Introduction

I.1 THE PROBLEM

The European Union 'places the individual at the heart of its activities'.[1] So begins the Charter of Fundamental Rights of the European Union. Likewise, the old story of integration through law[2] tells us that law pushed forward the integration programme, the individual being its main enforcer and beneficiary. The European legal landscape has, on this view, evolved into a unique[3] supranational system that empowered primarily the individual through legal principles such as primacy and direct effect,[4] but also through the case law of the Court of Justice concerning the internal market, EU citizenship, and the protection of fundamental rights. The EU's response to the Euro crisis challenged that convention, with the focus instead shifting to the Member States. In this book, I reconceptualise legal accountability in a way that replaces the individual at the heart of all activities in the Economic and Monetary Union (EMU).

Introduced in the Maastricht Treaty,[5] the EMU symbolised a step of unprecedented integration, while also witnessing a sharp decline in public

[1] Charter of Fundamental Rights of the European Union [2016] OJ C202/389, Preamble.

[2] M Cappelletti, M Seccombe and J H H Weiler (eds), *Integration through Law: Europe and the American Federal Experience*, Book 1 (de Gruyter 1986).

[3] J H H Weiler, 'Prologue: Global and Pluralist Constitutionalism – Some Doubts' in G de Búrca and J H H Weiler (eds), *The Worlds of European Constitutionalism* (Cambridge University Press 2012) 11–12. For a criticism of this view of European law, see S R Larsen, 'European Public Law after Empires' (2022) 1(1) *European Law Open* 6.

[4] Case 26/62 *van Gend en Loos* EU:C:1963:1; Case 6/64 *Costa v ENEL* EU:C:1964:66.

[5] Treaty Establishing the European Community (TEC) [1992] OJ C224/1.

support, unlike any previous Treaty revision.[6] The reason for this may be found in the fact that European integration expanded into areas traditionally considered core state powers,[7] resulting in new intergovernmental modes of governance,[8] such as differentiation through opt-outs and the establishment of regulatory agencies.[9] The Euro crisis displayed serious accountability deficiencies, exacerbating these concerns further.[10] The emphasis on authority derived from regulatory effectiveness and market prosperity[11] over democratic accountability has been particularly visible in the ad hoc creation of EU's economic governance mechanisms[12] and in the activities of the European Central Bank (ECB).[13]

A common denominator behind these solutions is that they bypass the individual and limit her influence in economic governance decision-making. Judicial review by national and EU courts relied heavily on the principle of equality of sovereign Member States, by protecting the budgetary autonomy of national parliaments through an emphasis on conditionality in financial assistance.[14] Yet, these conditions, imposed by the Troika outside the framework of EU law proper, left little to no wiggle room for parliamentary

[6] J H H Weiler, *The Constitution of Europe: 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration* (Cambridge University Press 1999) 4; N MacCormick, *Questioning Sovereignty* (Oxford University Press 1999) 98–99.

[7] P Genschel and M Jachtenfuchs, 'More Integration, Less Federation: The European Integration of Core State Powers' (2016) 23(1) *Journal of European Public Policy* 42.

[8] C J Bickerton, D Hodson and U Puetter, 'The New Intergovernmentalism: European Integration in the Post-Maastricht Era' (2015) 53(4) *Journal of Common Market Studies* 703.

[9] Genschel and Jachtenfuchs (n 7) 46–48. For an overview of the literature, see A Maricut-Akbik, 'EU Politicization beyond the Euro Crisis: Immigration Crises and the Politicization of Free Movement of People' (2019) 17 *Comparative European Politics* 380, 382–383.

[10] C Fasone, 'European Economic Governance and Parliamentary Representation: What Place for the European Parliament?' (2014) 20(2) *European Law Journal* 164; M Dawson, 'The Legal and Political Accountability Structure of "Post-crisis" EU Economic Governance' (2015) 53(5) *Journal of Common Market Studies* 976, 983; J Pisani-Ferry, 'Rebalancing the Governance of the Euro Area' in M Dawson, H Enderlein and C Joerges (eds), *Beyond the Crisis: The Governance of Europe's Economic, Political, and Legal Transformation* (Oxford University Press 2015) 72; A Maatsch, *Parliaments and the Economic Governance of the European Union: Talking Shops or Deliberative Bodies?* (Routledge 2016).

