The European Central Bank's centralised application of national law under the Single Supervisory Mechanism: a rule of law analysis

Budinská, B.

A decade ago, the competence to supervise Eurozone banks was given to the European Central Bank (ECB). However, the applicable substantive rules remain largely enshrined in national law. One of the consequences of this 'mismatch' is that the ECB has become competent to apply national (banking) law. This somewhat peculiar competence gave rise to a new European Union administration model and, consequently, brought about a host of constitutional questions.

This study asks what challenges to the rule of law arise from the ECB's mandate to apply national law, and whether they can be addressed within the current European Union Treaty framework. It examines the ECB's mandate from the perspective of different rule of law principles and establishes, firstly, that certain administrative practices of the ECB do not sit well with the principle of conferral. Secondly, it concludes that in order for the ECB to comply with the principle of legality of the administration, the Court of Justice of the European Union should reconsider the way it applies certain judicial doctrines, such as the Costanzo and the direct effect doctrines. And, finally, this research establishes that only by actively involving national courts in the proceedings can the EU Courts ensure effective judicial protection against ECB decisions based on national law.

This is a volume in the series of the Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University. This study is part of the Law School's research programme 'The Progression of EU law: Accommodating Change and Upholding Values'.

E.M. MEIJERS INSTITUUT
INSTITUUT VOOR RECHTSWETENSCHAPPELIJK ONDERZOEK

MI
441

B. BUDINSKÁ

The European Central Bank's centralised application of national law under the Single Supervisory Mechanism

E.M. MEIJERS INSTITUUT
INSTITUUT VOOR RECHTSWETENSCHAPPELIJK ONDERZOEK

The European Central Bank's centralised application of national law under the Single Supervisory Mechanism

A rule of law analysis

B. BUDINSKÁ