



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-493/17
Weiss and Others

Advocate General Wathelet proposes that the Court of Justice should rule that the decision of the ECB establishing a programme for the purchase of government bonds on secondary markets is valid

The programme does not infringe the prohibition of monetary financing and does not exceed the powers of the ECB

By decision of 4 March 2015,¹ the European Central Bank (ECB) put in place a secondary markets public sector asset purchase programme ('PSPP').

The PSPP is one of the four sub-programmes of the Expanded Asset Purchase Programme ('APP') announced by the ECB in January 2015 and generally referred to as 'quantitative easing'. The other three sub-programmes of the APP, to which the PSPP is subsidiary, concern the purchase of private bonds.

The APP, and therefore the PSPP, aim to respond to the risks of deflation in the euro area and thus to maintain price stability. A large purchase of securities, including public sector bonds, is supposed to ease monetary and financial conditions enabling undertakings and households to obtain financing at more favourable prices. In principle, this stimulates investment and consumption, which contribute to returning inflation rates to the target level, namely below, but close to, 2%.

The PSPP was set up in an environment where key ECB interest rates were at their lower bound and private purchase programmes were judged to have provided insufficient scope to achieve that goal. The only category of securities considered capable of providing the purchase volume needed to bridge the inflation gap, owing to its market volume at that time, was that of public sector bonds.

Several groups of individuals have brought before the Bundesverfassungsgericht (Federal Constitutional Court, Germany) various constitutional actions concerning various decisions of the ECB relating to the APP, the participation of the Deutsche Bundesbank (German Central Bank) in the implementation of those decisions or the alleged failure of it to act with regard to those decisions and the alleged failure of the Federal Government and the Lower House of the German Federal Parliament to act in respect of that participation and those decisions.

They claim that the PSPP infringes the prohibition of monetary financing of the Member States² and the principle of conferral of powers³ Moreover, they claim that the decisions on the PSPP undermine the principle of democracy enshrined in the Grundgesetz (German Basic Law) and, accordingly, undermine German constitutional identity.

¹ Decision (EU) 2015/774 of the European Central Bank of 4 March 2015 on a secondary markets public sector asset purchase programme (OJ 2015 L 121, p. 20). This decision was amended by Decision (EU) 2015/2101 of the European Central Bank of 5 November 2015 (OJ 2015 L 303, p. 106), by Decision (EU) 2015/2464 of the European Central Bank of 16 December 2015 (OJ 2015 L 344, p. 1), by Decision (EU) 2016/702 of the European Central Bank of 18 April 2016 (OJ 2016 L 121, p. 24) and by Decision (EU) 2017/100 of the European Central Bank of 11 January 2017 (OJ 2017 L 15, p. 51).

² Laid down in Article 123 of the Treaty on the Functioning of the European Union (TFEU).

³ Laid down in Article 5(1) of the Treaty on European Union (TEU), read in conjunction with Articles 119 and 127 TFEU.

The Bundesverfassungsgericht states that, if the decision of the ECB establishing the PSPP infringes the prohibition of monetary financing or exceeds the mandate of the ECB, it must find that the powers of the ECB have been manifestly and structurally significantly exceeded and, consequently, uphold the actions in the main proceedings. The same applies if the rules on the sharing of losses stemming from that decision affected the budgetary responsibility of the Lower House of the German Federal Parliament. In those circumstances, the Bundesverfassungsgericht decided to request a preliminary ruling from the Court of Justice.

In today's Opinion, Advocate General Melchior Wathelet proposes that the Court should reply to the Bundesverfassungsgericht by stating that the examination of the decision of the ECB establishing the PSPP⁴ ('the PSPP decision') has not revealed any factor capable of affecting its validity.

The Advocate General considers, **in the first place**, that **the PSPP decision does not infringe the prohibition of monetary financing.**

Firstly, **the PSPP does not give the European System of Central Banks (ESCB)'s intervention an effect equivalent to that of a direct purchase of government bonds** from the public authorities and bodies of the Member States and, secondly, **it is not such as to lessen the impetus of the Member States to follow a sound budgetary policy.**

With reference particularly to the judgment in Gauweiler and Others concerning the OMT programme announced by the ECB in September 2012,⁵ the Advocate General notes that the legality in principle of a purchase transaction of government bonds on secondary markets by the ESCB is not open to question. The validity of a programme such as the PSPP is dependent on the guarantees surrounding it.

