Of these amounts only the smaller part was bought by the ECB directly (10 percent; before April 2016, 12 percent), while the rest was bought by the national central banks (90 percent; before April 2016, 88 percent).

F6 Against these measures several individuals brought complaints before the FCC. They contested, inter alia, that the ECB had exceeded its monetary policy mandate and encroached upon the member states' economic policy competences. They contested further a (prohibited) monetary financing of member states according to *\*Article 123 of the TFEU\** and an infringement of the constitutional identity of Germany. They expressed their fears that this bond buying programme would inflate public debt and real estate prices, endanger personal savings, pension, and retirement schemes, and save economically unviable companies to the detriment of the national economy as a whole. The ECB should have taken these consequences into due consideration. Organs of Germany should have refrained from participating in these decision processes. They should furthermore have taken suitable steps to challenge the PSPP programme.

F7 According to the *\*Maastricht judgment\** of 1993 the procedural basis for these complaints in the *\*Basic Law, 1949 (Germany)\** was essentially found in the right to democracy and self-determination (*\*Article 20(1)\* and \*20(2)\**) and in the right to free and genuine elections (*\*Article 38(1)\**). This judgment created something akin to an *actio popularis* and anchored this right in Article 38(1) of the Basic Law (the inadmissibility of constitutional changes regarding the principle of democracy: the 'eternity clause' (*Ewigkeitsklausel*)).

F8 On 18 July 2017 the Second Senate suspended the proceedings and asked the ECJ for a preliminary ruling pursuant to *\*Article 267(1) of the TFEU\** as to a series of questions of European Union ('EU') law at issue. By its *\*Weiss judgment\** of 11 December 2018, the ECJ denied

	<p>any violation of EU law by the adoption and implementation of the PSPP programme. In particular, the ECJ found neither a violation of <u>*Article 123 of the TFEU*</u> nor a violation of the delimitation of the EU's monetary policy. The claim that the ECB had violated the principle of proportionality when adopting the PSPP programme was rejected.</p>
<p><b>Held:</b></p>	<p>H1 The findings by the ECJ in the <i>*Weiss judgment*</i> were not convincing. The <i>Weiss judgment</i> itself was rendered <i>ultra vires</i> for not having identified the flaws of the ECB decisions in its 'differing view'. <b>[paras 116, 118]</b></p> <p>H2 As to <u>*Article 123 of the TFEU*</u>, there was no definite evidence of prohibited monetary financing of member states. On this point, the ECJ's arguments raised 'considerable concerns' but nonetheless they could 'still be considered tenable from a methodological perspective'. <b>[paras 116, 180, 197]</b></p> <p>H3 The ECB should be severely criticized for launching and continuing the PSPP programme, while disrespecting the principle of proportionality. This instrument, which qualified as a monetary tool, might in reality have disproportional effects in the field of economic policy. The relevant ECB decisions were <i>ultra vires</i> acts. <b>[paras 116 and 117]</b></p> <p>H4 However, it could not 'yet be definitively determined whether the ECB decisions at issue' satisfied 'the principle of proportionality'. <b>[para 116]</b></p> <p>H5 The federal government and the Parliament had violated the rights of the individuals under the first sentence of <u>*Article 38(1) of the Basic Law*</u> in conjunction with <u>*Article 20(1)*</u> and <u>*20(2) of the Basic Law*</u> and <u>*Article 79(3) of the Basic Law*</u> by having failed to take suitable steps challenging the decisions by the ECB to adopt and implement the PSPP programme. The ECB, when adopting these decisions, had neither assessed nor substantiated that the measures provided for in these decisions satisfied the principle of proportionality. <b>[paras 116, 164]</b></p> <p>H6 On this basis, the relevant decisions by the ECB were 'a qualified, ie manifest and structurally significant, exceeding of the competences assigned to the ECB in <u>*Article 119*</u>, <u>*Article 127 et seq of the TFEU*</u> and <u>*Article 17 et seq of the ESCB Statute*</u>'. The German constitutional organs (the federal government as well as the German Parliament) had failed to take 'suitable steps' challenging the violations of EU law committed by the ECB. <b>[para 116]</b></p> <p>H7 The delimitation of competences by the ECJ was 'simply untenable', because for the ECJ the PSPP programme was rightly adopted as an instrument of monetary policy. <b>[para 117]</b> The relevant findings by the ECJ were 'simply not comprehensible and thus objectively arbitrary' and therefore the usual deference by the FCC towards decisions by the ECJ regarding the validity or interpretation of measures taken by EU bodies and institutions could no longer apply. <b>[para 118]</b></p>

