



## Reports of Cases

### JUDGMENT OF THE COURT (Grand Chamber)

16 June 2015 \*

(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)

In Case C-62/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverfassungsgericht (Germany), made by decision of 14 January 2014, received at the Court on 10 February 2014, in the proceedings

**Peter Gauweiler,**

**Bruno Bandulet and Others,**

**Roman Huber and Others,**

**Johann Heinrich von Stein and Others,**

**Fraktion DIE LINKE im Deutschen Bundestag**

v

**Deutscher Bundestag,**

intervener:

**Bundesregierung,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen (Rapporteur), T. von Danwitz, A. Ó Caoimh and J.-C. Bonichot, Presidents of Chambers, J. Malenovský, E. Levits, A. Arabadjiev, M. Berger, A. Prechal, E. Jarašiūnas, C.G. Fernlund and J.L. da Cruz Vilaça, Judges,

Advocate General: P. Cruz Villalón,

Registrar: K. Malacek, Administrator,

\* Language of the case: German.

having regard to the written procedure and further to the hearing on 14 October 2014,

after considering the observations submitted on behalf of:

- Mr Gauweiler, by W.-R. Bub, Rechtsanwalt, and D. Murswiek,
- Mr Bandulet and Others, by K.A. Schachtschneider,
- Mr Huber and Others, by H. Däubler-Gmelin, Rechtsanwältin, and by C. Degenhart and B. Kempen,
- Mr von Stein and Others, by M.C. Kerber, Rechtsanwalt,
- Fraktion DIE LINKE im Deutschen Bundestag, by H.-P. Schneider and A. Fisahn and by G. Gysi, Rechtsanwalt,
- the Deutscher Bundestag, by C. Calliess,
- the German Government, by T. Henze and J. Möller, acting as Agents, and by U. Häde,
- Ireland, by E. Creedon, G. Hodge and T. Joyce, acting as Agents, and by M. Cush and N.J. Travers, Senior Counsels, and M.J. Dunne and D. Moloney, Barristers-at-Law,
- the Greek Government, by S. Charitaki, S. Lekkou and M. Skorila, acting as Agents,
- the Spanish Government, by A. Rubio González, A. Sampol Pucurull and E. Chamizo Llatas, acting as Agents,
- the French Government, by F. Alabrune, G. de Bergues, D. Colas and F. Fize, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,
- the Cypriot Government, by K.K. Kleanthous and N. Ioannou, acting as Agents,
- the Netherlands Government, by M. Bulterman and J. Langer, acting as Agents,
- the Polish Government, by B. Majczyna, C. Herma and K. Maćkowska, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes, P. Machado and M.L. Duarte, acting as Agents,
- the Finnish Government, by J. Heliskoski and H. Leppo, acting as Agents,
- the European Parliament, by A. Neergaard, U. Rösslein and E. Waldherr, acting as Agents,
- the European Commission, by B. Martenczuk, C. Ladenburger, B. Smulders and J.-P. Keppenne, acting as Agents,
- the European Central Bank (ECB), by C. Zilioli and C. Kroppenstedt, acting as Agents, and H.-G. Kamann, Rechtsanwalt,

after hearing the Opinion of the Advocate General at the sitting on 14 January 2015,

gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the validity of the decisions of the Governing Council of the European Central Bank (ECB) of 6 September 2012 on a number of technical features regarding the Eurosystem's outright monetary transactions in secondary sovereign bond markets ('the OMT decisions') and the interpretation of Articles 119 TFEU, 123 TFEU and 127 TFEU and of Articles 17 to 24 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank (OJ 2012, C 326, p. 230; 'the Protocol on the ESCB and the ECB').
- 2 The request has been made in the context of a series of constitutional actions and dispute resolution proceedings between constitutional bodies, which concern the participation of the Deutsche Bundesbank (German Central Bank) in the implementation of the OMT decisions and the alleged failure, of the Bundesregierung (Federal Government) and the Deutscher Bundestag (Lower House of the German Federal Parliament), to act with regard to those decisions.

### The dispute in the main proceedings and the questions referred for a preliminary ruling

#### *The OMT decisions*

- 3 According to the minutes of the 340th meeting of the Governing Council of the ECB ('the Governing Council') on 5 and 6 September 2012, that body 'approved the main parameters of Outright Monetary Transactions (OMT), which would be set out in a press release ["the press release"] to be published after the meeting'.
- 4 The press release is worded as follows:

'As announced on 2 August 2012, the [Governing Council] has today taken decisions on a number of technical features regarding the Eurosystem's [OMTs] in secondary sovereign bond markets that aim at safeguarding an appropriate monetary policy transmission and the singleness of the monetary policy. These will be known as [OMTs] and will be conducted within the following framework:

Conditionality A necessary condition for [OMTs] is strict and effective conditionality attached to an appropriate European Financial Stability Facility/European Stability Mechanism (EFSF/ESM) programme. Such programmes can take the form of a full EFSF/ESM macroeconomic adjustment programme or a precautionary programme (Enhanced Conditions Credit Line), provided that they include the possibility of EFSF/ESM primary market purchases. The involvement of the IMF shall also be sought for the design of the country-specific conditionality and the monitoring of such a programme. The Governing Council will consider [OMTs] to the extent that they are warranted from a monetary policy perspective as long as programme conditionality is fully respected, and terminate them once their objectives are achieved or when there is non-compliance with the macroeconomic adjustment or precautionary programme. Following a thorough assessment, the Governing Council will decide on the start, continuation and suspension of [OMTs] in full discretion and acting in accordance with its monetary policy mandate.

Coverage [OMTs] will be considered for future cases of EFSF/ESM macroeconomic adjustment programmes or precautionary programmes as specified above. They may also be considered for Member States currently under a macroeconomic adjustment programme when they will be regaining

bond market access. Transactions will be focused on the shorter part of the yield curve, and in particular on sovereign bonds with a maturity of between one and three years. No *ex ante* quantitative limits are set on the size of [OMTs].

