

**THE NEW EUROPEAN FINANCIAL  
ARCHITECTURE AND THE IMPLICATIONS OF  
THE PRINCIPLE OF EFFECTIVE JUDICIAL  
PROTECTION**

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- i. Effective judicial protection at two levels, but Banking Union has mixed them in unprecedented ways.
- ii. Union Courts / National Courts
- iii. The right to an effective remedy
- iv. Some examples

## II. EU COURTS

### – Actions of annulment

- Review of ECB acts implementing national law: the General Court as a jurisdiction entrusted with ensuring the application of national law by an EU Institution
- Impossibility of the General Court to make references to national authorities. Who is the authoritative interpreter of national law, when applied by the ECB and, eventually, the General Court?
- National law applied by the ECB: a question of law or fact? Its impact on appeals on points of law (Edwin, C-263/09 P)

## II. EU COURTS

- Damages actions in cases in which the manifest breach is of national law
  - If the ECB incurs in liability when implementing national law, what is the standard of the “manifest breach”?
    - Identical standard as in breaches of EU Law
    - A new standard, departing from traditional Factortame / Bergaderm case-law
  - If the liable breach is in national law, is the ECB liable if it implements it in its acts *vis-à-vis* credit institutions?  
Shared liability.

## II. EU COURTS

### – Infringement actions

- Article 271,d) TFEU: can the ECB bring an infringement procedure against a national central bank in the context of the SSM?
- What is the alternative, in case of a breach of EU Law by a national supervisory authority? National courts.

## II. EU COURTS

### – Preliminary references

- References of interpretation from national courts
  - References as an indirect means to scrutinize the compatibility of national options and discretions in light of EU Law.
  - Absence of the ECB in proceedings, unless it is an intervener in national proceedings.
- References of validity of ECB and SRB acts
  - No urgent procedures (particularly in the case of the SRB)
  - No authority of EU courts when the invalidity is the result of a wrong application of national law.

### III. NATIONAL COURTS

- Review of ECB acts, the case of “instructions”
  - Can national courts review decisions of supervisory authorities that follow non-discretionary “instructions” issued by the ECB, pursuant to article 6.3 of Reg. 1024/13?
  - Does the national court have a duty to make a reference to the Court of Justice in these circumstances, even if it is not a last instance court? The precedent of Melki (C-188/10).

### III. NATIONAL COURTS

- Direct effect of Directives (CRDIV) invoked by the ECB
  - Can the ECB rely on the direct effect of a directive, in a claim against a Member State before national courts?
  - Portugás (C-425/12) as a precedent
  - This risk of circumventing the Commission's role as guardian of the Treaties
  - The relationship between ECB infringements actions and ECB actions before national courts
  - The case of the SRB, exportable or not?

## IV. THE RIGHT TO AN EFFECTIVE REMEDY

- The overall picture and the right to an effective remedy
  - Not an absence of remedies, but an overabundance.
  - Examples of malfunctioning remedies
  - What are the relevant rules that could contribute to improve the remedial architecture?
    - Art. 47 of the Charter of Fundamental Rights
    - The principles of effectiveness and equivalence