



Complaints Season Not Over Yet: Legal Disputes about Bond-Buying in the Euro Area

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In response to the judgment of the German constitutional court (BVG) in May questioning the purchase of government bonds in the euro area launched in 2015, the European Central Bank (ECB) provided explanations through the Bundesbank, which the German government and parliament considered sufficient. The dispute, however, is hardly over. Critics of the central bank's actions intend to file further complaints, this time against the pandemic programme PEPP.

At the beginning of May, [the BVG ruled on constitutional complaints against the ECB's Public Sector Purchase Programme \(PSPP\) initiated five years ago](#). Although the verdict did not find a breach of the treaty ban on financing states by the central bank, it nevertheless pointed to the problem of "proportionality" of the actions taken in relation to their impact on the entire economy. The purchase of bonds, which was supposed to increase the money supply in the euro area, could, according to judges, cause many side effects for savers and banks, for example. Therefore, the court ordered the ECB to submit an assessment of this proportionality to the government and the Bundestag within three months. If this requirement was not met, the Bundesbank should withdraw from the PSPP.

The verdict caused great concern among policymakers in the monetary union. Its judgment struck at actions of key importance for the stability of the euro area in the midst of the worst economic crisis in decades. The ECB has found itself in an awkward legal situation as its activities are guaranteed to be independent from other political bodies. Ultimately, the ECB Council—with the intermediation of the Bundesbank—provided the government and the Bundestag with the relevant documents. Both institutions recognised the ECB's reaction as adequate implementation of the court's recommendations, which could be considered the end of the highly controversial case. However, as opponents of the actions taken by the ECB have announced further legal steps, the argument will continue.

Questioning the Bank's Explanations. First, attempts were made to undermine the reaction of the central bank, the government, and the parliament to the BVG judgment. According to the authors of the constitutional complaint (including former CSU politician Peter Gauweiler and founder of Alternative for Germany, the AfD, Bernd Lucke), the documents provided by the ECB cannot be considered a detailed explanation of the issue of "proportionality" and the impact of bond purchases on the entire economy, not only in the sphere of money. These are earlier analyses and protocols, but they do not contain, as critics claim, a comprehensive answer to the doubts raised by the judges from Karlsruhe. In fact, some of the documents were classified and were made available to Members of the Bundestag in a special room without the possibility of making notes and copies or revealing their content. These circumstances also serve as a reason for the claims that the ECB did not adequately deal with the court's recommendations.

Therefore, the applicants decided to apply to the BVG for a kind of executive order, the purpose of which is to specify the conditions for the implementation of the judgment. Its effect—if positively considered—would probably be the transfer of a much larger number of documents and expert opinions, albeit within the established institutional path. However, the issuance of such an order by the BVG should be considered unlikely. It is difficult to imagine that the lawyers of the court in Karlsruhe can have such a different opinion than their counterparts in the government,

Bundestag, and Bundesbank, which, after all, considered the ECB's explanations sufficient. However, as long as there is no clarity on the matter, the issue of the PSPP ruling draws public attention to the arguments of opponents of the euro area.

Another target: PEPP. A much more serious issue than the legal skirmishes surrounding the implementation of the judgment of 5 May, may be its broader consequences for the governance system. The position of the BVG suggests that the Bundestag and the government should constantly monitor the “proportionality” of the ECB's actions to avoid the accusation of failing to act in matters important for public finances. The ruling may also be a starting point for further attempts to question policy tools applied by the central bank of the euro area.

This applies in particular to the PEPP (Pandemic Emergency Purchase Programme), which was launched in spring this year to prevent the collapse of the economy after the outbreak of the COVID-19 pandemic. It assumes that by mid-2021, the bank may spend up to €1.35 billion on the purchases of bonds. The programme was designed in such a way that the ECB was able to flexibly react to the market situation. This meant, for example, a departure from the rule that the bank cannot hold more than 33% of bonds issued by one euro area Member State. Moreover, purchases do not have to be proportional to the state's share of ECB capital. PEPP proved to be effective: it avoided a sharp sell-off in the bonds of the most crisis-stricken countries, which could threaten the stability of the monetary union.

However, the flexibility of the programme—the source of its success—is intended to be questioned by opponents of the ECB's policy. At the end of August, AfD filed a complaint with the BVG regarding the inactivity of the German government and parliament against the apparent violation by PEPP of Article 123 of the Treaty on the Functioning of the EU, which prohibits the financing of states by the ECB. The complaint was filed under a special procedure of the Constitutional Court Act, which allows the parliamentary group to act on behalf of the Bundestag and defend its powers. The AfD claims that the government and parliament should take steps to block the PEPP, for example, launch a respective complaint procedure to the Court of Justice of the EU. At the same time, the party's lawyers point out that PEPP contradicts the judgment of the BVG judgment of May 5, 2020: compared to the PSPP, it gives many more reasons to

consider it a breach of the ban on financing states by the central bank.

Conclusions. The dispute over the purchase of government bonds by the ECB is important to Germany's domestic policy. Its escalation is undoubtedly beneficial to the AfD, which is trying to regain the political initiative and return to double-digit support in electoral preference polls. The determination of the far right is all the greater because, contrary to expectations, the COVID-19 crisis did not shake the government's ratings. However, it forced the grand coalition to take a political course to deepen financial integration, which is reflected both in the support of the actions of the ECB and [the “economic recovery” fund](#). The German public has so far been rather sceptical of such actions—and here, AfD sees its chance. The issue of economic policy in the euro area may therefore be an important topic in the far-right's campaign ahead of next year's elections to the Bundestag.

The significance of the dispute, however, goes beyond the internal German context. Even the partial success of the PSPP complaint may encourage critics of the euro in other Member States to take similar legal action and to question the authority of the ECB in monetary policy. Attempts to block the pandemic PEPP should be of particular concern. Admittedly, there is a long way to go to the possible judgments, but if the court agrees with the applicants, the result may be chaos on bond markets and a huge increase in debt servicing costs in Southern European countries. In the face of this threat, expert circles are increasingly asking to clarify the rules—through jurisprudence or treaty changes—for ECB intervention on the markets.

The controversy surrounding the purchase of bonds is part of a broader debate on how macroeconomic policy and governance should work in the euro area. The legal disputes result largely from the fact that the main burden of anti-crisis measures has so far rested with the ECB, which, faced with the threat of a collapse of the monetary union, had virtually no other option than to search for unconventional tools. The pressure would be less if the task of supporting the economy rested more on common fiscal policy. There are many indications that its foundations are being created in the form of the Next Generation EU programme, the issuance of EU bonds and plans to introduce new common taxes. If these efforts are successful, the ECB will be able to step down in its expansive monetary activities and thus reduce the risk of legal disputes over the limits of its mandate.