**Creditor treatment** The Eurosystem intends to clarify in the legal act concerning [OMTs] that it accepts the same (*pari passu*) treatment as private or other creditors with respect to bonds issued by euro area countries and purchased by the Eurosystem through [OMTs], in accordance with the terms of such bonds.

**Sterilisation** The liquidity created through [OMTs] will be fully sterilised.

**Transparency** Aggregate [OMT] holdings and their market values will be published on a weekly basis. Publication of the average duration of [OMT] holdings and the breakdown by country will take place on a monthly basis.

**Securities Markets Programme** Following today's decision on [OMTs], the Securities Markets Programme (SMP) is herewith terminated. The liquidity injected through the SMP will continue to be absorbed as in the past, and the existing securities in the SMP portfolio will be held to maturity.'

*The main proceedings and the order for reference*

- 5 Several groups of individuals, including a group supported by more than 11 000 signatories, have brought various constitutional actions concerning the OMT decisions and the alleged failure of the Bundesregierung and the Deutscher Bundestag to act with regard to those decisions. In addition the Fraktion DIE LINKE im Deutschen Bundestag (The Left Party Parliamentary Group in the German Bundestag) has made an application, in dispute resolution proceedings between constitutional bodies, for a declaration that the Deutscher Bundestag is under certain obligations with regard to the OMT decisions.
- 6 In support of those actions, the applicants in the main proceedings submit (i) that the OMT decisions form, overall, an ultra vires act inasmuch as they are not covered by the mandate of the ECB and infringe Article 123 TFEU and (ii) that those decisions breach the principle of democracy entrenched in the German Basic Law (Grundgesetz) and thereby impair German constitutional identity.
- 7 The Bundesverfassungsgericht (Federal Constitutional Court) states that if the OMT decisions exceed the mandate of the ECB or infringe Article 123 TFEU it will have to uphold these various actions.
- 8 In that regard the referring court observes in particular, alluding to the principle of conferral of powers provided for in Article 5(1) and (2) TEU, that the mandate assigned to the ESCB must be strictly limited in order to meet democratic requirements and that compliance with the limits concerned must be subject to comprehensive judicial review. The referring court observes that the Court of Justice has held that the independence of the ECB does not preclude such review since that independence relates only to the powers that the Treaties confer on the ECB, but not to the definition of the extent and scope of its mandate.
- 9 The referring court further observes that even if it were established that the OMT decisions are to be regarded as merely an announcement of the adoption of future acts, that would not of itself render the proceedings brought before it inadmissible, since preventive legal protection may be necessary, pursuant to national procedural rules, in order to avoid irreparable consequences.

10 In those circumstances, the Bundesverfassungsgericht decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) (a) Is the decision of the Governing Council of the ECB of 6 September 2012 on Technical features of Outright Monetary Transactions incompatible with Article 119 TFEU and Article 127(1) and (2) TFEU and with Articles 17 to 24 of the Protocol on the ESCB and the ECB because it exceeds the monetary policy mandate of the ECB laid down in the abovementioned provisions and encroaches upon the competence of the Member States?

Is the mandate of the ECB exceeded in particular because the decision of the Governing Council of the ECB of 6 September 2012:

- (i) is linked to economic assistance programmes of the EFSF or of the ESM (conditionality)?
  - (ii) provides for the purchase of government bonds of selected Member States only (selectivity)?
  - (iii) provides for the purchase of government bonds of programme countries in addition to assistance programmes of the EFSF or of the ESM (parallelism)?
  - (iv) could undermine the limits and conditions laid down by assistance programmes of the EFSF or of the ESM (circumvention)?
- (b) Is the decision of the Governing Council of the ECB of 6 September 2012 on Technical features of Outright Monetary Transactions incompatible with the prohibition of monetary financing enshrined in Article 123 TFEU?

Is compatibility with Article 123 TFEU precluded in particular by the fact that the decision of the Governing Council of the ECB of 6 September 2012:

- (i) does not provide for quantitative limits for government bond purchases (volume)?
  - (ii) does not provide for a time gap between the issue of government bonds on the primary market and their purchase by the European System of Central Banks (ESCB) on the secondary market (market pricing)?
  - (iii) allows all purchased government bonds to be held to maturity (interference with market logic)?
  - (iv) does not contain any specific requirements for the credit standing of the government bonds to be purchased (default risk)?
  - (v) provides for the same treatment of the ESCB as private or other holders of government bonds (debt cut)?
- (2) In the alternative, in the event that the Court does not consider the decision of the Governing Council of the ECB of 6 September 2012 on Technical features of Outright Monetary Transactions, qua act of an EU institution, to be an appropriate object for a request pursuant to point (b) of the first paragraph of Article 267 TFEU:
- (a) Are Article 119 TFEU and Article 127 TFEU and Articles 17 to 24 of the Protocol on the ESCB and the ECB to be interpreted as permitting the Eurosystem, alternatively or cumulatively,

- (i) to make government bond purchases conditional on the existence of and compliance with economic assistance programmes of the EFSF or of the ESM (conditionality)?
  - (ii) to purchase government bonds of selected Member States only (selectivity)?
  - (iii) to purchase government bonds of programme countries in addition to assistance programmes of the EFSF or of the ESM (parallelism)?
  - (iv) to undermine the limits and conditions laid down by assistance programmes of the EFSF or of the ESM (circumvention)?
- (b) Having regard to the prohibition of monetary financing, is Article 123 TFEU to be interpreted as permitting the Eurosystem, alternatively or cumulatively,
- (i) to purchase government bonds without quantitative limits (volume)?
  - (ii) to purchase government bonds without a minimum time gap from their issue on the primary market (market pricing)?
  - (iii) to hold all purchased government bonds to maturity (interference with market logic)?
  - (iv) to purchase government bonds without minimum credit standing requirements (default risk)?
  - (v) to accept the same treatment of the ESCB as private and other holders of government bonds (debt cut)?
  - (vi) to influence pricing, by communicating the intention to purchase or otherwise, coinciding with the issue of government bonds by Member States of the euro area (encouragement to purchase newly issued bonds)?