[11] B Crum and S Merlo, 'Democratic Legitimacy in the Post-crisis EMU' (2020) 42(3) *Journal of European Integration* 399; T Isiksel, *Europe's Functional Constitution* (Oxford University Press 2016) 6, 13.

[12] Isiksel (n 11) 224 onwards. See also J Habermas, 'Democracy, Solidarity and the European Crisis' in A-M Grozelier, B Hacker, W Kowalsky, J Machnig, H Meyer and B Unger (eds), *Roadmap to a Social Europe* (Social Europe Report 2013).

[13] For an argument that the ECB has become a constitutional organ surpassing its role as an independent agency, see M Goldoni, 'The Limits of Legal Accountability of the European Central Bank' (2017) 24 *George Mason Law Review* 595.

[14] Case C-370/12 *Pringle* EU:2012:756 [136].

deliberations in debtor Member States.[15] Beyond financial assistance, the ECB, through its quantitative easing programmes, became the largest creditor of the eurozone and significantly affected asset prices across different interest groups. Similar to financial assistance, the ECB operates without outside input due to its high level of independence. Consequently, we know very little about how the ECB balances the interests of various socioeconomic groups across the eurozone and the normative considerations that guide its activities.[16]

Departing from the well-established EU law routes of regulation, these developments were characterised by 'legal experimentalism'.[17] This can, in part, be attributed to the lack of a more coordinated approach to the possibility of a crisis in the Maastricht Treaty and its amendments.[18] In essence, as Chiti and Teixeira underline, risk-sharing did not feature in the initial EMU logic, which instead only focused on the mutual benefits of the shared currency area.[19] Regarding the EMU as a solidarity area was not present in its original design.[20] The underlying principle of the EMU framework relies on the equality of Member States,[21] embedded in the protection of national sovereignty in budgetary matters.[22] This concerns specifically the no-bailout clause in Article 125(1) TFEU, intended to incentivise Member States to follow a sound budgetary policy, which would be jeopardised should the euro area transform into a transfer union.[23] Such a focus influenced the division of competences between the EU and the national level in a way that reduced emphasis on solidarity, which I argue ultimately led to a decreased ability of all EU citizens equally to hold EMU decision-makers to account.

[15] See also A Guazzarotti, '"It's the (Asymmetric) Economy, Stupid!" Some Remarks on the Weiss Case of the Bundesverfassungsgericht' (2020) 6 *Italian Law Journal* 655, 666.

[16] For a recent criticism, see M Sandbu, 'A Political Backlash against Monetary Policy Is Looming' *Financial Times*, 23 October 2022. Available at <www.ft.com/content/6f70bbcd-72b7-4518-be6b-401adba7cc34>.

[17] K Tuori and K Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge University Press 2014) 90.

[18] ibid 89.

[19] E Chiti and P G Teixeira, 'The Constitutional Implications of the European Responses to the Financial and Public Debt Crisis' (2013) 50 *Common Market Law Review* 683, 697.

[20] ibid 697–700.

[21] F Losada, 'Institutional Implications of the Rise of a Debt-Based Monetary Regime in Europe' (2016) 22(6) *European Law Journal* 822, 828; A Mody, *EuroTragedy: A Drama in Nine Acts* (Oxford University Press 2018) 320.

[22] Chiti and Teixeira (n 19) 698–699.

[23] 2 BvR 1390/12 *ESM Treaty II* Judgment of the Second Senate of 12 September 2012 [153].

At the same time, existing accountability mechanisms in the Treaties were no longer appropriate for such novel legal developments. For example, political accountability of the Council and Parliament was overshadowed by the dominance of the Euro Group and the Commission in the decision-making processes concerning financial assistance.[24] Furthermore, legal accountability as the task of the Court of Justice was reduced in effect as it could not extend the responsibility of the Euro Group beyond the letter of the Treaties.[25] The idiosyncrasies of the regulatory approach to the financial crisis were further strongly reflected in the review of financial assistance measures and the European Stability Mechanism (ESM), which the Court of Justice initially did not assess against the standards of the Charter of Fundamental Rights.[26] In monetary policy, the ECB's constitutionally entrenched independence removed it from the traditional routes of political and administrative accountability found in national contexts. It was likewise shielded from legal accountability, as the Court of Justice applied a lax standard of review of its monetary policy decisions.[27] In effect, accountability structures originally devised in the Treaties were not efficient in the EMU and brought about a diminished capacity of EU citizens to hold decision-makers to account after the financial crisis.[28]

National constitutional courts, except for the Portuguese Constitutional Court,[29] have not called into question the austerity measures that formed part of the conditionality requirements attached to financial assistance. Both EU and national courts focused on conditionality as a way of protecting creditors and ensuring the sound budgetary policy of debtor states. In that sense, the

[24] P Craig, 'The Eurogroup, Power and Accountability' (2017) 23 *European Law Journal* 234.

