



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 192/18
Luxembourg, 11 December 2018

Judgment in Case C-493/17
Heinrich Weiss and Others

The ECB's PSPP programme for the purchase of government bonds on secondary markets does not infringe EU law

It does not exceed the ECB's mandate and does not contravene the prohibition of monetary financing

The European Central Bank (ECB) and the central banks of the Member States whose currency is the euro form the European System of Central Banks (ESCB) and conduct the EU's monetary policy, the primary objective of which is, under the EU Treaties, to maintain price stability. Since 2003, the ESCB has specifically defined that objective as the maintenance of inflation rates at levels below, but close to, 2% over the medium term.

In view of a number of factors that materially increased the risk of a medium-term decline in prices in the context of an economic crisis entailing a risk of deflation, the ECB, on 4 March 2015, adopted a programme for the purchase of government bonds on secondary markets¹ ('the PSPP² programme'), with the aim of returning inflation rates to levels below, but close to, 2%.

The ECB considers that the large-scale purchase of government bonds facilitates access to the financing that is conducive to boosting economic activity, by promoting a reduction in real interest rates and encouraging commercial banks to provide more credit. The PSPP programme is thus intended to ease monetary and financial conditions, including those of non-financial corporations and households, in order to support aggregate consumption and investment spending in the euro area.

The PSPP programme provides that each national central bank is to purchase eligible securities of central, regional or local issuers of its own jurisdiction;³ such purchases are distributed in accordance with the key for subscription of the ECB's capital. The national central banks' share of the book value of purchases is 90% and that of the ECB is 10%. On 12 May 2017, the volume of the PSPP programme amounted to € 1 534.8 billion.

It was initially anticipated that the PSPP programme would apply until the end of September 2016. That period has subsequently been extended on a number of occasions.

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

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), as amended by Decision (EU) 2017/100 of the European Central Bank of 11 January 2017 (OJ 2017 L16, p. 51).

² Public sector asset purchase programme.

³ In addition, national central banks may purchase securities issued by eligible international organisations and multilateral development banks.

Those groups of individuals maintain, in essence, that the decisions of the ECB in question together amount to an ultra vires act, inasmuch as (i) they fail to observe the division of competences between the European Union and the Member States, since they do not fall within the scope of the ECB's mandate, and (ii) they infringe the prohibition of monetary financing. They also argue that those decisions infringe the principle of democracy laid down by the Grundgesetz (German Basic Law) and thereby undermine German constitutional identity.

The Federal Constitutional Court states that if the PSPP programme exceeds the mandate of the ECB or infringes the prohibition of monetary financing, it must uphold those various actions. The same applies if the rules on the sharing of losses arising under that programme affect the budgetary responsibility of the Federal Parliament. The Federal Constitutional Court has thus decided to submit questions to the Court of Justice concerning the validity of the PSPP programme in the light of EU law.

By today's judgment, the Court finds that consideration of the questions referred by the Federal Constitutional Court has disclosed no factor of such a kind as to affect the validity of the PSPP programme.

The Court finds, first, that the PSPP programme does not exceed the ECB's mandate. The programme falls within the area of monetary policy, in respect of which the EU has exclusive competence for the Member States whose currency is the euro, and observes the principle of proportionality.

The purpose of the PSPP programme is to encourage a return of inflation rates to levels below, but close to, 2% over the medium term. It does not appear that the ESCB's specification of the objective of maintaining price stability as the maintenance of inflation rates at levels below, but close to, 2% over the medium term, is vitiated by a manifest error of assessment and goes beyond the framework established by the EU Treaties.

The Court recalls that a monetary policy measure cannot be treated as equivalent to an economic policy measure for the sole reason that it may have indirect effects that can also be sought in the context of economic policy.⁴ On the contrary, in order to exert an influence on inflation rates, the ESCB necessarily has to adopt measures that have certain effects on the real economy, which might also be sought, to different ends, in the context of economic policy.