### **Consideration of the questions referred for a preliminary ruling**

#### *Preliminary observations*

- 11 The Italian Government submits that the present request for a preliminary ruling may not be examined by the Court of Justice, since the referring court does not accept the binding and definitive interpretative value that the answer given by the Court in response to that request has. It argues that the referring court considers that it has ultimate responsibility for ruling on the validity of the decisions in question in the light of the conditions and limits imposed by the German Basic Law.
- 12 It may be observed in this regard that in *Kleinwort Benson* (C-346/93, EU:C:1995:85) the Court declared that it does not have jurisdiction to give a ruling where the court making the reference is not bound by the Court's interpretation. Indeed, the Court does not have jurisdiction to provide, in preliminary ruling proceedings, answers which are purely advisory (see, to that effect, judgment in *Kleinwort Benson*, C-346/93, EU:C:1995:85, paragraphs 23 and 24).
- 13 However, in that case an interpretation of EU law was not called for because the Court was asked 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 contained no direct and unconditional renvoi to EU law but was limited to taking an act of EU law as a model and only partially reproduced the terms

thereof (see, to that effect, judgments in *Confederación Española de Empresarios de Estaciones de Servicio*, C-217/05, EU:C:2006:784, paragraph 21, and *Les Vergers du Vieux Tauves*, C-48/07, EU:C:2008:758, paragraph 24).

- 14 It must be stated that the circumstances of the present case differ significantly from those of the case that gave rise to the judgment in *Kleinwort Benson* (C-346/93, EU:C:1995:85), since, here, the request for a preliminary ruling concerns directly the interpretation and application of EU law, which means that the present judgment will have definitive consequences as regards the resolution of the main proceedings.
- 15 In that regard, it should be observed that, according to settled case-law of the Court of Justice, Article 267 TFEU establishes a procedure for direct cooperation between the Court and the courts of the Member States (see, inter alia, judgments in *SAT Fluggesellschaft*, C-364/92, EU:C:1994:7, paragraph 9, and *ATB and Others*, C-402/98, EU:C:2000:366, paragraph 29). 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 (see, to that effect, inter alia, judgments in *WWF and Others*, C-435/97, EU:C:1999:418, paragraph 31, and *Lucchini*, C-119/05, EU:C:2007:434, paragraph 43), 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 (judgment in *Eckelkamp and Others*, C-11/07, EU:C:2008:489, paragraph 52).
- 16 It must also be borne in mind that it is settled case-law of the Court that a judgment in which the latter gives a preliminary ruling is binding on the national court, as regards the interpretation or the validity of the acts of the EU institutions in question, for the purposes of the decision to be given in the main proceedings (see, inter alia, judgments in *Fazenda Pública*, C-446/98, EU:C:2000:691, paragraph 49, and *Elchinov*, C-173/09, EU:C:2010:581, paragraph 29).
- 17 It follows that the Court must reply to the referring court's request for a preliminary ruling.

#### *Admissibility*

- 18 Ireland, the Greek, Spanish, French, Italian, Netherlands, Portuguese and Finnish Governments, the European Parliament, the European Commission and the ECB challenge, on various grounds, the admissibility of the request for a preliminary ruling or of certain of the questions it includes.
- 19 First, the Italian Government maintains that the dispute in the main proceedings is contrived and artificial. The actions before the referring court are, in its submission, devoid of purpose since it has not been shown that the applicants in the main proceedings are in need of preventive protection or at risk of damage, but also because the alleged lack of action on the part of the Deutscher Bundestag is not per se amenable to any form of legal classification. Those actions should, moreover, have been declared inadmissible by the referring court since they concern EU measures that are not legal acts. The Italian Government further submits that the case in the main proceedings does not actually give rise to a question of obviously ultra vires acts which is connected to German constitutional identity.
- 20 The Italian Government also argues that the questions are abstract and hypothetical inasmuch as they are based on a series of assumptions, in particular with regard to the links between purchases of government bonds and compliance with economic assistance programmes, the lack of any quantitative limit on the volume of those purchases or the failure to take account of the risk of losses for the ECB.



- 21 The Greek Government also maintains that the questions raised are hypothetical, basing its argument on the fact that the ECB has not, in its view, adopted any measure which directly affects the rights conferred by EU law on the applicants in the main proceedings. The Finnish Government submits that the second question is inadmissible given that it relates to hypothetical actions on the part of the ECB and the national central banks of the euro area.
- 22 Next, although it does not expressly raise an objection to admissibility, the Spanish Government asserts that the national proceedings which have given rise to the reference for a preliminary ruling are not compatible with the system for reviewing the validity of EU acts established by Articles 263 TFEU and 267 TFEU given that they create a direct action against the validity of an EU act without complying with the conditions for admissibility laid down by Article 263 TFEU in respect of actions for annulment.
- 23 Finally, Ireland, the Greek, Spanish, French, Italian, Netherlands and Portuguese Governments, the Parliament, the Commission and the ECB submit that the first question is inadmissible since a question concerning validity cannot, in their submission, be directed at an act which, like the OMT decisions, is preparatory or does not have legal effects.
- 24 In the first place, as regards the argument that the dispute in the main proceedings is contrived and artificial and that the questions referred are hypothetical, it should be observed that, as is apparent from paragraph 15 of this judgment, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to 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. 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 (see, to that effect, judgment in *Melloni*, C-399/11, EU:C:2013:107, paragraph 28 and the case-law cited).
- 25 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, to that effect, judgment in *Melloni*, C-399/11, EU:C:2013:107, paragraph 29 and the case-law cited).
- 26 In the present case, the arguments which the Italian Government puts forward to establish the contrived and artificial nature of the dispute in the main proceedings and the hypothetical nature of the questions raised are based on a critical analysis of the admissibility of the actions at issue in the main proceedings and of the assessment of the facts undertaken by the referring court for the purpose of applying the criteria laid down by national law. It is not, however, for the Court to call that assessment into question since it falls, in the framework of these proceedings, within the jurisdiction of the national court (see, to that effect, judgment in *Lucchini*, C-119/05, EU:C:2007:434, paragraph 43); nor is it for the Court to determine whether a decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and legal proceedings (judgment in *Schnorbus*, C-79/99, EU:C:2000:676, paragraph 22 and the case-law cited). Those arguments are therefore not sufficient to rebut the presumption of relevance mentioned in the previous paragraph.
- 27 As to the fact, to which the Greek and Finnish Governments draw attention, that the programme for purchasing government bonds announced in the press release has not been implemented and that its implementation will be possible only after further legal acts have been adopted, it does not — as the