[25] Most evident in Joined Cases C-597/18 P, C-598/18 P, C-603/18 P and C-604/18 P *Chrysostomides* EU:C:2020:1028, where the Court of Justice overturned the finding of the General Court that the Euro Group may be considered a body for the purposes of establishing non-contractual liability of the Union. For a further analysis, see Chapter 3, Section 3.4.1.

[26] Case C-370/12 *Pringle* (n 14).

[27] M Dawson, A Maricut-Akbik and A Bobić, 'Reconciling Independence and Accountability at the European Central Bank: The False Promise of Proceduralism' (2019) 25(1) *European Law Journal* 75; N de Boer and J van 't Klooster, 'The ECB, the Courts and the Issue of Democratic Legitimacy after Weiss' (2020) 57(6) *Common Market Law Review* 1689.

[28] See also M Hildebrand, 'Unravelling the Politicisation – Depoliticisation Nexus of Decontestatory Politics during the Euro-Crisis' in A Farahat and X Arzoz (eds), *Contesting Austerity: A Socio-Legal Inquiry* (Hart 2021) 59.

[29] Even so, the Portuguese Constitutional Court limited the temporal effects of its judgment in which it struck down austerity measures it found contrary to the Constitution. See Ruling N. 353/12 of 5 July 2012, English summary available at <www.tribunalconstitucional.pt/tc/en/acordaos/20120353s.html>. See further in Chapter 3, Section 3.3.1.

principle of equality of Member States has taken centre stage. Solidarity was acknowledged solely to the extent that it does not intrude on the budgetary prerogative of national parliaments,[30] causing a disregard of the major redistributive effects that financial assistance,[31] as well as monetary policy measures,[32] have had in the eurozone, in particular by increasing wealth inequality. Such effects do not follow Member State lines, but rather socio-economic ones, and have so far not been accounted for by the relevant decision-makers on the supranational level.[33] Solidarity, although a common soundbite in political discourse of that time, made no impact in regulatory design or judicial review.

At the end of this story comes the Next Generation EU (NGEU): a package of instruments allowing the EU, for the very first time, to borrow money on capital markets in unprecedented amounts and use portions of it for transfers to Member States in the form of non-refundable grants. Thus, 'in a spirit of solidarity between Member States, in particular for those Member States that have been particularly hard hit',[34] coherent and unified measures are exceptionally necessary to address the 'significant disturbances to economic activity which are reflected in a steep decline in gross domestic product and have a significant impact on employment, social conditions, poverty and inequalities'.[35] The constitutional justification of the NGEU framework laid bare debates, old and new, on the flexibility of Treaty rules as well as the accountability mechanisms embedded in this exceptional, and at present temporary, experiment. These developments, then, inevitably invite us to consider how best to ensure that decision-makers meet their duty to deliver the common interest, ensuring that all EU citizens can demand so under equal conditions.

[30] The German Bundesverfassungsgericht, for example, stated that every individual measure taken in the spirit of solidarity must be explicitly approved by the Bundestag and it must not in any event lose the decisive influence on budgetary matters. See Case 2 BvR 987/10 *Aids for Greece and EFSF* Judgment of 7 September 2011 [128].

[31] M P A Schneider, S Kinsella and A Godin, 'Redistribution in the Age of Austerity: Evidence from Europe 2006–2013' (2017) 24(1) *Applied Economics Letters* 672.

[32] K Adam and P Tzamourani, 'Distributional Consequences of Asset Price Inflation in the Euro Area' (2016) 89 *European Economic Review* 172.

[33] For an argument that the EU should re-orient itself as the arena for resolving these new types of conflict, see D Chalmers, 'The European Redistributive State and a European Law of Struggle' (2012) 18(5) *European Law Journal* 667.