If the ESCB were precluded altogether from adopting such measures when their effects are foreseeable and knowingly accepted, that would, in practice, prevent it from using the means made available to it by the Treaties for the purpose of achieving monetary policy objectives and might — in particular in the context of an economic crisis entailing a risk of deflation — represent an insurmountable obstacle to its accomplishing the task assigned to it by primary law.

The Court also points out that it is clear from primary law that the ECB and the central banks of the Member States may, in principle, operate in the financial markets by buying and selling outright marketable instruments in euro.

In view of the information available to it, it does not appear to the Court that the ESCB's economic analysis — according to which the PSPP was appropriate, in the monetary and financial conditions of the euro area, for contributing to achieving the objective of maintaining price stability — is vitiated by a manifest error of assessment.

According to the Court, the PSPP programme, in its underlying principle, does not manifestly go beyond what is necessary to raise inflation rates. It is clear, inter alia, that it was not possible to counter the risk of deflation by means of the other instruments available to the ESCB. Key interest rates were at their lower bound and the ESCB had, for several months, already been implementing a programme of large-scale purchases of private sector assets.

⁴ Cases: [C-370/12](#) Pringle, see Press Release No. [154/12](#) and [C-62/14](#) Gauweiler and Others, see Press Release No. [70/15](#).

As regards the procedures for implementing the PSPP, the Court points out that the programme is not selective and does not meet the specific financing needs of certain Member States of the euro area. It does not permit the purchase of securities with a high level of risk and lays down strict purchase limits per issue and issuer. In addition, it gives priority to the purchase of bonds issued by private operators.

In the Court's view, it is not apparent that a government-bonds purchase programme of either more limited volume or shorter duration would have been able to achieve — as effectively and rapidly as the PSPP — changes in inflation comparable to those sought by the ESCB, for the purpose of achieving the primary objective of monetary policy laid down by the authors of the Treaties.

Moreover, it is clear that the ESCB weighed up the various interests involved so as to actually prevent disadvantages which are manifestly disproportionate to the PSPP's objective from arising on implementation of the programme. In particular, the ESCB duly took into consideration the risks to which the substantial volume of asset purchases under the PSPP might possibly expose the central banks of the Member States and took the view that it was not appropriate to establish a general rule on loss sharing.

The Court then finds that the PSPP programme does not infringe the prohibition of monetary financing, which prevents the ESCB from granting any type of credit to a Member State. Implementation of that programme is not equivalent to a purchase of bonds on the primary markets and does not reduce the impetus of the Member States to follow a sound budgetary policy.

The Court considers that safeguards are built into the PSPP which ensure that a private operator cannot be certain, when it purchases bonds issued by a Member State, that those bonds will actually be bought by the ESCB in the foreseeable future. The fact that the PSPP procedures make it possible to foresee, at macroeconomic level, that there will be a purchase of a significant volume of bonds issued by public authorities and bodies of the Member States does not afford a given private operator such certainty that he can act, de facto, as an intermediary of the ESCB for the direct purchase of bonds from a Member State.

Furthermore, the PSPP programme does not enable the Member States to determine their budgetary policy without taking account of the fact that, in the medium term, continuity in the implementation of the PSPP is in no way guaranteed and that they will thus be led, in the event of a deficit, to seek financing on the markets without being able to take advantage of the easing of financing conditions that implementation of the PSPP may entail.

Moreover, the effects of the PSPP programme on the impetus to conduct a sound budgetary policy are limited by (i) the restriction of the total monthly volume of public sector asset purchases, (ii) the subsidiary nature of the PSPP programme, (iii) the distribution of purchases between the national central banks in accordance with the key for subscription of the ECB's capital, (iv) purchase limits per issue and issuer (which means that only a minority of the bonds issued by a Member State can be purchased by the ESCB under the PSPP) and (v) stringent eligibility criteria (based on a credit quality assessment).

The Court also states that the prohibition of monetary financing does not preclude either the holding of bonds until maturity or the purchase of bonds at a negative yield to maturity.

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.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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