referring court states — render the actions in the main proceedings devoid of purpose since under German law preventive legal protection may be granted in such a situation if certain conditions are met.

- 28 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, according to the referring court, none the less permitted under German law. Since, in proceedings of the kind provided for in Article 267 TFEU, the interpretation of national law falls exclusively to the referring court (judgment in *Križan and Others*, C-416/10, EU:C:2013:8, paragraph 58), the fact that the OMT decisions have not yet been implemented and 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, by analogy, judgment in *Bosman*, C-415/93, EU:C:1995:463, paragraph 65).
- 29 In the second place, as regards the alleged incompatibility between the national proceedings and the system established by Articles 263 TFEU and 267 TFEU, the Court has, on a number of occasions, ruled on the admissibility of requests for a preliminary ruling concerning the validity of secondary legislation which have been made in judicial review proceedings brought under United Kingdom law. The Court, relying on the fact that, under national law, the persons concerned were able to make an application for judicial review of the legality of the intention or obligation of the United Kingdom Government to comply with EU legislation, has concluded that 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, to that effect, judgments in *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, EU:C:2002:741, paragraphs 36 and 40, and *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraphs 33 and 34). It is clear from the order for reference that that is indeed the case here.
- 30 As regards, in the third place, the arguments, set out in paragraph 23 of this judgment, which relate specifically to the first question, it should be observed that, in the present case, the referring court has brought the matter before the Court in order that the latter determine whether Articles 119 TFEU, 123(1) TFEU and 127(1) and (2) TFEU and Articles 17 to 24 of the Protocol on the ESCB and the ECB must be interpreted as permitting the ESCB to adopt a programme for the purchase of government bonds on secondary markets, such as the programme announced in the press release.
- 31 In the light of the foregoing, the request for a preliminary ruling must be declared admissible.

#### *Substance*

- 32 By its questions, which it is appropriate to consider together, the referring court asks, in essence, whether Articles 119 TFEU, 123(1) TFEU and 127(1) and (2) TFEU and Articles 17 to 24 of the Protocol on the ESCB and the ECB must be interpreted as permitting the ESCB to adopt a programme for the purchase of government bonds on secondary markets, such as the programme announced in the press release.

Articles 119 TFEU and 127(1) and (2) TFEU, and Articles 17 to 24 of the Protocol on the ESCB and the ECB

- 33 The referring court raises the question of whether a programme for the purchase of government bonds on secondary markets, such as the programme announced in the press release, can be covered by the powers of the ESCB, as defined by primary law.

– Powers of the ESCB

- 34 It should be noted as a preliminary point that under Article 119(2) TFEU, the activities of the Member States and the Union are to include a single currency, the euro, as well as the definition and conduct of a single monetary policy and exchange-rate policy (judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 48).
- 35 As regards more particularly monetary policy, Article 3(1)(c) TFEU states that the Union is to have exclusive competence in that area for the Member States whose currency is the euro (see, to that effect, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 50).
- 36 Under Article 282(1) TFEU, the ECB and the central banks of the Member States whose currency is the euro, which constitute the Eurosystem, are to conduct the monetary policy of the Union (judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 49). Under Article 282(4) TFEU, the ECB is to adopt such measures as are necessary to carry out its tasks in accordance with Articles 127 TFEU to 133 TFEU, with Article 138 TFEU and with the conditions laid down in the Statute of the ESCB and of the ECB.
- 37 Within that framework, it is for the ESCB, pursuant to Article 127(2) TFEU, to define and implement that policy.
- 38 More specifically, it follows from Article 129(1) TFEU, read in conjunction with Article 12.1 of the Protocol on the ESCB and the ECB, that the Governing Council is to formulate the monetary policy of the Union and that the Executive Board of the ECB is to implement that policy in accordance with the guidelines and decisions laid down by the Governing Council.
- 39 It also follows, from the third subparagraph of Article 12.1 of the Protocol that, to the extent deemed possible and appropriate, the ECB is to have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB, those banks being obliged, under Article 14.3 of the Protocol, to act in accordance with the guidelines and instructions of the ECB.
- 40 Furthermore, it is apparent from Article 130 TFEU that the ESCB is to be independent when carrying out its task of formulating and implementing the Union's monetary policy. It can be seen from the wording of that Article that it is intended to shield the ESCB and its decision-making bodies from external influences which would be likely to interfere with the performance of the tasks which the FEU Treaty and the Protocol on the ESCB and the ECB assign to the ESCB. Thus, Article 130 TFEU is, in essence, intended to shield the ESCB from all political pressure in order to enable it effectively to pursue the objectives attributed to its tasks, through the independent exercise of the specific powers conferred on it for that purpose by primary law (see, to that effect, judgment in *Commission v ECB*, C-11/00, EU:C:2003:395, paragraph 134).
- 41 In accordance with the principle of conferral of powers set out in Article 5(2) TEU, the ESCB must act within the limits of the powers conferred upon it by primary law and it cannot therefore validly adopt and implement a programme which is outside the area assigned to monetary policy by primary law. In order to ensure that the principle of conferral is complied with, the acts of the ESCB are, on the conditions laid down by the Treaties, subject to review by the Court (see, to that effect, judgment in *Commission v ECB*, C-11/00, EU:C:2003:395, paragraph 135).
- 42 It must be pointed out in this regard that the FEU Treaty contains no precise definition of monetary policy but defines both the objectives of monetary policy and the instruments which are available to the ESCB for the purpose of implementing that policy (see, to that effect, *Pringle*, C-370/12, EU:C:2012:756, paragraph 53).