[34] Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433 I/23) Recital 5.

[35] ibid Recital 2.

I.2 THE ARGUMENT

Accountability has been the object of legal and political science research alike. In both, accountability was conceptualised predominantly as a procedural mechanism, relying on the principal–agent model.[36] This model takes different shapes. First, political accountability relies on representative institutions that are obliged to deliver the mandate given by their constituents and suffer political loss in the next election cycle should they fail to make good on their promises. Legal accountability rests, by contrast, on the ability of citizens to seek courts to review the actions of the legislator, the administration, and the executive in the exercise of their tasks. Finally, it is important to add administrative accountability, whereby specialist bodies, through their knowledge, authority, and publicity, exert other types of pressure on the actor to deliver sound policy within the exercise of its mandate.[37] These varieties of accountability can be exercised either on procedural or substantive grounds.

Most famously expressed by Bovens,[38] a procedural concept of accountability leaves out any reference to normative content but rather focuses on a procedural checklist. Once met, it means that the agent has been held accountable in one way or another by the principal. While useful in terms of generalisability, Bovens's and similar procedural frameworks may be misused by decision-makers and reduced to a box ticking exercise.[39] They fail to capture conceptually and structurally diverse relationships of any given polity and cannot be used as a Procrustean bed to accommodate the diverse world of supranational governance. Substantive accountability, by contrast, surpasses a mere evaluation of the process that led to a certain decision, focusing instead on its content and compliance with the mandate conferred by the principal on the agent.[40] Attempts at substantive conceptualisations of accountability, however, focus predominantly on the nation-state as the role model. For

[36] G J Brandsma and J Adriaensen, 'The Principal–Agent Model, Accountability and Democratic Legitimacy' in T Delreux and J Adriaensen (eds), *The Principal Agent Model and the European Union* (Palgrave 2017) 37–38, 42; A Lupia, 'Delegation and Its Perils' in K Strøm, W C Müller and T Bergman (eds), *Parliamentary Democracy: Promise and Problems* (Oxford University Press 2006) 33.

[37] For a useful account, see M Krajewski, *Relative Authority of Judicial and Extra-Judicial Review: EU Courts, Boards of Appeal, Ombudsman* (Hart 2021).

[38] M Bovens, 'Analysing and Assessing Accountability: A Conceptual Framework' (2007) 13(4) *European Law Journal* 447; M Bovens, D Curtin and P 't Hart (eds), *The Real World of EU Accountability: What Deficit?* (Oxford University Press 2010).

[39] For a useful overview of the weaknesses of Bovens' framework, see R L Heidelberg, 'Political Accountability and Spaces of Contestation' (2017) 49(10) *Administration & Society* 1379.

[40] Dawson, Maricut-Akbik and Bobić (n 27) 76.

example, legal accountability introduced by Oliver[41] has been used as a basis for further research of accountability and legitimacy in the EU.[42] Yet, the EU has famously created an institutional system that often sits uneasily with these categories.[43] For example, it is difficult to locate the principal of the ECB, given that its Treaty-granted mandate and independence escape any meaningful control.

In an attempt to address this gap in the study of legal accountability beyond the state, this book brings together works from sociology and philosophy in order to move beyond the principal–agent relationship as the determinant characteristic[44] of approaches that theorise accountability across the social sciences.[45] In addition, I argue that we should abandon the formal reading of equality of states that pervades the intergovernmental logic of supranational polities by arguing instead for a substantive reading of equality. To achieve this, adding solidarity to the mix is indispensable. The two principles will then be brought together to offer a theory of accountability beyond the state, where instead of being marked by a clear representational relationship between the principal and the agent,[46] accountability is achieved by decision-makers acting in the common interest of all citizens. Such a normative approach regards accountability as a virtue in itself, rather than as a pure responsiveness mechanism.[47]

An attempt to conceptualise legal accountability through political equality of citizens will provide a basis for further study into legal accountability in transnational contexts. I will approach this under-researched topic from a more general perspective of constitutionalism beyond the state.[48] At the

[41] D Oliver, *Government in the United Kingdom: The Search for Accountability, Effectiveness and Citizenship* (Open University Press 1991).

