

DON'T BLAME GERMAN JUDGES FOR QE UNCERTAINTY

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German constitutional court is about to rule on the legality of the European Central Bank's quantitative easing programme. The ECB is not subject to German law, but the Bundesbank is. Germany's central bank is the largest shareholder in the ECB. A No ruling from court tomorrow would therefore take the eurozone into legally uncharted territory.

The ruling was expected in March, but the court postponed the decision to take account of the ECB's pandemic emergency purchase programme. We do not know whether the court wants to rule on the PEPP as well. If it does, we could be in for a nasty surprise. As explained by Ana Bobic and Mark Dawson, two Berlin based legal scholars, the PEPP does not obviously meet the legal criteria set in previous court rulings.

The European Court of Justice has four criteria for asset purchases. First, the programme must leave investors in the dark about the actual assets to be bought. This is why the ECB nominally limits the amount of debt it can buy. It relaxed restrictions for the PEPP, so a large share of newly issued Italian bonds could end up on the ECB's balance sheet, Second, purchases must not deter member states from pursuing sound fiscal policies. Third, the ECB should not hold bonds to maturity. Finally, it must try to offload risks to the European Stability Mechanism, the rescue fund.

There is no point trying to predict what Germany's constitutional court will do. It has been full of surprises. In the past, it roared against the euro but never went for the kill. In 1993 and 1998, German Eurosceptics hoped in vain that the court would stop the monetary union. The justices often expressed sympathy with the claimants, but always ended up ruling against them.

The court also takes emergencies into account. The Covid19 lockdown clearly qualifies. If they want to wave it through, they will find a way.

But with each ruling, the German court also narrowed the legal scope of what is allowed. When it asked the ECJ for an opinion about the legality of the ECB's backstop from 2012, the ECJ came out in support of the ECB. But the ECJ also produced a lot of small print.

Eurosceptic German academics may have lost each time they have gone to trial before. But they may yet have the last laugh. They have already got the courts to produce annoying legal clarity where comforting grey zones existed before.

Many think of German judges as obstacles to modern monetary policy. I disagree. It is generally not a good idea to look at legal systems as obstacles. The laws underpinning the eurozone reflect the complex social contract between EU member states when they set up monetary union in the 1990s. Perpetual legal conflicts only minor political and economic divisions built up since 2008.

When we disagree with a law, we should try to change it. In the case of the eurozone, we direct our ire at judges because EU treaties are difficult to change. There may not be a majority among EU members for a substantive reform of how the eurozone works. But we cannot expect judges to do the job for us. If they end up declaring asset purchases illegal, they will have merely adopted a narrower interpretation of the law than we might find expedient,

There may be solid technical reasons to disagree with such a ruling, but the underlying problem is the law itself.

Everyone involved in eurozone policy knows that the monetary union owes its survival to successful rule bending.

It was a masterpiece of legal engineering in the last crisis to set fire to a no-bailout clause in European treaties, and then create a bailout umbrella on its ashes.

The eurozone's continued survival is contingent on such legal trickery. But in a world of independent judiciaries, this is hardly a stable basis. No matter what happens tomorrow, this monetary union needs a new treaty.