- 43 Thus, under Articles 127(1) TFEU and 282(2) TFEU, the primary objective of the Union's monetary policy is to maintain price stability. The same provisions further stipulate that, without prejudice to that objective, the ESCB is to support the general economic policies in the Union, with a view to contributing to the achievement of its objectives, as laid down in Article 3 TEU (see, to that effect, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 54).
- 44 The Protocol on the ESCB and the ECB is thus characterised by a clear mandate, which is directed primarily at the objective of ensuring price stability. The tightly drawn nature of that mandate is further reinforced by the procedures for amending certain parts of the Statute of the ESCB and of the ECB.
- 45 As to the means assigned to the ESCB by primary law for the purpose of achieving those objectives, Chapter IV of the Protocol on the ESCB and the ECB, which describes the monetary functions and operations assured by the ESCB, sets out the instruments to which the ESCB may have recourse in the framework of monetary policy.
- The delimitation of monetary policy
- 46 The Court has held that 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 (see, to that effect, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraphs 53 and 55).
- 47 In the first place, as regards the objectives of a programme such as that at issue in the main proceedings, it can be seen from the press release that the aim of the programme is to safeguard both 'an appropriate monetary policy transmission and the singleness of the monetary policy'.
- 48 First, 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'.
- 49 Secondly, 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.
- 50 The ability of the ESCB to influence price developments by means of its monetary policy decisions in fact depends, to a great extent, on the transmission of the 'impulses' which the ESCB sends out across the money market to the various sectors of the economy. Consequently, if the monetary policy transmission mechanism is disrupted, that is likely to render the ESCB's decisions ineffective in a part of the euro area and, accordingly, to undermine the singleness of monetary policy. Moreover, since disruption of the transmission mechanism undermines the effectiveness of the measures adopted by the ESCB, that necessarily affects the ESCB's ability to guarantee price stability. Accordingly, measures that are intended to preserve that transmission mechanism may be regarded as pertaining to the primary objective laid down in Article 127(1) TFEU.
- 51 The fact that a programme such as that announced in the press release might also be capable of contributing to the stability of the euro area, which is a matter of economic policy (see, to that effect, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 56), does not call that assessment into question.
- 52 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 (see, by analogy, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 56).

- 53 In the second place, as regards the means to be used for achieving the objectives sought by a programme such as that announced in the press release, it is not disputed that the implementation of such a programme will entail outright monetary transactions on secondary sovereign debt markets.
- 54 It is clear from Article 18.1 of the Protocol on the ESCB and the ECB, 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 ECB and the national central banks may, in principle, operate in the financial markets by buying and selling outright marketable instruments in euro. Accordingly, the transactions which the Governing Council has in mind in the press release use one of the monetary policy instruments provided for by primary law.
- 55 As regards the selective nature of the programme announced in the press release, it should be borne in mind 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. In those circumstances, 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.
- 56 In the light of those considerations, it is apparent that a programme such as that announced in the press release, in view of its objectives and the instruments provided for achieving them, falls within the area of monetary policy.
- 57 The fact that the implementation of such a programme is made conditional upon full compliance with EFSF or ESM macroeconomic adjustment programmes does not alter that conclusion.
- 58 It is, of course, possible that a government bond-buying programme may, indirectly, increase the impetus to comply with those adjustment programmes and thus, to some extent, further the economic-policy objectives of those programmes.
- 59 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.
- 60 The point should also be made that the ESCB, in a wholly independent manner, made implementation of the programme announced in the press release conditional upon full compliance with EFSF or ESM macroeconomic adjustment programmes, thereby ensuring that its monetary policy will not give the Member States whose sovereign bonds it purchases financing opportunities which would enable them to depart from the adjustment programmes to which they have subscribed. The ESCB thus ensures that the monetary policy measures it has adopted will not work against the effectiveness of the economic policies followed by the Member States.
- 61 Furthermore, since the ESCB is obliged, under Article 127(1) TFEU, read in conjunction with Article 119(3) TFEU, to comply with the guiding principle that public finances must be sound, the conditions included in a programme such as that announced in the press release, which prevent that programme from acting as an incentive to Member States to allow their financial situation to deteriorate, cannot be regarded as taking the programme beyond the confines of the monetary policy framework laid down by primary law.

