



## Reports of Cases

### Case C-62/14

**Peter Gauweiler and Others**  
v  
**Deutscher Bundestag**

(Request for a preliminary ruling from the Bundesverfassungsgericht)

(Reference for a preliminary ruling — Economic and monetary policy — Decisions of the Governing Council of the European Central Bank (ECB) on a number of technical features regarding the Eurosystem's outright monetary transactions in secondary sovereign bond markets — Articles 119 TFEU and 127 TFEU — Powers conferred on the ECB and the European System of Central Banks — Monetary policy transmission mechanism — Maintenance of price stability — Proportionality — Article 123 TFEU — Prohibition of monetary financing of Member States in the euro area)

Summary — Judgment of the Court (Grand Chamber), 16 June 2015

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Jurisdiction of the national court — Necessity of a question referred and relevance of the questions raised — Assessment by the national court*  
*(Art. 267 TFEU)*
2. *Questions referred for a preliminary ruling — Judgment of the Court of Justice — Effects*  
*(Art. 267 TFEU)*
3. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Clearly irrelevant questions and hypothetical questions put in a context not permitting a useful answer — Jurisdiction to reply to questions raised in proceedings arising from an action taken on a preventive basis in accordance with national law*  
*(Art. 267 TFEU)*
4. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Request for interpretation of an EU measure of general application not having been the subject of implementing measures under national law — Admissibility of the action before the national court — Included*  
*(Art. 267 TFEU)*

5. *Economic and monetary policy — Monetary policy — Scope — Programme for the purchase by the European System of Central Banks of government bonds on secondary markets — Included — Programme entailing positive effects as regards the achievement of economic policy objectives — No impact on the classification as a monetary policy measure*  
  
(Arts 119(2) TFEU, 127(1) TFEU and 282(2) TFEU; Protocol No 4 annexed to the EU and FEU Treaties, Art. 18.1)
6. *Economic and monetary policy — Monetary policy — Implementation — Discretion of the European System of Central Banks — Judicial review — Limits — Obligation to state reasons — Scope*  
  
(Art. 5(4) TEU; Arts 119(2) TFEU and 127(1) TFEU)
7. *Acts of the institutions — Statement of reasons — Obligation — Scope — Assessment of the obligation to state reasons in the light of the circumstances of the case*  
  
(Art. 296(2) TFEU)
8. *Economic and monetary policy — Monetary policy — Implementation — Programme for the purchase by the European System of Central Banks of government bonds on secondary markets — Breach of principle of proportionality — No such breach*  
  
(Art. 5(4) TEU; Arts 119(2) TFEU and 127(1) TFEU)
9. *Economic and monetary policy — Monetary policy — Prohibition of monetary financing — Scope — Programme for the purchase by the European System of Central Banks of government bonds on secondary markets — Not included — Conditions*  
  
(Art. 123(1) TFEU; Protocol No 4 annexed to the EU and FEU Treaties, Art. 18.1 and Art. 33; Council Regulation No 3603/93, 7<sup>th</sup> recital)
10. *Economic and monetary policy — Monetary policy — Prohibition of monetary financing — Aim — Member States' impetus to follow a sound budgetary policy*  
  
(Arts 119(2) TFEU, 123 TFEU, 127(1) TFEU and 282(2) TFEU)
11. *European Central Bank — Powers of the European System of Central Banks — Adoption of a programme for the purchase of government bonds on secondary markets — Included*  
  
(Arts 119 TFEU, 123(1) TFEU and 127(1) and (2) TFEU; Protocol No 4 annexed to the EU and FEU Treaties, Arts 17 to 24)

1. As regards references for preliminary rulings, the Court of Justice does not have jurisdiction to give a ruling where the court making the reference is not bound by the Court's interpretation. The Court does not have jurisdiction to provide answers which are purely advisory. Thus, the Court does not have jurisdiction to interpret an act of EU law in order to enable the national court to decide on the application of national law in a situation where the national law contains no direct and unconditional renvoi to EU law but is limited to taking an act of EU law as a model and only partially reproduces the terms thereof. That is not the case, however, when the request for a preliminary ruling concerns directly the interpretation and application of EU law, which means that the judgment given by the Court will have definitive consequences as regards the resolution of the main proceedings.