[42] See, for example, C Harlow, *Accountability in the European Union* (Oxford University Press 2002); Bovens, Curtin and 't Hart (n 38); A Arnull and D Wincott, *Accountability and Legitimacy in the European Union* (Oxford University Press 2013). Addressing these issues in the context of multilevel polities, see Y Papadopoulos, 'Accountability and Multi-level Governance: More Accountability, Less Democracy?' (2010) 33(5) *West European Politics* 1030.

[43] R Dehousse, 'Delegation of Powers in the European Union: The Need for a Multi-principals Model' (2008) 31(4) *West European Politics* 789.

[44] Bovens (n 38).

[45] D Braun and D H Guston, 'Principal–Agent Theory and Research Policy: An Introduction' (2003) 30(5) *Science and Public Policy* 302.

[46] See also J Black, 'Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes' (2008) 2 *Regulation & Governance* 137, 138.

[47] M Bovens, 'Two Concepts of Accountability: Accountability as a Virtue and as a Mechanism' (2010) 33(5) *West European Politics* 946.

[48] For a significant contribution to this discussion, see G Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization* (Oxford University Press 2012); N Krisch,

moment, legal accounts of post-crisis EMU governance focus on the institutional context and analyse accountability as imagined in the nation-state.[49] This book will offer an original conceptualisation of legal accountability, while addressing the idiosyncrasies of EU post-crisis economic governance. My emphasis on legal accountability will shed new light on the individual, an approach currently missing in the literature.

What about other forms of accountability? I do not argue that legal accountability is the *only* route that would guarantee that decision-makers act towards achieving the common interest. I also do not consider that courts are the platform for democratic deliberation and participation, and they cannot provide legitimacy to decisions taken in democratically deficient procedures. Instead, focusing on courts is based on two ideas. First, by focusing on the common interest that underpins all Union action, they are able to provide remedies to affected individuals through the award of damages or annulment of decisions that depart from values underpinning the common interest. Their second important function is creating legitimate expectations not only for individuals but also for decision-makers. By insisting on a high duty of care and an extensive obligation of giving reasons in line with the common interest, courts can, to a certain extent, shape the behaviour of decision-makers in the future.

While political and administrative mechanisms constitute essential components of accountability, they remain outside the scope of this book for two reasons. First, political accountability in the EMU post-crisis has been extensively researched and yielded important contributions that pertain more generally to research on the empowerment of the European Parliament and national parliaments.[50] By contrast, the literature on legal accountability in the EMU, in particular post-crisis, is less about theorising accountability in a

Beyond Constitutionalism: The Pluralist Structure of Postnational Law (Oxford University Press 2013); K Tuori, *European Constitutionalism* (Cambridge University Press 2015).

[49] M Markakis, *Accountability in the Economic and Monetary Union: Foundations, Policy, and Governance* (Oxford University Press 2020).

[50] A Akbik, *The European Parliament as an Accountability Forum: Overseeing the Economic and Monetary Union* (Cambridge University Press 2022); B Crum, 'Parliamentary Accountability in Multilevel Governance: What Role for Parliaments in Post-crisis EU Economic Governance?' (2018) 25(2) *Journal of European Public Policy* 268; D Fromage, 'The European Parliament in the Post-crisis Era: An Institution Empowered on Paper Only?' (2018) 40(3) *Journal of European Integration* 281; D Jančić (ed), *National Parliaments after the Lisbon Treaty and the Euro Crisis: Resilience or Resignation?* (Oxford University Press 2017); K Auel and O Höing, 'National Parliaments and the Eurozone Crisis: Taking Ownership in Difficult Times?' (2015) 38(2) *West European Politics* 375; F Amtenbrink and K van Duin, 'The European Central Bank before the European Parliament: Theory and Practice after Ten Years of Monetary Dialogue' (2009) 34(3) *European Law Review* 561.

supranational context and more about analysing the quality of judicial involvement using traditional nation-state benchmarks of accountability.[51] This book thus aims to contribute to our understanding of legal accountability from a novel perspective.

The second reason for narrowing the focus to legal accountability is the exceptionally court-centred nature of the EU's functioning. The central role of the Court of Justice in the development of the EU's constitution and the contestation of that authority by national courts[52] makes courts crucial accountability actors, especially given that they are the only institution that provides direct access to individuals. Coupled with the low democratic legitimacy of EMU decisions in the political sphere, where the individual lacks space for expressing her preferences, courts are the institutions capable of providing that space. Having said that, whenever other forms of accountability intersect with legal accountability, this will be acknowledged and addressed.

