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Robert Böttner

Hermann-Josef Blanke *Editors*

Treaty on the Functioning of the European Union - A Commentary

Volume II: Articles 90-164

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Robert Böttner • Hermann-Josef Blanke
Editors

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*To Jean Monnet (1888-1979)
and Robert Schumann (1886-1963)
architects of the European integration
and creators of the European Community's
intellectual, political and economic
foundations*

Preface

While finalising the second volume of this commentary project, Professor Hermann-Josef Blanke, one of the initiators and a *spiritus rector* of this endeavour, passed away unexpectedly. His death is a painful loss, both personally and academically. All the more reason for me, as co-editor of this volume, to complete the work he co-founded.

The second volume of the TFEU Commentary covers Articles 90 to 164 and focuses on the provisions of Title VIII on the Economic and Monetary Union including analyses concerning the reform of the EMU. This supplement is due to the fact that, as a result of the international treaties which the Member States have concluded to reform the EMU (Treaties on ESM and SCG), but also of the numerous directives and regulations establishing the Banking Union, the Treaty norms and secondary legislation as it existed before have ceased to be the sole basis for policy making within the Economic and Monetary Union.

The institutional reforms carried out in the wake of the sovereign debt crisis and the monetary policy measures taken by the ECB have helped to stabilise the public finances of the EMU Member States and strengthen the resilience of the euro area economy. The Member States which adopted the Euro and together constitute the Eurozone could therefore look towards the future with positive expectations at the beginning of the 70th year of the Schuman Declaration (9 May 1950). The Covid-19 pandemic, however, faced the Union and its Member States with unprecedented challenges. It had serious socio-economic consequences also in the long term and has again put the solidarity within the European multilevel governance under scrutiny. The financial protective walls erected by the Member States and the aid measures of the Union, in particular the Union's post-COVID recovery fund *Next Generation EU* launched in attempt to cushion the fall of the Member State economies in a recession, illustrate the exceptional nature of the pandemic situation. Against this backdrop, a return to a stability-oriented budgetary and monetary policy as soon as possible is essential.

The fact that “reform processes are needed in multiple governance areas” (European Parliament, 15 January 2020) is also reflected in the “Conference on the Future of Europe” which concluded its work in 2022. Even if an amendment to

the Lisbon Treaty will not be at the centre of the agenda following up on the Conference, it opens up the opportunity for a closer involvement of EU citizens in a bottom-up approach in which they are listened to and their voices and expectations towards the Union contribute to current debates.

The need to step up the European integration process is also a result of the Covid-19 pandemic, although in political circles there is still uncertainty about how far reform can go. However, deeper integration in policy fields whose challenges can only be mastered together has long since become a precondition that Europe can assert itself in the world of the future.

The war of aggression that the Russian Federation and its President Vladimir Putin have launched on Ukraine has led to a *Zeitenwende* or “turning point” (*Olaf Scholz*) in Europe and the world. Instead of being divided, the members of NATO and the European Union stand closer together than before, despite all the existing disagreements. Further reforms can grow out of this environment.

Erfurt, Germany

Robert Böttner

Structure of the Commentary

The whole Commentary is organised as follows:

The Treaty on the European Union (TEU) – A Commentary

The Treaty on the Functioning of the European Union (TFEU) – A Commentary

Volume I: Preamble, Articles 1–89

Volume II: Articles 90–164

Volume III: Articles 165–358

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Abbreviations

arg.	argumentum
A.S.	Atto Senato
ABoR	Administrative Board of Review
ABSPP	Asset Backed Securities Purchase Programme
AC	Appeal Cases
ACER	Agency for the Cooperation of Energy Regulators
ACP	African, Caribbean and Pacific States (Group)
AETR	European Agreement on Road Transport
AEUV	Vertrag über die Arbeitsweise der Europäischen Union (Treaty on the Functioning of the European Union—TFEU)
AFSJ	Area of Freedom, Security and Justice
AG	Advocate General
AGS	Annual Growth Survey
al.	alias (other)
AMR	Alert Mechanism Report
APP	Asset Purchase Programme
AQR	Asset Quality Review
ASOR	Agreement on the international occasional carriage of passengers by coach and bus
ASS	Asset Purchase Programme
AT1	Additional Tier 1
ATC	average total costs
AVC	average variable costs
BBA	British Bankers' Association
BCBS	Basel Committee on Banking Supervision
BDI	Bundesverband der Deutschen Industrie (Federation of German Industries)
BGBI.	Bundesgesetzblatt
BGEP	Broad guidelines for the economic policies
BIS	Bank for International Settlements

