

## **Draghi's big bazooka referred to ECJ**

*di Nicholas Hirst*

It was an odd decision that Germany's constitutional court gave on Friday (7 February) when it referred to the European Union's highest court a case challenging the European Central Bank's programme to buy the bonds of weak member states, introduced in 2012 to calm the economic crisis raging in the eurozone.

An odd decision not just because this is the first time that the Bundesverfassungsgericht, long a favourite of German Eurosceptics challenging the EU, has deferred to the European Court of Justice.

Odd because, before asking its questions, Germany's highest court trashed the ECB's defence. Jörg Asmussen, Germany's former member of the ECB executive board, had defended the ECB with a claim that it was acting within its powers. But this was compellingly challenged by Jens Weidmann, the Bundesbank's president and member of the ECB's governing council – so much so that six of the eight German judges provided a long list of reasons as to why the ECB's bond-buying programme flagrantly overstepped the bank's mandate. There were several indications, said the German court, that the bank had gone beyond the monetary policy provided for in its mandate and had engaged in economic policy outright. Not only this, but the ECB had sought to “circumvent” restrictions on its mandate, acting outside of “parliamentary legitimation and monitoring”.

Yet, in this case brought by over 35,000 German citizens, the judges conclude by asking the ECJ if the conduct can nonetheless be squared with EU law.

The ruling was welcomed by the European Commission, while markets remained calm. Analysts argue that the German court has left the ECJ with enough room to approve the ECB's outright monetary transactions (OMT) decision, taken in September 2012 in the midst of the eurozone's economic crisis. One easy option might be to limit the scope of the decision. The ECJ is also considered to be a friendlier institution towards the ECB than the German court.

But the present calm may not last. It takes the ECJ an average of 16 months to rule on questions referred to it. In the meantime, the comments from Germany may inhibit the ECB from using its “unlimited firepower”. And even a ruling that came earlier than expected could give rise to further complications. A judgment that responded to the German judges by restricting the OMT decision could severely undermine Draghi's promise to do “whatever it takes” to save the euro, which so calmed the markets. By contrast, a judgment that gave short shrift to the constitutional court's concerns may prove unpalatable to its judges in Karlsruhe. But to disregard the ECJ's

judgment could have disastrous consequences, not only for the ECB but for the EU legal order as a whole.