

The German Constitutional Court's ruling on the ECB's bond-buying decision

On 6 September 2012, the Governing Council of the European Central Bank (ECB) confirmed its President, Mario Draghi's announcement that the ECB would purchase government bonds on secondary markets, known as Outright Monetary Transactions (OMT). Germany's Federal Constitutional Court (BVerfG) was called upon to consider the legality of OMT within a case on the constitutionality of German ratification of the European Stability Mechanism (ESM).

Proceedings before the Court

The BVerfG had to decide on six complaints against the German ratification acts of the [ESM](#), the new [Article 136\(3\) TFEU](#) and the Fiscal Compact, or [Treaty on Stability, Coordination and Governance in the Economic & Monetary Union](#) (TSCG). The applicants, amongst which the [Die Linke](#) group in the Bundestag, and former justice minister, Herta Daübler-Gmelin, representing the association "[More Democracy e.V.](#)", supported by more than 37 000 citizens, requested a temporary injunction of the ratification acts. On 12 September 2012, the Court [dismissed](#) the majority of applications for temporary injunction, stating that the instruments in question were not likely to violate German constitutional law. However, the signing of the Act bringing the ESM into German law was accepted only under certain [conditions](#). The Court stated that the question of whether the ECB's decision to buy bonds on the secondary markets is an *ultra vires* act, going beyond the limits established by the German act approving the ESM, would be examined in the main proceedings.

Referral to the Court of Justice of the EU

On 7 February 2014, the Court [announced](#) that the final judgment on the constitutionality of the German ratification acts will be delivered on 18 March. At the same time, the BVerfG decided to refer the question of the conformity of the [OMT decision](#) with primary EU law, for a preliminary ruling under [Article 267 TFEU](#), to the Court of Justice of the EU (CJEU). This is the first such referral by the BVerfG to the CJEU. The Court regards the ECB decision to purchase an unlimited amount of government bonds of selected Member States (MS) to be in breach of the [ban on monetary financing](#) of MS budgets according to [Article 123\(1\) TFEU](#). According to the Court, the OMT decision does not fall under the ECB mandate for monetary policy ([Article 127 TFEU](#)), but is an economic measure seeking to provide relief for crisis-hit MS. As economic policy is an MS competence ([Article 120 TFEU](#)), the Court regards the decision to buy bonds as shifting the distribution of competences towards the EU and thus violating the budgetary responsibility of the German legislator. As a consequence, the German voters' right of political participation would be rendered ineffective. If this was the case, the ECB decision would be an *ultra vires* act, i.e. an act overstepping EU competence. The BVerfG has held repeatedly that in case of an *ultra vires* act, it is competent to rule not only on the constitutionality of acts of German authorities but also those of EU institutions. The Court however did not exclude that the OMT decision could be interpreted in conformity with EU law.

What next?

The ruling met with mixed reactions. [Many](#), including the two judges with [dissenting opinions](#), claim that the Court is intruding into the scope of political discretion of the German legislator and government. Academic Ingolf Pernice [points](#) to the risk of the preliminary question being rejected by the CJEU for being too abstract, not least since the OMT decision has not been put into practice yet. The CJEU is widely [seen](#) to be unlikely to declare OMT in breach of EU law. Even if the CJEU rules OMT lawful, the BVerfG [could](#) still, in the main proceedings, impose conditions relating to the use of OMT on the Bundesbank and the German Government.

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