In that regard, Article 267 TFEU establishes a procedure for direct cooperation between the Court and the courts of the Member States. In that procedure, which is based on a clear separation of functions between the national courts and the Court, any assessment of the facts of the case is a matter for the national court, which must determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court, whilst the Court is empowered to give rulings on the interpretation or the validity of an EU provision only on the basis of the facts which the national court puts before it. Consequently, where the questions submitted concern the interpretation or the validity of a rule of EU law, the Court is in principle bound to give a ruling.

Accordingly, questions concerning EU law enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation, or the determination of validity, of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

(see paras 12-15, 24, 25)

2. See the text of the decision.

(see para. 16)

3. As regards a reference for a preliminary ruling concerning the validity of decisions of the Governing Council of the European Central Bank relating to a programme for purchasing government bonds, the fact that that programme has not been implemented and that its implementation will be possible only after further legal acts have been adopted does not render the actions in the main proceedings devoid of purpose, when, under the national law in question, preventive legal protection may be granted in such a situation if certain conditions are met. Although the main actions — since they seek to avoid the infringement of rights that are under threat — must necessarily be based on hypotheses which are by their nature uncertain, they are none the less permitted under national law. Consequently, since, in proceedings of the kind provided for in Article 267 TFEU, the interpretation of national law falls exclusively to the national court, the fact that the decisions which are contested have not yet been implemented and the fact that their implementation will be possible only after further legal acts have been adopted is not a ground for denying that the request for a preliminary ruling meets an objective need for resolving the cases brought before that court.

(see paras 27, 28)

4. Where the parties to a case in respect of which a reference for a preliminary ruling has been made to the Court are able, under national law, to make an application for judicial review of the legality of the intention or obligation of the Government of the Member State concerned to comply with EU legislation, the opportunity open to individuals to plead the invalidity of an EU act of general application before national courts is not conditional upon that act actually having been the subject of implementing measures adopted pursuant to national law. In that respect, it is sufficient if the national court is seised of a genuine dispute in which the question of the validity of such an act is raised on indirect grounds.

(see para. 29)

5. In order to determine whether a measure falls within the area of monetary policy it is appropriate to refer principally to the objectives of that measure. The instruments which the measure employs in order to attain those objectives are also relevant.

A programme for the purchase by the European System of Central Banks (ESCB) of government bonds on secondary markets, whose aim is to safeguard both an appropriate monetary policy transmission and the singleness of the monetary policy, falls within the area of monetary policy. In the first place, the objective of safeguarding the singleness of monetary policy contributes to achieving the objectives of that policy inasmuch as, under Article 119(2) TFEU, monetary policy must be single. Moreover, the objective of safeguarding an appropriate transmission of monetary policy is likely both to preserve the singleness of monetary policy and to contribute to its primary objective, which is to maintain price stability. That assessment cannot be undermined by the fact that the programme concerned might also be capable of contributing to the stability of the euro area, which is a matter of economic policy. Indeed, a monetary policy measure cannot be treated as equivalent to an economic policy measure merely because it may have indirect effects on the stability of the euro area.

In the second place, it is clear from Article 18.1 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, which forms part of Chapter IV thereof, that in order to achieve the objectives of the ESCB and to carry out its tasks, as provided for in primary law, the Bank and the national central banks may, in principle, operate in the financial markets by buying and selling outright marketable instruments in euro. As regards the selective nature of the programme for the purchase of government bonds, given that the programme is intended to rectify the disruption to the monetary policy transmission mechanism caused by the specific situation of government bonds issued by certain Member States, the mere fact that the programme is specifically limited to those government bonds is thus not of a nature to imply, of itself, that the instruments used by the ESCB fall outside the realm of monetary policy. Moreover, no provision of the FEU Treaty requires the ESCB to operate in the financial markets by means of general measures that would necessarily be applicable to all the States of the euro area.