BIT	bilateral investment treaty
BL	Basic Law (German Constitution = Grundgesetz)
BR-Drs.	Bundesratsdrucksache
BRRD	Bank Recovery and Resolution Directive
BT-Drs.	Bundestagsdrucksache
BVerfG	Bundesverfassungsgericht (German Federal Constitutional Court)
BVerfGE	Entscheidung des Bundesverfassungsgerichts (Decision of the German Federal Constitutional Court)
BV-G	Bundesverfassungsgesetz (Austrian Constitution)
CA(s)	Competent Authority(ies)
CAC(s)	Collective Action Clause(s)
CAP	Common Agricultural Policy
CAT	Capital Acquisition Tax
CBDC	Central Bank Digital Currency
CBPP3	Covered Bond Purchase Programme
CC	Constitutional Court/Council
CCNR	Central Commission for the Navigation of the Rhine
CCP	Common Commercial Policy
CCT	Common Customs Tariff
CEAS	Common European Asylum System
CEBS	Committee on European Banking Supervisors
CEDAW	Committee on the Elimination of Discrimination Against Women
Cedefop	European Centre for the Development of Vocational Training
CEDH	Convention européenne des droits de l'homme Cour européenne des droits de l'homme
CEECs	Central and Eastern European countries
CEFTA	Central European Free Trade Agreement
CEPS	Centre for European Policy Studies
CET1	Common Equity Tier 1
CETA	Comprehensive Economic and Trade Agreement
cf.	confer (compare)
CF	Cohesion Fund
CFA	Franc de la Communauté Financière d'Afrique
CFI	Court of First Instance
CFP	Franc des Colonies françaises du Pacifique
CFSP	Common Foreign and Security Policy
Chap.	chapter
CISA	Convention implementing the Schengen Agreement
cit.	cited
CJEU	Court of Justice of the European Union
CJEU Statute	Protocol (No 3) on the Statute of the Court of Justice of the European Union

CMFB	Committee on monetary, financial and balance of payments statistics
CMO	Common Market Organisation
COA	Court of Auditors
CoC	Code of Conduct
CoE	Council of Europe
COM	Commission
CoR	Committee of the Regions
COREPER	Comité des représentants permanents (= Committee of Permanent Representatives)
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union
COSI	Standing Committee on Operational Cooperation on Internal Security
COVID-19	Corona Virus Disease 2019
CPC	Convention for the European Patent for the Common Market
CPSS	Committee on Payment and Settlement Systems
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
CSD	Central Securities Depositories
CSDP	Common Security and Defence Policy
CSPP	Corporate Sector Purchase Programme
CSR	country-specific recommendation(s)
CST	European Union Civil Service Tribunal
CUP	Cambridge University Press
DG	Directorate-General
DGS(s)	Deposit Guarantee Scheme(s)
DGSD	Deposit Guarantee Scheme Directive
DLT	Distributed Ledger Technology
DNA	National Anti-Corruption Directorate
Doc.	Document
DPA	Data Protection Authority
DPD	Data Protection Directive
EA	Euro Area
EAEC	European Atomic Energy Community
EAFRD	European Agricultural Fund for Rural Development
EAGF	European Agricultural Guarantee Fund
EAGGF	European Agricultural Guidelines and Guarantee Fund
EAW	European Arrest Warrant
EBA	European Banking Authority
EBU	European Banking Union
EC Treaty	Treaty establishing the European Community
EC	European Community/European Communities

ECB	European Central Bank
ECCL	Enhanced Conditions Credit Line
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECJ Statute	Protocol (No 3) on the Statute of the Court of Justice of the European Union
ECN	European Competition Network
ECN+	European Competition Network as reformed by Directive 2019/1
ECOFIN	Economic and Financial Affairs Council
ECommHR	European Commission of Human Rights
ECR	European Court Reports
ECSC	European Coal and Steel Community
ECSC Treaty	Treaty establishing the European Coal and Steel Community
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
ECU	European Currency Unit
EDA	European Defence Agency
EDC	European Defence Community
Ed(s).	Editor(s)
EDIS	European Deposit Insurance Scheme
edn.	edition
EDP	Excessive deficit procedure
EDPB	European Data Protection Board
EDP Protocol	Protocol (No. 12) on the Excessive Deficit Procedure
EDPS	European Data Protection Supervisor
EEA	European Economic Area
EEAS	European External Action Service
EEC	European Economic Community
EEC Treaty	Treaty establishing the European Economic Community
EES	European Employment Strategy
EFB	European Fiscal Board
EFC	Economic and Financial Committee
EFSF	European Financial Stability Facility/Europäische Finanzstabilisierungsfazilität
EFSM	European Financial Stability Mechanism/Europäischer Finanzstabilisierungsmechanismus
EFTA	European Free Trade Association
e.g.	exempli gratia (for example)
EGF	European Globalization Adjustment Fund
EGTC	European Grouping of Territorial Cooperation
EIB	European Investment Bank