H8 The *\*Weiss judgment\** of 11 December 2018 ‘manifestly exceed[ed] the mandate conferred upon’ the ECJ in the second sentence of *\*Article 19(1) of the Treaty on European Union* (7 February 1992), Official Journal C 325 (24 December 2002), entered into force 1 November 1993\* (‘TEU’), ‘resulting in a structurally significant shift in the order of competences to the detriment of the Member States.’ Consequently, this judgment constituted ‘an *ultra vires* act and thus has no binding effect’ in Germany. **[para 119]**

H9 The *\*Weiss judgment\** had disregarded the economic policy effects of the PSPP programme completely. The application of the principle of proportionality could not fulfil its purpose as the ‘key element’ of this principle—the balancing of conflicting interests—was missing. Therefore, the review of proportionality was meaningless. **[para 138]**

H10 The ECB, in its proportionality assessment, should have taken into account ‘the effects that a programme for the purchase of government bonds has on, for example, public debt, personal savings, pension and retirement schemes, real estate prices and the keeping afloat of economically unviable companies, and – in an overall assessment and appraisal – weighing these effects against the monetary objective that the programme aims to achieve and is capable of achieving’. **[para 139]**

H11 As the PSPP constituted an *ultra vires* act, given the ECB’s failure to substantiate that the programme was proportionate, the responsibility with regard to European integration (*Integrationsverantwortung*) required the federal government and the Parliament to take steps seeking to ensure that the ECB conducted a proportionality assessment in relation to the PSPP. The federal government and the Parliament had to clearly communicate their legal view to the ECB or take other steps to ensure that conformity with the treaties was restored. **[para 232]**

H12 A transitional period of three months was granted. **[para 235]**

**Analysis**

A1 This judgment caused enormous stir all over Europe and beyond. While it is not the first time that a constitutional court of an EU member state had openly challenged EU acts, this decision was, so far, surely the most spectacular one decided by the constitutional court of a politically and economically very strong member state in a blatant fashion.

A2 It was unusual that an ‘apex court’ in Europe disqualified another ‘apex court’ (and in particular the ECJ) in such a tone. To state that the findings of the judicial counterpart were simply ‘not comprehensible’, **[para 116]** ‘simply untenable’, **[para 117]** ‘not comprehensible and thus objectively arbitrary’, **[para 118]** and ‘no longer tenable from a methodological perspective’ **[para 119]** might seem to be—at a first reading—not only an expression of discord, but of disrespect. This view may be somewhat softened if we consider that in the *\*Lisbon judgment\** and *\*Honeywell judgment\** the FCC tried to impose extremely strict conditions for declaring an EU act *ultra vires*. Then it should have become highly improbable that the FCC would, eventually, come to such a conclusion. This strategy, however, backfired in the case at hand: the FCC could only qualify the ECB decisions and the ECJ judgment as *ultra vires* by qualifying them in

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such harsh tones. In any case, in the academic discussion, but also in the media, this offensive tone has caused considerable irritation.