With this starting position, my aim will be to determine the position of the individual and her ability to make use of existing routes of legal accountability in the EMU post-crisis through a novel approach to legal accountability. I argue that the current institutional set-up of EU economic governance, and specifically the idiosyncratic legal nature of anti-crisis mechanisms, caused political inequality between EU citizens. The design of anti-crisis mechanisms is premised on the principle of equality of Member States and is heavily anchored in conditionality. However, this creates disparities among EU citizens in terms of their influence on the decision-making process and access to accountability mechanisms: first, given the decreased ability to use accountability mechanisms at the EU level, and second, due to the variety of accountability mechanisms at the national level. In that sense, the book will answer the question: what is the influence of the individual in holding decision-makers in EU economic governance to account through judicial review?

In addition, the book aims to propose a framework of legal accountability for EU's economic governance that reasserts the centrality of the individual in its institutional framework. As will be argued, the equal ability of all EU citizens to access mechanisms of legal accountability and hold decision-makers in the EMU accountable can be achieved through a balanced application of the principles of equality and solidarity. On this view, accountability is the glue that ties the public institution to the common interest. To achieve

[51] Markakis (n 49); Tuori and Tuori (n 17).

[52] A Bobić, *The Jurisprudence of Constitutional Conflict in the European Union* (Oxford University Press 2022).

it, these institutions have a duty to maintain a balance between the principles of equality and solidarity. Seen in this way, all institutions are under an obligation to consider the interests involved and balance them in a way that best serves the common interest. This approach moves beyond the constraints of the nation-state and lends itself to multilevel polities beyond the state, where traditional routes of legitimation are more difficult to identify in a straightforward manner. To reimagine legal accountability in this way, I put forward a normative proposal concerning the relationship between equality and solidarity of political units, with the aim of achieving the equality of every person in pursuing the common interest.

I further argue that courts are and should be the institutions where individuals enforce the duty of policymakers to act in the common interest. The EMU is an area characterised by high redistributive effects coupled with a wide discretion on the part of decision-makers. Under these conditions, courts are, unlike political institutions, in the perfect position to ensure that such decisions meet the Treaty-entrenched objectives in the common interest.[53] To do so successfully, I claim that judicial review of decisions in the EMU entails two duties. First, the starting point for courts must be an assumption of a full review, which is an expression of their duty to safeguard the common interest, as expressed in the Treaties and in the norm granting competence to the decision-maker in question. Second, the decision-makers for their part have an extensive duty of giving reasons for their decisions and thus put to the court the arguments on the nature of their discretion and how they used it. In this way, courts become the public platform for discussing the extent of the power given to an institution and deciding on the way it has contributed to the common interest.

In every case that comes before a court, the presumption should be that it is to perform a high standard of review. This includes an intensive examination of all the factual, legal, and political considerations that went into reaching the decision under review. Decisions in the EMU carry high redistributive effects, which should be an important concern in judicial scrutiny. By the same token, the legitimacy structure behind the granting of discretion to the decision-making body is relevant: what limitations and conditions are attached to the granting of discretion and what accountability duties in other spheres (e.g., political and administrative) were or are in store for the decision-maker. The burden then shifts to the parties to demonstrate not only who should win the case, but also, preliminarily, what the appropriate standard of review and

[53] These are presented and analysed in detail in Chapter 1, Section 1.3.5.

all the necessary evidence should be. I propose that the parties in the litigation carry the responsibility to present a rich evidentiary basis that is to serve as ammunition aimed at endorsing or rebutting the presumption of full judicial review. This judicial activity should be shared between national and EU courts, as is done in other areas of EU law. How this book will reach these conclusions is what I turn to next.