EIB Statute	Protocol (No 5) on the Statute of the European Investment Bank
EIF	European Investment Fund
EIOPA	European Insurance and Occupational Pensions Authority
EIP	Excessive Imbalances Procedure
EJN	European Judicial Network
ELA	Emergency Liquidity Assistance/European Labour Authority
EMCF	European Monetary Cooperation Fund
EMCO	Employment Committee
EMF	European Monetary Fund
EMFF	European Maritime and Fisheries Fund
EMI	European Monetary Institute
EMS	European Monetary System
EMU	Economic and Monetary Union
ENP	European Neighbourhood Policy
EnzEuR	Enzyklopädie Europarecht
EP	European Parliament
EPC	European Patent Convention
EPO	European Patent Office
EPOrg	European Patent Organisation
EPP	Economic Partnership Programme
EPPO	European Public Prosecutor's Office
EPSO	European Personnel Selection Office
EPSR	European Pillar of Social Rights
ERA	EU Agency for Railways
ERDF	European Regional Development Fund
ERM	(European) Exchange Rate Mechanism
ERM2	(European) Exchange Rate Mechanism 2
ESA(s)	European Supervisory Authority(ies)/European System of Integrated Economic Accountss
(E)ESC	(European) Economic and Social Committee
ESNRA	European system of national and regional accounts
ESCB	European System of Central Banks
ESCB Statute	Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank
ESDP	European Security and Defence Policy
ESF	European Social Fund
ESF+	European Social Fund Plus
ESFS	European System of Financial Supervision/Supervisors
ESI Funds	European Structure and Investment Funds
ESM	European Stability Mechanism
ESMA	European Securities and Markets Authority
ESMV	Vertrag zur Errichtung des Europäischen Stabilitätsmechanismus

ESP	European statistical programme
ESPN	European Social Policy Network
ESRB	European Systemic Risk Board
ESS	European statistical system
et al.	et alii (and others)
eTEN	Trans-European Telecommunication Networks
et seq(q).	et sequens, et sequentes (and the following)
EU	European Union
EUCFR	European Union Charter of Fundamental Rights
EU-OSHA	European Agency for Safety and Health at Work
EUR	Euro (currency)
EURATOM	European Atomic Energy Community
EURIMF	Coordination Group of European Executive Directors in the IMF
Eurofund	European Foundation for the Improvement of Living and Working Conditions
EUROPOL	European Police Office
EUSFTA	EU-Singapore Free Trade Agreement
EUSR	EU Special Representative
EU Treaty	Treaty on European Union—TEU
EUV	Vertrag über die Europäische Union (Treaty on European Union—TEU)
EUZBBG	Gesetz über die Zusammenarbeit von Bundesregierung und Deutschem Bundestag in Angelegenheiten der Europäischen Union (Act on the Cooperation between the Federal Government and the German Bundestag in European matters)
EWG	Eurogroup Working Group
F.A.Z.	Frankfurter Allgemeine Zeitung
FCC	(German) Federal Constitutional Court
FDI	foreign direct investment
FEAD	European Fund for Aid to the Most Deprived
FEU Treaty	Treaty on the Functioning of the European Union—TFEU
FICOD	Financial Conglomerate Directive
fn.	footnote
FPS	freedom to provide services
FR	Financial Rules
FROB	Fondo de Reestructuración Ordenada Bancaria (Spanish Bank Restructuring Fund)
FSA Plan	Financial Services Action Plan
FSB	Financial Stability Board
G10	Group of Ten (consisting of Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Sweden, the United Kingdom, and the United States)
GATS	General Agreement on Trade in Services