- <sup>62</sup> It should be added that full compliance of the Member State concerned with the obligations arising under an adjustment programme to which it has subscribed is not, in any event, a sufficient condition to trigger intervention by the ESCB in the framework of a programme such as that announced in the press release, since such intervention is made strictly conditional upon there being disruptions of the monetary policy transmission mechanism or the singleness of monetary policy.
- <sup>63</sup> Accordingly, the fact that the purchase of government bonds on the secondary market subject to a condition of compliance with a macroeconomic adjustment programme could be regarded as falling within economic policy when the purchase is undertaken by the ESM (see, to that effect, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 60) does not mean that this should equally be the case when that instrument is used by the ESCB in the framework of a programme such as that announced in the press release.
- <sup>64</sup> In that regard, the difference between the objectives of the ESM and those of the ESCB is decisive. Whilst it can be seen from paragraphs 48 to 52 of this judgment that a programme such as that at issue in the main proceedings may be implemented only in so far as is necessary for the maintenance of price stability, the ESM's intervention is intended to safeguard the stability of the euro area, that objective not falling within monetary policy (see, to that effect, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 56).
- <sup>65</sup> That analysis also leads the Court to exclude the possibility that a programme such as that announced in the press release may serve to circumvent the conditions circumscribing the ESM's activity on the secondary market, since the ESCB's intervention is not intended to take the place of that of the ESM in order to achieve the latter's objectives but must, on the contrary, be implemented independently on the basis of the objectives particular to monetary policy.

– Proportionality

- <sup>66</sup> 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.
- <sup>67</sup> In that regard, it should be borne in mind that, according to the settled case-law of the Court, the principle of proportionality requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary in order to achieve those objectives (see, to that effect, judgment in *Association Kokopelli*, C-59/11, EU:C:2012:447, paragraph 38 and the case-law cited).
- <sup>68</sup> As regards judicial review of compliance with those conditions, since the ESCB is required, when it prepares and implements an open market operations programme of the kind announced in the press release, to make choices of a technical nature and to undertake forecasts and complex assessments, it must be allowed, in that context, a broad discretion (see, by analogy, judgments in *Afton Chemical*, C-343/09, EU:C:2010:419, paragraph 28, and *Billerud Karlsborg and Billerud Skärblacka*, C-203/12, EU:C:2013:664, paragraph 35).
- <sup>69</sup> 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.
- <sup>70</sup> In that regard, the Court has consistently held that, although the statement of reasons for an EU measure, which is required by Article 296(2) TFEU, must show clearly and unequivocally the reasoning of the author of the measure in question, so as to enable the persons concerned to



ascertain the reasons for the measure and to enable the Court to exercise its power of review, it is not required to go into every relevant point of fact and law. In addition, the question whether the obligation to provide a statement of reasons has been satisfied must be assessed with reference not only to the wording of the measure but also to its context and the whole body of legal rules governing the matter in question (see, to that effect, judgment in *Commission v Council*, C-63/12, EU:C:2013:752, paragraphs 98 and 99 and the case-law cited).

- 71 Although an examination of whether the obligation to provide a statement of reasons has been satisfied may be undertaken only on the basis of a decision that has been formally adopted, in this case it must none the less be found that the press release, together with draft legal acts considered during the meeting of the Governing Council at which the press release was approved, make known the essential elements of a programme such as that announced in the press release and are such as to enable the Court to exercise its power of review.
- 72 As regards, in the first place, the appropriateness of a programme such as that announced in the press release for achieving the ESCB's objectives, it is apparent from the press release and from the explanations provided by the ECB that the programme is based on an analysis of the economic situation of the euro area, according to which, at the date of the programme's announcement, interest rates on the government bonds of various States of the euro area were characterised by high volatility and extreme spreads. According to the ECB, those spreads were not accounted for solely by macroeconomic differences between the States concerned but were caused, in part, by the demand for excessive risk premia for the bonds issued by certain Member States, such premia being intended to guard against the risk of a break-up of the euro area.
- 73 According to the ECB, that special situation severely undermined the ESCB's monetary policy transmission mechanism in that it gave rise to fragmentation as regards bank refinancing conditions and credit costs, which greatly limited the effects of the impulses transmitted by the ESCB to the economy in a significant part of the euro area.
- 74 Having regard to the information placed before the Court in the present proceedings, it does not appear that that analysis of the economic situation of the euro area as at the date of the announcement of the programme in question is vitiated by a manifest error of assessment.
- 75 In that regard, the fact, mentioned by the referring court, that that reasoned analysis has been subject to challenge does not, in itself, suffice to call that conclusion into question, 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.
- 76 In the situation described in paragraphs 72 and 73 of this judgment, the purchase, on secondary markets, of government bonds of the Member States affected by interest rates considered by the ECB to be excessive 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.
- 77 In those circumstances, the ESCB was 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.
- 78 Thus, it is undisputed that interest rates for the government bonds of a given State play a decisive role in the setting of the interest rates applicable to the various economic actors in that State, in the value of the portfolios of financial institutions holding such bonds and in the ability of those institutions to obtain liquidity. Therefore, eliminating or reducing the excessive risk premia demanded in respect of



the government bonds of a Member State is likely to avoid the volatility and level of those premia from hindering the transmission of the effects of the ESCB's monetary policy decisions to the economy of that State and from jeopardising the singleness of monetary policy.

- 79 Moreover, the ECB's assertion that the mere announcement of the programme at issue in the main proceedings was sufficient to achieve the effect sought — namely to restore the monetary policy transmission mechanism and the singleness of monetary policy — has not been challenged in these proceedings.
- 80 It follows from the foregoing that, in economic conditions such as those described by the ECB at the date of the press release, the ESCB could legitimately take the view that a programme such as that announced in the press release is appropriate for the purpose of contributing to the ESCB's objectives and, therefore, to maintaining price stability.
- 81 Accordingly, it should, in the second place, be established whether such a programme does not go manifestly beyond what is necessary to achieve those objectives.
- 82 It must be noted in that regard that the wording of the press release makes quite clear that, under the programme at issue in the main proceedings, the purchase of government bonds on secondary markets is permitted only in so far as it is necessary to achieve the objectives of that programme and that such purchases will cease as soon as those objectives have been achieved.
- 83 It should also be noted that the announcement made in the press release about the programme at issue in the main proceedings will be followed, if necessary, by a second phase, namely implementation of the programme, which will be dependent upon an in-depth assessment of the requirements of monetary policy.
- 84 Moreover, more than two years after the programme at issue in the main proceedings was announced, that programme has not been implemented, the Governing Council taking the view that its activation was not justified by the economic situation of the euro area.
- 85 In addition to the fact that implementation of a programme such as that announced in the press release is strictly subject to the objectives of that programme, the Court notes that the potential scale of the programme is limited in a number of ways.
- 86 It is thus apparent that, in the context of such a programme, the ESCB may purchase only the government bonds of Member States which are undergoing a macroeconomic adjustment programme and which have access to the bond market again. Furthermore, a programme such as that at issue in the main proceedings is concentrated on government bonds with a maturity of up to three years, the ESCB reserving the right to sell at any time the bonds it has purchased.
- 87 It follows from those considerations, first, that a programme such as that announced in the press release ultimately concerns only a limited part of the government bonds issued by the States of the euro area, so that the commitments which the ECB is liable to enter into when such a programme is implemented are, in fact, circumscribed and limited. Secondly, such a programme can be put into effect only when the situation of certain of those States has already justified EMS intervention which is still under way.
- 88 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.