I.3 STRUCTURE OF THE BOOK

The central concern of this book is determining how individuals can hold decision-makers in the EMU to account before EU and national courts. In addressing the problems presented in this introduction, the analysis in this book will embark on an expedition across theory (Chapters 1 and 2), practice (Chapters 3–5), and back – to reach its destination with conclusions on what sort of legal accountability is necessary to achieve political equality of citizens in the EMU (Conclusion and Epilogue). To achieve this, the book will look at three case studies in EU economic governance during and after the crisis: the financial assistance mechanisms; the monetary policy mechanisms of the ECB; and the Single Supervisory Mechanism (SSM). These case studies capture diverse contexts of post-crisis economic governance: the ESM operates outside the legal framework of EU law and operates on the basis of strict conditionality; monetary policy, on the one hand, and the SSM, on the other, represent distinct roles of the ECB. In the following passages, I will present how this journey will play out.

In Chapter 1, I present the theoretical framework of legal accountability grounded in the common interest, ensuring the political equality of citizens in their ability to hold decision-makers to account. This framework will draw on sociological and philosophical approaches to solidarity and the cosmopolitan literature on equality, to present a conceptual understanding of political equality of citizens. The framework put forward is based on an equilibrium between the principles of solidarity and equality that better provides for the political equality of citizens. I then apply this normative framework to the EMU, addressing more specifically the ways in which courts can contribute to the political equality of citizens through procedural and substantive routes.

Chapter 2 zooms in on theorising judicial review in the EMU. I first turn to the most problematic examples of non-accountable decision-making that recently took place in the EMU. The purpose here is to offer a sneak-peek preview of what went wrong, how (the lack of) judicial review contributed to this problem, and why traditional arguments against judicial review do not work in this context. Next, I theorise the role of courts in respect of executive

discretion more generally, to move away from seeing courts as undemocratic institutions, most notably drawing on the work of Dworkin and Ely. On this basis, I present a framework of judicial review, placed in the context of the EMU. This chapter also proposes a division of labour between national and EU courts by advancing an argument for their closer cooperation and the management of their possible conflict.

Moving to the empirical part of the book, Chapter 3 analyses in detail the practice of legal accountability in respect of financial assistance mechanisms during the Euro crisis. After a brief description of financial assistance measures, I present how judicial review of the ESM and the resulting Memoranda of Understanding took place before national and EU courts. In both these levels of analysis, I focus on the procedural (access and remedies) and substantive aspects (interpretation of equality and solidarity) of the existing case law. This chapter closes with a reflection upon the influence that judicial interactions between EU and national courts have on the improvement of legal accountability in financial assistance.

Chapter 4 turns to the ECB in its conduct of monetary policy. In the first step, I present the legal framework of monetary policy within the system of the European System of Central Banks and explain in more detail the quantitative easing programmes of the ECB. Here, I also provide a summary of the back-and-forth litigation on the limits to monetary policy between the Court of Justice and the Bundesverfassungsgericht (in *Gauweiler* and *Weiss*). Against this backdrop, I conduct a further in-depth analysis of these decisions. Both these sections follow the same structure: they focus, first, on access to courts and remedies, and second, on the ways in which the courts under analysis approached the principles of equality and solidarity for the purposes of achieving the common interest. The last section is concerned with judicial interactions between EU and national courts and the role these play in the legal accountability of the ECB.

Chapter 5, the last one with an empirical approach, deals with the SSM. It presents the legal framework of the SSM and the solutions chosen for its organisation and operation. This exercise both aids our reading of the case law to come and highlights several accountability distortions that are problematic for the political equality of citizens. I then focus on judicial review concerning the SSM before EU courts and repeat this exercise in respect of national courts. I follow the approach taken in the previous two case studies by looking at how the courts have approached questions of access, remedies, and any possible interpretation of the principles of equality and solidarity. This chapter closes by again reflecting upon the role that judicial interactions play in delivering accountability within the SSM.

The Conclusion of the book then joins the theoretical propositions from the first two chapters with the empirical findings in Chapters 3–5. It is here that an assessment is made of how legal accountability has so far been able to ensure that decision-makers in the EMU are held to account by politically equal citizens. Turning to the future, the Conclusion makes proposals on how the theory of legal accountability from Chapters 1 and 2 can be meaningfully achieved. The book ends with an Epilogue that looks into the future: still in its infancy, the NGEU is the perfect guinea pig for testing my theoretical propositions, taking into account the lessons learned throughout the case studies. The Epilogue starts by presenting the legal framework of the NGEU and the way it has been grounded in the Treaties. I then turn to the used and possible avenues of judicial review before national and EU courts, to close the book with some final thoughts on what awaits individuals when holding the decision-makers in the EMU to account before courts.