

Implications of the ruling of the German Constitutional Court

Jens Bastian

ELIAMEP Senior Policy Adviser

Yesterday's ruling by the federal Constitutional Court in Germany is an unprecedented and potentially far-reaching intervention by the judges in euro area politics. The Court ruled that the ECB's *Public Sector Purchase Programme* (PSPP) which was established in March 2015 is partly unconstitutional according to the German Basic Law. The decision in Karlsruhe where the Court is based highlights two major points of departure from previous rulings in Germany.

- For one, the 7:1 majority among the German judges overrules a 2018 conclusion by the European Court of Justice (ECJ) in Luxemburg which had ruled in favor of the ECB's PSPP programme. In essence the German court is taking back control from European judges. Never before has Germany's highest court taken a legal conclusion *against* the ECJ. The historic ruling thus creates more legal uncertainty than it intended to clarify.
- Secondly, the judges in Karlsruhe have explicitly told the ECB in Frankfurt that it cannot decide to initiate major bond purchase programmes independently. The ECB is being obliged by the ruling to implement changes to the PSPP within a strict time frame of three months. Otherwise, and this further highlights the Court's determination, the German *Bundesbank* will be prohibited in participating in the ongoing PSPP programme.

What follows from this constitutional conclusion? The timing of the decision could not have been more challenging. Crisis management in Europe will become even more complicated and subject to further legal scrutiny. This will not make political decisions in Frankfurt, Berlin or Brussels any easier, nor in times as these during a pandemic any quicker when urgency demands it. The judges in Karlsruhe have essentially told policy makers at the ECB and the federal government in Berlin that what is legally prohibited must unconditionally take precedent over what is politically required in a situation of great urgency such as prevailed in early 2015. Put otherwise: the ECB will have to think twice if an emergency requires immediate action and what kind of action is constitutional.

The small print of the Constitutional Court's ruling further argues that it is not part of the ECB's mandate to influence sovereign spreads of other euro area countries. Without mentioning Italy, Greece or Spain by name, this interpretation underlines that the ECB should not be in the business of government financing and economic policy making.

We can expect that the German ruling will be scrutinized in detail by other courts across Europe. The legal precedent can be analyzed by others as a green light to also overrule or outright ignore decisions by the ECJ. The candidates for such interpretations can be found among EU member states, e.g. in Poland and Hungary where the recalibration of constitutional courts has given judges new legitimacy to continue fighting any inconvenient ruling from Luxemburg.

What the plaintiffs in Germany achieved yesterday also has implications for policy making during the Covid-19 pandemic. We can expect that the ECB's new €750 billion *Pandemic Emergency Purchase Programme* (PEPP) will come under intense legal scrutiny. The preparations are already under way and have received a significant impetus from Karlsruhe.