GATT	General Agreement on Tariffs and Trade
GBER	General Block Exemption Regulation
GC	General Court (part of the CJEU)/Grand Chamber
GCC	German Constitutional Court
GDP	Gross Domestic Product
GDPR	General Data Protection Regulation
GDR	German Democratic Republic
GG	Grundgesetz (German Basic Law)
GNI	gross national income
GNP	gross national product
GOBR	Geschäftsordnung des Bundesrats (Rules of Procedure of the German Bundesrat)
GOBT	Geschäftsordnung des Deutschen Bundestags (Rules of Procedure of the German Bundestag)
G-SII(s)	Global Systematically Important Institution(s)
GVBl.	Gesetz- und Verordnungsblatt
HDR	Habilitation à diriger des recherches (authorised to steer researches)
HICP	Harmonized Index of Consumer Prices
HLEG	High Level Expert Group
HQ	headquarters
HR	High Representative (of the Union for Foreign Affairs and Security Policy)
HRA	Human Rights Act
i.a.	inter alia (among other things)
i.e.	id est (that is)
ibid.	ibidem (at the same place)
ICANN	Internet Corporation for Assigned Names and Numbers
ICC	International Criminal Court
ICJ	International Court of Justice
ICR	International Court Reports
id.	idem (the same)
IGA	Intergovernmental Agreement
IGC	Intergovernmental Conference
ILM	International Law Materials
ILO	International Labour Organisation
IMF	International Monetary Fund
IMFC	International Monetary and Financial Committee
INEA	Innovation and Networks Executive Agency
IOSCO	International Organization of Securities Commission
IP	intellectual property
IPU	intermediate EU parent undertaking

IRB	internal ratings based
ISO	International Organization for Standardization
ITS(s)	Implementing Technical Standard(s)
ISS	EU Institute for Security Studies
IWF	Internationaler Währungsfonds (= International Monetary Fonds in German)
JER	Joint Employment Report
JHA	Justice and Home Affairs
JST	Joint Supervisory Team(s)
LCR	Liquidity Coverage Ratio
LfE	Licence for Europe
loc. cit.	loco citato (in the place already cited)
LSI(s)	Less Significant Institution(s)
MEIP	Market Economy Investor Principle
MEO	Market Economy Operator
MEOP	Market Economy Operator Principle
MEP	Member of the European Parliament
MEQR	measure equivalent to quantitative restriction
MIP	Macroeconomic Imbalance Procedure
MLP	Mutual Learning Programme
MoU	Memorandum of Understanding
MP	Member of Parliament
MREL	Minimum Requirement for own funds and Eligible Liabilities
MS	Member State(s)
MSP	Multilateral Surveillance Procedure
MTO	medium-term budgetary objective
NAB	New Arrangements to Borrow
NACE	statistical classifications of economic activities
NATO	North Atlantic Treaty Organisation
N.B.	nota bene (note well)
n.F.	neue Fassung (new Version)
NCA(s)	National Competent Authority(ies)
NCB(s)	National Central Bank(s)
NDICI	Neighbourhood, Development and International Cooperation Instrument “Global Europe”
NGEU	Next Generation EU
NGO	Non-Governmental Organization
No.	Number
NPL(s)	Non-Performing Loan(s)
NRA(s)	National Resolution Authority(ies)
NRP	National Reform Programme
NSFR	Net Stable Funding Ratio
NSI	National Statistical Institute

NSM	Non-Standard Measures
NUTS	Territorial units for statistics (nomenclature des unités territoriales statistiques)
nyr	not yet reported
NZZ	Neue Zürcher Zeitung
O.J.	Official Journal
O.J. C	Official Journal (Communications)
O.J. L	Official Journal (Legislation)
OCTs	Overseas Countries and Territories
OECD	Organisation for Economic Cooperation and Development
OEEC	Organisation for European Economic Cooperation
OLAF	Office européen de lutte anti-fraude (European Anti-Fraud Office)
OMC	Open Method of Coordination
OMRs	Outermost Regions
OMT	Outright Monetary Transactions
OSCE	Organisation for Security and Cooperation in Europe
OUP	Oxford University Press
p.	page(s)
para	paragraph(s)
passim	widely mentioned, at various places
PCCL	Precautionary Conditioned Credit Line
PCIJ	Permanent Court of International Justice
PEPP	Pandemic Emergency Purchase Programme
PESCO	Permanent Structured Cooperation
PIF	Protection of the Financial Interests of Union (protection des intérêts financiers)
PJCC	Police and Judicial Cooperation in Criminal Matters
PMP	Primary Market Purchase
PNR	Passenger Name Record
PRGT	Poverty Reduction and Growth Trust
PRP	Parliamentary Rules of Procedure
PSC	Permanent Structured Cooperation/Political and Security Committee
PSI	Private Sector Involvement
PSO	Public Service Obligation
PSPP	Public Sector Purchase Programme
PUF	Presses Universitaires de France
QM	qualified majority
QMV	qualified majority voting
Racc.	Raccolta della giurisprudenza della Corte di giustizia e del Tribunale di primo grado
RAP	Rules of application