- 89 Furthermore, in so far as the referring court raises the question of the selectivity of such a programme, it should be recalled that this programme is intended to rectify the disruption of the ESCB's monetary policy which arose as a result of the particular situation of government bonds issued by certain Member States. In those circumstances, the ESCB was fully entitled to take the view that a selective bond-buying programme may prove necessary in order to rectify that disruption, concentrating the ESCB's activity on the parts of the euro area which are particularly affected by that disruption and thereby preventing the scale of that programme from being needlessly increased, beyond what is necessary to achieve its objectives, or the programme's effectiveness from being diminished.
- 90 It must also be stated that a programme such as that announced in the press release 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.
- 91 In the third place, the ESCB weighed up the various interests in play so as to actually prevent disadvantages from arising, when the programme in question is implemented, which are manifestly disproportionate to the programme's objectives.
- 92 It follows from the foregoing considerations that a programme such as that announced in the press release does not infringe the principle of proportionality.

Article 123(1) TFEU

- 93 The referring court raises the issue of the compatibility with Article 123(1) TFEU of a programme for the purchase of government bonds on secondary markets, such as the programme announced in the press release.
- 94 It is clear from its wording that Article 123(1) TFEU prohibits the ECB and the central banks of the Member States from granting overdraft facilities or any other type of credit facility to public authorities and bodies of the Union and of Member States and from purchasing directly from them their debt instruments (judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 123).
- 95 It follows that that provision prohibits all financial assistance from the ESCB to a Member State (see, to that effect, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 132), but does not preclude, generally, the possibility of the ESCB purchasing from the creditors of such a State, bonds previously issued by that State.
- 96 Thus, Article 18.1 of the Protocol on the ESCB and the ECB 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.
- 97 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.
- 98 In addition, in order to determine which forms of purchases of government bonds are compatible with Article 123(1) TFEU, it is necessary to take account of the objective pursued by that provision (see, by analogy, judgment in *Pringle*, C-370/12, EU:C:2012:756, paragraph 133).

- 99 To that end, it must be recalled that the origin of the prohibition laid down in Article 123 TFEU is to be found in Article 104 of the EC Treaty (which became Article 101 EC), which was inserted in the EC Treaty by the Treaty of Maastricht.
- 100 It is apparent from the preparatory work relating to the Treaty of Maastricht that the aim of Article 123 TFEU is 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 deficits (see the Draft Treaty amending the Treaty establishing the European Economic Community with a view to achieving economic and monetary union, *Bulletin of the European Communities*, Supplement 2/91, pp. 24 and 54).
- 101 Thus, as is stated in the seventh recital in the preamble to Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles [123 TFEU] and [125(1) TFEU] (OJ 1993 L 332, p. 1), purchases made on the secondary market may not be used to circumvent the objective of Article 123 TFEU.
- 102 It follows that, as the Advocate General has observed in point 227 of his Opinion, when the ECB 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.
- 103 As regards a programme such as that announced in the press release, it must in the first place be stated that, in the framework of such a programme, the ESCB is entitled to purchase government bonds — not directly, from public authorities or bodies of the Member States — but only indirectly, on secondary markets. Intervention by the ESCB of the kind provided for by a programme such as that at issue in the main proceedings thus cannot be treated as equivalent to a measure granting financial assistance to a Member State.
- 104 That said, the point should be made, in the second place, that the ESCB's intervention could, in practice, have an effect equivalent to that of a direct purchase of government bonds from public authorities and bodies of the Member States if the potential purchasers of government bonds on the primary market knew for certain that the ESCB was going to purchase those bonds within a certain period and under conditions allowing those market operators to act, de facto, as intermediaries for the ESCB for the direct purchase of those bonds from the public authorities and bodies of the Member State concerned.
- 105 However, the explanations provided by the ECB in these proceedings have made clear that the implementation of a programme such as that announced in the press release must be subject to conditions intended to ensure that the ESCB's intervention on secondary markets does not have an effect equivalent to that of a direct purchase of government bonds on the primary market.
- 106 In this respect, the draft decision and draft guideline produced by the ECB in these proceedings indicate that the Governing Council is to be responsible for deciding on the scope, the start, the continuation and the suspension of the intervention on the secondary market envisaged by such a programme. The ECB has also made clear before the Court that the ESCB intends, first, to ensure that a minimum period is observed between the issue of a security on the primary market and its purchase on the secondary market and, secondly, to refrain from making any prior announcement concerning either its decision to carry out such purchases or the volume of purchases envisaged.

