



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 70/15

Luxembourg, 16 June 2015

Judgment in Case C-62/14
Gauweiler and Others

The OMT programme announced by the ECB in September 2012 is compatible with EU law

This programme for the purchase of government bonds on secondary markets does not exceed the powers of the ECB in relation to monetary policy and does not contravene the prohibition of monetary financing of Member States

By a press release issued on 6 September 2012, the European Central Bank (ECB) announced that it had adopted certain decisions concerning a programme¹ authorising the European System of Central Banks (ESCB) to purchase on secondary markets² government bonds of Member States of the euro area, provided that certain conditions were met. The aim of that programme, commonly referred to as the “OMT programme”, is to deal with the disruption of the ESCB’s monetary policy transmission mechanism caused by the particular situation of government bonds issued by certain Member States and to preserve the “singleness” of monetary policy.

The ECB had found that the interest rates on government bonds of the various States of the euro area were characterised, at that time, by high volatility and extreme spreads. In the ECB’s view, those spreads were not accounted for solely by macroeconomic differences between the States concerned but were caused, in part, by the demand for excessive risk premia for the bonds issued by certain Member States, such premia being intended to guard against the risk of a break-up of the euro area. According to the ECB’s analysis, that exceptional situation severely undermined the ESCB’s monetary policy transmission mechanism in that it gave rise to fragmentation of bank refinancing conditions and credit costs, which greatly limited the effects of the “impulses” transmitted by the ESCB to the economy in a significant part of the euro area.

The ECB has asserted³ that simply making the announcement about the OMT programme was sufficient to achieve the effect sought, namely to restore the monetary policy transmission mechanism and the singleness of monetary policy. More than two years after that announcement was made, the programme has still not been activated.

A number of constitutional actions⁴ have been brought before the Bundesverfassungsgericht (Federal Constitutional Court, Germany) concerning the participation of the Deutsche Bundesbank (German Central Bank) in the implementation of the OMT programme and the alleged failure of the Federal Government and the Bundestag (Lower House of the German Federal Parliament) to act with regard to that programme. The parties which have brought these actions maintain that the OMT programme (i) is not covered by the mandate of the ECB and contravenes the prohibition of monetary financing of the euro area Member States and (ii) that those decisions breach the

¹ “Decisions” of the Governing Council of the European Central Bank of 6 September 2012 on a number of technical features regarding the Eurosystem’s outright monetary transactions in secondary sovereign bond markets.

² That is to say, not directly from public authorities and bodies of the Member States concerned, but only indirectly, from market operators who have previously purchased them on the primary market.

³ This assertion has not been disputed before the Court of Justice.

⁴ The actions in question have been brought by several groups of individuals, one of which is supported by more than 11 000 signatories. The Fraktion DIE LINKE im Deutschen Bundestag (The Left Party Parliamentary Group in the Lower House of the German Federal Parliament) has also brought proceedings before the referring court on the ground of a conflict between constitutional bodies.

principle of democracy entrenched in the German Basic Law (Grundgesetz) and thus impair German constitutional identity.

The Bundesverfassungsgericht has asked the Court of Justice whether the EU Treaties permit the ESCB to adopt a programme such as the OMT programme. In particular, it has doubts as to whether the programme is within the powers of the ESCB, as defined by the EU Treaties, and is also uncertain about whether the programme is compatible with the prohibition of monetary financing of the Member States.

By today's judgment, the Court replies that the EU Treaties⁵ permit the ESCB to adopt a programme such as the OMT programme.

The powers of the ESCB

The Court notes the powers of the ESCB, which is responsible for defining and implementing monetary policy (for which the Union has exclusive competence with regard to the Member States whose currency is the euro), and points out that, in accordance with the principle of conferral of powers, the ESCB may not adopt and implement a programme which is outside the area assigned to monetary policy by primary law. In order to ensure that the principle of conferral is complied with, the acts of the ESCB are, on the conditions laid down by the Treaties, subject to review by the Court.

The Court finds that **the OMT programme**, in view of its objectives and the instruments provided for achieving them, **falls within monetary policy and therefore within the powers of the ESCB.**

First, the OMT programme, in seeking to preserve the singleness of monetary policy, contributes to achieving the objectives of that policy, which under the EU Treaties must be "single".

Secondly, in seeking to safeguard "an appropriate monetary policy transmission", that programme is likely both to preserve the singleness of monetary policy and to contribute to its **primary objective**, which is **to maintain price stability**.