As regards the claim that the PSPP has an effect equivalent to that of a direct purchase of government bonds from the public authorities and bodies of the Member States, the Advocate General considers that **the PSPP offers sufficient guarantees to 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** and to prevent operators which are active on the government bond markets from being able to act, de facto, as intermediaries for the ESCB for the direct purchase of bonds.

In that regard, the Advocate General notes in particular that (i) the ECB Governing Council decides on the scope, the start, the continuation and the suspension of the intervention on the secondary markets envisaged by the PSPP, (ii) the PSPP is subsidiary in relation to the other three APP programmes which concern the purchase of private bonds, (iii) unlike the OMT, the PSPP does not provide for the selective purchase of bonds, rather it provides for purchases in a manner which is representative of all the Member States of the euro area, (iv) the holding of bonds is, in principle, limited to 33% of bonds from a single issue and the ESCB is prohibited from holding more than 33% of the outstanding bonds of a single issuer for the entire duration of the PSPP, (v) there must be a minimum period between the issue of a security on the primary market and its purchase on the secondary market and (vi) the PSPP procedures communicated by the ECB are of a general nature.

As regards the alleged negative effects of a programme such as the PSPP on the impetus to follow a sound budgetary policy, the Advocate General notes that those effects are already limited by the fact that the ESCB has the option of selling the purchased bonds at any time. In addition, if an issuer of government bonds no longer follows a sound budgetary policy, the bonds issued risk losing the credit quality rating required by the PSPP. Moreover, the purchases between the public issuers of all of the euro area Member States are distributed in accordance with a criterion which is objective and separate from their economic situation or their budgetary policy, namely the ECB's capital key. Therefore, the PSPP cannot be interpreted as mechanism that

⁴ In its version resulting from the subsequent decisions referred to in note 1.

⁵ Case: [C-62/14 Gauweiler and Others](#) also see Press Release No [70/15](#)

might assist Member States which are in financial difficulty. Lastly, since the risk sharing under the PSPP is limited, for 80% of purchases made under the PSPP, local taxpayers or other creditors of government borrowing will have to bear any losses and recapitalise the central bank in question.

The Advocate General notes, in those circumstances, that only one Member State (Spain) remains under an excessive deficit procedure, whereas that number was twenty-four in 2011. That objective situation suggests that the euro area Member States are pursuing a sound budgetary policy.

In the second place, the Advocate General considers, as regards whether the PSPP exceeds the ECB's mandate in the light of its volume, its period of application and the ensuing consequences, that the PSPP pursues a monetary policy objective using instruments which fall under that same policy. In his opinion, the ECB did not commit a manifest error of assessment in determining the objective of the programme, or in its choice of instruments to be implemented. Moreover, it did not misuse its powers or manifestly exceed the limits of its discretion.

The Advocate General also notes, inter alia, that any possible indirect effects do not mean that an ECB programme must necessarily be treated as equivalent to an economic policy measure, since it is apparent from the Treaty itself that, without prejudice to the objective of price stability, the ESCB is to support the general economic policies in the EU. In addition, the conduct of monetary policy will always entail an impact on interest rates and bank refinancing conditions, which necessarily has consequences for the financing conditions of the public deficit of the Member States.

In addition to making the purchase of government bonds conditional upon the credit quality of the issuer or guarantor, three of the PSPP's characteristics in particular ensure that the programme does not, principally, pursue an economic policy objective. First, purchases of government bonds under the PSPP are subsidiary in relation to the activities authorised by the other three APP programmes which all concern the purchase of private bonds. Second, the purchases authorised by the PSPP are distributed across all of the euro area Member States in accordance with a fixed and objective distribution key, which is independent of the individual economic situation of those States. Third, risk sharing is limited to 20% of purchases made under the PSPP.

Against that background the Advocate General notes that the aim of achieving inflation rates below, but close to, 2% over the medium term is in reach. That is why the ECB stated, during the meeting of the Governing Council of 14 June 2018, that the monthly pace of the net asset purchases under the APP would, in principle, be reduced to €15 billion from October 2018 until the end of December 2018 and that net purchases will then end.

In the third place, the Advocate general considers, as regards the proportionality of the PSPP, that the PSPP is as capable of attaining its objective as is necessary (because the ECB had already exhausted the other monetary policy measures that are equally effective) and does not go manifestly beyond what is necessary. The ESCB sufficiently weighed up the various interests involved in such a way as to prevent disadvantages which are manifestly disproportionate to the objectives pursued from arising when the PSPP is implemented.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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.

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

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