A3 The main point of criticism concerned the supposed attack on the supremacy of EU law and therefore on the very foundation of EU law as had come to be understood and interpreted, starting with the ECJ's *\*Van Gend and Loos, Judgment*, ECLI:EU:C:1963:1, 5 February 1963\*. This criticism is, however, only partly justified. It is true that contesting the interpretative prerogative by the ECJ in regard to EU law by stating that 'this [prerogative] no longer applies where the interpretation of the Treaties is simply not comprehensible and thus objectively arbitrary' [para 118] is highly problematic. In fact, this statement not only contains—at least implicitly—a sharp censure of the quality of the ECJ jurisprudence but it also implies the assertion of a right to second-guess this jurisprudence. This is an assumption that is scarcely reconcilable with the unity and the effectivity of the EU legal order. If all the member states' constitutional courts acted this way, not much of the common legal order would be left. This had been said in the literature: \*Franz Mayer, 'What if all behaved like this?', (JZ 2020, 734\* {mentioned only in headnote}. On the other hand, it is equally wrong to deny to member states and their institutions in principle a right to object against ECJ judgments. This holds true even if these judgments were final according to EU law. In fact, as long as the principle of conferral applied and the EU did not have '*Kompetenz-Kompetenz*', it must be permissible for member states and their organs to defend their competences.

A4 But how could a problem as mentioned above be solved without endangering the achievements of European integration as a whole? In this context it was proposed to create a new appeal jurisdiction, a 'Mixed Chamber' at the ECJ, composed of sitting Members of the Court of Justice alongside sitting Members of the constitutional or equivalent supreme courts of the member states. The only function of this Chamber would be to rule on competence disputes as a court of appeal (see \*Daniel Sarmiento Ramirez-Escudero and Joseph Weiler, 'The EU Judiciary After Weiss – Proposing a New Mixed Chamber of the Court of Justice', [VerfBlog, 2020/6/02\\*](https://verfassungsblog.de/the-eu-judiciary-after-weiss/) <https://verfassungsblog.de/the-eu-judiciary-after-weiss/> {mentioned only in headnote}). This is surely an intelligent proposal. Its authors invited readers to further work on it. Further refinements might be possible. According to this author there is one fundamental problem with this proposal: It goes hand in hand with the official recognition that the described problem of (possible) *ultra vires* acts existed in reality, while up to this moment it had been attempted, at least at the EU level, to ignore it. Such a recognition could arguably be associated with the danger that more *ultra vires* disputes could arise, thereby fostering the disintegrative tendencies within the EU.

A5 On a more technical level, at the heart of the dispute stood the principle of proportionality. For the FCC this principle was violated both by the ECB and by the ECJ (although this verdict, as shown, was definite only with regard to the ECJ, not with regard to the ECB, which was 'allowed' to submit further explanations). [paras 116, 235] According to the FCC, the ECB did not sufficiently explain how it had balanced the various interests that were touched by the bond

purchasing programme, which could very well have been used as an instrument of economic policy (excluded by EU law from the ECB's competence as it fell into the competence of the member states) instead of as a tool of monetary policy. As already explained, the FCC was rather contradictory as to the failures of the ECB in this regard. With regard to the purported disrespect for the principle of proportionality by the ECJ, however, the FCC was uncompromising: The *\*Weiss Judgment\** on this point was 'simply not comprehensible so that, to this extent, the judgment was rendered *ultra vires*'. [para 116]