Rass. parl.	Rassegna parlamentare
REACT-EU	Recovery Assistance for Cohesion and the Territories of Europe
REFIT	Regulatory Fitness and Perand Performance Programme
Règ. Ass.Nat.	Règlement de Assemblée Nationale
Règ.Sén.	Règlement du Sénat de la République Française
RMV	reverse majority voting
RP	rules of procedure
RPR	reference(s) for a preliminary ruling
RQMV	reverse qualified majority voting
RTGS	real-time gross settlement
RTS(s)	Regulatory Technical Standard(s)
RWA(s)	Risk Weighted Asset(s)
SBC	Schengen Borders Code
scil.	scilicet (namely)
SCIMF	Sub-Committee on International Monetary Fund
SDR(s)	Special Drawing Right(s)
SE	Societas Europea
SEA	Single European Act
Sec.	section
seq(q).	sequence/sequentes (following)
ser.	series
SFA	Financial Services Action
SGEI(s)	Service(s) of General Economic Interest
SGP	Stability and Growth Pact
SI(s)	Significant Institution(s)
SIFI	Systematically Important Financial Institutions
SIPI	Systematically important payment systems
SIS	Schengen Information System
SMEs	Small and Medium-sized Enterprises
SMP	Securities Markets Programme
SRB	Single Resolution Board
SREP	Supervisory Review and Evaluation Process
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism
SRMR	Single Resolution Mechanism Regulation
SRSP	Structural Reform Support Programme
SSM	Single Supervisory Mechanism
SSMR	Single Supervisory Mechanism Regulation
STC	Sentencia del Tribunal Constitucional (judgment of the Spanish Constitutional Tribunal)
SURE	Support Mitigating Unemployment Risks in Emergency
SZ	Süddeutsche Zeitung
T2S	TARGET2-Securities

TARGET	Trans-European Automated Real-time Gross Settlement Express Transfer
TARGET2	Trans-European Automated Real-time Gross Settlement Express Transfer System
TCE	Treaty establishing a Constitution for Europe/Traité instituant la Communauté européenne
TEC	Treaty establishing the European Community
TECSC	Treaty establishing the European Coal and Steel Community
TEEC	Treaty establishing the European Economic Community
TEN	Trans-European Network
TEN-E	Trans-European Energy Networks
TEN-T	Trans-European Transport Networks
TESM	Treaty Establishing the European Stability Mechanism
TEU	Treaty on European Union (as amended by the Treaty of Lisbon)
TEU-Amsterdam	Treaty on European Union as amended by the Treaty of Amsterdam
TEU-Maastricht	Treaty on European Union as drawn up by the Treaty of Maastricht
TEU-Nice	Treaty on European Union as amended by the Treaty of Nice
TFEU	Treaty on the Functioning of the European Union
TFUE	Trattato sul funzionamento dell'Unione europea/Traité sur le fonctionnement de l'Union européenne (Treaty on the Functioning of the European Union—TFEU)
TLAC	Total-Loss Absorption Capacity
TLTRO	Targeted longer-term refinancing operations
TMCA	Agreement on the transfer and mutualisation of contributions to the single resolution fund
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union
TTIP	Transatlantic Trade and Investment Partnership
TUE	Trattato sull'Unione europea/Traité sur l'Union européenne (Treaty on European Union—TEU)
UEF	Union Européenne des Fédéralistes
UK	United Kingdom
UNC	Charter of the United Nations
UN(O)	United Nations Organisation
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change
UNTS	United Nations Treaty Series
US	United States

USA	United States of America
v/v.	versus (against)
VAT	Value Added Tax
VCLT	Vienna Convention on the Law of Treaties (1969)
VCLT-IO	Vienna Convention on the Law of Treaties between States and International Organizations and between International Organizations (1986)
VCSST	Vienna Convention on Succession of States in respect of Treaties
Vol.	Volume
VVDStRL	Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer
WD	Working Document
WEAG	Western European Armaments Group
WEU	Western European Union
WFSStG	Gesetz zur Übernahme von Gewährleistungen zum Erhalt der für die Finanzstabilität in der Währungsunion erforderlichen Zahlungsfähigkeit der Hellenischen Republik (Law on the giving of guarantees to maintain the Hellenic Republic's ability to pay which is required for financial stability in the monetary union)
WHO	World Health Organization
WTO	World Trade Organisation

Title VI

Transport