The ability of the ESCB to influence price developments by means of its monetary policy decisions in fact depends, to a great extent, on the transmission of the "impulses" which the ESCB sends out across the money market to the various sectors of the economy. Consequently, if the monetary policy transmission mechanism is disrupted, that is likely to render the ESCB's decisions ineffective in a part of the euro area and, accordingly, to undermine the singleness of monetary policy. Moreover, since disruption of the transmission mechanism undermines the effectiveness of the measures adopted by the ESCB which necessarily affects the ESCB's ability to guarantee price stability. The fact that the OMT programme might also be capable of contributing to the stability of the euro area (which is a matter of economic policy) does not call that assessment into question. A monetary policy measure cannot be treated as equivalent to an economic policy measure merely because it is likely to have indirect effects on the stability of the euro area.

As regards the means which the OMT programme anticipates using – namely the purchase of government bonds on secondary markets – the Court points out that this entails use of one of the monetary policy instruments provided for by the EU Treaties. The Treaties permit the ECB and the national central banks to operate in the financial markets by buying and selling outright marketable instruments in euro.

In view of its specific features, the OMT programme cannot be equated with an economic policy measure. As regards, in particular, the fact that implementation of the programme is conditional upon full compliance by the Member States concerned with a European Financial Stability Facility (EFSF) or European Stability Mechanism (ESM) macroeconomic adjustment programme, it is possible that that feature of the OMT programme may have indirect effects so far as the realisation of certain economic policy objectives is concerned. However, such indirect effects do not mean

⁵ More specifically, Articles 119 TFEU, 123(1) TFEU and 127(1) and (2) TFEU and Articles 17 to 24 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank.

that such a programme must be regarded as an economic policy measure, since it is apparent from the EU Treaties that, without prejudice to the objective of price stability, the ESCB is to support the general economic policies in the Union.

The Court also states that the **OMT programme does not infringe the principle of proportionality.**

Firstly, in economic conditions such as those described by the ECB on 6 September 2012, the ESCB could reasonably take the view that the OMT programme was appropriate for the purpose of contributing to the ESCB's objectives and, therefore, to the maintenance of price stability.

Secondly, the OMT programme, in view of the conditions that are to apply in the event of it being implemented, does not go manifestly beyond what is necessary to achieve the objectives it pursues. Those conditions include, in particular, the fact that it is strictly subject to the objectives pursued and is limited to certain types of bonds issued by Member States selected on the basis of precise criteria linked to those objectives.

Thirdly, the ESCB weighed up the various interests in question so as actually to prevent disadvantages from arising, when the programme is implemented, which are manifestly disproportionate to the OMT programme's objectives.

Prohibition of monetary financing of Member States

The Court states that this prohibition does not prevent the ESCB from adopting a programme such as the OMT programme and implementing it under conditions which do not result in the ESCB's intervention having an effect equivalent to that of a direct purchase of government bonds from the public authorities and bodies of the Member States.

According to the Court, although the EU Treaties prohibit all financial assistance from the ESCB to a Member State, they do not preclude, generally, the possibility of the ESCB purchasing from the creditors of such a State bonds previously issued by that State.

However, the purchase of government bonds on secondary markets must not have an effect equivalent to that of a direct purchase of such bonds on the primary market. Furthermore, such purchases may not be used to circumvent the objective of prohibiting the monetary financing of the Member States, since that objective seeks to encourage the Member States to follow a sound budgetary policy, not allowing monetary financing of public deficits or privileged access by public authorities to the financial markets to lead to excessively high levels of debt or excessive Member State deficits. Thus, when the ECB purchases government bonds on secondary markets, sufficient safeguards must be built into its intervention to ensure that the latter does not contravene the prohibition of monetary financing.

In that regard, the Court observes that the ESCB's intervention could, in practice, have an effect equivalent to that of a direct purchase of government bonds if the potential purchasers of such bonds on the primary market knew for certain that the ESCB was going to purchase those bonds within a certain period and under conditions allowing those market operators to act, de facto, as intermediaries for the ESCB for the direct purchase of those bonds from the public authorities and bodies of the Member State concerned.

However, the draft decision and guideline put forward by the ECB in these proceedings indicate that the Governing Council is to be responsible for deciding on the scope, the start, the continuation and the suspension of the intervention envisaged by the OMT programme on the secondary market. Before the Court the ECB has also explained that the ESCB intends to ensure that a minimum period is observed between the issue of a security on the primary market and its purchase on the secondary market and also to refrain from making any prior announcement concerning either its decision to carry out such purchases or the volume of purchases envisaged.

Inasmuch as those safeguards prevent the conditions of issue of government bonds from being distorted by the certainty that those bonds will be purchased by the ESCB after their issue, they

ensure that implementation of the OMT programme will not, in practice, have an effect equivalent to that of a direct purchase of government bonds from public authorities and bodies of the Member States.

In the Court's view, the features of the OMT programme also ensure that the programme cannot be considered to be of such a kind as to lessen the Member States' impetus to follow a sound budgetary policy and thus to circumvent the objective pursued by the prohibition of monetary financing of the Member States.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106