A6 The next problem was what was meant by the 'principle of proportionality' and how this principle was to be interpreted. The FCC provided lengthy explanations about how this principle was to be interpreted and the legal foundations for this principle in EU law. [paras 123 ff] The FCC cited a long list of jurisprudence that should have corroborated its viewpoint. Critics argued that this was a 'typical German' reading of this principle (\*Julian Nowag, [The BVerfG's proportionality review in the PSPP judgment and its links to ultra vires and constitutional core: solange Babel's tower has not been finalized](#), LUNDLawEU WP 1/2020, 15 June 2020, p 9\* <available at SSRN: <https://ssrn.com/abstract=3634218> or <http://dx.doi.org/10.2139/ssrn.3634218> {mentioned only in headnote}). Strong criticism was voiced against these findings (see \*Toni Marzal, ['Is the BVerfG PSPP decision "simply not comprehensible"?' - A critique of the judgment's reasoning on proportionality](#)', VerfBlog, 2020/5/09\*, <https://verfassungsblog.de/is-the-bverfg-pspp-decision-simply-not-comprehensible/> {mentioned only in headnote}; Ingolf Pernice, 'Machtspruch aus Karlsruhe: "Nicht verhältnismäßig? – Nicht verbindlich? – Nicht zu fassen..."', 31 EuZW 12/2020, S. 508-519 (511ss.)\* {mentioned only in headnote}; \*Jacob Öberg, [The German Federal Constitutional Court's PSPP Judgment: Proportionality Review Par Excellence](#)', European Law Blog, 2 June 2020\*, <https://europeanlawblog.eu/2020/06/02/the-german-federal-constitutional-courts-pspp-judgment-proportionality-review-par-excellence/> {mentioned only in headnote}, and \*Nowag\*). Thus, it was said that the principle of proportionality as stated in the second sentence of \*Article 5(1)\* and \*Article 5(4) of the TEU\* applied to the exercise of given competences and not for their delimitation. Furthermore, it was contended that the FCC did not apply this principle for the delimitation of competences between the state and the federal units in Germany. It would therefore be incoherent for this Court to apply this principle in the relations between the EU and its member states. These arguments are not convincing. In fact, it is theoretically possible that a violation of this principle could result in a competence violation even though the EU treaties did not refer to this hypothesis. Furthermore, it is not convincing to compare the role of the principle of proportionality within the Federal Republic of Germany with that of proportionality within the European Union. While within the EU the distribution of competences between the Union and its member states was in a continuous flux with the ECJ acting as an arbiter with far-reaching powers, the situation within Germany was far more stable. While in the former case the principle of proportionality could provide useful guidance (in the use of EU competences), in the latter case to allow reference to proportionality considerations for the delimitation of

competences could put into question a competence order that was widely consolidated.

A7 The problem is rather a different one. First, on the economic level it was not possible to distinguish neatly between monetary policy and economic policy as the former also formed part of the latter (interpreted in a larger sense). Second, the FCC expected the ECB—and subsequently the ECJ—to describe exactly the effects of the bond purchasing programme on different economic facts. In a next step the ECB and the ECJ should have engaged in a ‘balancing and weighing’ of these elements, [para 176] making sure not only that this tool continued to be applied (at least prevalingly) as an instrument of monetary policy, but also in order to guarantee that detrimental effects of such a policy on certain subjects would be made transparent and taken into due consideration. It is all too evident that behind this challenge stood the suspicion that the victims of this policy would be, first of all, German stakeholders. Economic theory has shown that such a proposition is rather perfunctory and does not really grasp the essence of the situation (see, with much detail, \*Ralf-M. Marquardt, ‘EZB-Verfassungsgerichtsurteil: filigrane Rechtsauslegung versus pragmatische Geldpolitik?’, *Wirtschaftsdienst* 6/2020, 432-440\* {mentioned only in headnote}). Even if it should be possible to identify and isolate the specific economic effects of one single measure of economic policy on any element of a national economy (which it was not), it was absolutely unclear how these effects should be ‘weighed and balanced’. True, especially in Germany, there were strong voices emphasizing that legal method was independent from economic theory. They derived from this truism the following: even if the subdivision between economic and monetary policy according to the EU treaties should be flawed (from an economic point of view), this would not influence legal interpretation. The consequences of such an approach are, however, aberrant legal solutions totally detached from reality and useless to solve effective problems, if not even counterproductive.

A8 As a consequence, it can be said that the judgment under review was flawed in many senses and constituted an attack on a series of achievements of European integration. It can be seen as an attempt to emphasize the (purported) interests of the ‘German Volk’ (defence of their personal savings, pension, and retirement schemes, containment of real estate prices, [para 139] to the detriment of solidarity (see on the principle of solidarity \*Peter Hilpold, ‘Understanding Solidarity within EU Law: An Analysis of the ‘Islands of Solidarity’ with Particular Regard to Monetary Union’, 34 *Yearbook of European Law* 2015, 257-285\* {mentioned only in headnote}) and the solution of common European challenges. At the basis of this problematic judgment stood difficulties in understanding the concept of ‘monetary and economic policy’ and a misinterpretation of the extent to which legal analysis of economic concepts could be detached from economic analysis and economic reality. Part of the criticism voiced against this judgment by experts of EU law, was, however, also beyond the point. It is wrong to deny to the FCC (as well to other constitutional courts or equivalent courts of the member states) the right to question the legality of EU acts and even of ECJ judgments, even though the \*Weiss

*judgment*\* was evidently the wrong occasion to emphasize this right (see in this sense also \*Sarmiento and Weiler\*).

