

The background of the top half of the page is a dark blue grid with a glowing blue line graph that fluctuates across the screen. A horizontal dotted line is also visible, intersecting the graph. The overall aesthetic is high-tech and financial.

**NEW EU LAW AUTHORITY FOR  
ECB INTERVENTION IN THE EU  
GOVERNMENT BOND MARKETS  
STRENGTHENS EUROPEAN  
FINANCIAL MARKETS**

The ECB Governing Council will meet on 22 January and is expected to discuss implementing a quantitative easing (QE) policy which would result in national central banks buying Euro denominated government bonds from their own national governments respectively - as a means by which QE could be operated in the Eurozone in a way which is centrally coordinated by the ECB.

The role that the ECB could potentially play has been given the underpinning of EU law authority as a result of the decision of the European Court of Justice's Advocate-General Cruz Villalon (AG) in the case of *Gauweiler and Others v Deutscher Bundestag* which was published on 14 January 2015.

The case to which the AG's opinion relates was brought in the German Federal Constitutional Court by a number of German politicians and academics to challenge the ECB's announcement of its institution of an Outright Market Transactions (OMT) programme in September 2012 at the height of concerns about the viability of the Eurozone.

There were two key concerns raised by the parties which brought the case to the German Federal Constitutional Court. The first was that they argued that the OMT programme was not an act of monetary policy but an act of economic policy. The significance here is that a monetary policy action was more likely to be within the scope of the ECB's powers whereas an economic policy action would generally be a matter for member state governments and their Finance or Economic ministries although the EU has some general economic role under the EU Treaty.

The second was that the EU Treaty prohibits monetary financing of individual member states and it was argued that the OMT programme would be a means by which individual member states would be financed because their bonds are issued by them and if the ECB bought those bonds it would be financing those states.

The AG's opinion supports the ECB's actions while indicating certain obligations on the ECB when it engages in an OMT programme. It also gives helpful guidance on the limits of ECB

powers in the area of monetary and economic policy.

The AG's opinion makes it clear that he considers that prior to implementing an OMT programme the ECB must give a proper account of the reasons for adopting the programme identifying clearly and precisely the extraordinary circumstances which justify implementing such a programme.

It also indicates that the ECB must ensure the programme retains its character as a "monetary" rather than "economic" measure and that, in order to do so, it must refrain from any direct involvement in the financial assistance programme that applies to the EU Member State concerned (ie any state whose bonds are being purchased).

However, the AG's opinion also makes it clear that the ECB must have a broad discretion when framing and implementing the EU's monetary policy, and the courts must exercise a considerable degree of caution when reviewing the ECB's activity, because the courts lack the expertise and experience which the ECB has with regard to monetary policy.

So the ECB will have a very wide discretion provided they stay within the boundaries of monetary policy and give reasons for what they are doing.

Provided the European Court of Justice (ECJ) rules in line with the AG's opinion this gives the ECB a powerful new tool to manage the monetary policy of the Eurozone. National central banks tend to have powers to undertake similar interventions already.

The AG's opinion is not the decision of the European Court of Justice - but usually the ECJ decision will follow the opinion of the AG even if it modifies some aspects of the opinion. The significance of the AG's opinion is that it finds in favour of the ECB on the fundamental questions raised about whether the ECB's Outright Monetary Transactions programme was compatible in principle with the EU Treaty and the ECB's institutional powers. The ECJ is likely to follow suit.

The power to intervene in bond markets and buy up a nation's own government bonds is a typical power that a national central bank will have. In the UK, for example, if UK government debt was to be bought back this would typically be done by the Bank of England through its Asset Purchase Facility which allows it to buy both gilts and other assets such as corporate bonds. It was not entirely clear whether a power to carry out such activity was within the powers given by the EU to the ECB and would be consistent with the member states' own national areas of responsibility.

However, the ECB's willingness to support the Euro by being prepared to undertake Euro denominated government bond purchases was seen as a critical step in stabilising the Euro and financial markets against the backdrop of problems in Greece, Portugal, Spain and Italy in 2012. If its ability to do this was taken away by a decision declaring the ECB OMT programme to be outside of its institutional powers there was a serious risk of destabilising the Euro again, particularly against a background of possible Greek Eurozone exit (Grexit) if the Syriza party is elected in the forthcoming Greek election.

So the AG's opinion lowers, rather than raises, Eurozone volatility and gives EU law underpinning to the OMT programme which is likely to be confirmed by the ECJ.

Clients who take positions in European government bonds should be aware of the AG's opinion and the fact that ECJ is now expected to follow suit. This will also have wider significance for investment and corporate decision making from within the Eurozone and into the Eurozone and the EU in general as it should have a positive impact on the EU economy through providing support for ECB and central bank interventions to support the Euro.

DLA Piper has extensive experience in EU financial services law and regulation.

#### **FOR FURTHER INFORMATION CONTACT:**



#### **Michael Mckee**

Partner - European Financial Services Regulatory

T +44 20 7153 7468

[michael.mckee@dlapiper.com](mailto:michael.mckee@dlapiper.com)

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UK switchboard: +44 (0) 8700 111 111

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