- <sup>107</sup> Inasmuch as those safeguards prevent 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, they ensure that implementation of a programme such as that announced in the press release will not, in practice, have an effect equivalent to that of a direct purchase of government bonds from public authorities and bodies of the Member States.
- <sup>108</sup> It is true that, despite those safeguards, the ESCB's intervention remains capable of having, as the referring court points out, some influence on the functioning of the primary and secondary sovereign debt markets. However, that fact is not decisive since such influence constitutes, as the Advocate General has observed in point 259 of his Opinion, 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.
- <sup>109</sup> In the third place, a programme such as that announced in the press release would circumvent the objective of Article 123(1) TFEU, recalled in paragraph 100 of this judgment, if that programme were 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.
- <sup>110</sup> 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.
- <sup>111</sup> In any event, the Court finds that the features of a programme such as that announced in the press release exclude the possibility of that programme being considered of such a kind as to lessen the impetus of the Member States to follow a sound budgetary policy.
- <sup>112</sup> In that regard, it must be borne in mind, first, that the programme provides for the purchase of government bonds only in so far as is necessary for safeguarding the monetary policy transmission mechanism and the singleness of monetary policy and that those purchases will cease as soon as those objectives are achieved.
- <sup>113</sup> That limitation on the ESCB's intervention means (i) that the Member States cannot, in determining their budgetary policy, rely on the certainty that the ESCB will at a future point purchase their government bonds on secondary markets and (ii) that the programme in question cannot be implemented in a way which would bring about a harmonisation of the interest rates applied to the government bonds of the Member States of the euro area regardless of the differences arising from their macroeconomic or budgetary situation.
- <sup>114</sup> The adoption and implementation of such a programme thus do not permit the Member States to adopt a budgetary policy which fails to take account of the fact that they will be compelled, in the event of a deficit, to seek financing on the markets, or result in them being protected against the consequences which a change in their macroeconomic or budgetary situation may have in that regard.
- <sup>115</sup> Secondly, a programme such as that at issue in the main proceedings is accompanied by a series of guarantees that are intended to limit its impact on the impetus to follow a sound budgetary policy.

- 116 Thus, by limiting that programme to certain types of bonds issued only by those Member States which are undergoing a structural adjustment programme and which have access to the bond market again, the ECB has, de facto, restricted the volume of government bonds eligible to be purchased in the framework of the programme and, accordingly, has limited the scale of the programme's impact on the financing conditions of the States of the euro area.
- 117 Moreover, the impact of a programme such as that announced in the press release on the impetus to follow a sound budgetary policy is also limited by the fact that the ESCB has the option of selling the purchased bonds at any time. It follows that the consequences of withdrawing those bonds from the markets may be temporary. That option also means that the ESCB is able to adapt its programme in the light of the attitude of the Member States concerned, in particular with a view to limiting or suspending purchases of government bonds if a Member State changes its issuance behaviour by issuing more short-maturity bonds in order to finance its budget by means of bonds that are eligible for ESCB intervention.
- 118 The fact that the ESCB also has the possibility of holding the bonds it has purchased until maturity does not play a decisive role in this regard, since that possibility depends on such action being necessary to achieve the objectives sought and, in any event, the market operators involved cannot be certain that the ESCB will make use of that option. It should also be observed that such a practice is in no way precluded by Article 18.1 of the Protocol on the ESCB and the ECB and that it does not imply that the ESCB waives its right to payment of the debt, by the issuing Member State, once the bond matures.
- 119 In addition, by providing only for the purchase of government bonds issued by Member States that have access to the bond market again, the ESCB in practice excludes from the programme it intends to implement the Member States whose financial situation has deteriorated so far that they are no longer in a position to secure financing on the market.
- 120 Finally, the fact that the purchase of government bonds is conditional upon full compliance with the structural adjustment programmes to which the Member States concerned are subject precludes the possibility of a programme, such as that announced in the press release, acting as an incentive to those States to dispense with fiscal consolidation, relying on the financing opportunities to which the implementation of such a programme could give rise.
- 121 It follows from the foregoing that a programme such as that announced in the press release does not lessen the impetus of the Member States concerned to follow a sound budgetary policy. Accordingly, Article 123(1) TFEU does not prevent the ESCB from adopting such a programme and implementing it under conditions which do not result in the ESCB's intervention having an effect equivalent to that of a direct purchase of government bonds from the public authorities and bodies of the Member States.
- 122 The features of such a programme to which the referring court has specifically drawn attention and which have not been mentioned in the analysis in the previous paragraphs do not call that conclusion into question.
- 123 Thus, even if it were established that that programme could expose the ECB 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.
- 124 In this regard, the Court observes that those guarantees are also likely to reduce the risk of losses to which the ECB is exposed.

- <sup>125</sup> It should also be borne in mind that a central bank, such as the ECB, is obliged to take decisions which, like open market operations, inevitably expose it to a risk of losses and that Article 33 of the Protocol on the ESCB and the ECB duly provides for the way in which the losses of the ECB must be allocated, without specifically delimiting the risks which the Bank may take in order to achieve the objectives of monetary policy.
- <sup>126</sup> Furthermore, although the lack of privileged creditor status may mean that the ECB 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 ECB having privileged creditor status.
- <sup>127</sup> In view of all the foregoing considerations, the answer to the questions referred is that Articles 119 TFEU, 123(1) TFEU and 127(1) and (2) TFEU and Articles 17 to 24 of the Protocol on the ESCB and the ECB must be interpreted as permitting the ESCB to adopt a programme for the purchase of government bonds on secondary markets, such as the programme announced in the press release.

#### **Costs**

- <sup>128</sup> Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

**Articles 119 TFEU, 123(1) TFEU and 127(1) and (2) TFEU and Articles 17 to 24 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank must be interpreted as permitting the European System of Central Banks (ESCB) to adopt a programme for the purchase of government bonds on secondary markets, such as the programme announced in the press release to which reference is made in the minutes of the 340th meeting of the Governing Council of the European Central Bank (ECB) on 5 and 6 September 2012.**

[Signatures]