A9 In the immediate aftermath of the publication of this judgment, an intense discussion began on what would be the appropriate reaction by the European Commission to this open challenge as to what had been believed to be part of the *acquis communautaire*. Many suggested that an infringement procedure according to \*Article 258 of the TFEU\* would be the appropriate answer, and the European Commission started investigations in this direction too. This author is rather skeptical in this regard (see \*Peter Hilpold, 'Ein EU-Vertragsverletzungsverfahren gegen Deutschland wegen des PSPP-Urteils? Eine Abwägung von Für und Wider', EWS 4/2020, 181-186\* {mentioned only in headnote}). In fact, even if the European Commission won such a procedure (and there are good reasons that they would), this would only deepen the divisions between the economically strongest member state and the rest of the European Union. A sustainable solution to the *ultra vires* issue or question (ie to the problem that such conflicts could actually arise)—which was a real issue and not only an imagined one by the FCC, as some commentators tried to suggest—could only be found at the political level. A solution to the underlying economic issues, and in particular to the solidarity question, which becomes ever more urgent, could facilitate the finding of such a solution enormously.

**Further analysis:**

- \*Editorial Comments, 'Not mastering the Treaties: The German Federal Constitutional Court's PSPP judgment', 57 CMLR 2020, 965-978\*
- \*Ulrich Häde, 'Europäischer Gerichtshof und Bundesverfassungsgericht im Spannungsfeld zwischen Selbstbehauptung und Kooperation: Die Judikatur zu den Anleihenkaufprogrammen der EZB', in Markus Ludwigs and Stefanie Schmahl (eds), *Die EU zwischen Niedergang und Neugründung* (2020) 177-194\*
- \*Ulrich Haltern, 'Ultra-vires-Kontrolle im Dienst europäischer Demokratie', NVwZ 2020, 817-823
- \*Matthias Herdegen, *Europarecht* (22nd edition 2020)\*
- \*Peter Hilpold, 'La sentenza "PSPP" del BVerfG del 5 maggio 2020 – prime osservazioni su una sentenza con potenziale distruttivo per l'Unione Europea (2 BvR 859/15)', RDT suppl. online, 17. Juli 2020\*  
<http://www.rivistadiritto tributario.it/2020/07/17/la-sentenza-pspp-del-bverfg-del-5-maggio-2020-prime-osservazioni-sentenza-potenziale-distruttivo-lunione-europea-2-bvr-85915/>
- \*Peter Hilpold, 'Ein EU-Vertragsverletzungsverfahren gegen Deutschland wegen des PSPP-Urteils? Eine Abwägung von Für und Wider', EWS 4/2020, 181-186\*
- \*Panos Koutrakos, 'The German Federal Constitutional Court on bond buying by European Central Bank and EU law supremacy', in: Monckton Chambers, <https://www.monckton.com/the-german-federal-constitutional-court-on-bond-buying-by-european-central-bank-and-eu-law-supremacy/>
- \*Markus Ludwigs, 'Die Konsequenzen des PSPP-Urteils für die Kompetenzordnung der EU', EWS 4/2020, 186-191\*
- \*Ralf-M. Marquardt, 'EZB-Verfassungsgerichtsurteil: filigrane Rechtsauslegung versus pragmatische Geldpolitik?', Wirtschaftsdienst 6/2020, 432-440\*
- \*Toni Marzal, 'Is the BVerfG PSPP decision "simply not comprehensible"? - A critique of the judgment's reasoning on proportionality', VerfBlog, 2020/5/09\*  
<https://verfassungsblog.de/is-the-bverfg-pspp-decision-simply-not-comprehensible/>
- \*Franz C Mayer, 'Auf dem Weg zum Richterfaustrecht? Zum PSPP-Urteil des BverfG', VerfBlog, 2020/5/07\*  
<https://verfassungsblog.de/auf-dem-weg-zum-richterfaustrecht/>
- \*Franz C Mayer, 'Der Ultra vires-Akt', 75 JuristenZeitung 4/2020, 725-734\*
- \*Julian Nowag, 'The BVerfG's Proportionality Review in the PSPP Judgment and its Link to Ultra Vires and Constitutional Core: Solange Babel's Tower Has Not Been Finalised' (15 June 2020)\* available at SSRN: <https://ssrn.com/abstract=3634218> or <http://dx.doi.org/10.2139/ssrn.3634218>
- \*Jacob Öberg, 'The German Federal Constitutional Court's PSPP Judgment: Proportionality Review Par Excellence', European Law Blog, 2 June 2020\*  
<https://europeanlawblog.eu/2020/06/02/the-german-federal->