Moreover, the fact that the implementation of a programme for the purchase of government bonds is made conditional upon full compliance with macroeconomic adjustment programmes does not alter that conclusion. It is, of course, possible that a government bond-buying programme having such a feature may, indirectly, increase the impetus to comply with those adjustment programmes and thus, to some extent, further the economic-policy objectives of those programmes. However, such indirect effects do not mean that such a programme must be treated as equivalent to an economic policy measure, since it is apparent from Articles 119(2) TFEU, 127(1) TFEU and 282(2) TFEU that, without prejudice to the objective of price stability, the ESCB is to support the general economic policies in the Union.

(see paras 46-49, 51, 52, 54-59)

6. It follows from Articles 119(2) TFEU and 127(1) TFEU, read in conjunction with Article 5(4) TEU, that a bond-buying programme forming part of monetary policy may be validly adopted and implemented only in so far as the measures that it entails are proportionate to the objectives of that policy. As regards judicial review of compliance with those conditions, since the European System of Central Banks (ESCB) is required, when it prepares and implements an open market operations programme, to make choices of a technical nature and to undertake forecasts and complex assessments, it must be allowed, in that context, a broad discretion.

Nevertheless, where an EU institution enjoys broad discretion, a review of compliance with certain procedural guarantees is of fundamental importance. Those guarantees include the obligation for the ESCB to examine carefully and impartially all the relevant elements of the situation in question and to give an adequate statement of the reasons for its decisions. In that regard, the fact that a reasoned analysis of the economic situation of the euro area has been subject to challenge does not, in itself, suffice to call into question the Court's conclusion as to the absence of a manifest error of assessment, since, given that questions of monetary policy are usually of a controversial nature and in

view of the ESCB's broad discretion, nothing more can be required of the ESCB apart from that it use its economic expertise and the necessary technical means at its disposal to carry out that analysis with all care and accuracy.

(see paras 66, 68, 69, 74, 75)

7. See the text of the decision.

(see para. 70)

8. The purchase, on secondary markets, by the European System of Central Banks (ESCB) of government bonds of Member States of the euro area whose interest rates have been subject to high volatility and extreme spreads owing, in particular, to excessive risk premia intended to guard against the risk of a break-up of the euro area is likely to contribute to reducing those rates by dispelling unjustified fears about the break-up of the euro area and thus to play a part in bringing about a fall in — or even the elimination of — excessive risk premia.

In those circumstances, the ESCB is entitled to take the view that such a development in interest rates is likely to facilitate the ESCB's monetary policy transmission and to safeguard the singleness of monetary policy. The ESCB could thus legitimately consider such a programme to be appropriate for the purpose of contributing to the ESCB's objectives and, therefore, to maintaining price stability. Such a programme does not go manifestly beyond what is necessary to achieve those objectives where, in particular, it permits the purchase of government bonds on secondary markets only in so far as it is necessary to achieve the objectives of the programme and where such purchases will cease as soon as those objectives have been achieved.

Such a programme ultimately concerns only a limited part of the government bonds issued by the States of the euro area, so that the commitments which the European Central Bank is liable to enter into when such a programme is implemented are, in fact, circumscribed and limited. In those circumstances, a programme whose volume is thus restricted could legitimately be adopted by the ESCB without a quantitative limit being set prior to its implementation, such a limit being likely, moreover, to reduce the programme's effectiveness. It must also be stated that such a programme identifies the Member States whose bonds may be purchased on the basis of criteria linked to the objectives pursued and not by means of an arbitrary selection.