	<p><a href="#">constitutional-courts-pspp-judgment-proportionality-review-par-excellence/</a></p> <ul style="list-style-type: none"> <li>• *Ingolf Pernice, ‘<u>Machtspruch aus Karlsruhe: “Nicht verhältnismäßig? – Nicht verbindlich? – Nicht zu fassen...”</u>’, 31 EuZW 12/2020, 508-519*</li> <li>• *Frank Schorkopf, ‘<u>Wer wandelt die Verfassung?</u>’, 75 JuristenZeitung 14/2020, 734-740*</li> <li>• *Verfassungsblog* (<a href="https://verfassungsblog.de/tag/pspp/">https://verfassungsblog.de/tag/pspp/</a>)</li> <li>• *Bernhard W Wegener, ‘<u>Karlsruher Unheil – Das Urteil des Bundesverfassungsgerichts vom 5. Mai 2020 (2 BvR 859/15) in Sachen Staatsanleihekäufe der Europäischen Zentralbank</u>’, Europarecht 2020, 347-364*</li> </ul>
<b>Instruments cited:</b>	<p><u>International</u></p> <ul style="list-style-type: none"> <li>• *<u>Treaty on European Union</u> (7 February 1992) Official Journal C 325 (24 December 2002), entered into force 1 November 1993*, *Articles 3*, *4*, *5*, *6*, *19*, *48*</li> <li>• *<u>Treaty on the Functioning of the European Union</u>, Official Journal C 115, 9/05/2008, E 47-199*, *Articles 3*, *5*, *36*, *107*, *108*, *114*, *119*, *123* {discussed}, *125*, *126*, *127*, *130*, *267*, *282*, *296*, *340*</li> <li>• *Decision on an Expanded Asset Purchase Programme, Governing Council of the European Central Bank (ECB/2015/10), 22 January 2015*</li> <li>• *<u>Decision [EU] 2015/774 on a secondary markets public sector asset purchase programme</u>, European Central Bank, 4 March 2015*</li> </ul> <p><u>Constitutions</u></p> <ul style="list-style-type: none"> <li>• *<u>Basic Law, 1949 (Germany)</u>*, *Articles 2*, *20*, *23*, *38*, *79*, *88*</li> </ul>
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	<ul style="list-style-type: none"> <li>• <u>*Solange I Case, Individual constitutional complaint procedure, BVerfGE 37, 271*</u></li> <li>• <u>*Solange II Case, Individual constitutional complaint procedure, BVerfGE 73, 339*</u></li> <li>• <u>*Maastricht Case, Individual constitutional complaint procedure, BVerfGE 89, 155*</u></li> <li>• <u>*Banana Market Case, Individual constitutional complaint procedure, BVerfGE 102, 147; ILDC 430 (DE 2000), 7 June 2000*</u></li> <li>• <u>*Gauweiler Case, Individual constitutional complaint procedure, BVerfGE 123, 267; ILDC 1364 (DE 2009), 30 June 2009*</u></li> <li>• <u>*Honeywell Case, Individual constitutional complaint procedure, BVerfGE 126, 286*</u></li> </ul>
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