Moreover, in weighing up the various interests in play, the ESCB proceeds in such a way as to actually prevent disadvantages from arising, when the programme in question is implemented, which are manifestly disproportionate to the programme's objectives. Under those conditions, such a programme does not infringe the principle of proportionality.

(see paras 72, 76, 77, 80-82, 87, 88, 90-92)

9. It is clear from the wording of Article 123(1) TFEU that it prohibits all financial assistance from the European System of Central Banks (ESCB) to a Member State, but does not preclude, generally, the possibility of the ESCB purchasing from the creditors of such a State bonds previously issued by that State. Thus, Article 18.1 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank permits the ESCB, in order to achieve its objectives and to carry out its tasks, to operate in the financial markets, inter alia, by buying and selling outright marketable instruments, which include government bonds, and does not make that authorisation subject to particular conditions as long as the nature of open market operations is not disregarded.

Nevertheless, the ESCB does not have authority to purchase government bonds on secondary markets under conditions which would, in practice, mean that its action has an effect equivalent to that of a direct purchase of government bonds from the public authorities and bodies of the Member States,

thereby undermining the effectiveness of the prohibition in Article 123(1) TFEU. However, as is stated in the seventh recital in the preamble to Regulation No 3603/93 specifying definitions for the application of the prohibitions referred to in Articles [123 TFEU] and [125(1) TFEU], purchases made on the secondary market may not be used to circumvent the objective of Article 123 TFEU. It follows that when the Bank purchases government bonds on secondary markets, sufficient safeguards must be built into its intervention to ensure that the latter does not fall foul of the prohibition of monetary financing in Article 123(1) TFEU.

It is true that, in the case of a programme for the purchase by the ESCB of government bonds on secondary markets, the ESCB's intervention — despite the existence of safeguards preventing 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 — remains capable of having some influence on the functioning of the primary and secondary sovereign debt markets. However, that fact is not decisive since such influence constitutes an inherent effect in purchases on the secondary market which are authorised by the FEU Treaty. That effect is, moreover, essential if those purchases are to be used effectively in the framework of monetary policy.

Furthermore, even if it were established that such a programme could expose the Bank to a significant risk of losses, that would in no way weaken the guarantees which are built into the programme in order to ensure that the Member States' impetus to follow a sound budgetary policy is not lessened. Furthermore, a central bank, such as the European Central Bank, is obliged to take decisions which, like open market operations, inevitably expose it to a risk of losses. In that connection, Article 33 of the Protocol of the ESCB and the Bank duly provides for the way in which the losses of the Bank must be allocated, without specifically delimiting the risks which the Bank may take in order to achieve the objectives of monetary policy. Furthermore, although the lack of privileged creditor status may mean that the Bank is exposed to the risk of a debt cut decided upon by the other creditors of the Member State concerned, it must be stated that such a risk is inherent in a purchase of bonds on the secondary markets, an operation which was authorised by the authors of the Treaties, without being conditional upon the Bank having privileged creditor status.

(see paras 94-97, 101, 102, 107, 108, 123, 125, 126)

10. Article 123 TFEU is intended 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 deficit. That objective would be circumvented if the European System of Central Banks (ESCB) were to implement a programme that was such as to lessen the impetus of the Member States concerned to follow a sound budgetary policy. In fact, since it follows from Articles 119(2) TFEU, 127(1) TFEU and 282(2) TFEU that, without prejudice to the objective of price stability, the ESCB is to support the general economic policies in the Union, the action taken by the ESCB on the basis of Article 123 TFEU cannot be such as to contravene the effectiveness of those policies by lessening the impetus of the Member States concerned to follow a sound budgetary policy.

Moreover, 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.

(see paras 100, 109, 110)

11. Articles 119 TFEU, 123(1) TFEU and 127(1) and (2) TFEU and Articles 17 to 24 of the Protocol on the Statute of the European System of Central Banks and the European Central Bank must be interpreted as permitting the European System of Central Banks to adopt a programme for the purchase of government bonds on secondary markets.

(see para. 127, operative part)